

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, October 21, 2019
6:00 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **INTRODUCTION OF STUDENTS & SCOUTS**
- VI. **PRESENTATIONS**

Introduction of Teen Council
Jori Nelson

KC Rising presentation
Sheri Gonzales and John Murphy

- VII. **PUBLIC PARTICIPATION**

(5 minute time limit for items not otherwise listed on the agenda)

- VIII. **CONSENT AGENDA**

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

By Staff

- 1. Approval of regular City Council meeting minutes - October 7, 2019
- 2. Website agreement with Granicus

- IX. **COMMITTEE REPORTS**
- X. **MAYOR'S REPORT**
- XI. **STAFF REPORTS**
- XII. **OLD BUSINESS**
- XIII. **NEW BUSINESS**

- COU2019-46 Consider approval of agreement and draft survey questions with Wiese Research Group to conduct a market sustainability study for consideration of a Prairie Village civic center with community, aquatic and wellness facilities operated by the YMCA and a new Johnson County Library Branch
Sheila Myers and Cathy Morrissey
- COU2019-44 Consider approval of Ordinance #2408 to issue industrial revenue bonds (Silvercrest at Meadowbrook Senior Housing)
Lisa Santa Maria and Kevin Wempe
- COU2019-47 Consider approval of Resolution Authorizing Project (Public Works Facility)

Consider approval of Bond Sale Resolution (Public Works Facility)
Lisa Santa Maria, Kevin Wempe and Adam Pope
- COU2019-48 Consider agreement with McCown Gordon Construction for construction management series for the new Public Works facility
Keith Bredehoeft

XIV. **COUNCIL COMMITTEE OF THE WHOLE** (Council President presiding)

Village Voice Redesign
Adam Geffert

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, hearing assistance - in order to attend the meeting, please notify the City Clerk at 385-4616, no later than 48 hours prior to the beginning of the meeting. If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
OCTOBER 7, 2019**

The City Council of Prairie Village, Kansas, met in regular session on Monday, October 7, 2019, at 6:00 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance: Chad Herring, Jori Nelson, Serena Schermoly, Ron Nelson, Tucker Poling, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher. Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Lisa Santa Maria, Finance Director; Ashley Freburg, Public Information Officer/Deputy City Clerk; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for October 7, 2019. Mrs. Schermoly seconded the motion, which passed unanimously.

INTRODUCTION OF STUDENTS & SCOUTS

A student from Shawnee Mission North was in attendance as a requirement of her AP Government class.

PRESENTATIONS

Sarah VanLanduyt, Executive Director of the Arts Council of Johnson County, and members of the Prairie Village Arts Council were in attendance. Mayor Mikkelson read a proclamation declaring October 2019 as National Arts and Humanities Month in Prairie Village.

PUBLIC PARTICIPATION

- Dan Anderson, 3304 W. 71st Street, noted that the 13th annual State of the Arts reception would take place on Friday, October 11 from 6:00 - 8:00 p.m.
- Mary English, 4402 W. 77th Terrace, spoke in favor of LEED certification for the Public Works facility project.



CONSENT AGENDA

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion:

1. Approval of regular City Council meeting minutes - September 16, 2019
2. Approval of Expenditure Ordinance #2982
3. Consider bid award for 2019 tree trimming program

Mr. Poling made a motion to approve the consent agenda as presented.

A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell, Gallagher.

COMMITTEE REPORTS

- Mrs. Myers reported that the civic center survey agreement and draft survey would be presented to Council for approval at the October 21 meeting.

The Tree Board held its Fall Seminar on October 2. A presentation was given on the benefits of using native plants in landscaping. The Tree Board will also be planting 25 trees in the Prairie Fields subdivision on November 8 as part of the Heartland Tree Alliance program.

- Mr. Herring stated that the Parks and Recreation Committee meeting was rescheduled to Wednesday, October 16 at 5:30 p.m. The Wassmer Park dedication ceremony will be held on Saturday, October 26 at 2:00 p.m.
- Mr. Gallagher reported on the accomplishments of several former Teen Council members.
- Mr. Nelson shared that the new Teen Council orientation session would be held prior to the Council meeting on October 21.
- Chris Brewster, the city planning consultant with Gould Evans, stated that the Planning Commission unanimously approved a Special Use Permit at its September 10 meeting for the wireless telecommunication facility at 7700 Mission Road. The original permit held by Sprint was renewed in 2009 for a ten-year period, and is due for renewal in 2019. If approved, this Special Use Permit will be valid for another ten-year period.

Mr. Herring made a motion to approve Ordinance #2409, approving the renewal of a Special Use Permit for the wireless telecommunication facility at 7700 Mission Road. The motion was seconded by Mr. Nelson.



A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell, Gallagher.

MAYOR’S REPORT

Mayor Mikkelson reported the following:

- The Mayor, along with several councilmembers and staff, toured the Lenexa City Center to consider how other cities have addressed projects similar to the proposed civic center.
- A celebration was held at Highland Cemetery to recognize the donation of a water connection by WaterOne and HomeServe. Access to water will help caretakers maintain the cemetery.
- The Mayor met with leaders from the Climate Action Coalition and the Mid-America Regional Council to consider coordinated sustainability initiatives.
- The Mayor recapped several public meetings that had been held in previous weeks:
 - Updated zoning regulations
 - Skate park design
 - Coffee with Heart Strings
 - Sunflower House fundraiser
 - Northeast Johnson County Mayors Lunch with Everyg
 - Lunch with the CEO of Advent Health
 - Fundraiser for the Johnson County Library Foundation
- The second Chamber in the Chamber music series event was held on September 20.
- A renaming dedication ceremony was held to rename Prairie Park for former Mayor Ron Shaffer on September 28.
- Coffee with a Cop was held at Starbucks on October 2.
- The Mayor met with other Johnson County and Wyandotte County Mayors to discuss the dark store theory.
- The Mayor will meet with Johnson County officials to consider the construction of a new homeless shelter.
- An agreement was reached with First Washington for the donation of an easement at 71st and Mission Road for a public art installation.

STAFF REPORTS

Public Works

- Keith Bredehoeft stated that crews would begin paving Roe Avenue as part of a road reconstruction project later in the week.
 - The Somerset road closure should be reopened in the next two weeks.
 - Solar panels will not be installed in time for the dedication ceremony at Wassmer Park, but information about the panels will be shared with attendees.
 - Stormwater repairs and the installation of a sidewalk on Belinder Avenue between 73rd Street and 75th Street will begin in the spring.



- The Public Works Department is preparing equipment and training drivers for winter snowplowing.

Administration

- Wes Jordan shared that the October plan of action was included in the packet.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2019-42

Consider approval of the renewal of the City's health, dental and vision insurance providers, as recommended by City staff

Amy Hunt stated that there would not be an increase in costs for medical, dental and vision insurance in the 2020 plan year, even though an anticipated 12.5% increase had been included in the budget. There will be minor increases in the long-term disability plan and life insurance.

Mr. Wang noted that the City's benefit package was generous, and asked if it was comparable to what is found in other cities. Mrs. Hunt stated that Human Resources Directors from several municipalities discuss rates throughout the year to ensure they are competitive.

Mr. Gallagher made a motion to approve the renewal of the City's employee benefit package for 2020 as presented. The motion was seconded by Mr. Nelson, and passed unanimously.

COU2019-43

Consider revising Council Policy 217 - Arbor Day Honoree Nomination

Mrs. Myers, the Council liaison to the Tree Board, stated that the revisions to the policy would allow for the recognition of non-resident individuals or organizations that have had a positive impact on the City. Additionally, more than one nominee can now be recognized each year, and nominations from previous years may be considered for up to three years.

Mrs. Myers made a motion to approve the revisions to Council Policy 217 as proposed. The motion was seconded by Mr. Nelson, and passed unanimously.

COU2019-45

Consider professional services agreement with Clark Enersen Partners for the Public Works building schematic design



Mr. Bredehoeft said that since Council gave approval to proceed with the Public Works building project, staff met with building contractors, other cities and architectural firms to discuss options for moving forward. He added that it is possible that construction could begin as early as spring 2020, noting that advantages to starting early included lower construction costs and bonding rates. An RFQ has been released for construction management services, and a vendor should be selected prior to the Council meeting on October 21. He added that Public Works had collaborated with Clark Enersen on projects in the past.

Mrs. Prenger stated that the agreement being considered at this meeting was only in relation to the schematic design portion of the project, though plans for other phases were included in the scope of services. Rick Wise, representing Clark Enersen Partners, provided examples of the company's experience working on LEED projects. He shared the LEED points-based system for accreditation, and noted that Clark Enersen was qualified to work on LEED Gold and Platinum projects.

Mr. Runion asked about the value of having a LEED certification, and whether the money allotted for it could be better spent in another way. Mr. Wise stated that LEED includes multiple elements, including energy use reduction, water use reduction and the creation of more sustainable sites. He added that life cycle costs would be analyzed to determine the return on investment to the City.

Mr. Odell asked if the cost of the schematic design process would include studying the various LEED certification options. Mr. Wise stated that both the design of the building as well as sustainability solutions would be considered during this phase of the project.

Mr. Odell made a motion to approve the professional services agreement with Clark Enersen Partners for the Public Works building schematic design in the amount of \$108,450.00. The motion was seconded by Mrs. Schermoly.

Ms. Nelson asked if the architect assigned to the project would be LEED certified. Mr. Wise stated that the lead architect is a LEED accredited professional, and that three additional architects at Clark Enersen are currently going through the certification process.

Mr. Poling stated that the Council had voted to move forward on the project with the goal of LEED Platinum certification at its previous meeting, but the contract as it is currently written does not state that. Mr. Bredehoeft said that all references to "gold certification" were meant to be removed, but some were missed.

Mr. Poling made a motion to amend the motion to edit page one of the Scope of Services, deleting the word "gold" under the General Project Information paragraph. On page 7 of the Scope of Services, adding the words "with a goal of platinum certification". Additionally, changing Article III of the Agreement to "Attached as Scope of Services". The motion to amend was seconded by Mr. Herring and passed 9-3, with Mrs. Myers, Mrs. Morehead and Mr. Runion in opposition.



Mrs. Myers asked where the funding was coming from to pay for the schematic design portion of the project. Mr. Bredehoeft stated that it would come from the city contingency fund, but that bonds would be sold later in the year to finance the project. Mr. Wang asked whether an ROI report would be provided at the end of the schematic design project. Mr. Wise stated that this information will be included, and will show anticipated LEED scores and how much energy use is being reduced.

The amended motion passed unanimously.

Mr. Nelson made a motion that the City Council move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mrs. Schermoly and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE
Glass recycling and food composting pilot program

Ms. Nelson stated that changes had been made to the pilot program proposal that had been presented at the September 3 meeting. Meredith McAllister, owner of Compost Collective KC, gave a presentation of a proposed curbside composting pilot program. The pilot would run for a six-month period, with 20 homes in each of the six wards. For weekly service, the cost per residence would be \$17 per month, along with an \$8 bucket deposit. Bi-weekly collection would total \$10 per month, per residence. Total costs for the program would be \$12,240 for weekly service, \$7,200 for bi-weekly service, and \$1,040 for the bucket deposit. Monthly reports would be provided to Council indicating usage rates, pounds of food diverted from landfills, and comments from customers. All customer service issues would be handled by Compost Collective KC.

Mrs. Morehead stated that more information was still need before a decision could be made. She moved to table the topic for a future meeting. There was no second to the motion.

Mr. Wang asked how the cost model was developed. Ms. McAllister stated that the proposed rate is discounted from the normal residential rate, which is \$30 per month for weekly service and \$20 per month for bi-weekly service. Mr. Wang stated that he was not in favor of the program, noting that it might be something for homeowners associations to consider.

Mr. Poling made a motion to direct staff to move forward with a six-month pilot program with Compost Collective KC to gather information relevant to the feasibility, interest and effectiveness of a potential permanent program. Ms. Nelson seconded.

Mayor Mikkelson suggested asking staff to vet the program through normal processes, and then come back to Council with recommendations and potential changes. He added



that participants must be randomly selected to ensure that the feedback received is accurate.

The motion passed 9-3, with Mr. Wang, Mrs. Morehead and Mr. Runion in opposition.

Jamie Arnold, owner of Glass Bandit, presented a proposal with two options for a curbside glass recycling pilot program. Option #1 would allow residents to opt-in to the program, and would provide service every other trash day at a cost of \$3 per month, per residence, along with a \$7 deposit for a bin. Option #2 would allow each Councilmember the choice to opt-in their own neighborhood. The cost would be \$2 per month, per residence, plus a \$7 bin deposit. With either option, participation rates and usage rates would be reported monthly, as well as the amount of glass being recycled. Glass Bandit would be entirely responsible for customer service issues.

Mr. Odell made a motion to direct staff to move forward with a six-month pilot program with Glass Bandit to gather information relevant to the feasibility, interest and effectiveness of a potential permanent program, using option #2. The motion was seconded by Ms. Schermoly and passed 9-3, with Mr. Wang, Mrs. Morehead and Mr. Runion in opposition.

Village Voice redesign

Ashley Freburg stated that the Village Voice has been published in its present form for 10 years, and that there was interest in developing a new design. Currently, staff writes articles and takes photos, compiles this information in a Word document, and sends it to Boelte-Hall for graphic design, layout, printing and mailing services. Mrs. Freburg noted that she possessed graphic design experience, and provided two printed options for Councilmembers to consider. Bringing the design in-house would reduce expenses and provide more flexible deadlines. Boelte-Hall would still print and mail the newsletters. Mrs. Freburg added that she has the capacity to take on the additional work-time.

Ms. Nelson asked if the newsletters could be printed on recycled paper. Mrs. Freburg said she would verify that Boelte-Hall is using recycled paper, and what cost differences exist.

New Business

There was no new business to come before the Council Committee of the Whole.

Mr. Nelson moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion passed unanimously.



Mr. Gallagher made a motion that the Council go into Executive Session. The motion was seconded by Mr. Herring and passed unanimously.

EXECUTIVE SESSION

At 9:40, The City Council recessed into Executive Session for a period not to exceed 30 minutes for consultation with the city attorney which would be deemed privileged in the attorney-client relationship per K.S.A. 75-4319(b)(2), to discuss legal issues related to claims against the City. The Governing Body, City Administrator, Public Works Director and City Attorney were present.

No action was taken in the Executive Session, and the open meeting resumed at 10:10 in the Council Chambers.

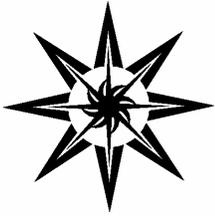
ANNOUNCEMENTS

Announcements were included in the Council packet.

ADJOURNMENT

With no further business to come before the City Council, Mayor Mikkelson declared the meeting adjourned at 10:10 p.m.

Adam Geffert
City Clerk



ADMINISTRATION

Council Consent Agenda Date: October 21, 2019

Consider approval of a contract with Granicus for website redesign and hosting services

RECOMMENDATION

Staff recommends the City Council approve the contract with Granicus for website redesign and hosting services.

BACKGROUND

At the September 16, 2019 Council Meeting, the Council of the Whole authorized staff to move forward with a contract with Granicus for website redesign services.

Granicus provides website management and hosting services for the City of Prairie Village. Content is created and edited by City staff utilizing Granicus's content management system. Every five years, the website qualifies for a redesign, which serves to give the site a facelift, improve functionality, and incorporate new technology. The City of Prairie Village website is due for such a redesign.

The attached contract was reviewed and approved by the City Attorney.

FUNDING

The total project cost for the website redesign is \$20,000. However, the City has an \$8,000 redesign credit with Granicus that lowers the project cost to \$12,000. Funds for the project are included in the 2020 budget.

ATTACHMENTS

Granicus contract

PREPARED BY

Ashley Freburg
Public Information Officer
Date: October 15, 2019

Granicus Proposal for Prairie Village, KS

Granicus Contact

Name: Adam Isern

Phone: +1 9139679978

Email: adam.isern@granicus.com

Proposal Details

Quote Number: Q-76970

Prepared On: 9/3/2019

Valid Through: 10/31/2019

Pricing

Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)

Currency: USD

Period of Performance: The Agreement will begin on the date of signature and continue for the term of the subscription(s). The govAccess subscription(s) will begin on 3/15/2020 and continue for 60 months. Services for the Basic Redesign Credit will begin on the date of signature and will continue for up to 12 months.

One-Time Fees

Solution	Billing Frequency	Quantity/Unit	One-Time Fee
govAccess – Website Design and Implementation – Innovator	Milestones - 40/20/20/20	1 Each	\$17,250.00
Basic Redesign Credit	Up Front	1 Each	-\$8,000.00
Mega Menu Designer	Milestones - 40/20/20/20	1 Each	\$2,750.00
		SUBTOTAL:	\$12,000.00

Annual Fees for New Subscriptions			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
govAccess - Maintenance, Hosting, & Licensing Fee - Core	Annual	1 Each	\$8,645.00
SUBTOTAL:			\$8,645.00

Remaining Period(s)	Year 2	Year 3	Year 4	Year 5
govAccess - Maintenance, Hosting, & Licensing Fee - Core	\$9,077.25	\$9,531.11	\$10,007.67	\$10,508.05
SUBTOTAL:	\$9,077.25	\$9,531.11	\$10,007.67	\$10,508.05

Product Descriptions	
Name	Description
govAccess - Website Design and Implementation - Innovator	<p>govAccess Website Design and Implementation - Innovator provides a citizen focused website and includes:</p> <ul style="list-style-type: none"> • UX consultation, which may include one (1) or more of the following: • One (1) site analytics report • One (1) heatmap analysis • One (1) internal stakeholder survey • Semi-custom homepage wireframe • Fully responsive design • Custom mobile homepage or standard mobile responsive homepage • Video background or standard rotating image carousel (switchable at any time) • One (1) specialty alternate homepage - Choose from Granicus' library that includes emergencies, election night, special events • One (1) customer experience feature - Choose from Granicus' library that includes service finder or data visualization banner • Programming/CMS implementation • Migrate all content • Five (5) forms converted into the new CMS • Two (2) days of web-based training
govAccess - Maintenance, Hosting, & Licensing Fee - Core	<p>The govAccess Maintenance, Hosting, and Licensing plan is designed to equip the client with the technology, expertise and training to keep the client's website relevant and effective over time.</p> <p>Services include the following:</p> <ul style="list-style-type: none"> • Ongoing software updates • Unlimited technical support (6:00 AM - 6:00 PM PT, Monday - Friday) • Access to training webinars and on-demand video library • Access to best practice webinars and resources • Annual health check with research-based recommendations for website optimization • DDoS mitigation • Disaster recovery with 90-minute failover (RTO) and 15-minute data replication (RPO)
Basic Redesign Credit	Client understands and agrees that completion of website design services provided herein fulfills Granicus' obligation to deliver a basic graphic redesign of the website.

Product Descriptions	
Name	Description
Mega Menu Designer	<p>The Mega Menu Designer allows clients to customize and design flexible menus on the client's website. Customization includes:</p> <ul style="list-style-type: none">• Defining the levels of navigation and number of columns in the menu• Adding extra columns and placing widgets in these columns (Widgets that can be added to Mega Menus include: News, Events, RFPs, FAQs, Facilities, Jobs, and the Staff, Business, and Service Directories)• Stacking multiple widgets in the same column

Terms and Conditions

- Upon the effective date, this Agreement shall supersede and replace any previous agreement between the parties. All prior agreements between the parties are hereby void and of no force and effect.
- Once the Agreement is signed, Granicus will move quickly to have a Kick Off Call and get tasks done. It is vital that Prairie Village, Kansas respond quickly to requests for information, so Granicus can keep the project on time. The redesign does not allow for extensions or delays imposed by the Prairie Village team. The Basic Redesign Credit is only valid for 12 months from date of signature.
- Prairie Village Responsibilities: To keep the project on schedule, Prairie Village is required to provide a project manager as the point-of-contact for Granicus to ensure successful completion of the redesign. The point-of-contact must review and respond with approvals during the redesign in a timely manner.
- Link to Terms: https://granicus.com/pdfs/Master_Subscription_Agreement.pdf
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Prairie Village, KS to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- If submitting a Purchase Order, please include the following language: All pricing, terms and conditions of quote Q-76970 dated 9/3/2019 are incorporated into this Purchase Order by reference.
- Billing Frequency Notes (Milestones - 40/20/20/20):
 - An initial payment equal to 40% of the total, to be invoiced on 1/1/2020;
 - A payment equal to 20% of the total upon Granicus' delivery of the draft homepage design concepts to the client;
 - A payment equal to 20% of the total upon implementation of the main website into the VCMS on a Granicus-hosted development server; and
 - A payment equal to 20% of the total upon completion; provided, however that the client has completed training. If the client has not completed training, then Granicus shall invoice the client at the earlier of: completion of training or 21 days after completion.

Agreement and Acceptance

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Billing Information

Name:

Phone:

Email:

Address:

Prairie Village, KS

Signature:

Name:

Title:

Date:

Granicus govAccess

A GOVERNMENT WEBSITE TO BETTER SERVE YOUR CITIZENS

Most people come to a government website with one goal – to complete a task – yet most government websites fail to deliver. With Granicus govAccess, user-friendly design, powerful content, accessibility, and secure transactions have never been easier.

DATA-DRIVEN, CUSTOM DESIGN

All govAccess projects start with research into how your website visitors want to engage with you and what services and information is most important to them. This research informs the design, content structure and development of your website – the result: extreme usability whether on desktop or mobile.

SIMPLE, YET DYNAMIC GOVERNMENT CMS

govAccess is a content management system (CMS) that was purpose built for government, allowing your staff to easily create content that informs, engages and serves their communities. Our CMS makes it easy to manage mobile experiences, bring more services online, share content through popular social media channels, create custom interior pages, and more- all while ensuring consistency and control.

ENTERPRISE-CLASS HOSTING + SUPPORT

From our state-of-the-art hosting infrastructure with greater than 99.9% uptime, to a team of certified government experts and tech gurus, the govAccess team relentlessly focuses on client satisfaction. Continuous optimization, regular health checks that include research-based recommendations, and 24x7 support deliver guaranteed success.



Heatmaps help us understand where eyes and clicks are going on your site.



Basing our redesign on science, rather than emotion, helped to keep everyone on the same page as we worked through the process of transforming our web presence from a mere website to a customer service portal.

Kevin Tunell
Communications Director,
Yuma County, AZ



WEBSITE DESIGN + IMPLEMENTATION – INNOVATOR

- ✓ UX consultation including
 - Heatmap analysis, web analytics, internal stakeholder survey
 - Website analytics report
- ✓ Customized homepage wireframe
- ✓ Fully responsive design
- ✓ Custom Mobile Homepage or Standard Mobile Responsive Homepage
- ✓ Video Background or Standard Rotating Image carousel (switchable at any time)
- ✓ One (1) specialty alternate homepage – choose from our library including emergencies, election night, special events
- ✓ One (1) customer experience feature – choose from our library including service finder, geo finder, data visualization banner
- ✓ Website Programming + CMS Implementation
- ✓ Migrate all content
- ✓ Five (5) forms converted into the new CMS
- ✓ One (1) day of remote Web-based Training (typically used for “Writing for the Web” Training, Accessibility Training, and CMS Training).



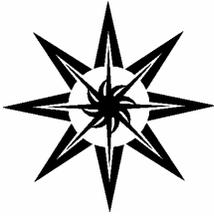
KEY CMS FEATURES

- ✓ Ongoing software updates (quarterly)
- ✓ Role-based dashboard for easy content updates, approvals + ability to lock down user permissions
- ✓ Mobile management to analyze mobile traffic and customize display on mobile device
- ✓ Interior page builder with drag-and-drop page building, 100+ widgets, save and reuse layouts + more
- ✓ Social media management with ability to schedule + preview posts to multiple social media accounts
- ✓ Form and survey builder with ready-to-use templates for the most common use cases, conditional logic, payment processing, and legally binding digital signatures
- ✓ Flexible search with the ability to define search synonyms, promote page + more
- ✓ Universal API + a vast number of commonly used apps integrated out-of-the-box



SUPPORT + MAINTENANCE

- ✓ 24/7 support
- ✓ Online help, including an extensive library of on-demand training videos
- ✓ Hosting infrastructure with 99.9% uptime
- ✓ Disaster recovery w/ 90 min failover (RTO), data replication every 15 mins (RPO), failover testing every 2 wks.
- ✓ Enterprise grade DDoS mitigation
- ✓ Industry leading data security (advanced threat detection and penetration)



ADMINISTRATION

City Council Meeting Date: October 21, 2019

COU2019-46: CONSIDER APPROVAL OF AN AGREEMENT & DRAFT SURVEY QUESTIONS WITH WIESE RESEARCH GROUP TO CONDUCT A MARKET SUSTAINABILITY STUDY FOR CONSIDERATION OF A PRAIRIE VILLAGE CIVIC CENTER WITH COMMUNITY, AQUATIC AND WELLNESS FACILITIES OPERATED BY THE YMCA AND A NEW JOHNSON COUNTY LIBRARY BRANCH.

RECOMMENDATION

Move to approve an agreement & draft survey questions, in cooperation with the YMCA and the Johnson County Library (JCL), with Wiese Research Group to conduct a Market Sustainability Study to gauge the community's thoughts, preferences, and perceived value of constructing a Civic Center at Harmon Park including community, aquatic and wellness facilities operated by the YMCA and a new JCL library branch.

BACKGROUND

On July 15th the Governing Body moved to approve an MOU with the YMCA and JCL to collaborate on a plan to study the possibility of constructing a Civic Center with a community, aquatic and wellness center operated by the YMCA in proximity with a new JCL library at Harmon Park. The MOU outlined the *Project Study* would consist of three phases: (1) Market Sustainability Study, (2) Community Engagement Evaluation; and (3) Project Site Design Study.

Staff worked in cooperation with the YMCA and JCL to prepare a RFP (Request for Proposal) to conduct a Market Sustainability Study intended to gauge the community's thoughts, preference, and perceived value for the project. The RFP was published on August 9 and responses were received from the following three research firms by the August 26 deadline:

- ETC Institute
- PB&A Marketplace Intelligence
- Wiese Research Group

The responses were distributed to the Civic Center Ad-Hoc Committee and Staff working on the project. Each person was asked to complete a basic score sheet, which resulted in most ranking Wiese and ETC highest. The Mayor, Committee Chair, and Staff met with officials from the YMCA and discussed the responses. The consensus was to proceed with phone interviews with ETC and Wiese to learn more

information about their written responses and methodology to extract survey accuracy.

On September 9th, the Committee Chair, the YMCA, JCL, and Staff conducted telephone interviews with representatives from ETC and Wiese to learn more information about their qualifications, experience, and differing methods to elicit data (phone surveys, online, mail). The YMCA strongly endorsed Wiese. The City was comfortable with both Wiese and ETC. Following discussion, the consensus amongst JCL, the YMCA and the City was to move forward with Wiese to conduct a phone survey of 400 households and include an on-line questionnaire, subject to approval of the agreement. Information about the on-line survey would be sent to Prairie Village households by postcard. Wiese confirmed it could separate data to provide Prairie Village specific responses.

BUDGET ESTIMATE

Given the scope of work and assumptions, Wiese would complete this project for the following fees (+/-10%) plus mileage costs to/from Omaha:

Phone Sample Size:	n=400
On-line Sample Size:	n=200-400 (estimate response rate)
Interview Length:	15 minutes
Total Project Cost:	\$30,600 (PV portion \$12,240)
Postcard Notification:	\$3,200 (PV portion \$1,280)

Council-Approved Overall Budgeted Amount (PV portion): \$50,000 (\$20,000)

ATTACHMENTS

- Market Sustainability Study Agreement with Wiese Research Group
- RFP
- RFP Responses (ETC, Wiese, PB&A)
- Draft Survey Questions
- MOU approved July 15

Prepared By:

Wes Jordan
City Administrator
Date: October 10, 2019



**Market Sustainability Study
Statement of Work (SOW)
September 24, 2019**

**Prepared For:
City of Prairie Village
Johnson County Library
YMCA of Greater Kansas City**

**Prepared By:
Wiese Research Group
1121 N. 102nd Court, Suite 100 • Omaha NE 68114 • 402-391-7734 (Ext. 210)**

BACKGROUND

The City of Prairie Village, the Board of Directors for the Johnson County Library, and the YMCA of Greater Kansas City are interested in conducting a *market sustainability study to determine the feasibility of constructing a new Prairie Village Community Center/YMCA and new Johnson County Library branch in the community of Prairie Village*. This research will take the form of telephone surveys with a cross section of adults who reside in the potential service area for both the community center and library branch being considered, supplemented by online surveys with those who live within the city limits of Prairie Village.

RESEARCH OBJECTIVES

The specific research objectives and possible topics to be addressed in this study for all three stakeholders (the Community Center, the City, and the Library) have been outlined in the RFP and therefore are not enumerated herein. Based on WRG's previous experience with similar assignments, and after a more thorough needs assessment with key stakeholders to discuss the informational objectives in greater detail, the desired research goals will be more specifically determined and prioritized. Final objectives will then be refined during the questionnaire development process, described later in this document.

SAMPLING DESIGN

With any research project, it is critically important to accurately define and understand the population or populations to be studied. The population is the group from which all sampling takes place and to which the results must eventually be projected. Since this is a general community study, essentially all adults (18+) residing within the appropriate service area for the proposed community center and library branch will be included in the "population of interest."

Geographically speaking, the market area to be surveyed for this project has been defined by the following Kansas and Missouri zip codes: 66202, 66204, 66205, 66206, 66207, 66208, 66212, 64112, 64113, and 64114.

WRG will obtain the necessary sample lists within the designated area to be surveyed. These lists will include both landline phones as well as wireless phone numbers. WRG will then establish approximate quotas by geography and age/gender groups and will work toward achieving a final sample initially screened that reflects actual household characteristics. If the final obtained sample varies appreciably from the actual population characteristics due to difficulties in filling some particularly hard to reach demographics, statistical weighting could be utilized to adjust the final sample to be representative of the target market.

The total sample size for the *random* phone phase of this study will be n=400 respondents across the entire market area. A supplemental sample of those living within the city limits of Prairie Village will also be surveyed online, providing what is expected to be another n=200-400 respondents, depending on the actual number of households invited and response rate achieved during this *supplemental* phase.

Given this sampling approach, the total combined phone and online sample will of course “over represent” the City of Prairie Village residents. Therefore, WRG will adjust for this oversampling by either weighting the data or using the online data only when presenting results for Prairie Village proper (to boost the sample size for that segment only).

METHOD OF SAMPLE CONTACT

Given the types of information desired and the need for quantifiable and projectable results, telephone will be the sample contact methodology for the *random* phase of this study. All calling will take place from WRG’s central interviewing facilities. Trained and experienced interviewers from WRG’s staff will collect the data, with each interviewer working on this project fully briefed on the proper administration of the questionnaire prior to sample contact.

In addition, those residing within the city limits of Prairie Village will have the opportunity to complete the survey online. For this supplemental phase, the City will invite residents to participate via a postcard (or as part of another mailing) containing a link to the web-based survey. WRG will provide the online survey link and host the data collection.

QUESTIONNAIRE DEVELOPMENT

The questionnaire development process will begin with a needs assessment discussions between the various stakeholders and WRG. This will serve to “fine tune” the specific objectives, allowing WRG to create an initial questionnaire draft. This draft will then be mutually reviewed and revised, with subsequent drafts prepared by WRG, until all interested parties are satisfied that the survey instrument developed will meet the informational objectives.

The final, approved phone survey will be CATI scripted and fully tested prior to study launch. WRG has provided budgets assuming a 15-minute survey (on-phone administration time). After pilot testing, if the actual survey length varies from this estimate, budgets can be adjusted accordingly (up or down) or changes can be made to the questionnaire and/or sample size to stay within the available budget. WRG will also program the survey for web administration (identical to the phone instrument) prior to the City mailing the survey link to residents.

DATA ANALYSIS AND DELIVERABLES

Upon completion of the data collection, WRG’s in-house coding department would categorize the responses to any open-ended questions. All data will then be cleaned and processed by WRG, with Tabular Results generated showing frequency and percentage findings for the total sample, as well as across relevant demographic segments. These crosstabs will be provided as a reference document, along with the raw data file in the client’s preferred format (typically SPSS or Excel).

From analysis of the Tabular Results and accompanying statistics, WRG will prepare a comprehensive written report that will include a graphic presentation of the results and narrative discussion of what WRG feels are the key findings as they relate to planning or decision making. WRG will also be available to present the results of this study by phone or in person at a meeting designed for this purpose.

TIME FRAME

From the time all needs assessment discussions have taken place, we would anticipate that at least two weeks would be needed for the questionnaire development, review, and revision process. Once the final questionnaire has been approved, CATI programming and pilot-testing takes about a week, while approximately three weeks would be needed for data collection. Another few days should be allowed for coding the open-ended responses and data processing the results. Therefore, from the time interviewing begins, Tabular Results should be available in about four weeks, with another two weeks needed to prepare the Summary Report. This turnaround time will also depend to some degree on the timeliness of survey approval from all stakeholders (and the extent to which our field schedule might be impacted should that approval process be delayed).

BUDGET ESTIMATE

Given the scope of work and assumptions outlined herein, WRG would complete this project for the following cost (+/-10%):

Budget Estimate for Final Scope of Work	
Phone Sample Size:	n=400
Online Sample Size:*	n=200-400
Interview Length:	15-Minute
Total Project Cost (+/-10%):	\$30,600

**Additional surveys with City of Prairie Village residents only.*

The preceding budgets include all costs associated with the research project as outlined herein, with the exception of any travel expenses incurred by a WRG Associate for client requested in-person meetings (mileage to/from Omaha). However, it should be noted that the above cost is still only an estimate based on an assumed survey length. Once the final survey has been pilot-tested to determine the actual interview length, a firm cost quote can be provided. WRG’s normal procedure is to bill for one-half of the total project amount at the time questionnaire development begins, with the balance due once the scope of work agreed upon has been completed.

Acknowledged:

[SIGNATURES BELOW AND ON NEXT PAGE]

WIESE RESEARCH GROUP

By: 

Name: Cathy J. Morrissey

Title: President

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson, Mayor

Attest:

City Clerk

Approved As To Form:

BOARD OF DIRECTORS OF JOHNSON COUNTY LIBRARY

By: _____
Bethany Griffith, Chair

Attest:

Amy Amos Ruo, Secretary

Approved as to Form:

Fred J. Logan, Jr., Board Attorney

YMCA OF GREATER KANSAS CITY

By: _____

Name: _____

Title: _____

**REQUEST FOR PROPOSAL
MARKET SUSTAINABILITY STUDY**

City of Prairie Village
Johnson County Library
YMCA of Greater Kansas City

August 9, 2019

1. PROJECT SUMMARY

The City of Prairie Village, Kansas (the “City”), the YMCA of Greater Kansas City (the “YMCA”) and the Board of Directors of the Johnson County Library, Johnson County, Kansas (“JCL”) intend to conduct a market sustainability study to determine the feasibility of constructing a new Prairie Village Community Center/YMCA and new Johnson County Library branch (the “Project”) in the community of Prairie Village. The City, YMCA and JCL are occasionally referred to in this Request for Proposal individually as “Party” and collectively as “Parties.”

The Market Sustainable Study (the “Study”) is intended to gauge the community’s thoughts, preferences and perceived value for the Project. The Parties are accepting proposals from qualified market research firms who can obtain the research objectives within the timeline.

2. RESEARCH OBJECTIVES

The primary aim of this Study is to gauge the viability of the Project located in Prairie Village, Kansas. The following informational areas are provided as topics to be addressed but not limited to in this study:

- a. Community Center
 - i. Obtain market penetration levels for health club and fitness facilities currently utilized by residents in this market, including other Community Centers and YMCA locations, as well as the types of memberships possessed (individual, two adults, family)
 - ii. Estimate the likelihood to utilize a new Prairie Village Community Center/YMCA facility, assuming a reasonable cost, and then at specified price points (for various types of memberships). These results will be used to estimate potential membership units
 - iii. Assess the relative importance consumers place on specific features and amenities that are currently under consideration for the new Prairie Village Community Center/YMCA
 - iv. Assess number of existing YMCA members that would retain their membership and transfer to the new Prairie Village Community Center/YMCA and estimate the number of single adult memberships that would upgrade to a family membership
 - v. Measure potential demand for (likelihood to use) specific exercise/activity options the new Prairie Village Community Center/YMCA facility could offer, in addition to potential wellness and health-related programs in partnership with a medical entity
 - vi. Evaluate viability of a medical partner and medical referral type of services programming
- b. City
 - i. Study the likelihood of Prairie Village residents supporting funding mechanism/options for a new Community Center/YMCA
 - ii. Determine the support of partnering with other organizations in the

development and operation of a Community & Wellness center in proximity and convenience to a Library

- c. Library
 - i. Gain a deeper understanding of how the community of Prairie Village feels about several topics concerning public libraries and specifically the Corinth Library in Prairie Village
 - ii. Determine if the survey participant currently visits the Corinth Library in Prairie Village
 - iii. Determine whether the community believes Prairie Village needs a new library with more modern conveniences
 - iv. Assess how important the location of a Public Library is and determine user impact if located closer to other community amenities
 - v. Study access to the Public Library including services like a drive-thru service to pick-up and return library materials
 - vi. Determine if the meeting room spaces in the present Corinth Library are enough to meet the needs of the community and if there is a need for increased meeting and study areas
 - vii. Obtain a deeper understanding of the programming needs for the community. Looking at programming for Adults, Youth and Kids, Parents and Seniors. Examples are Early Childhood Literacy, Author visits, Book clubs and Special Events, such as movies in the park

3. SUBMITTAL REQUIREMENTS

The RFP package submittal shall not exceed 15 pages and **ONLY BE ACCEPTED IN ELECTRONICALLY IN PDF FORMAT** at the email address below. All submittals shall include the following:

- a. Letter of Transmittal
- b. Brief history of the firm and any sub-consultants that may be a part of the team.
- c. Description of three relevant previous projects that key project staff has played a central role in developing.
- d. General project approach.
- e. Names and resumes of specific project staff that will play the primary role(s) in this project; name and resume of project manager must be included.
- f. Proposed project scope broken down with estimated costs.
- g. At least three references for similar projects. References must include current contact name and phone number and email address.
- h. Additional information that will assist the Parties in considering the Evaluation Criteria outlined below.
- i. Inclusion of a digital copy of all submitted information.
- j. One copy of a sample product from a similar previous project (not included as part of the 15 pages.)

The YMCA is the managing authority for this project and all questions regarding this RFP shall be directed to Mark Hulet, SVP Operations & Risk, at 816-935-3299 or markhulet@kansascityymca.org.

Submittals should be emailed to markhulet@kansascityymca.org with “Prairie Village Study Submittal” in the subject line.

4. EVALUATION CRITERIA

Consultants will be evaluated according to the following:

- a. Qualifications and previous related work of firm, project manager and staff, particularly with regard to working on projects of similar scope and complexities, with communities of similar size, government structure and issues, and firm’s experience in technical areas required to successfully complete all feasibility study elements.
- b. Understanding of project goals, local issues and needs, particularly as expressed in the Research Objectives.
- c. Experience in developing comparable studies for facilities similarly multijurisdictional in nature.
- d. Ability to complete the proposed Research Objectives in Section 2 within the proposed budget and proposed timeline.
- e. Quality of sample materials and proposal package submitted.
- f. Responsiveness to submission requirements.

The Parties reserve the right to reject any or all proposals submitted, to waive technical or legal deficiencies, and to accept any proposals that it may deem to be in the best interest of the Parties. By submitting a proposal, the consultant hereby authorizes the Parties to contact references and make such further investigations as may be in the best interest of the Parties.

5. REQUEST FOR PROPOSAL SCHEDULE

Request for Proposals Issued	August 9, 2019
Questions/Clarifications Deadline	August 16, 2019
Proposals Deadline	August 26, 2019
Proposal Review & Selection	August 30, 2019
Contract Award Date	September 3, 2019
Market Sustainability Study Initiated	September 16, 2019
Market Sustainability Results	November 15, 2019



JOHNSON COUNTY LIBRARY the



A Proposal to Conduct a Market Sustainability Study for the City of Prairie Village, Johnson County Library, and the YMCA of Greater Kansas City

Submitted by:
ETC Institute

p. 913-829-1215
f. 913-829-1591

725 W. Frontier Lane
Olathe, Kansas 66061

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Letter of Transmittal

Request for Proposals for a Market Sustainability Study

ETC Institute is pleased to submit a proposal to conduct a Market Sustainability Study for the City of Prairie Village, The YMCA of Greater Kansas City, and the Board of Directors of the Johnson County Library (the Party/Parties). This proposal is intended to be completely responsive to the RFP. ETC Institute is recognized as a national leader in the design and administration of market research for local governments. Since 1982, ETC Institute has completed research projects for organizations in 49 states. ETC Institute has designed and administered more than 3,500 statistically valid surveys and our team of professional researchers has moderated more than 1,000 focus groups and 2,000 stakeholder meetings. During the past five years alone, ETC Institute has administered surveys in more than 700 cities and counties across the United States. ETC Institute has conducted research for more large U.S. communities than any other firm.

ETC Institute Has the Ability to Compare Your Results with Other Communities. Our firm maintains national and regional benchmarking data for parks surveys that provide comparative norms for over 80 services, programs, and facility features. Unlike some comparative databases that use comparative data from secondary sources, ETC Institute's data is from surveys that were all administered by ETC Institute. This ensures that the results for the Parties are directly comparable to other similar agencies. ETC Institute's database only includes data from surveys that have been administered during the past three years. This ensures our comparative norms are truly representative of existing attitudes and expectations regarding parks and recreation features and amenities.

ETC Institute Has the Most Updated and Innovative Analytical Tools to Help the Parties Understand and Utilize Survey Data. Today, government officials have limited resources which need to be targeted to activities that are of the most benefit to their citizens. The Priority Investment Rating (PIR) was developed by ETC Institute to provide governments with an objective tool for evaluating the priority that should be placed on parks and recreation investments. The Priority Investment Rating was developed by ETC Institute to identify the facilities and programs residents think should receive the highest priority for investment. The priority investment rating reflects the importance residents place on facilities/programs and the unmet needs for each facility/program relative to the facility/program that rated the highest overall. Since decisions related to future investments should consider both the level of unmet need and the importance of facilities and programs, the PIR weights each of these components equally.

ETC Institute also has the capabilities to generate maps of the survey results. GIS Mapping is used to show how respondents in different areas of a community rate various services. Our GIS capabilities will also give us the advantage of knowing exactly where each survey respondent is located. This will allow for an accurate analysis of responses among various boundaries.

A Few Good Reasons to Select our Firm:

- **ETC Institute is familiar with the area.** ETC Institute has conducted survey research for most of the municipalities in the Kansas City Metropolitan area, including: Prairie Village, Overland Park, the Unified Government, Olathe, Independence, Lee's Summit, Shawnee, Blue Springs, Lenexa, Liberty, Raytown, Grandview, Gardner, Grain Valley, Merriam, Mission, Roeland Park, Parkville, North Kansas City, Spring Hill, Fairway, Mission Hills, Lawrence, and others.
- **ETC Institute guarantees that we will be very responsive to your needs.** ETC Institute administered a survey to organization that had used our services. Among the 151 clients who responded to the survey, 100% were satisfied with the service they received and 100% indicated they would recommend our firm to other organizations. The reason ETC Institute's customer satisfaction levels are so high is due to our commitment to the needs of our clients.
- **ETC Institute's most senior professionals will be managing this project on a daily basis.** By having experienced, senior personnel lead the day-to-day management of each task, ETC Institute will ensure that your organization receives the highest level of service possible and that high standard of quality control are maintained. The Parties will receive priority for resources from our firm and we will ensure that the project is accomplished according to your schedule. To ensure your success, we have assembled a team of the very best market researchers and experts to assist with the design of surveys, the development of the sampling plans, the administration of the surveys, and the analysis of the data collected. Our team has unparalleled expertise in project management, survey design, sampling methodology and survey administration.

ETC Institute will work very closely with the City of Prairie Village, The YMCA of Greater Kansas City, and the Board of Directors of the Johnson County Library and do everything possible to ensure the survey meets the high expectations set for this project. No firm is better suited to help you meet your goals and objectives than ETC Institute. Our experience with market research for local governments is second to none, and clients in 49 states can attest to our commitment and attention to customer satisfaction.

We appreciate your consideration of our proposal and look forward to your decision. If you have any questions, please do not hesitate to call us at (913) 829-1215.

Sincerely,



Jason Morado

Director of Community Research, ETC Institute

725 W Frontier Lane, Olathe, Kansas 66061

913-829-1215

Jason.Morado@etcinstitute.com

www.etcinstitute.com

Firm Overview

ETC Institute is a market research firm that specializes in the design and administration of market research for governmental organizations. Our major areas of emphasis include parks and recreation surveys and research, community planning surveys, citizen satisfaction surveys, business surveys, voter opinion surveys, focus groups, and stakeholder interviews. Since 1982, ETC Institute has completed research projects for organizations in 49 states and has completed projects for nearly every municipality in the Kansas City Metropolitan area.

Our Research is Implementation Oriented. ETC Institute's clients do not usually hire ETC Institute just to gather data. They use our services because they know we are focused on helping them achieve their short and long-range objectives. A good measurement of our ability to help our clients implement their goals and objectives involves the values of new projects that have been funded as a result of our work. During the past five years, the results of our market research have led to more than \$3 billion in new funding for state, municipal and county governments as well as numerous nonprofit organizations. Projects that have been funded include a wide range of transportation improvements, community redevelopment projects, improvements to schools and health care institutions, water and electrical utility improvements, tourism attractions, neighborhood improvements, downtown revitalization projects, open space acquisition and park improvements, and the development of numerous specialized leisure facilities such as community centers, aquatic centers, and sports facilities. Our ability to help our clients integrate survey research with community planning decisions helps our clients maximize the value of their investment in our services.

Our Research Helps Leaders Balance the Needs of the Public with Special Interest Groups. Special interest groups often dominate local decision-making processes because they actively participate in community meetings and share their ideas with local officials. While input from special interest groups is important, the needs of the public can be overlooked if community leaders only have input from well organized groups and community activists. ETC Institute's surveys are designed to ensure the needs of the entire community are represented.

All work for this project will be completed in-house by ETC Institute staff without the assistance of a sub-consultant. ETC Institute has thoroughly reviewed the proposal documents and will be able to meet all goals and objectives of the project within the designated timeline.

Relevant Project Experience

2017 City of Merriam Parks and Recreation Department Survey

ETC Institute administered a needs assessment survey for the City of Merriam during the summer of 2016. The survey was administered as the City of Merriam was considering options for the future of the Merriam Aquatic Center and Irene B. French Community Center. The survey was used to help the City make the most informed decision possible when it came to the future of these two facilities. The City was also working to create a Facilities Master Plan using the survey data. The Master Plan was used as a roadmap on how to serve the citizens of Merriam in the future. As the City faced difficult decisions regarding the future of the Merriam Aquatic Center and Irene B. French Community Center, the results of the survey helped ensure the City took a resident-driven approach for a long-term solution.

In August of 2017, ballots for the community center ballot initiative were mailed to residents in Merriam. In September, 67.5% of Merriam voters approved the community center ballot initiative. Merriam is currently in the process of building a new community center with indoor and outdoor aquatics at Vavra Park for \$30 million.

Anna Slocum, Parks and Recreation Department Director

913-322-5556

annas@merriam.org

2018 City of Plano Parks and Recreation and Library Needs Assessment

ETC Institute administered a needs assessment survey for the City of Plano during the fall of 2018. The Parks and Recreation Department and the Plano Public Library continually assesses programs and services provided to residents. The results of the survey helped the two organizations work together to identify areas for improvement in the system. The results also helped guide joint efforts in meeting the needs of the community when it comes to combined parks and recreation and library initiatives.

The survey was administered as a part of the City's ongoing planning efforts and as a part of the City's parks and recreation master plan efforts. The data used will help guide decisions in the future and ensure the City takes a resident-driven approach to decision making.

Tammy Korns, Development and Outreach Manager

972-769-4473

tammyko@plano.gov

2018 Long Bridge Park Aquatic and Fitness Center Fee Survey

ETC Institute administered a survey to residents of Arlington County, Virginia during the summer of 2018. The purpose of the survey was to gather input regarding what residents feel are the appropriate fees to be charged for access to the Long Bridge Park Aquatic and Fitness Center. The survey results, combined with other engagement efforts, helped shape recommendations on a fee package for the Long Bridge Park Aquatic and Fitness Center. The survey was designed to obtain objective results that would inform Arlington County of the potential support for various funding mechanisms and options for the center. The survey also tested various thresholds for entry fees and membership prices to help the County inform their decisions.

The \$70.7 million Long Bridge Park complex is currently under construction, with an opening slated for late 2020 or early 2021. The data collected by ETC Institute will help inform County Board members in their decision on final user fees.

Peter Lusk, Athletic and Facility Services Division Chief

703-228-1872

plusk@arlingtonva.us

2018 City of Prairie Village Citizen Survey

During the spring of 2018, ETC Institute administered a citizen survey for the City of Prairie Village. The purpose of the survey was to gather input from residents on service quality, priorities, and overall performance. This was the second survey conducted for the City of Prairie Village. The goal was to complete at least 400 surveys. The goal was far exceeded, with a total of 704 households completed a survey.

The survey results helped influence decisions that will be made about the future of Prairie Village. It was a City Council goal to use the survey as a guide in continuing to provide a high quality of life for all residents.

Alley Porter, Assistant City Administrator

913-385-4635

aporter@pvkansas.com

Approach

Phase 1: Develop the Survey and Sampling Plan

Task 1.1 Develop the Survey

Once selected for the project, ETC Institute will meet with the Parties via phone to discuss the goals and objectives for the project. To facilitate the survey design process, ETC Institute will provide the Parties with sample surveys created for similar projects. At this time, ETC Institute's analysis tools will also be discussed and our firm will suggest which tools would be best to use. Based on input from the Parties, ETC Institute will develop a first draft of the survey.

ETC Institute will work closely with staff to ensure that the Party's input is utilized to create a survey that best fits the needs of the project. It is anticipated that 3-4 drafts of the survey will be prepared before the survey is approved. Party staff will review the survey instrument before it is administered and provide final approval before distribution. The survey is guaranteed to meet industry best practices, be easy to follow in plain language, meet any coding requirements, and meet all project objectives.

Task 1.2 Design the Sampling Plan

As part of this task, the sampling plan for the survey will be finalized and the project manager will discuss which methodology is best to conduct the surveys. ETC Institute will design a sampling plan based on completing a minimum of 400 surveys. The overall results of 400 completed surveys would have a precision of at least +/-5% at the 95% level of confidence. This sample size would allow ETC Institute to provide cross-tabular analysis for key demographic variables, such as age, gender, number of years lived in the City, and by geographic characteristics (i.e. Council District).

As the total number of completed surveys increases, the precision of the survey improves. Cost is a function of two major variables: (1) the length of the survey and (2) the number of completed surveys. ETC Institute will work with staff to find the right combination of these two variables to maximize your investment in our services.

Task 1 Deliverables

ETC Institute will deliver the approved survey instrument and a description of the finalized sampling plan.

Phase 2: Administer the Survey

Task 2.1 Administer the Survey

Once the final survey instrument is approved, ETC Institute will administer the survey. ETC Institute recommends using a combination of mail and online to administer the survey. Given the negative impact that Caller ID has had on phone survey response rates in recent years and the need to ensure diverse populations are well represented, we offer the combination mail/online to maximize the overall level of response. Even if people do not respond by mail, people who receive the mailed version of the survey are significantly more likely to respond to the survey online because they know the survey is legitimate. The mailed survey will include a cover letter (on City/Library/YMCA letterhead) that will explain the

importance of the survey, encourage participation, and include a link to the online survey for citizens who prefer that option.

The following are the procedures that will take place for the mail/online combination methodology. All the procedures described below would be delivered in-house at our main office:

Survey Administration Procedures

ETC Institute will work with the Parties to develop a communication plan for the survey. As a part of this task, ETC Institute will provide sample press release that can be used to notify the public about the survey. Advance publicity can significantly enhance the response rate.

ETC Institute will mail a copy of the survey instrument and a postage-paid return envelope to each of the households selected for the random sample. The survey will include a letter on letterhead that explains the purpose of the survey and that indicates all survey responses will remain anonymous. Portions of the cover letter and survey can be translated into another language to provide non-English speaking residents with assurances about the legitimacy of the survey.

Approximately 10 days after the surveys are mailed, ETC Institute will e-mail a link to the online survey to households who received the survey in the mail. These e-mail follow-ups will significantly increase the response rate which will greatly reduce the probability that the results are affected by non-response bias. ETC Institute will track and only include online survey responses from residents who were randomly selected for the survey.

Additional e-mail follow-ups will be concentrated on demographic and geographic areas where response to the survey is low. This will help ensure the results are representative of the entire study area, both demographically and geographically.

Data Management and Quality Control

ETC Institute has an ongoing quality control and assurance program in place. The program has been developed and refined through our experience with hundreds of studies that involved the design and administration of surveys, focus groups, and other data collection services.

Our quality assurance program is directly monitored by the company CEO, Christopher Tatham. The program is designed to give clients error free results, and all employees at ETC Institute are directly involved in the program. The quality control and assurance methods used by ETC Institute have been reviewed by the United States Office of Management and Budget.

Following the completion of survey administration, ETC Institute will perform data entry, editing, and verification of all survey responses. The data processing system used by our firm for this study will alert data entry personnel with an audible alarm if entries do not conform to predetermined specifications. Data entry field will be limited to specific ranges to minimize the probability of error. A supervisor will match at least 10% of the records in the database against the corresponding survey to ensure that all data entry is accurate and complete.

Open Internet Option

In addition to offering the survey to a randomly selected sample of residents, the Parties may consider offering the same web survey to the general public. ETC Institute can provide a separate link that can be used for this purpose and will deliver the tabular results at no additional charge to the Parties.

Task 2 Deliverables

ETC Institute will deliver a copy of the overall results to each question on the survey as tables, this deliverable will include any open-ended responses from the survey.

Phase 3: Survey Analysis and Reporting

Task 3.1 Analyze the Survey Results

The analysis tools that will be included in this project are proved below:

Task 3.1.1 Priority Investment Ratings

By using specific design features, ETC Institute can utilize the survey data to create a Priority Investment Rating (PIR). The PIR was developed by ETC Institute to provide organizations with an objective tool for evaluating the priority that should be placed on parks and recreation investments. The rating system helps to identify the items residents think should receive the highest priority for investment. ETC Institute believes decisions related to future investments should consider both the level of need for an item and the importance of an item in a community equally. The PIR will weight both of these components equally to develop a consensus on what items should be the top priority for improvement.

Task 3.1.2 Benchmarking Analysis

ETC Institute will work with the Parties to determine which benchmarking comparisons best meet the goals and objectives for the project. ETC Institute maintains local, regional, and national benchmarking comparisons that help decision-makers interpret the meaning of survey data.

Task 3.1.3 GIS Mapping

ETC Institute will prepare maps showing the results of specific questions on the survey by census block group (or other geographic characteristics decided upon by the Parties). ETC Institute will geocode the home address of survey respondents to the block latitude and longitude coordinates. This will allow our team to generate maps that visually show how well parks and recreation needs are being met in various parts of the City. GIS maps continue to be an effective tool for communicating the results of the survey to elected officials and the public.

Task 3.1.4 Cross-Tabulations

Based on a discussion with staff, ETC Institute will create cross-tabulations of questions on the survey with key demographic variables (i.e., age, gender, income, number of years lived in the study area, geographic characteristics, and user vs. non-user status). ETC Institute will work with staff to understand the significant differences found in the cross-tabulations among the key demographic groups.

Task 3.2 Prepare a Final Report

Following a meeting with the project team and board members, ETC Institute will develop a written report utilizing the analysis tools found in Task 3.1. The report will provide a thorough analysis of the data, including a summary of the results. The report will describe the methods used in conducting the survey and the number of respondents surveyed. The full report will also include the following:

- An executive summary that includes the description of the survey methodology and major findings,
- Charts and graphs for all questions on the survey, including respondent demographics,
- Priority Investment Ratings that identify priorities for investment,
- Benchmarking analysis,
- GIS maps that show select questions on the survey as a map,
- Cross-tabulations that break down the results by key demographic variables,
- Data tables showing the results for all questions on the survey, and
- A copy of the survey instrument.

Task 3 Deliverables

Prior to completing the written report, a project manager from ETC Institute will meet with the project team to present findings and analysis and discuss application, limitations, and additional benchmarking opportunities. Once the project team have made their final recommendations, ETC Institute will develop and deliver an electronic version of a draft report. Once staff provides feedback on the draft report, ETC Institute will deliver a final version of the report in electronic format. ETC Institute will provide the Parties with the raw survey data in an Excel spreadsheet that includes the latitude and longitude coordinates, at the block level, for all responses. A project manager from ETC Institute will make one on-site visit to present the final report and deliver a formal presentation at a time mutually decided upon by the Parties and ETC Institute.

Key Personnel Assigned to the Project

The ETC Institute team was assembled based on a thorough review of the RFP. The staff members selected to fill key roles have extensive experience which exceeds the technical requirements for this project. All services will be performed in-house, by ETC Institute staff. ETC institute has its own mailing department, call center, and web design team. The key members of the project team who will be assigned to the project are listed below.

- **Jason Morado:** Mr. Morado will assume the role of Senior Project Manager. Mr. Morado has more than 18 years of experience in the design, administration, and analysis of community market research. In his current role as Director of Community Research he leads community market research projects across the country. He has served as the project manager on community research projects for over 500 local government organizations throughout the United States, including a recent community survey for the City of Prairie Village.
- **Ryan Murray:** Mr. Murray will assume the role of Project Manager and will be the day-to-day contact for the Party. Mr. Murray has over 13 years of experience in the administration, development, supervision, and research analysis of a wide variety of survey topics. He has served as a project manager for over 200 local government projects throughout the United States, including the most recent City of Roeland Park community survey and business survey project as well as numerous parks and recreation projects throughout the area.
- **Christopher Tatham:** Mr. Tatham has managed more than 2,500 community surveys for local governmental organizations throughout the United States, including dozens surveys through the State of Kansas. He has conducted community surveys in nine of the 20 largest U.S. cities and 11 of the 20 largest U.S. counties. He has more experience with the design and interpretation of community survey research than anyone in the nation. He excels in using survey data to facilitate consensus about organization priorities. His understanding of local government issues and his expertise make him ideally suited to help the Parties achieve their goals and objectives for this project. Mr. Tatham will serve as a Senior Consultant and will assist the project managers in the review and design of the survey instrument and final report.

Resumes for each of the team members listed above can be found below and on the following pages.

Jason Morado, Director of Community Research

EDUCATION

M.B.A., Webster University

B.S. Business Administration & Marketing, Avila University

SUMMARY OF EXPERIENCE

Mr. Morado has over 18 years of experience in the design, administration, and analysis of community market research. He has served as the project manager on community survey research projects for over 500 local governmental organizations throughout the U.S. Mr. Morado is experienced in all phases of project management of market research studies, including survey design, developing sampling plans, quantitative and qualitative analysis, interpretation of results and presentation of findings. His areas of emphasis include citizen satisfaction surveys, parks and recreation needs assessment surveys, community planning surveys, business surveys, and transportation studies. He has also led the coordination and facilitation of focus groups and stakeholder interviews for a wide range of topics.

RELEVANT PROJECT EXPERIENCE

Mr. Morado has served as the Senior Project Manager for over 200 parks and recreation surveys for local governmental organizations. Some of these organizations include:

- Albemarle County, VA
- Ankeny, IA
- Arlington County, VA
- Auburn, AL
- Brownsburg, IN
- Carmel-Clay, IN
- Casa Grande, AZ
- Chatham County, NC
- Chesterfield, MO
- Cincinnati, OH
- Corpus Christi, TX
- Culpepper County, VA
- Dania Beach, FL
- Davie County, NC
- Denver, CO
- Derby, KS
- Downers Grove Park District, IL
- Durango, CO
- Eau Claire, WI
- Edgewater, CO
- Elmhurst Park District, IL
- Fauquier County, VA
- Geneseo Park District, IL
- Glasgow, KY
- Greensboro, NC
- Hamilton County, OH
- Harnett County, NC
- Hoffman Estates Park District, IL
- Hunters Creek, FL
- Huron-Clinton Metroparks, OH
- Idaho Fall, ID
- Kent, WA
- Maryland Heights, MO
- Mecklenburg County, NC
- Merriam, KS
- Miami, FL
- Milton, GA
- Milwaukee County, WI
- Mobile, AL
- Montpelier, VT
- Montgomery County, MD
- Morrisville, NC
- Oakland County, MI
- Ozark, MO
- Paducah, KY
- Pleasant Hill, CA
- Prince George County, MD
- Prince William County, VA
- Roanoke, VA
- Round Rock, TX
- Rowan County, NC
- Salvation Army (numerous locations)
- Salina, KS
- San Diego, CA
- Sarasota, FL
- Sioux Falls, SD
- Streamwood Park District, IL
- St. Louis County, MO
- Tucker, GA
- Upper Arlington, OH
- U.S. Army Installation Management Command
- U.S. Marine Corps
- U.S. National Park Service
- Virginia Beach, VA
- Washtenaw County, MI
- Westerville, OH
- Westfield, NJ
- West Sacramento, CA
- Wayne County, MI

Ryan Murray, Assistant Director of Community Research

EDUCATION

B.S. Public Administration, University of Kansas

SUMMARY OF EXPERIENCE

Mr. Murray has over 13 years of experience in survey administration, development, supervision, and research analysis. Throughout his tenure at ETC Institute Mr. Murray has had the pleasure of working on survey projects that cover a wide variety of topics, including parks and recreation, community planning, customer satisfaction, transportation, employee, library, comprehensive planning, parks and recreation master plans, water and utility, and business development. His current role as Assistant Director of Community Research includes the management of survey design, developing sampling plans, quantitative and qualitative data analysis, interpretation of results, and presentation of findings. In his previous role he planned, coordinated and supervised the administration of large-scale origin-destination transportation studies on over a dozen projects throughout the country. Mr. Murray has worked as a Project Manager on projects for over 200 state, county, local, and private sector clients. Below are some examples of the clients Mr. Murray has worked for.

RELEVANT PROJECT EXPERIENCE

Mr. Murray has served as the Project Manager for over 100 parks and recreation surveys for local governmental organizations. Some of these organizations include:

- Aberdeen, South Dakota
- Addison, Texas
- Ankeny, Iowa
- Auburn, Georgia
- Barrington, Illinois
- Bend, Oregon
- Berkshire Township, Ohio
- Cape Coral, Florida
- Chatham County, North Carolina
- Cincinnati, Ohio
- Colleyville, Texas
- Corpus Christi, Texas
- Dania Beach, Florida
- Deerfield Township Ohio
- Denver, Colorado
- Derby, Kansas
- Dundee, Illinois
- Durango, Colorado
- Edgewater, Colorado
- Estero, Florida
- Eudora, Kansas
- Flower Mound, Texas
- Geneseo, Illinois
- Glasgow, Kentucky
- Grand Prairie, Texas
- Grand Rapids, Michigan
- Great Neck, New York
- Hamilton County, Ohio
- High Point, North Carolina
- Holmdel, New Jersey
- Huber Heights, Ohio
- Huron-Clinton Metroparks, Michigan
- Jersey City, New Jersey
- Kenmore, Washington
- Kentwood, Michigan
- Kettering, Ohio
- Lincoln, Nebraska
- Marquette, Michigan
- Merriam, Kansas
- Miami, Florida
- Mill Valley, California
- Missouri City, Texas
- Mobile, Alabama
- Oakland County, Michigan
- Oswegoland, Illinois
- Ozark, Missouri
- Palm Beach, Florida
- Pittsboro, North Carolina
- Platte City, Missouri
- Pleasant Hill, California
- Port St. Lucie, Florida
- Roanoke, Virginia
- Rolesville, North Carolina
- Salina, Kansas
- San Clemente, California
- San Diego, California
- Sandy Springs, Georgia
- Shawnee, Kansas
- Smyrna, Georgia
- Somerset County, New Jersey
- Sugar Land, Texas
- Sylvania, Ohio
- Tacoma, Washington
- Tucson, Arizona
- Upper Arlington, Ohio
- Valparaiso, Indiana
- Villa Park, Illinois
- Waxhaw, North Carolina
- Wayne County, Michigan
- West Sacramento, California
- Westerville, Ohio

Christopher Tatham, CEO

EDUCATION

M.B.A., Management, Kansas State University

B.A., Political Science/Economics, Princeton University

SUMMARY OF EXPERIENCE

Mr. Tatham is one of the nation's leading authorities on the development of qualitative and quantitative customer satisfaction research for state and local governments. During the past ten years, he has designed and implemented customer satisfaction assessments for more than 500 governmental agencies in 41 states. He has superior skills for planning and coordinating complex tasks that are required for the successful administration of comprehensive customer satisfaction research programs. During the past year, he managed more than \$5 million dollars worth of research projects with budgets ranging from \$2,000 to more than \$2 million.

Mr. Tatham is a highly skilled interviewer and focus group facilitator. His experience includes interviews with foreign cabinet members, Heads-of-State, ambassadors, and numerous leaders at all levels of government and business in the United States, Mexico, and Canada. His communication skills (both English and Spanish) are excellent and he is extremely successful at getting quality feedback. During the past year, he facilitated more than 100 focus groups and nearly 200 stakeholder interviews.

RELEVANT PROJECT EXPERIENCE

Mr. Tatham has managed Customer Survey Research for dozens of governmental and private sector clients, including the following large governmental organizations:

- Atlanta, Georgia
- Austin, Texas
- Broward County, Florida
- Buffalo, New York
- Colorado Springs, Colorado
- Columbus, Ohio
- Coral Springs, Florida
- DeKalb County, Georgia
- Denver, Colorado
- Des Moines, Iowa
- Detroit, Michigan
- Dupage County, Illinois
- Durham, North Carolina
- Fairfax County, Virginia
- Fort Lauderdale, Florida
- Fort Worth, Texas
- Fulton County, Georgia
- Houston, Texas
- Kansas City, Missouri
- Las Vegas, Nevada
- Los Angeles, California
- Louisville, Kentucky
- Mesa, Arizona
- Miami-Dade County, Florida
- Nashville, Tennessee
- Norfolk, Virginia
- Oakland, California
- Oklahoma City, Oklahoma
- Phoenix, Arizona
- Providence, Rhode Island
- San Antonio, Texas
- San Bernardino County, California
- San Diego, California
- San Francisco, California
- St. Louis, Missouri
- St. Paul, Minnesota
- Tucson, Arizona
- U.S. Army Installation Management Agency
- U.S. National Parks Service
- Washington, D.C.
- Wayne County, Michigan

Pricing

In Task 1.2 ETC Institute suggests administering a minimum of 400 surveys. ETC Institute will do our best to maximize your investment in our services. A project manager from ETC Institute can discuss additional pricing options and negotiate pricing based on the needs of the Parties. The pricing below is all-inclusive and was provided based on each of the tasks described in the Approach.

Task	number of completed surveys precision w/95% level of confidence at City level	400	600
		+/-4.9%	+/-4.0%
Task 1.1	Develop the Survey	\$ 1,500.00	\$ 1,500.00
Task 1.2	Design the Sampling Plan	\$ 2,000.00	\$ 2,500.00
Task 2.1	Administer the Survey	\$ 10,500.00	\$ 12,500.00
Task 3.1	Analyze the Survey Results	\$ 3,500.00	\$ 3,500.00
Task 3.2	Final Report	\$ 1,500.00	\$ 1,500.00
Total		\$ 19,000.00	\$ 21,500.00

References

The following references have worked with each member of the project team on various projects including community surveys, parks and recreation surveys, business surveys, employee surveys, focus groups, and more. We encourage you to contact each of the individuals listed below.

City of Olathe, Kansas

J. Michael Wilkes, City Manager
913-971-8700
jmwilkes@olatheks.org

City of Roeland Park, Kansas

Keith Moody, City Administrator
913-722-2600
kmoody@reolandpark.org

City of Kansas City, Missouri

Kate Bender, Senior Performance Analyst
816-513-6567
kate.bender@kcmo.org

City of Overland Park, Kansas

Sean Reilly, Manager, Communications
913-895-6109
sean.reilly@opkansas.org

Additional Information

ETC Institute has the staff, resources, and availability to complete this project in-house, on-time, and within budget. ETC Institute has offered two sampling options; 400 completed surveys and 600 completed surveys. In 2018 ETC Institute administered a community survey for the City of Prairie Village and guaranteed the completion of 400 surveys. Over 700 completed surveys were returned to ETC Institute and delivered in the final database at no additional cost to the City. We will always try our best to maximize your investment in our services and we have a proven track record of doing so for our local clients.

There is no firm better suited to help the Parties achieve their desired goals and desired outcomes for this project. Our references and past clients can attest to our willingness to go above and beyond the original scope for a project to ensure the project exceeds all goals and objectives.

After a thorough review of the RFP, ETC Institute plans to develop a single survey instrument that encompasses all of the topics addressed in the RFP under section 2. Our experience with similar projects puts us in a unique position to begin developing the survey instrument immediately after notification of award.

A typical community survey process takes approximately 10-12 weeks to complete. This timeframe includes kick-off meetings, survey design, sample plan development, survey administration, analysis and the delivery of the final report. However, ETC Institute is capable of completing the survey in less time should that be required. Since the surveys will be administered in-house, the completion date for this project is entirely within our control and we will tailor the project schedule to meet your needs.

ETC Institute understands the importance of gathering data from traditionally underserved populations. During the past two years, ETC Institute has administered more than 75,000 surveys to traditionally underserved populations. Our extensive experience in the recruitment of traditionally underserved populations to participate in surveys ensures that our clients get accurate data for a wide range of difficult to reach populations including non-English speaking persons, persons with mental and physical disabilities, inner city and rural poor, and the elderly.

City of Plano Parks and Recreation and Library Needs Assessment

...helping organizations make better decisions since 1982

Findings Report

Submitted to the City of Plano (TX)

ETC Institute
725 W. Frontier Lane,
Olathe, Kansas
66061

January 2019





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2018 City of Plano Parks and Recreation and Library Needs Assessment Executive Summary

Overview

ETC Institute administered a needs assessment survey for the City of Plano during the Fall of 2018. The Parks and Recreation Department and Plano Public Library continually assess programs and services that are provided to its residents. Therefore, the results from this survey will help identify the areas for improvement, guide efforts in meeting the needs of the community, and see where the resident's needs are currently being met.

Methodology

ETC Institute mailed a survey packet to a random sample of households in the City of Plano. Each survey packet contained a cover letter, a copy of the survey, and a postage-paid return envelope. Residents who received the survey were given the option of returning the survey by mail or completing it online at www.PlanoSurvey.com.

Ten days after the surveys were mailed, ETC Institute sent emails and placed phone calls to the households that received the survey to encourage participation. The emails contained a link to the online version of the survey to make it easy for residents to complete the survey. To prevent people who were not residents of Plano from participating, everyone who completed the survey online was required to enter their home address prior to submitting the survey. ETC Institute then matched the addresses that were entered online with the addresses that were originally selected for the random sample. If the address from a survey completed online did not match one of the addresses selected for the sample, the online survey was not counted.

The goal was to obtain completed surveys from at least 400 residents. The goal was exceeded with a total of 466 residents completing the survey. The overall results for the sample of 466 households have a precision of at least +/- 4.5% at the 95% level of confidence.

This report contains the following:

- Charts showing the overall results of the survey (Section 1)
- Priority Investment Rating (PIR) that identifies priorities for facilities/amenities and recreation programs (Section 2)
- Benchmarking analysis comparing the City's results to national results (Section 3)
- Tabular data showing the overall results for all questions on the survey (Section 4)
- A copy of the survey instrument (Section 5)

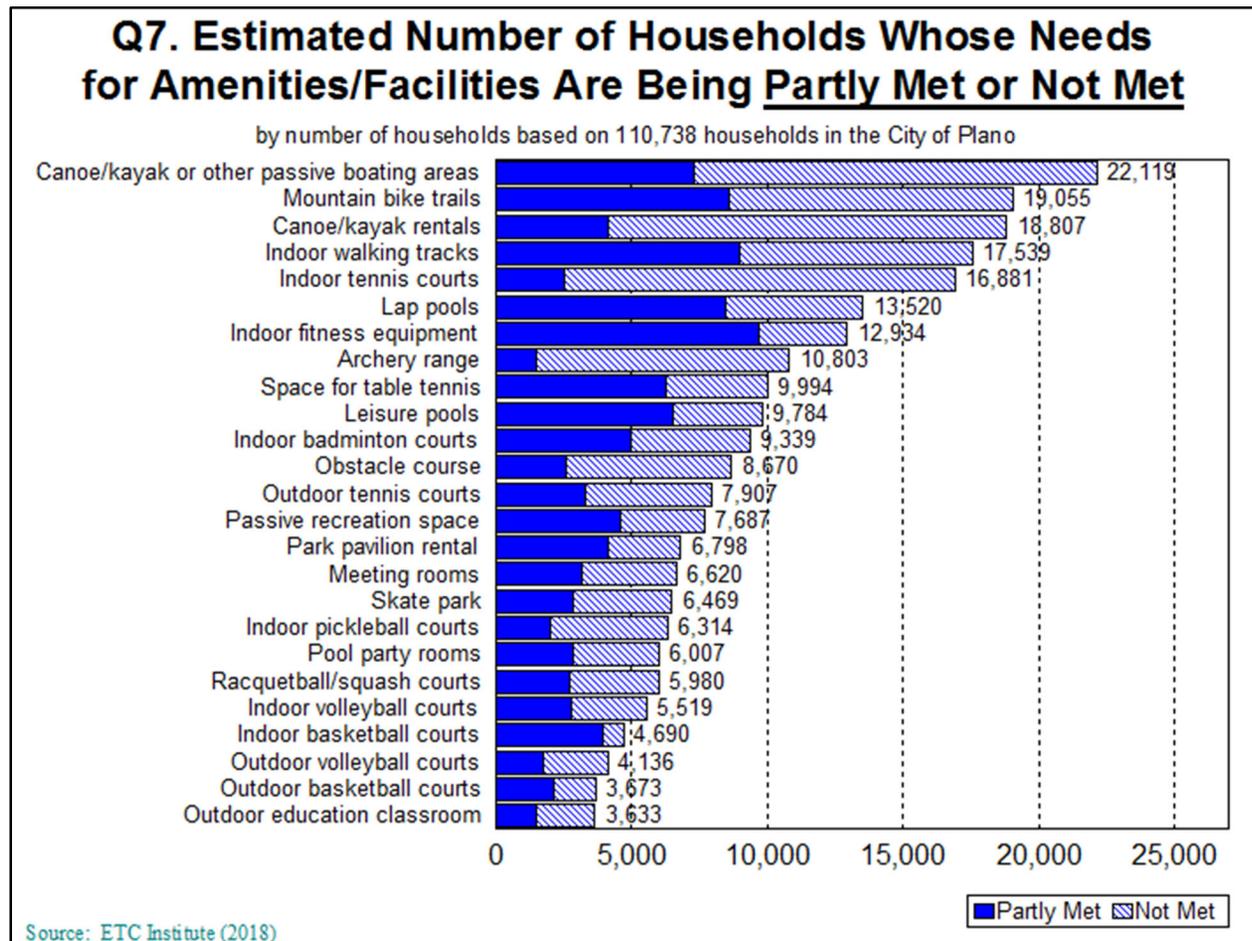
The major findings of the survey are summarized on the following pages.

Plano Parks and Recreation Survey Findings

Facility/Amenity Needs and Priorities

Facility/Amenity Needs: Respondents were asked to identify if their household had a need for 25 recreation facilities and amenities and rate how well their needs for each facility/amenity were currently being met. Based on this analysis, ETC Institute was able to estimate the number of households in the community that had the greatest “unmet” need for various facilities.

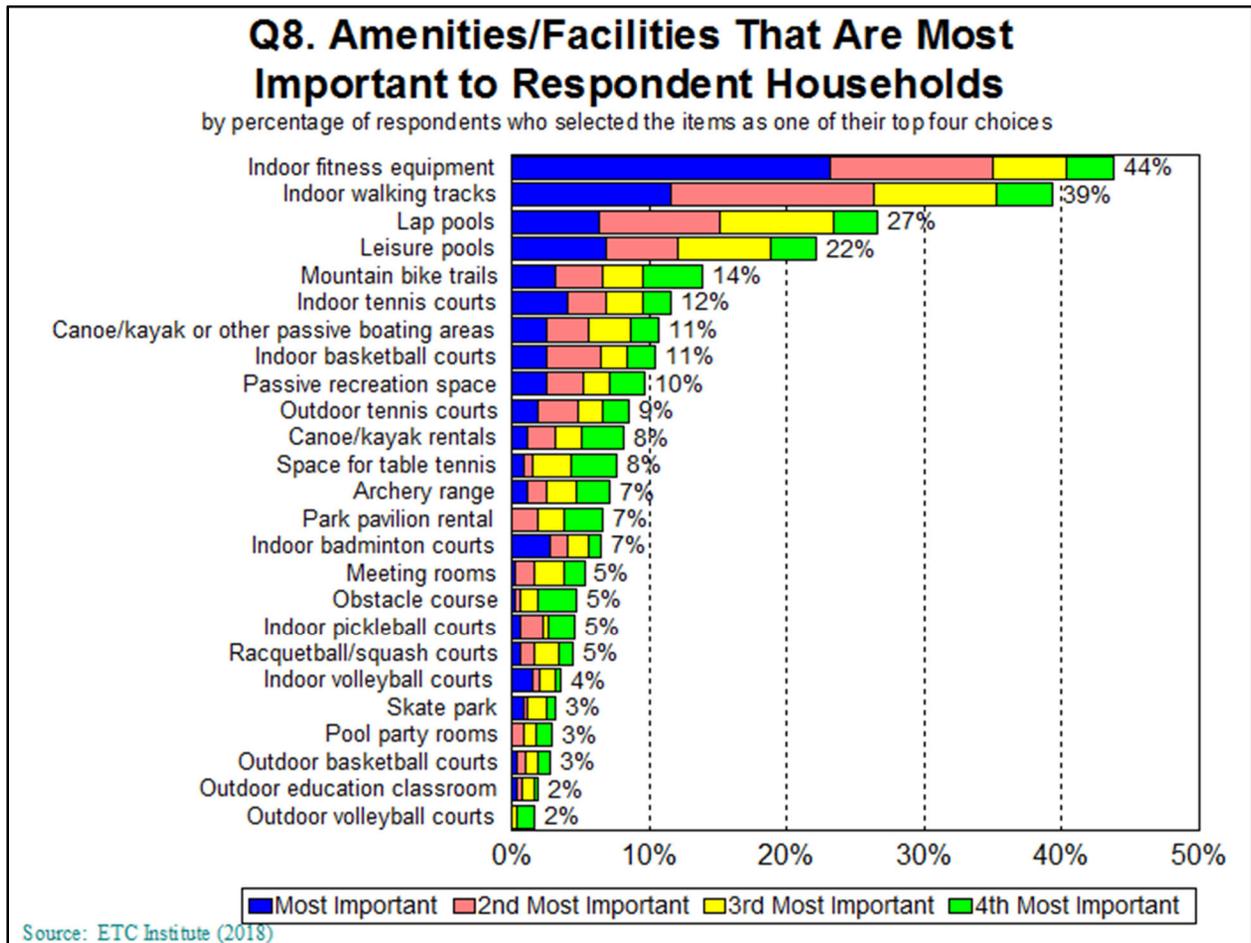
The top four facilities/amenities with the highest percentage of households that indicated a need for the facility were: indoor fitness equipment (57%), indoor walking tracks (52%), lap pools (40%), and leisure pools (35%). ETC Institute estimates a total of 62,788 households out of the 110,738 households in Plano have a need for indoor fitness equipment and an estimated 57,694 households out of the 110,738 households in Plano have a need for indoor walking tracks. ETC Institute estimates a total of 22,119 households out of the 110,738 households in Plano have unmet needs for canoe/kayak or other passive boating areas, an estimated total of 19,055 households out of the 110,738 households in Plano have unmet needs for mountain bike trails, and an estimated 18,807 households out of the 110,738 households in Plano have unmet needs for canoe/kayak rentals. The estimated number of households that have unmet needs for each of the 25 facilities/amenities that were assessed is shown in the table below.



Facility/Amenity Importance: In addition to assessing the needs for each facility/amenity, ETC Institute also assessed the importance that residents placed on each facility/amenity. Based on the sum of respondents’ top four choices, the four most important facilities/amenities to residents were:

1. indoor fitness equipment (44%),
2. indoor walking tracks (39%),
3. lap pools (27%), and
4. leisure pools (22%).

The percentage of residents who selected each facility as one of their top four choices is shown in the following chart.

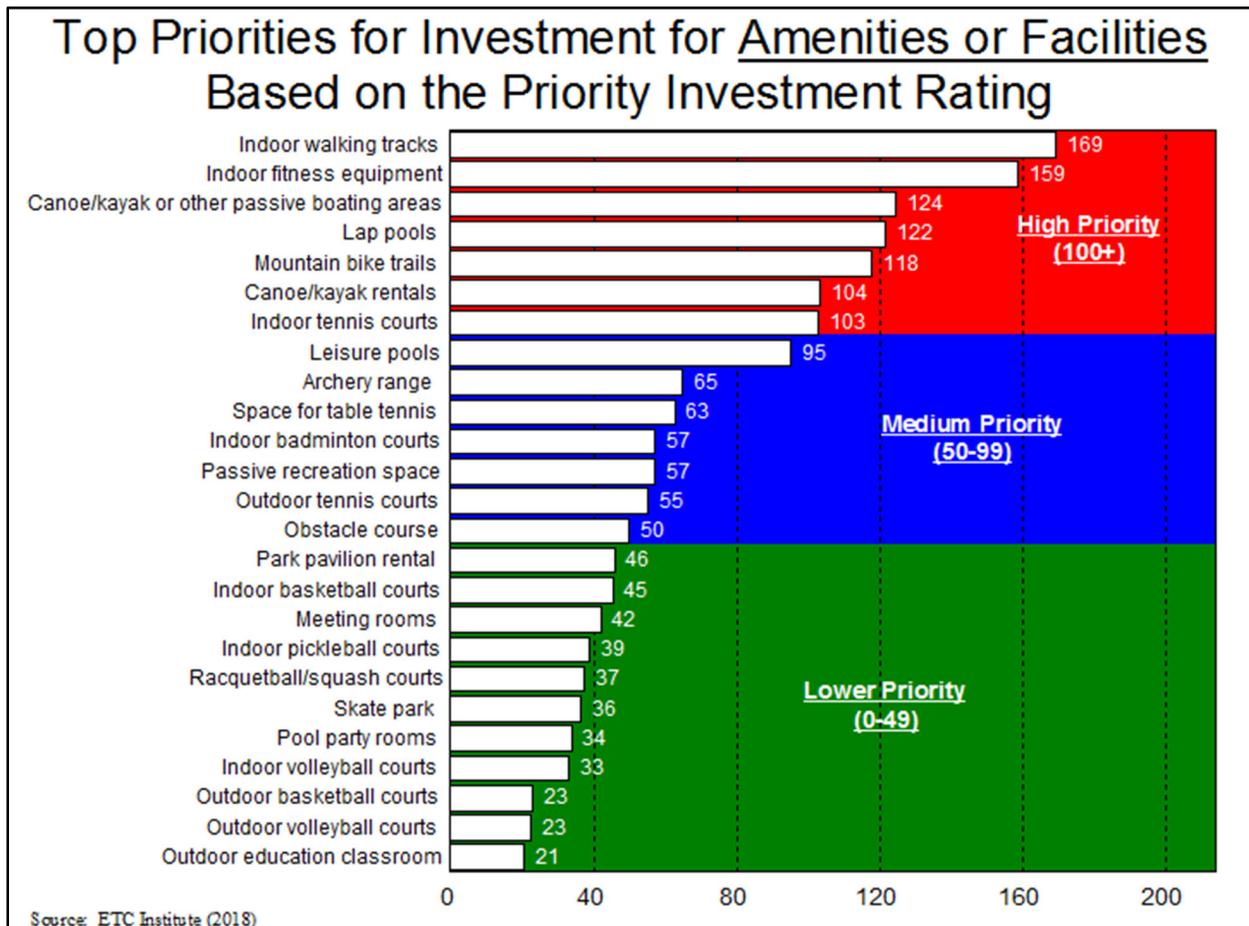


Priorities for Facility/Amenity Investments. The **Priority Investment Rating (PIR)** was developed by ETC Institute to provide organizations with an objective tool for evaluating the priority that should be placed on Parks and Recreation investments. The **Priority Investment Rating (PIR)** equally weights (1) the importance that residents place on facilities/amenities and (2) how many residents have unmet needs for the facility. [Details regarding the methodology for this analysis are provided in Section 2 of this report.]

Based the **Priority Investment Rating (PIR)**, the following seven facilities/amenities were rated as high priorities for investment:

- Indoor walking tracks (PIR=169)
- Indoor fitness equipment (PIR=159)
- Canoe/kayak or other passive boating areas (PIR=124)
- Lap pools (PIR=122)
- Mountain bike trails (PIR=118)
- Canoe/kayak rentals (PIR=104)
- Indoor tennis courts (PIR=103)

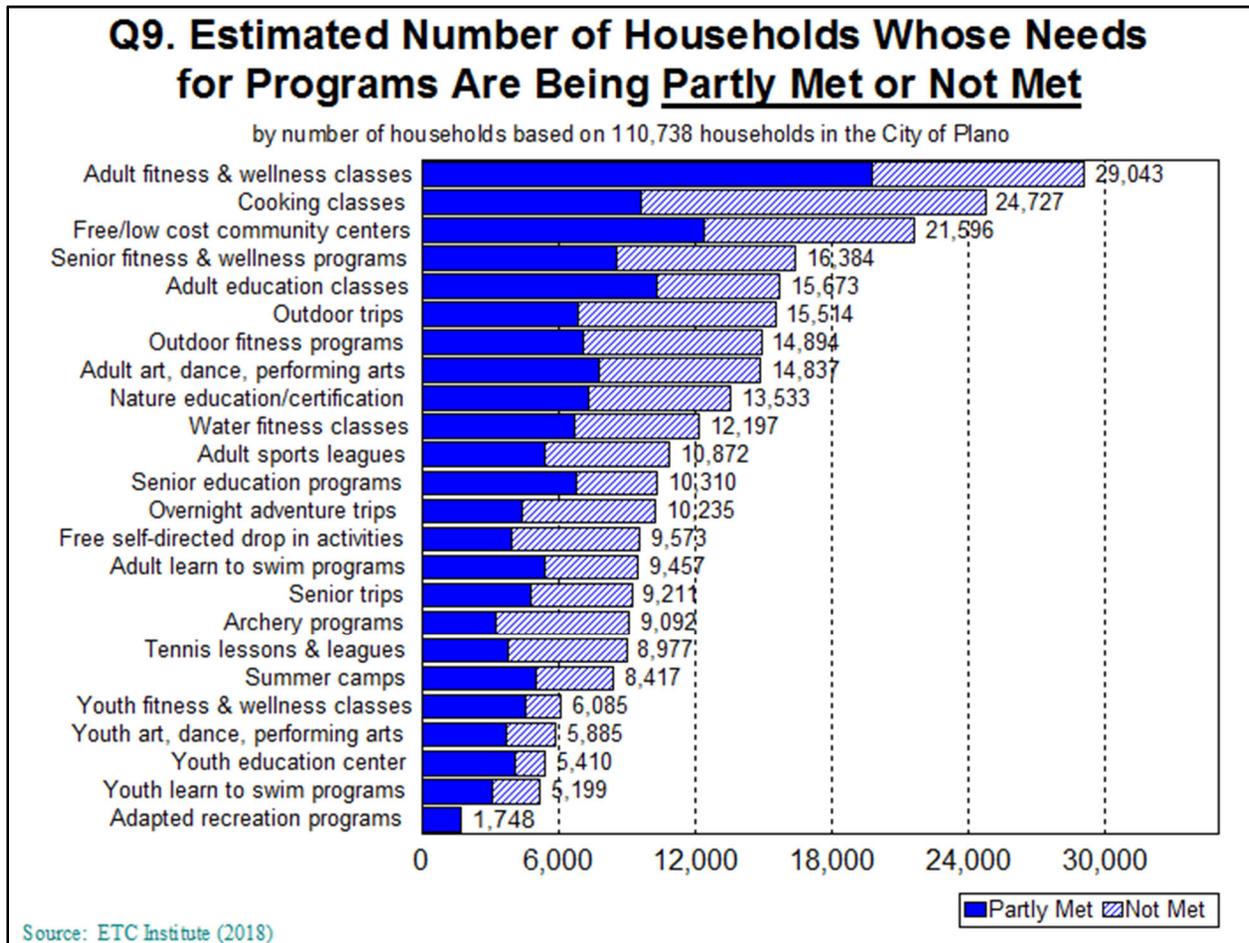
The following chart shows the **Priority Investment Rating (PIR)** for each of the 25 facilities/amenities that were assessed on the survey.



Programming Needs and Priorities

Programming Needs. Respondents were also asked to identify if their household had a need for 24 recreational programs and rate how well their needs for each program were currently being met. Based on this analysis, ETC Institute was able to estimate the number of households in the community that had “unmet” needs for each program.

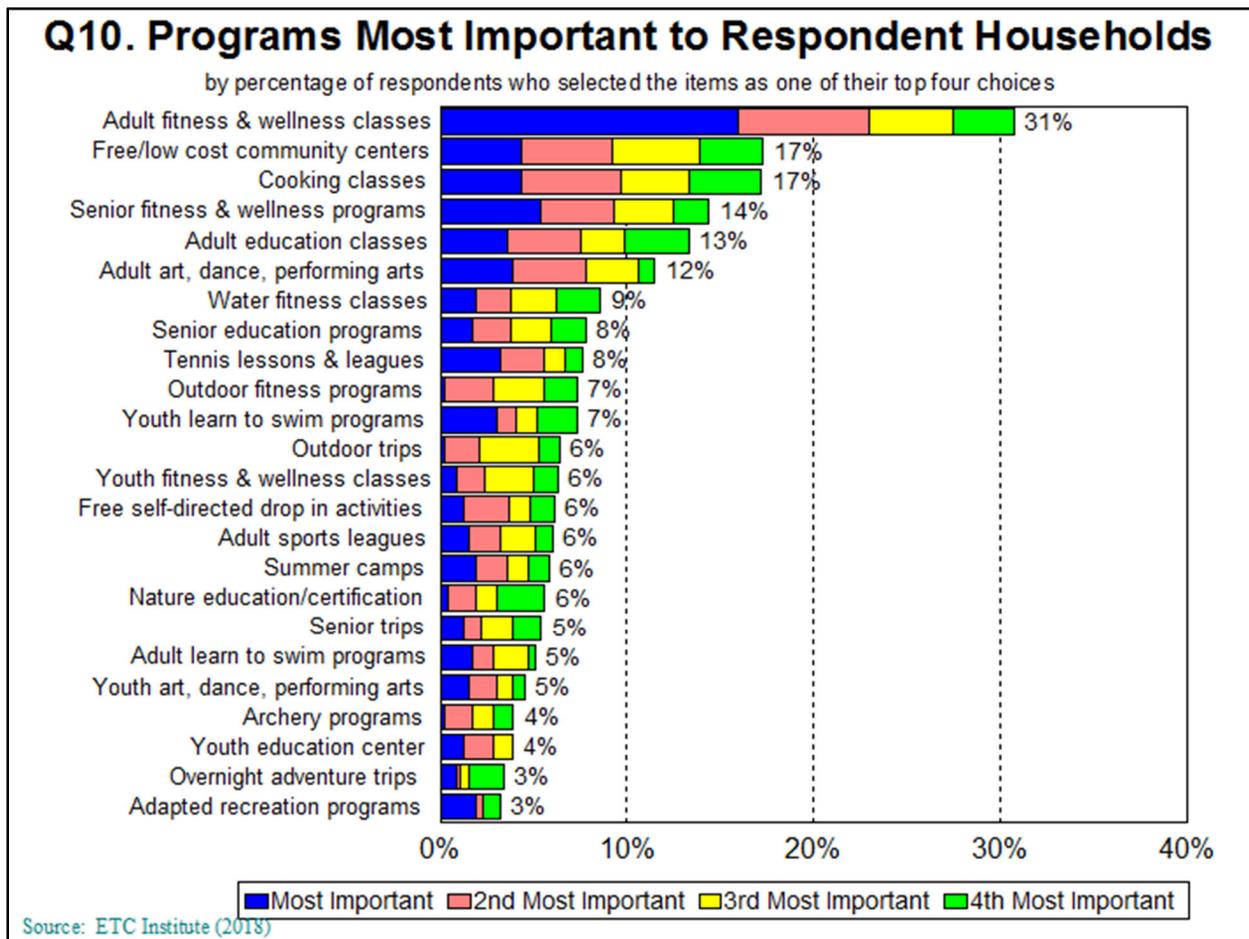
The four programs with the highest percentage of households that had needs were: adult fitness and wellness classes (48%), free/low cost community centers (28%), senior fitness and wellness programs (28%), and cooking classes (27%). ETC Institute estimates a total of 53,486 households out of the 110,738 households in Plano have a need for adult fitness and wellness classes, an estimated total of 31,117 households out of the 110,738 households in Plano have a need for free/low cost community centers, and an estimated 30,453 households out of the 110,738 households in Plano have a need for senior fitness and wellness programs. ETC Institute estimates a total of 29,043 households out of the 110,738 households in Plano have unmet needs for adult fitness and wellness classes, an estimated 24,727 households out of the 110,738 households in Plano have unmet needs for cooking classes, and an estimated 21,596 households out of the 110,738 households in Plano have unmet needs for free/low cost community centers. The estimated number of households that have unmet needs for each of the 24 programs that were assessed is shown in the chart below.



Program Importance. In addition to assessing the needs for each program, ETC Institute also assessed the importance that residents placed on each program. Based on the sum of respondents’ top four choices, the four most important programs to residents were:

1. adult fitness and wellness classes (31%),
2. free/low cost community centers (17%),
3. cooking classes (17%), and
4. senior fitness and wellness programs (14%).

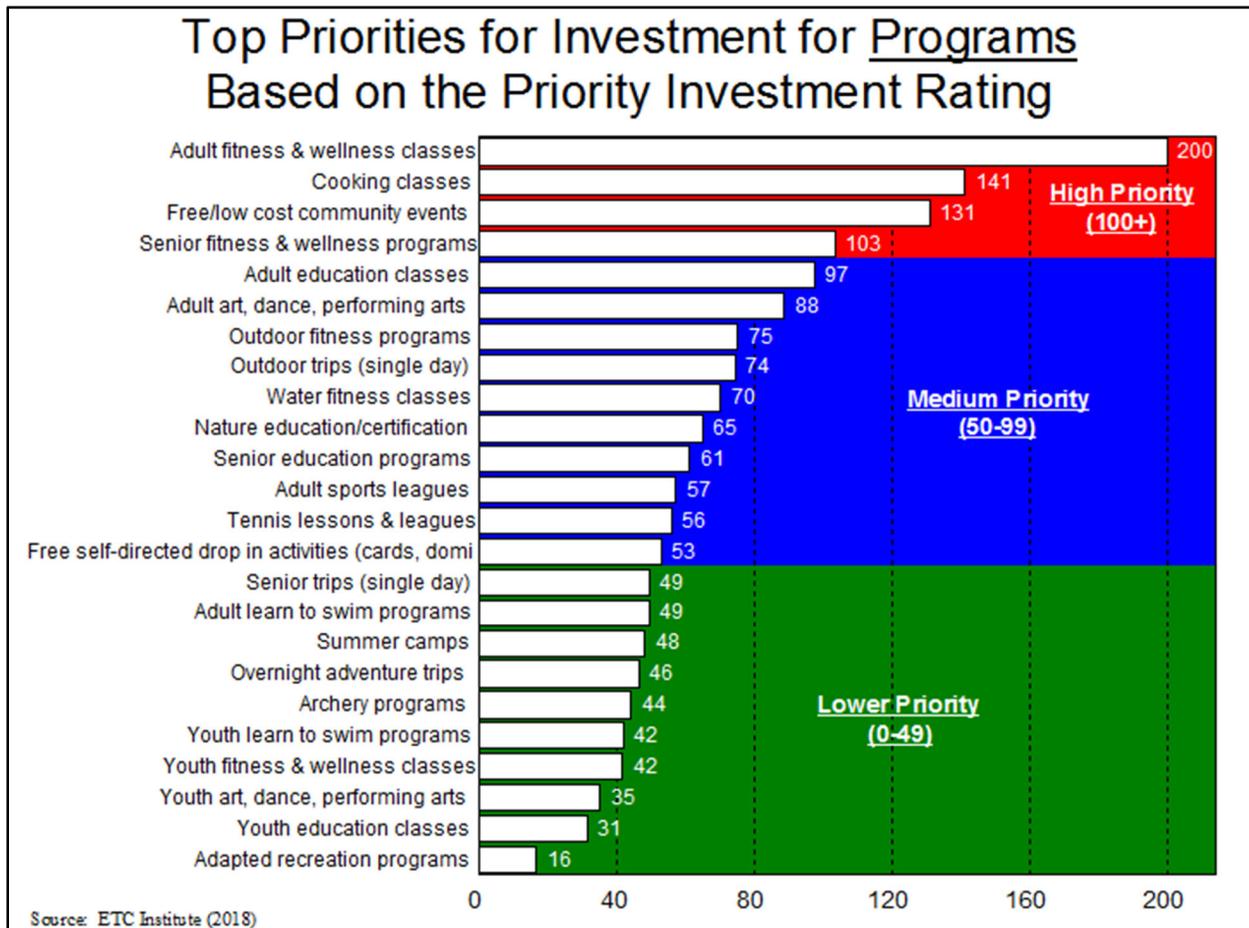
The percentage of residents who selected each program as one of their top four choices is shown in the table below.



Priorities for Programming Investments: Based the **Priority Investment Rating (PIR)**, which was described briefly on Page iv of this Executive Summary and is described in more detail in Section 2 of this report, the following four programs were rated as “high priorities” for investment:

- Adult fitness and wellness classes (PIR=200)
- Cooking classes (PIR=141)
- Free/low cost community events (PIR=131)
- Senior fitness and wellness programs (PIR=103)

The follow chart page shows the **Priority Investment Rating (PIR)** for each of the 24 programs that were rated.



Additional Findings

Out of a list of nine various City parks and facilities, respondents were asked to indicate which ones they had visited in the most in the past twelve months, the highest rated were: Carpenter Park Recreation Center (19%) and Tom Muehlenbeck Recreation Center (17%).

One percent (1%) of respondent households indicated they visit a Plano Recreation Center or pool “daily,” 17% visit “several times per week,” 13% visit several times per month,” 30% visit “several times per year,” and 39% have “never visited a Plano Recreation Center or pool”.

Respondents were given a list of twelve various reasons to what prevents them from visiting Plano Recreation Centers or pools more often and the top reasons were: lack of time (35%), I do not know what is offered (18%) and use other private facilities (16%).

Over a quarter (27%) of respondent households indicated that if a second recreation center for those who are age 50 or older was built near the central/western section of the city, they would use the facility.

Forty-eight percent (48%) of respondents indicated that their most preferred type of recreation center to use, where the price and amenities were the same, would be a recreation center intended for all ages.

Forty-eight percent (48%) of respondent households indicated they prefer to take classes with others that are similar in age, 34% prefer to take classes with others that are in any age group, 12% prefer taking classes with those that are the same age or younger, and 6% prefer to take classes with those the same age or older.

The most preferred day, as indicated by respondents, to take a class or attend a recreation program would be on a Thursday (87%). More specifically, thirty-four percent (34%) of respondents indicated Saturday morning, 8am to noon, would be the most preferred time to take a class or attend a recreation program.

The highest levels of importance for various parks and recreation items, based upon the sum of “extremely important” and “very important” responses among residents *who had an opinion*, were: build an archery range (49%), add additional meeting/even space (48%), add additional pool party room/space (47%), and provide an outdoor education classroom (43%).

Recommendations

To ensure Plano continues to meet the needs and expectations of the community, ETC Institute recommends that the Parks and Recreation Department sustain and/or improve the performance in areas that were identified as “high priorities” by the **Priority Investment Rating (PIR)**. The facilities and programs with the highest PIR ratings are listed below

Facility Priorities

- Indoor walking tracks (PIR=169)
- Indoor fitness equipment (PIR=159)
- Canoe/kayak or other passive boating areas (PIR=124)
- Lap pools (PIR=122)
- Mountain bike trails (PIR=118)
- Canoe/kayak rentals (PIR=104)

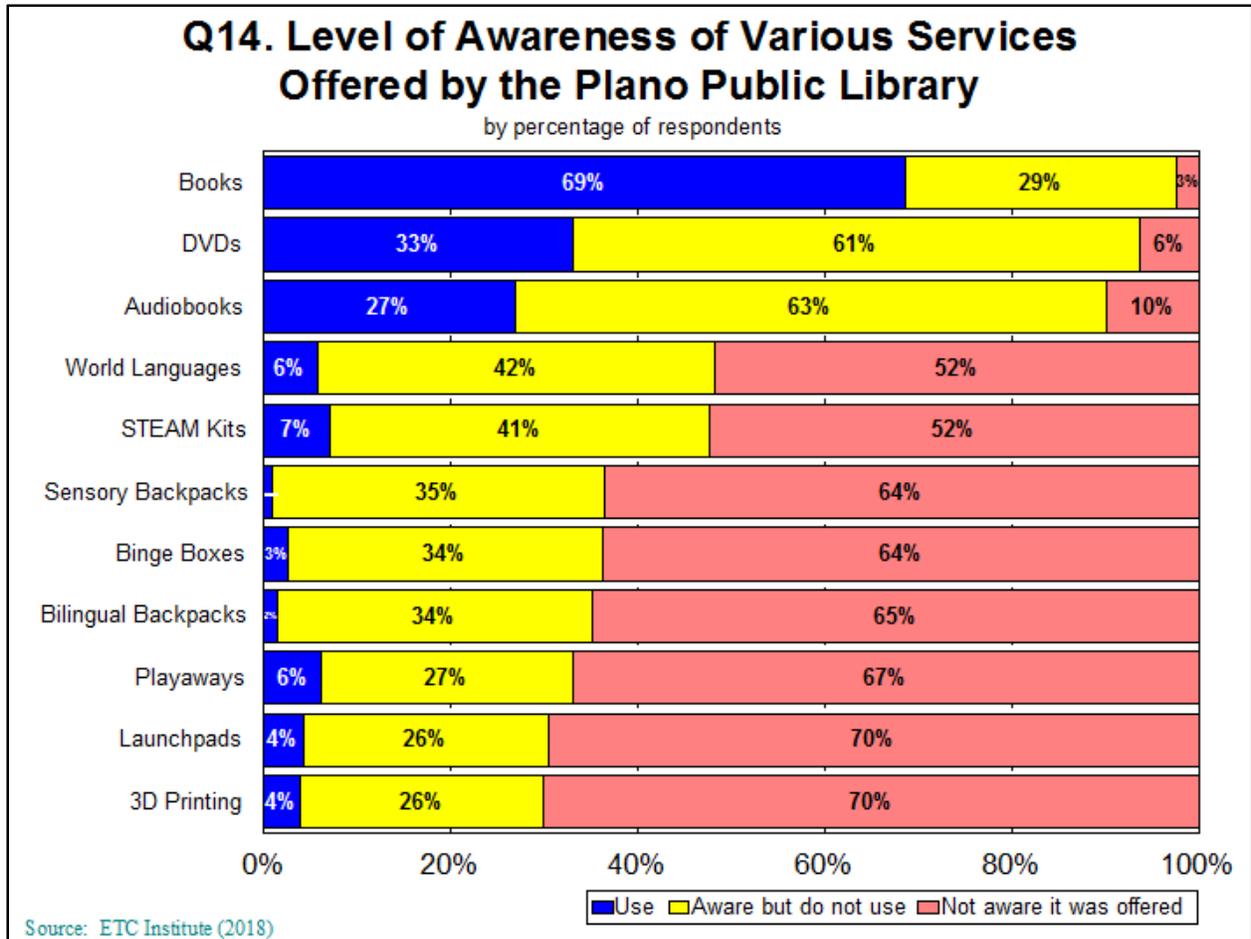
- Indoor tennis courts (PIR=103)

Programming Priorities

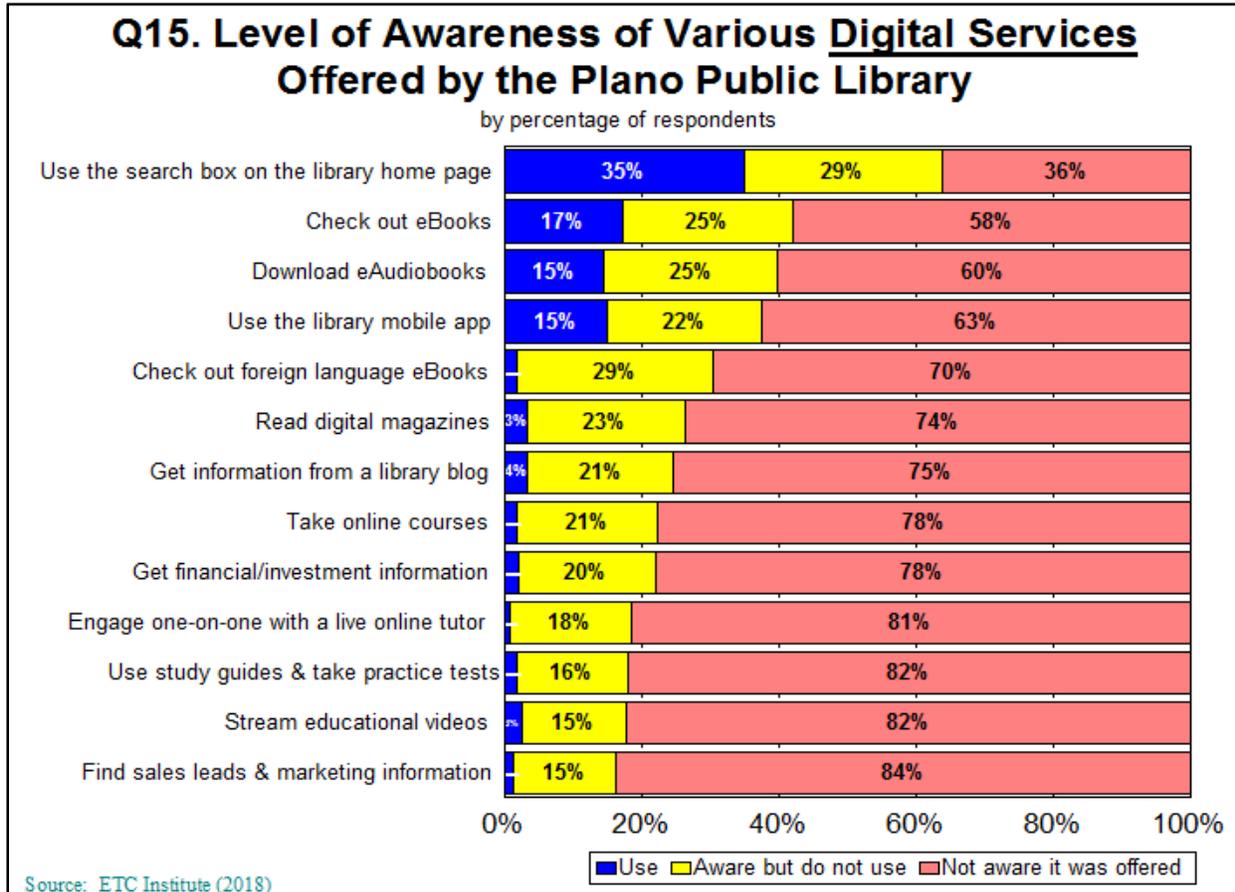
- Adult fitness and wellness classes (PIR=200)
- Cooking classes (PIR=141)
- Free/low cost community events (PIR=131)
- Senior fitness and wellness programs (PIR=103)

Plano Public Library Survey Findings

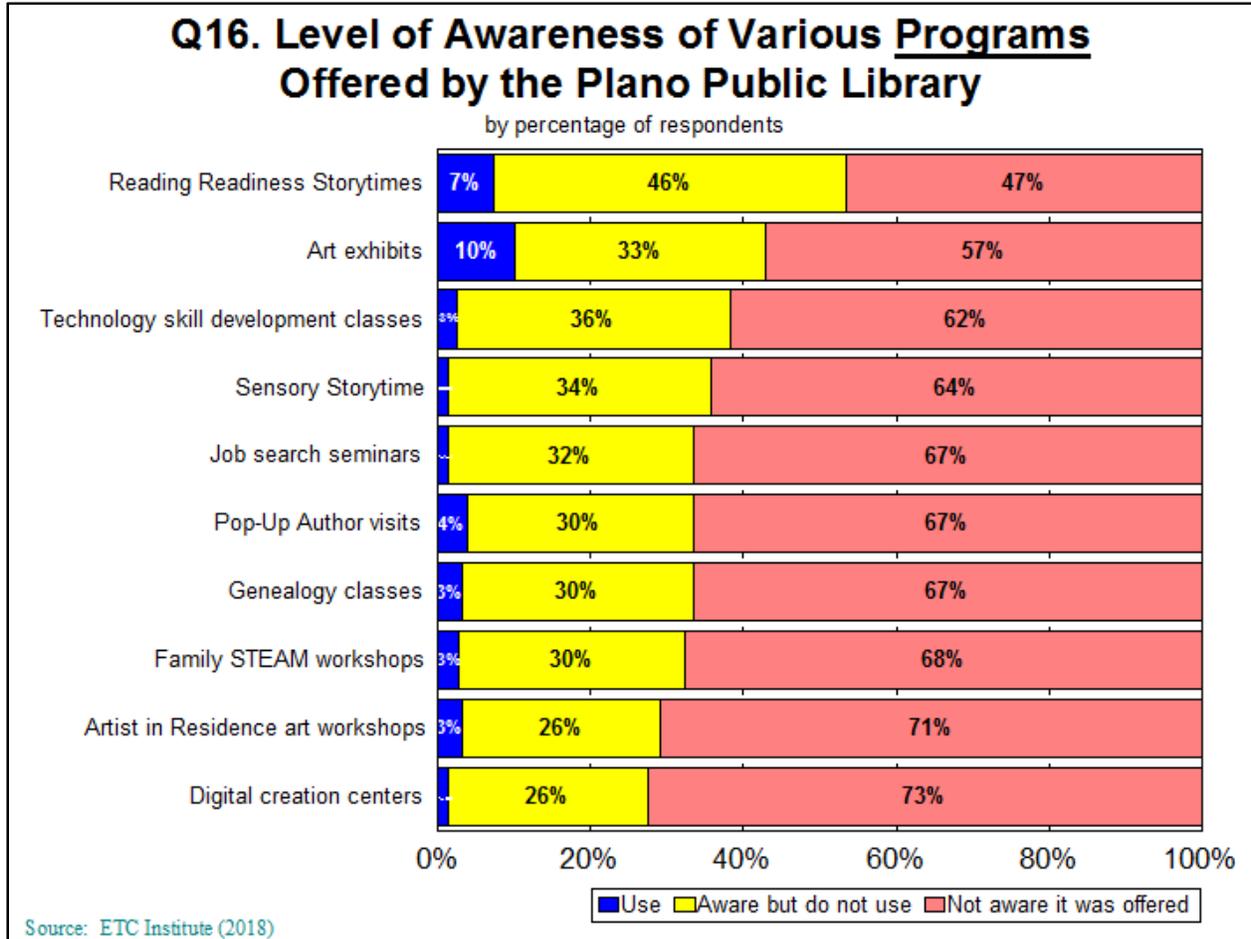
Services. The highest levels of awareness for various services offered by the Plano Public Library, based upon the sum of “use” and “aware but do not use” responses, were: books (98%), DVDs (94%), and audiobooks (90%). Sixty-nine percent (69%) of respondents indicated they use the books provided, 33% of respondents indicated they use the DVDs provided, and 27% of respondent households indicated they use the audiobooks provided. The chart below shows the level of awareness respondent households have of the various services offered by the public library.



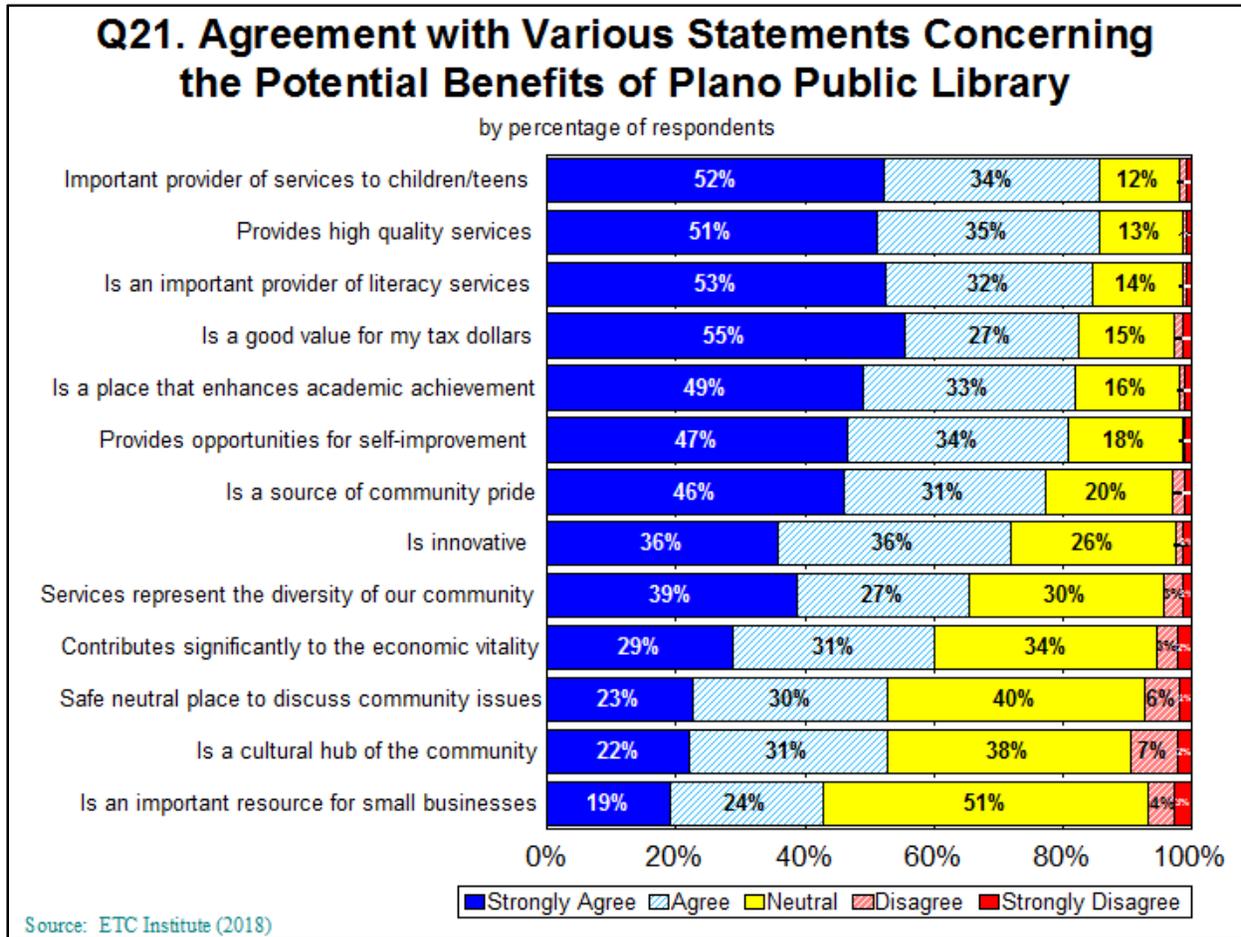
Digital Services. The highest levels of awareness for various digital services offered by the Plano Public Library, based upon the sum of “use” and “aware but do not use” responses, were: use the search box on the library home page (64%), check out eBooks (42%), and download eAudiobooks (40%). Thirty-five percent (35%) of respondent households indicated they use the search box on the library home page, 17% of respondents check out eBooks, 15% download eAudiobooks, and 15% use the library mobile app. The following chart shows the level of awareness respondents had of various digital services.



Programs. The highest levels of awareness of various programs offered by the Plano Public Library, based upon the sum of “use” and “aware but do not use” responses, were: Reading Readiness Storytimes (53%), art exhibits (43%), and technology skill development classes (39%). Ten percent (10%) indicated they use art exhibits and 7% of respondent households indicated they use Reading Readiness Storytimes. The chart below displays the level of awareness respondents had of various programs offered by the public library.



The highest level of agreement with various statements concerning the potential benefits of the Plano Public Library, based upon the sum of “strongly agree” and “agree” responses, were: important provider of services to children/teens (86%), provides high quality services (86%), is an important provider of literacy services (85%), and is a good value for my tax dollars (82%). The following chart displays the level of agreement respondent’s had with various statements concerning the public library.



Eighty percent (80%) of respondent households indicated they have a library card for the Plano Public Library.

The most used methods that respondents use to learn about library events and classes are from in the library (48%) and the library website (42%).

The most frequently visited libraries, as indicated by respondent households, were: www.PlanoLibrary.org (58%), Haggard (53%), and Davis (48%).

Fourteen percent (14%) of respondents indicated, when visiting a Plano library, they always interact with a staff member and 40% of respondents sometimes interact with a staff member.

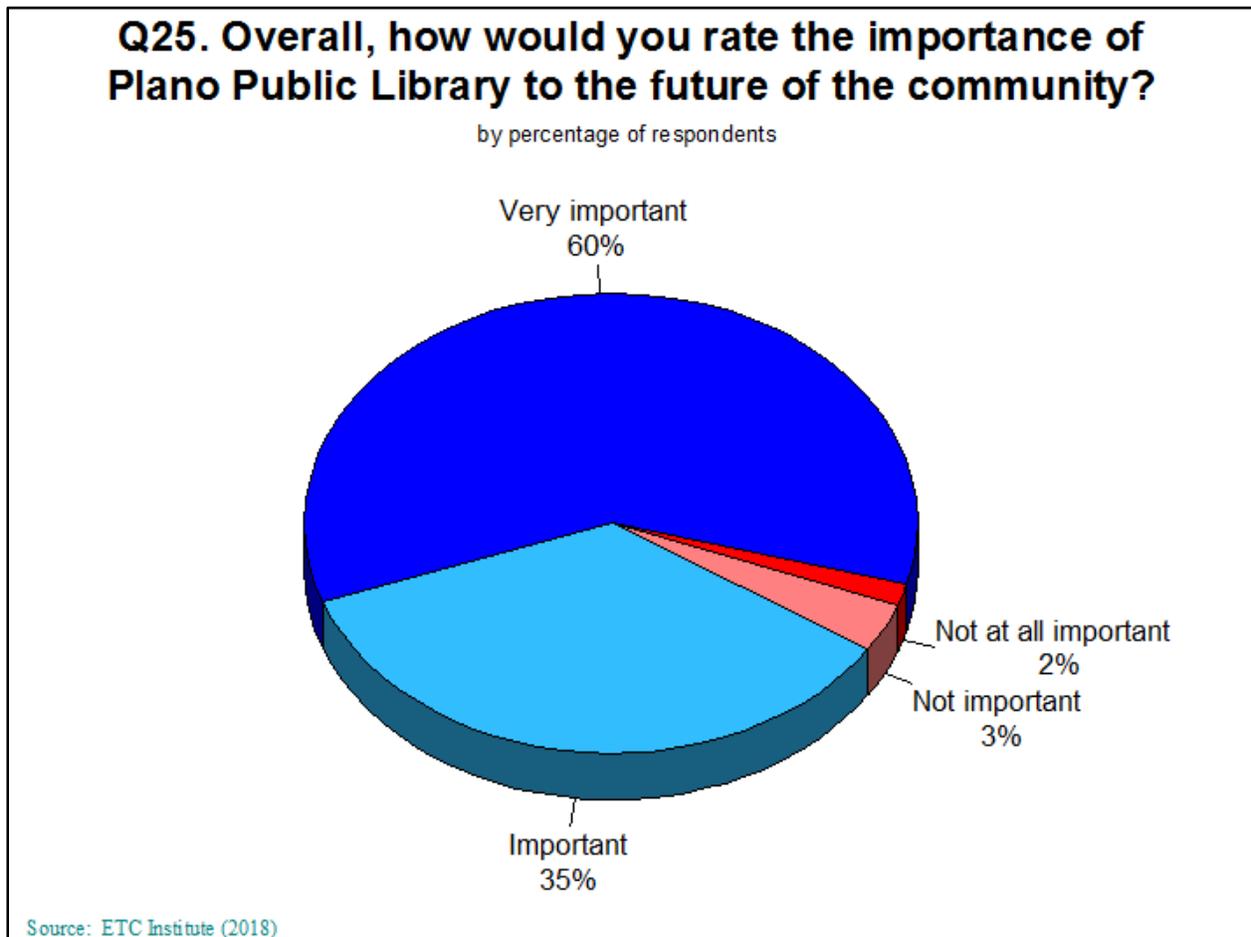
The top-rated roles and services of the library most important to respondent households were: provide resources for reading/listening/viewing (48%), provide quiet places for reading and individual study (45%), and support education and literacy for children and adults (37%).

Over half (52%) of respondents indicated they prefer to learn something new online and 48% most prefer learning something new in-person by being in a class.

Thirteen percent (13%) of respondent households subscribe to the library’s monthly eNewsletter, “Check It Out”.

Eighty-three percent (83%) of respondent households would rate the importance of the Plano Public Library as “very important” or “important” to their respective household.

An overwhelming number of respondents (95%) would rate the importance of the Plano Public Library as “very important” or “important” to the future of the community.

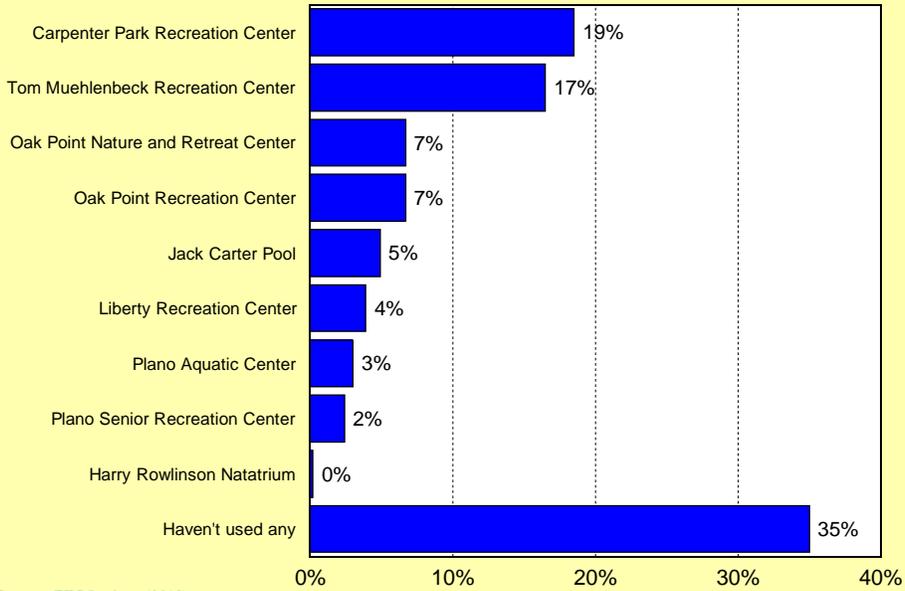


Section 1

Charts and Graphs

Q1. City of Plano Parks and Facilities Respondent Households Have Used MOST In the Past 12 Months

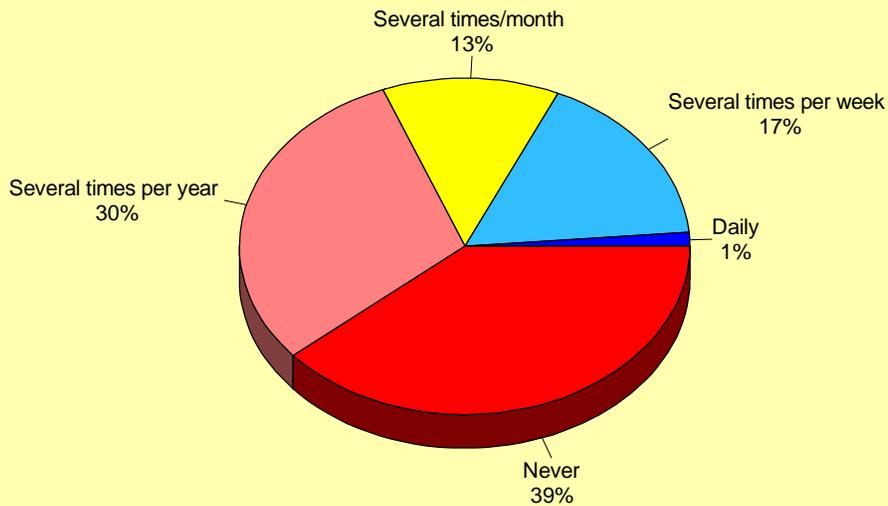
by percentage of respondents (multiple choices could be made)



Source: ETC Institute (2018)

Q2. How often do you visit a Plano Recreation Center or pool?

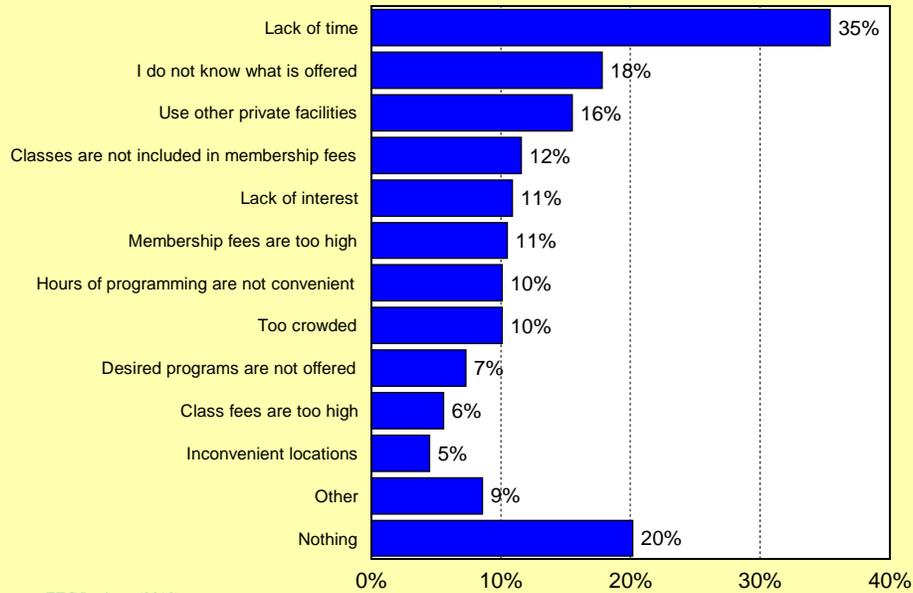
by percentage of households



Source: ETC Institute (2018)

Q3. Reasons Preventing Households From Visiting Plano Recreation Centers or Pools More Often

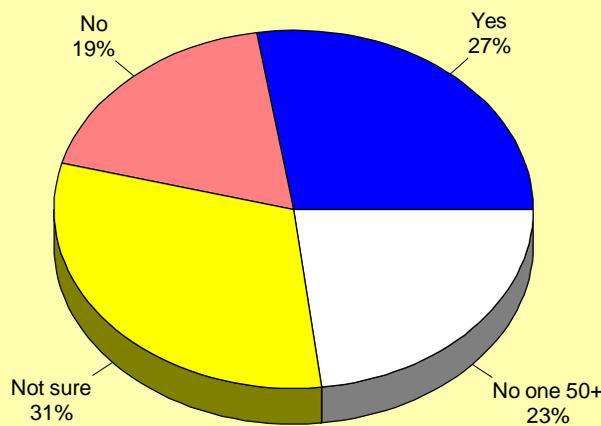
by percentage of respondents (multiple choices could be made)



Source: ETC Institute (2018)

Q4. If a second recreation center for those who are age 50 or older was built near the central/western section of the city, would you or members of your household use it?

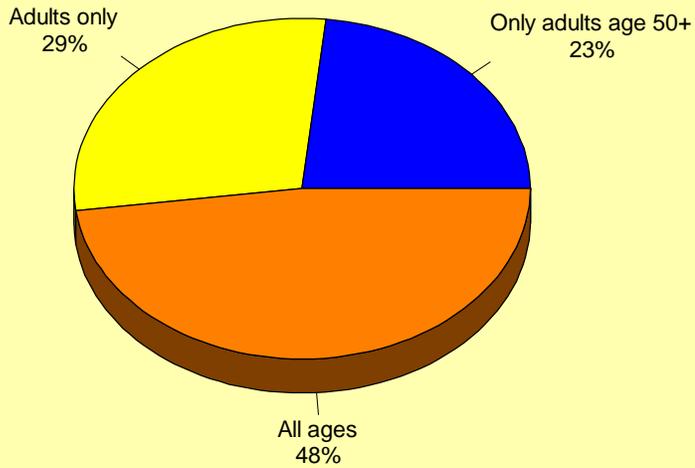
by percentage of households



Source: ETC Institute (2018)

Q5. If the membership price, programming, and amenities were the same, which ONE of the following types of recreation center would you prefer to attend?

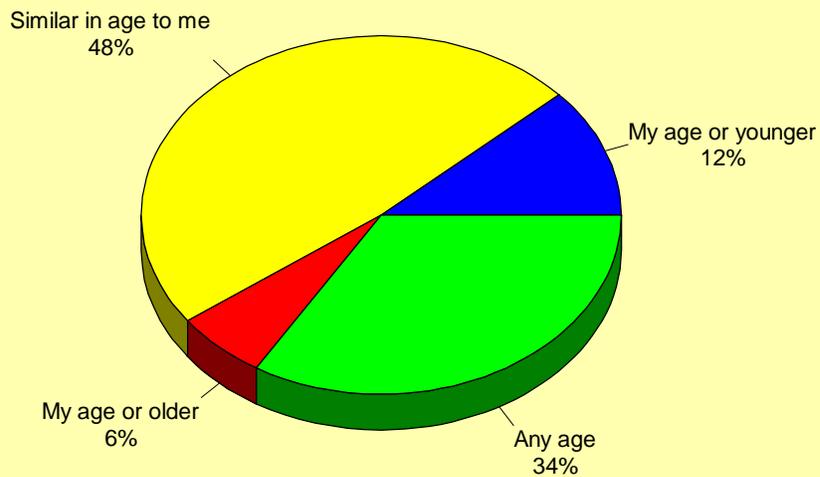
by percentage of respondents



Source: ETC Institute (2018)

Q6. What age range do you most prefer to take classes with?

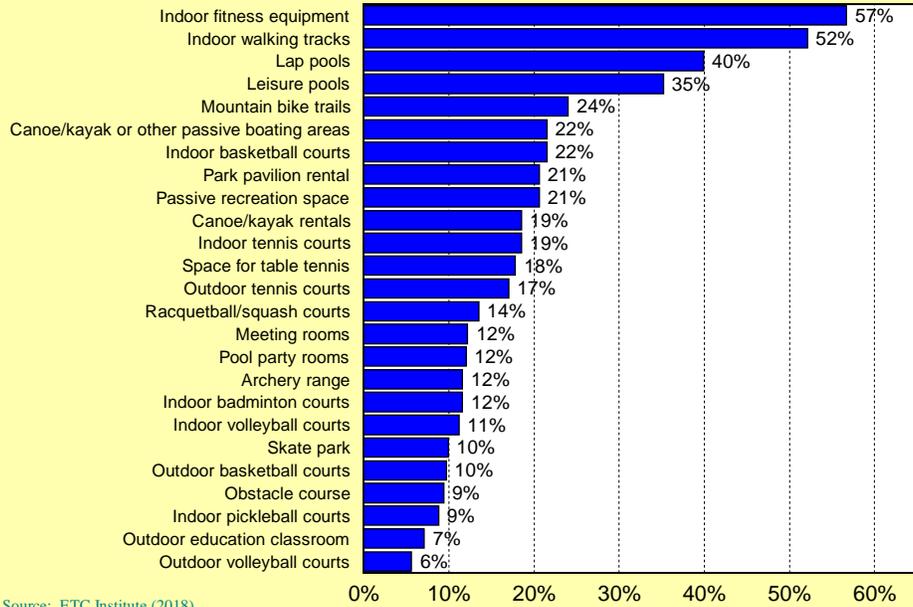
by percentage of respondents



Source: ETC Institute (2018)

Q7. Amenities/Facilities That Respondent Households Have a Need For

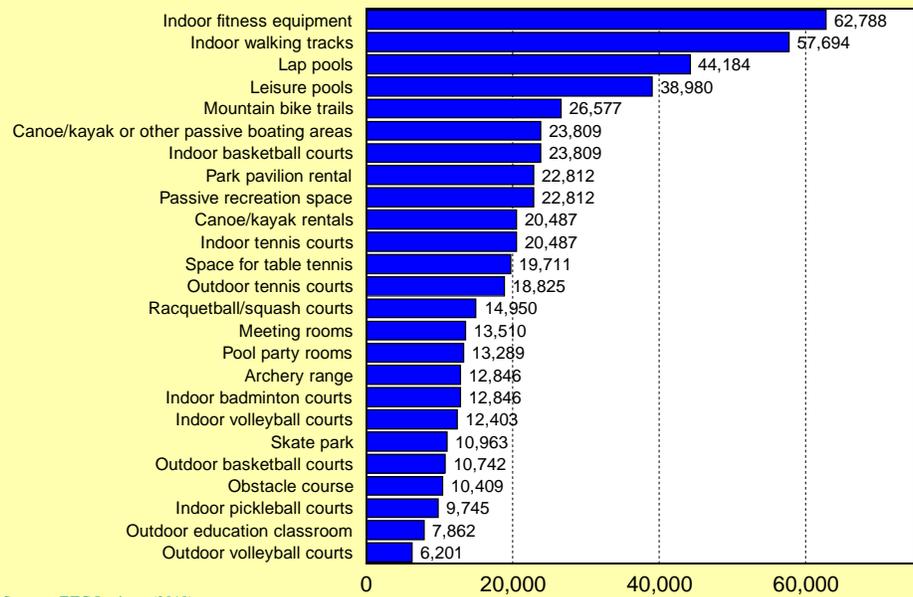
by percentage of respondents (multiple choices could be made)



Source: ETC Institute (2018)

Q7. Estimated Number of Households That Have a Need for Amenities/Facilities

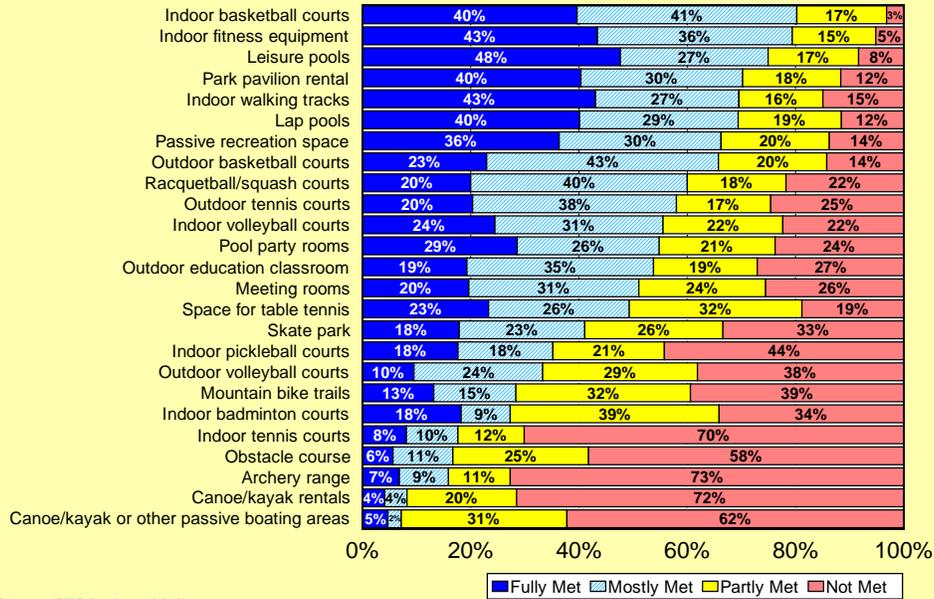
by number of households based on 110,738 households in the City of Plano



Source: ETC Institute (2018)

Q7. How Well Amenities/Facilities Meet the Needs of Respondent Households

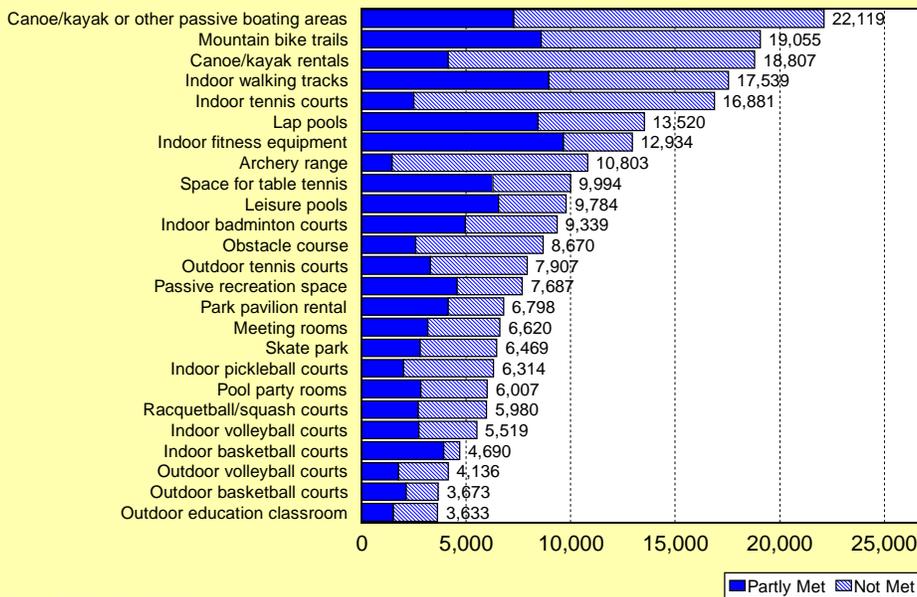
by percentage of respondents with a need for facilities



Source: ETC Institute (2018)

Q7. Estimated Number of Households Whose Needs for Amenities/Facilities Are Being Partly Met or Not Met

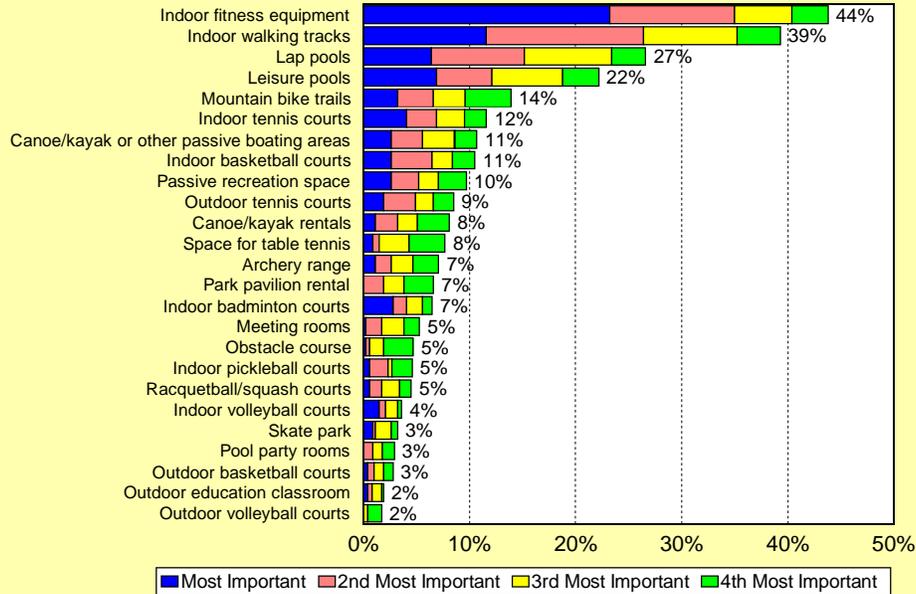
by number of households based on 110,738 households in the City of Plano



Source: ETC Institute (2018)

Q8. Amenities/Facilities That Are Most Important to Respondent Households

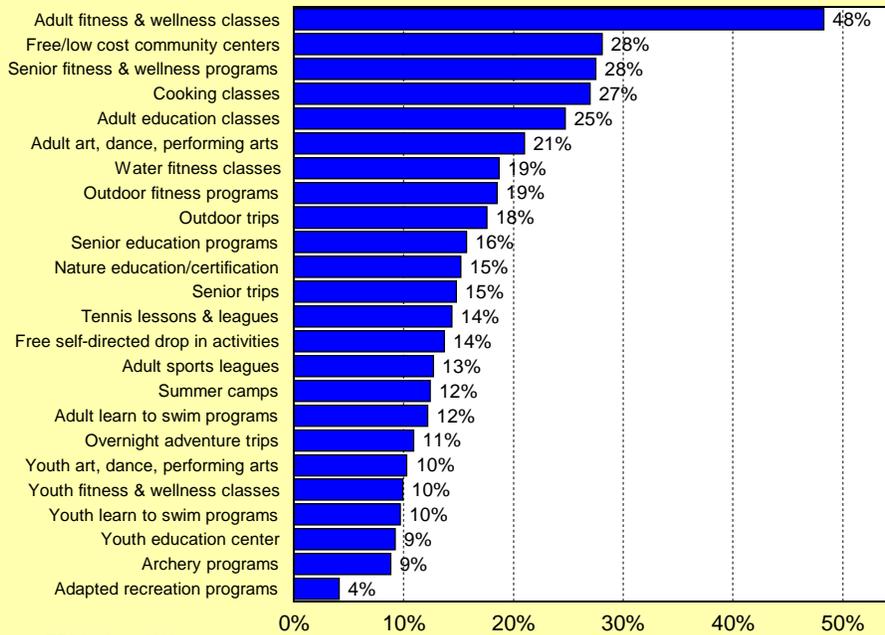
by percentage of respondents who selected the items as one of their top four choices



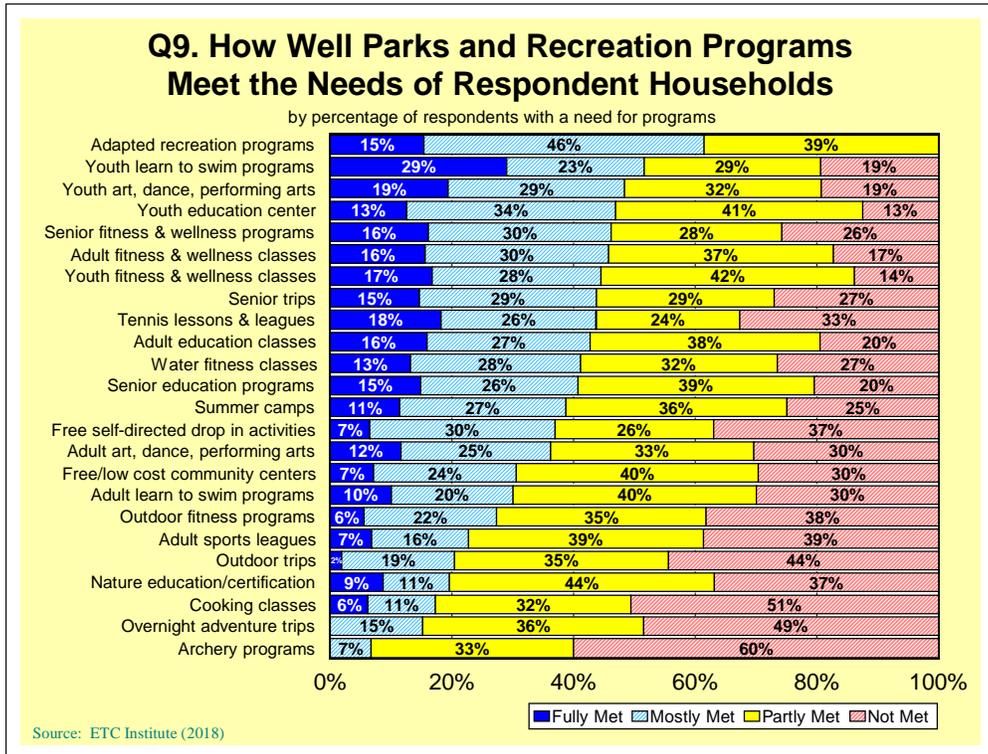
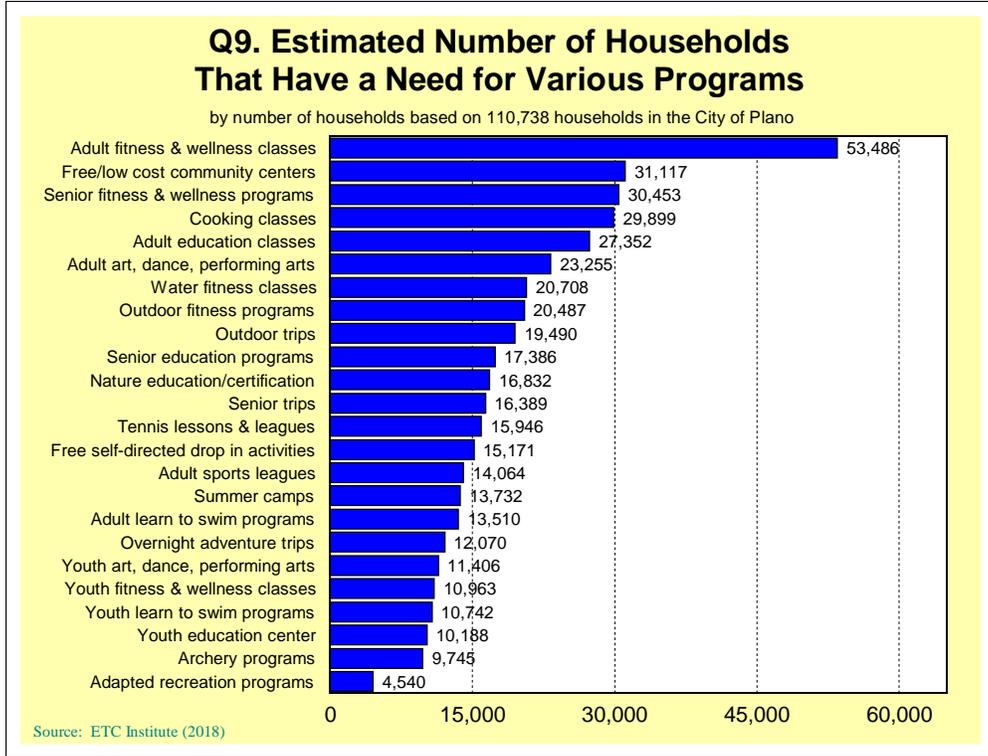
Source: ETC Institute (2018)

Q9. Programs Respondent Households Have a Need For

by percentage of respondents (multiple choices could be made)

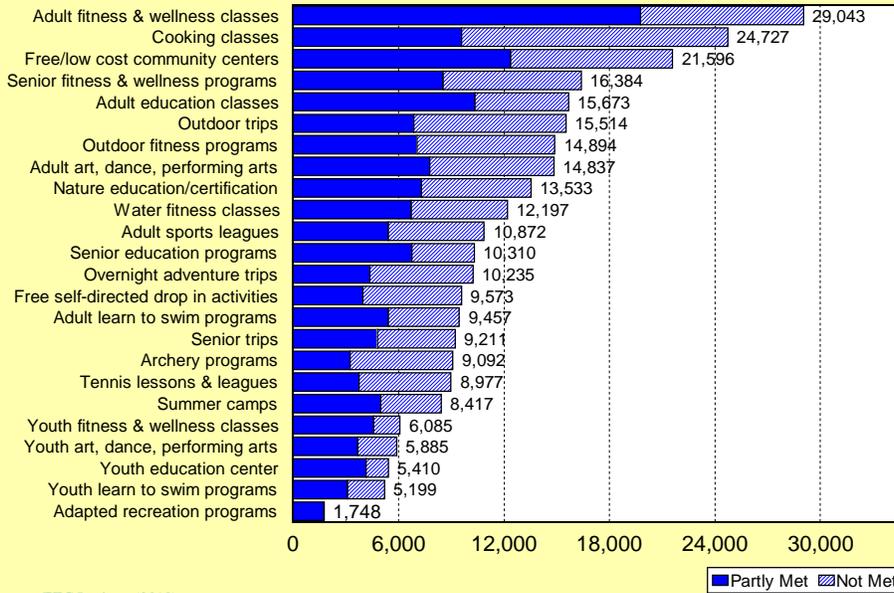


Source: ETC Institute (2018)



Q9. Estimated Number of Households Whose Needs for Programs Are Being Partly Met or Not Met

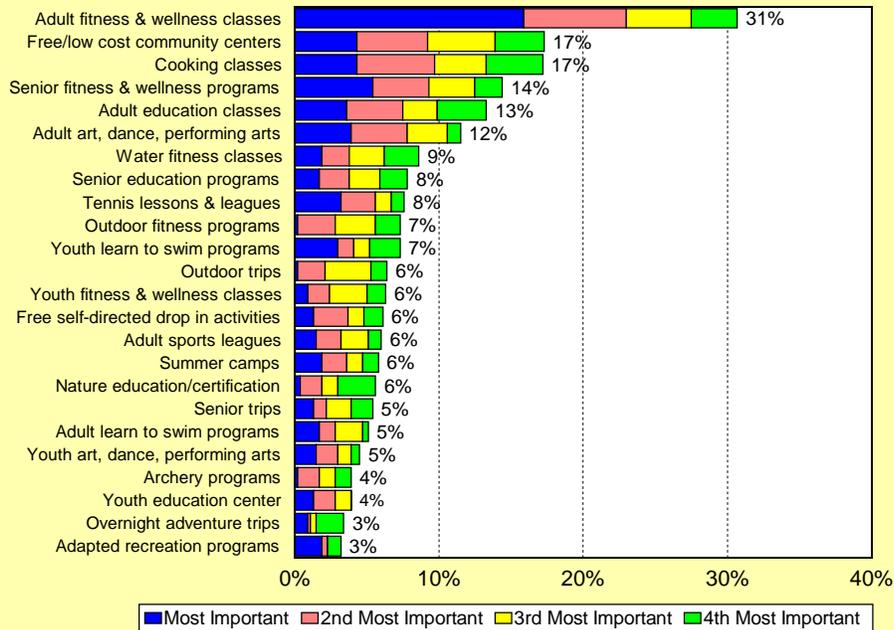
by number of households based on 110,738 households in the City of Plano



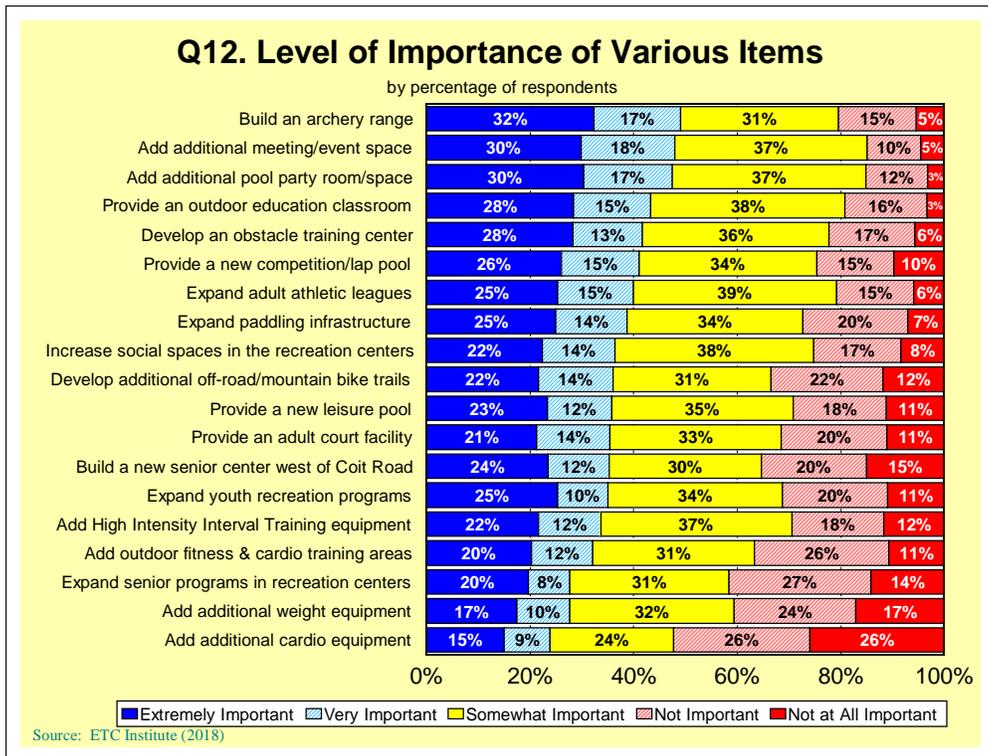
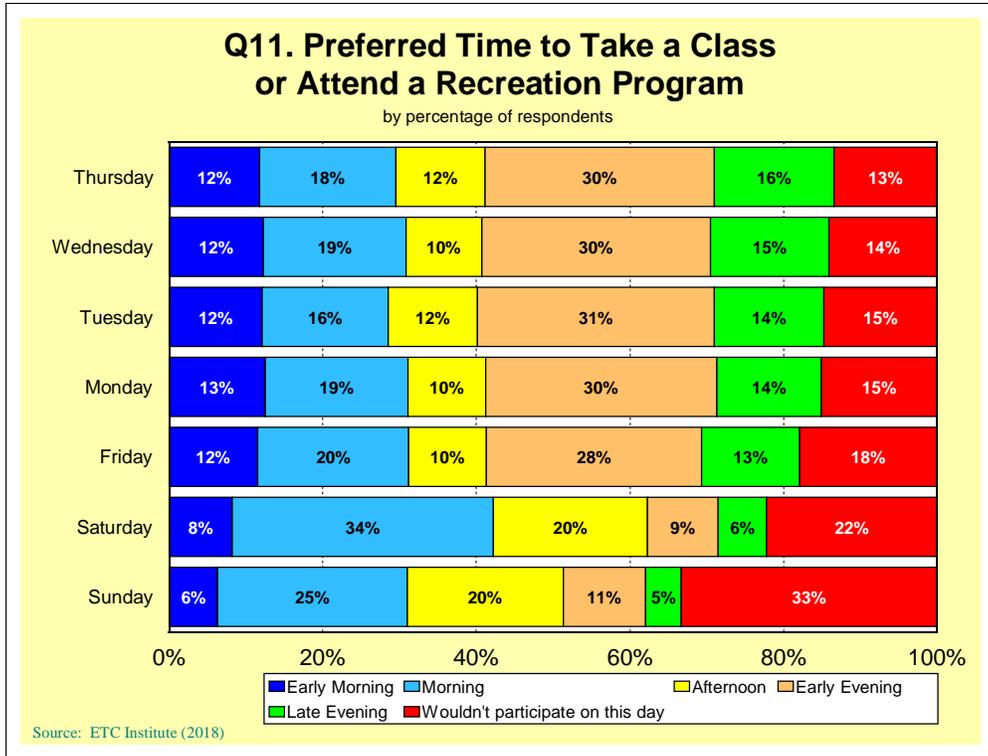
Source: ETC Institute (2018)

Q10. Programs Most Important to Respondent Households

by percentage of respondents who selected the items as one of their top four choices

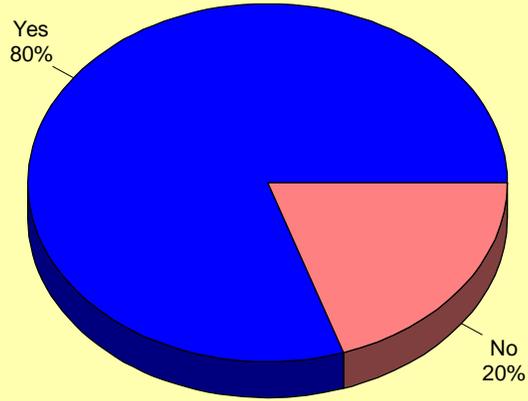


Source: ETC Institute (2018)



Q13. Do you or any members of your household have a library card for Plano Public Library?

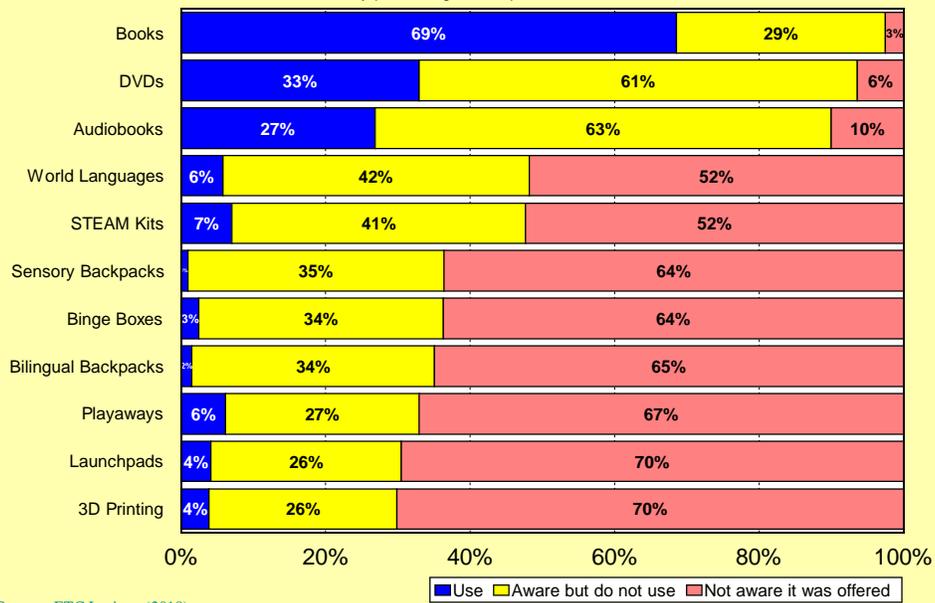
by percentage of households



Source: ETC Institute (2018)

Q14. Level of Awareness of Various Services Offered by the Plano Public Library

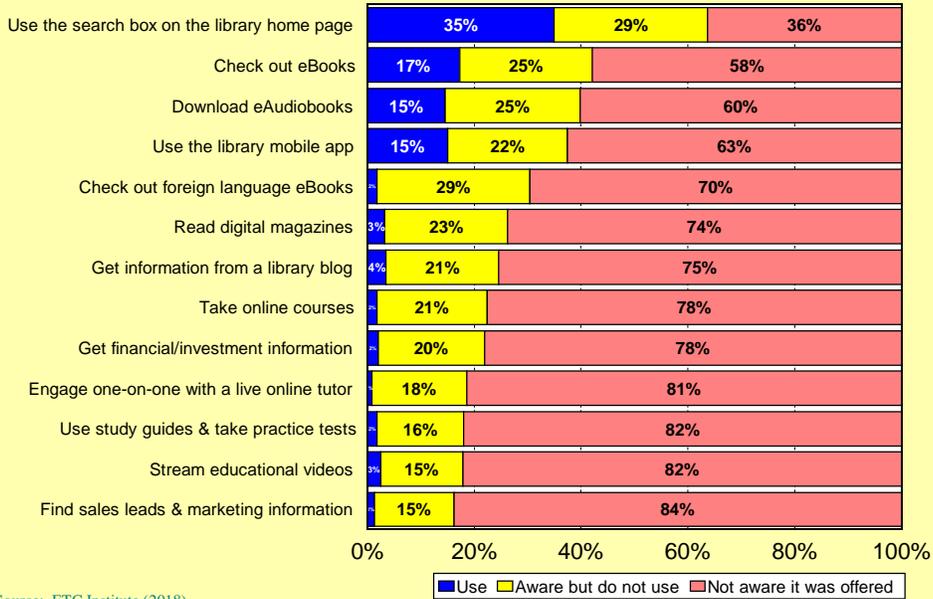
by percentage of respondents



Source: ETC Institute (2018)

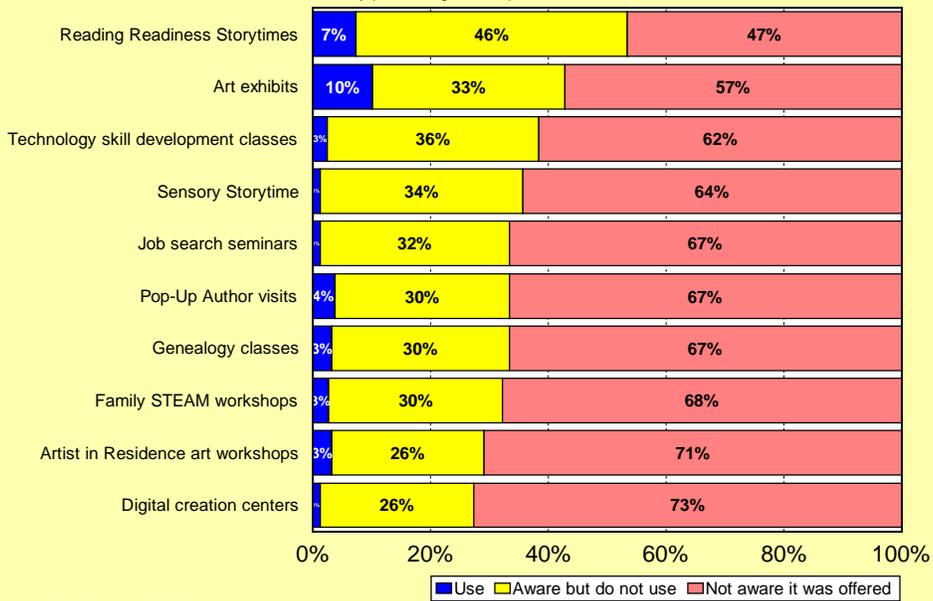
Q15. Level of Awareness of Various Digital Services Offered by the Plano Public Library

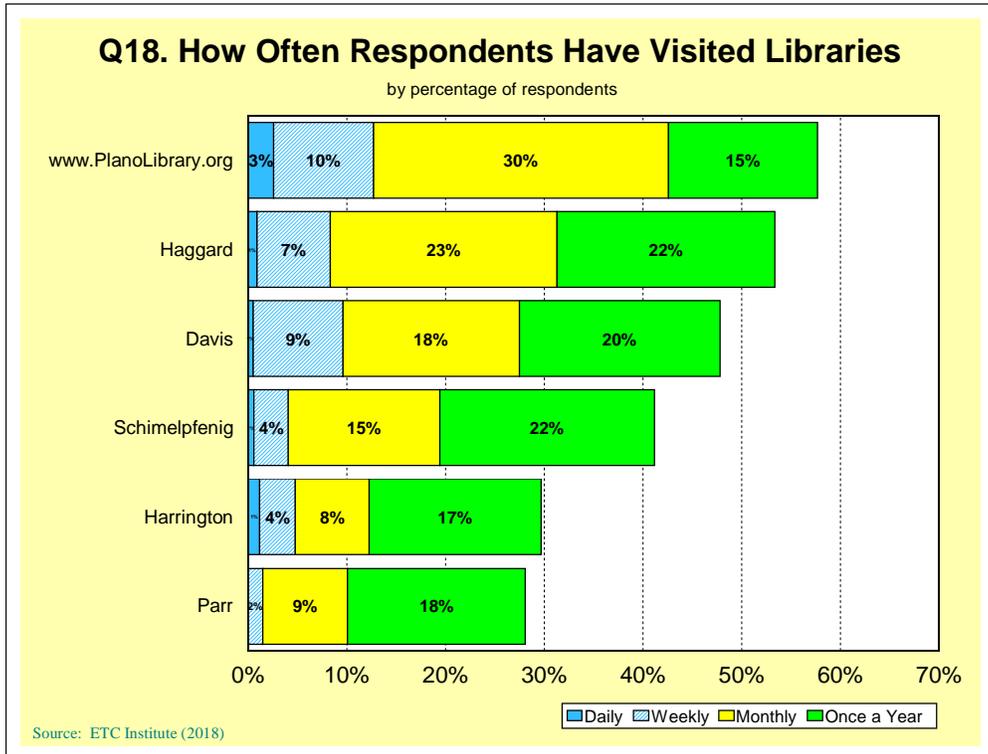
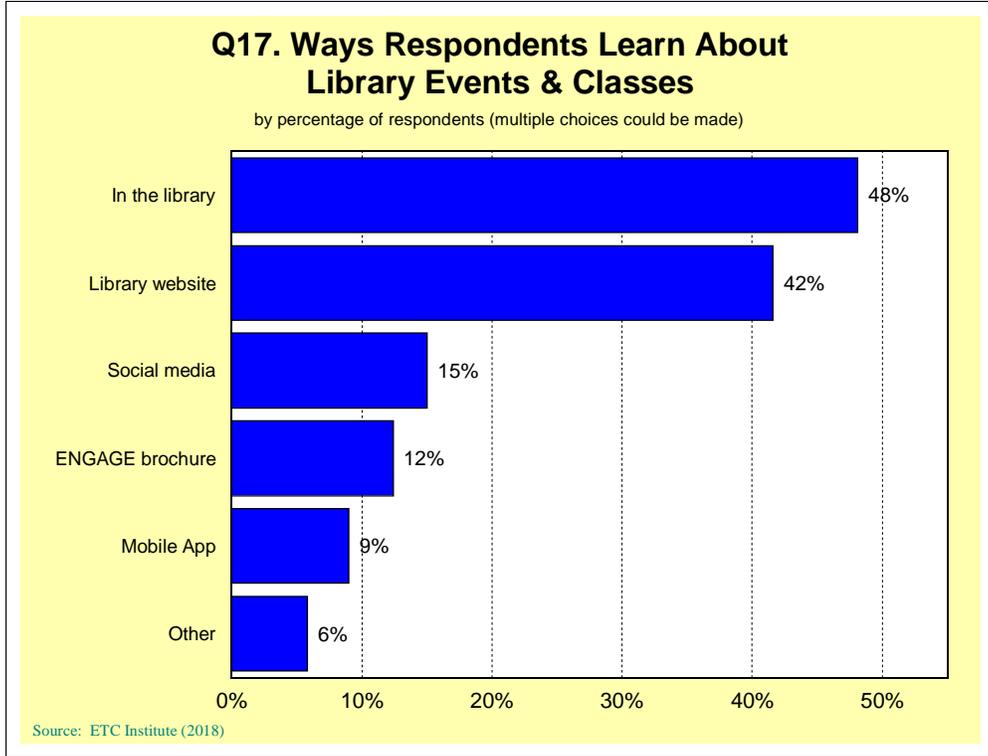
by percentage of respondents

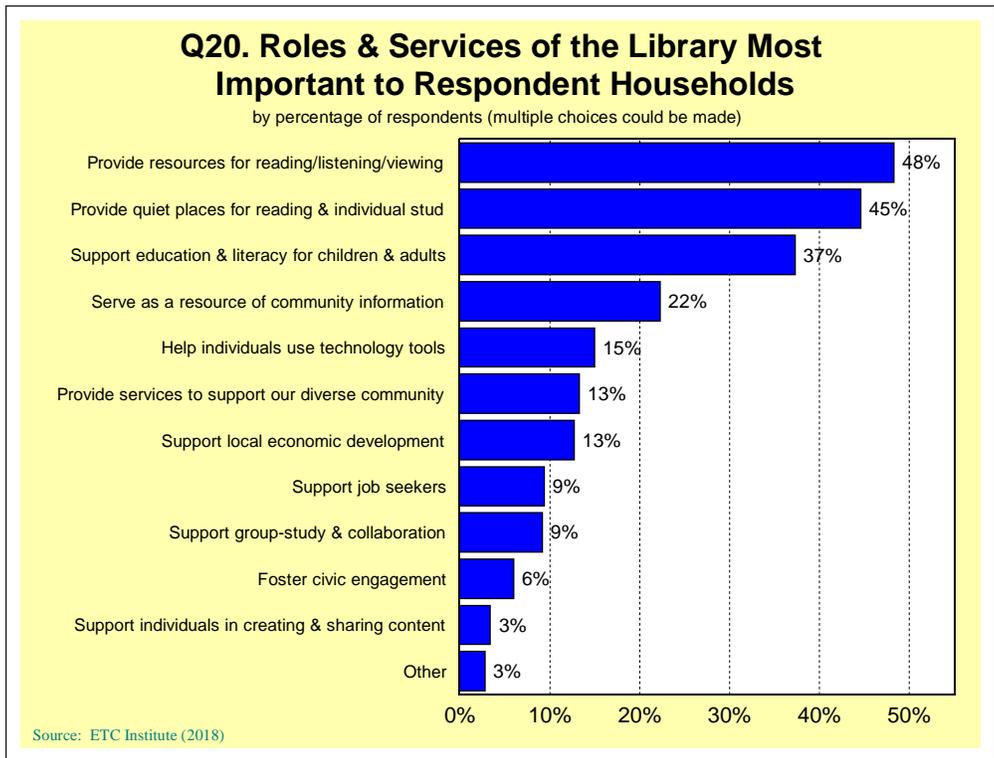
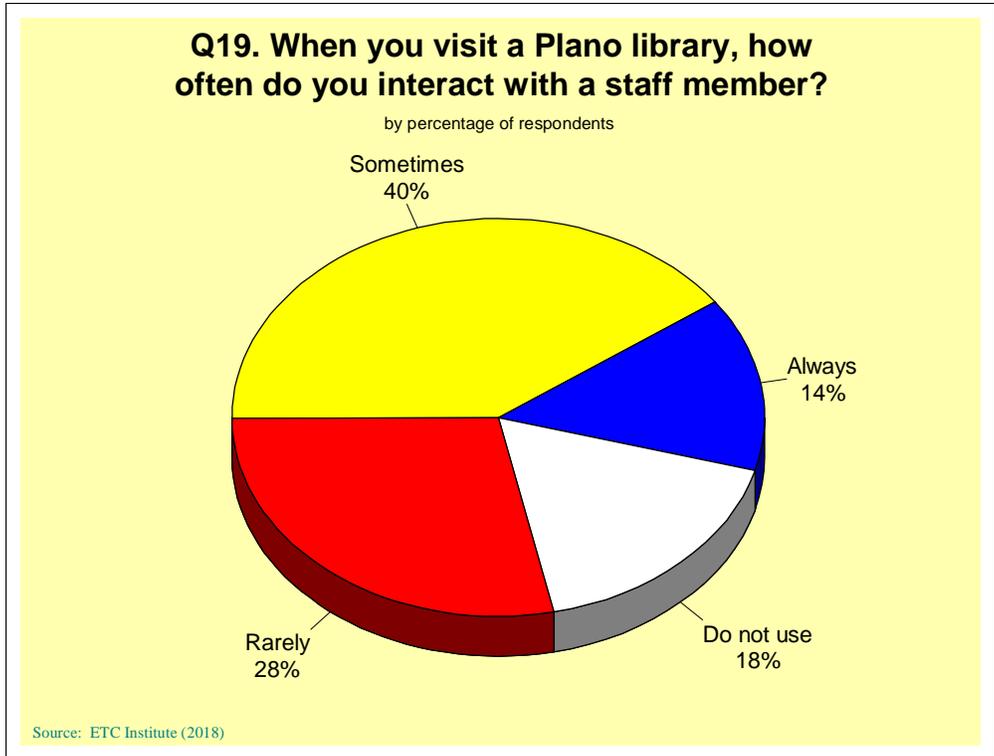


Q16. Level of Awareness of Various Programs Offered by the Plano Public Library

by percentage of respondents

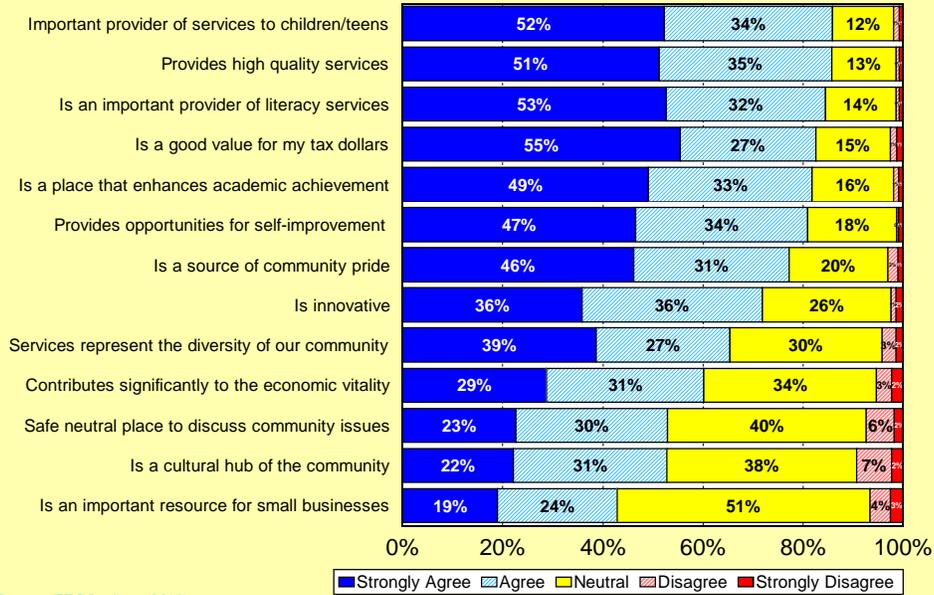






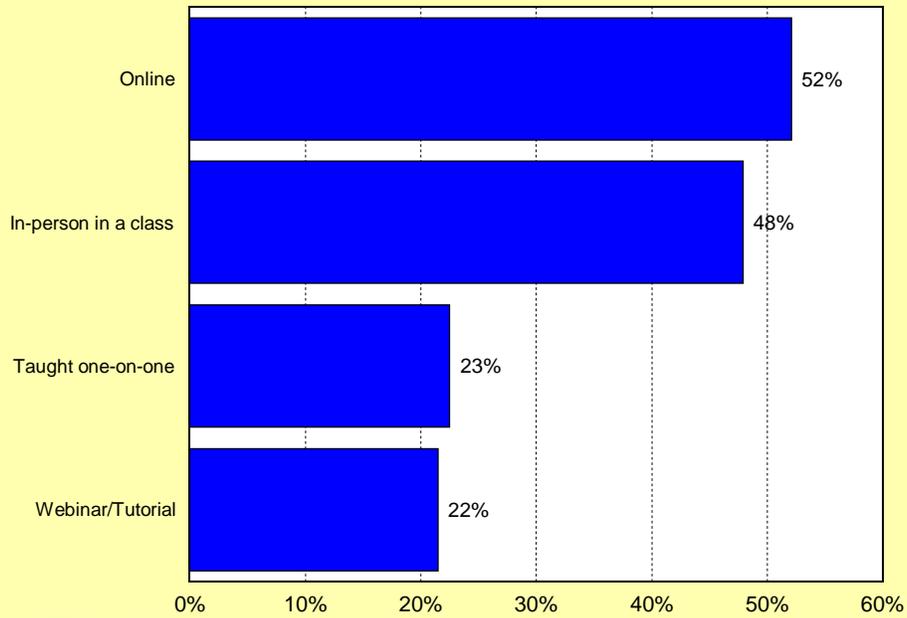
Q21. Agreement with Various Statements Concerning the Potential Benefits of Plano Public Library

by percentage of respondents



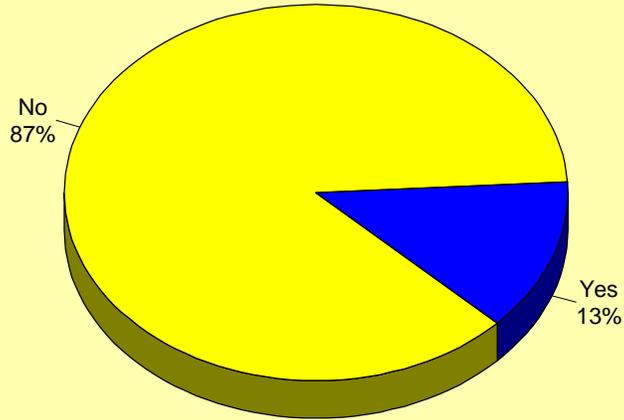
Q22. How do you prefer to learn something new?

by percentage of respondents (multiple choices could be made)



Q23. Do you subscribe to the Library's monthly eNewsletter, "Check It Out"?

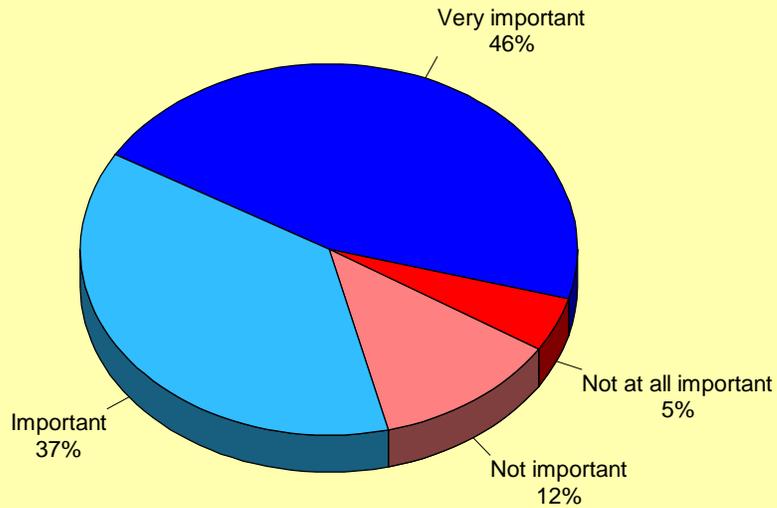
by percentage of respondents



Source: ETC Institute (2018)

Q24. Overall, how would you rate the importance of Plano Public Library to yourself and members of your household?

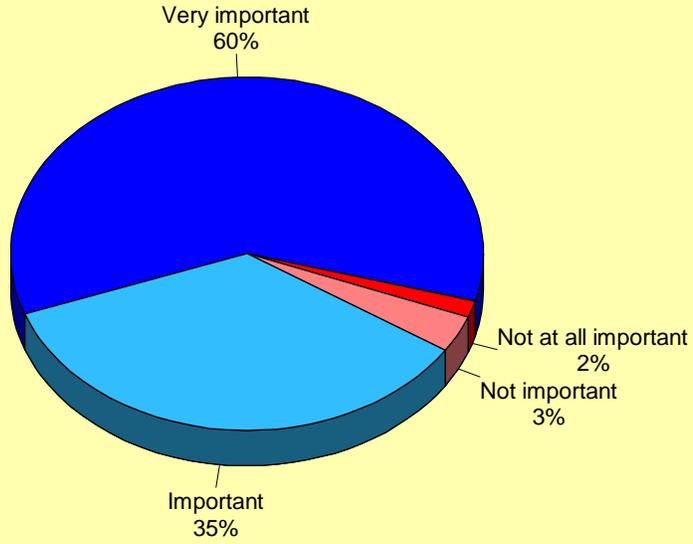
by percentage of respondents



Source: ETC Institute (2018)

Q25. Overall, how would you rate the importance of Plano Public Library to the future of the community?

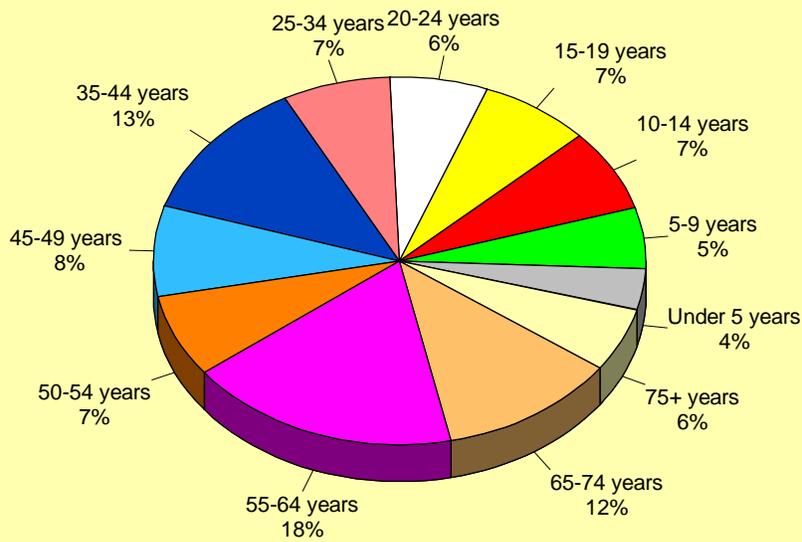
by percentage of respondents



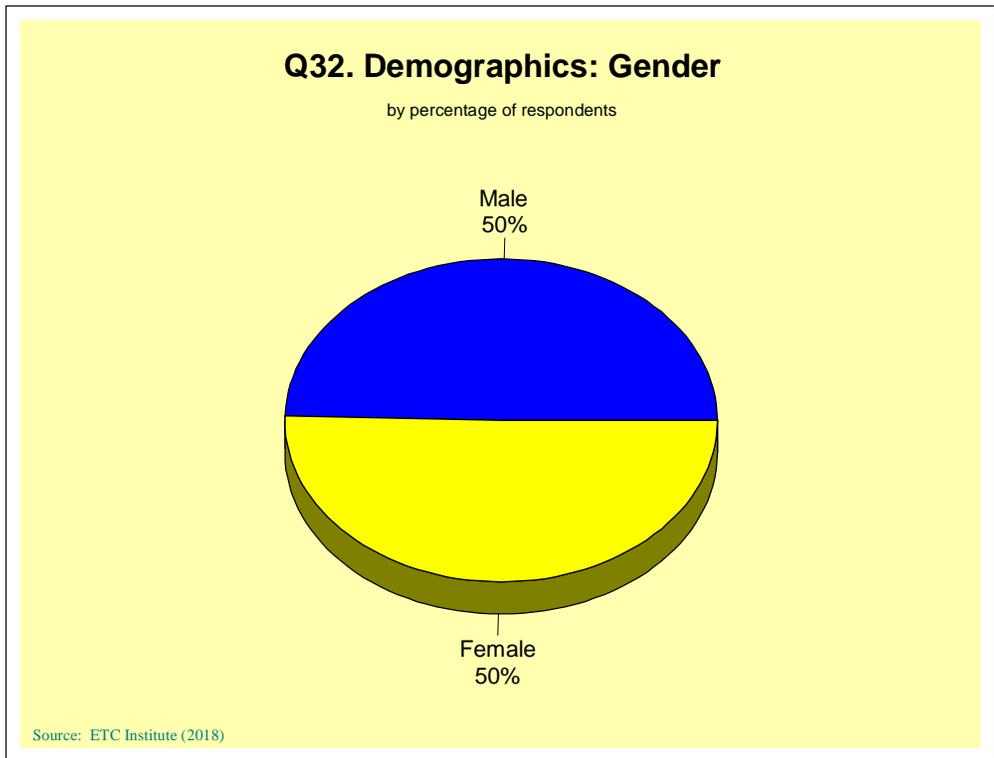
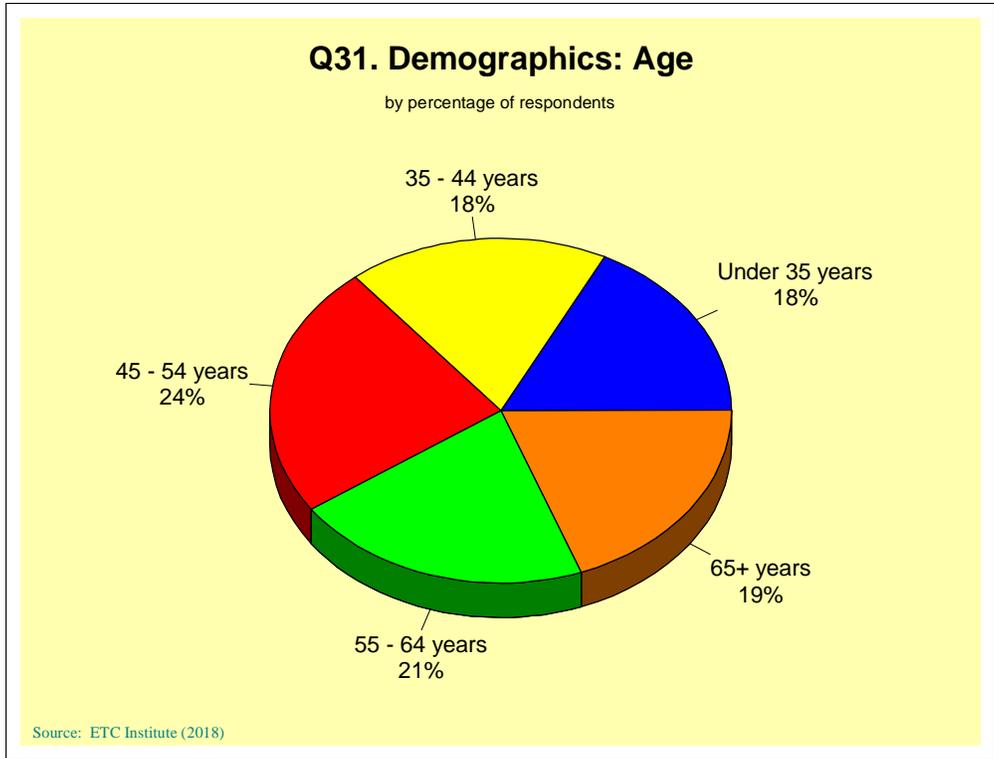
Source: ETC Institute (2018)

Q30. Demographics: Ages of People in Household

by percentage of household occupants

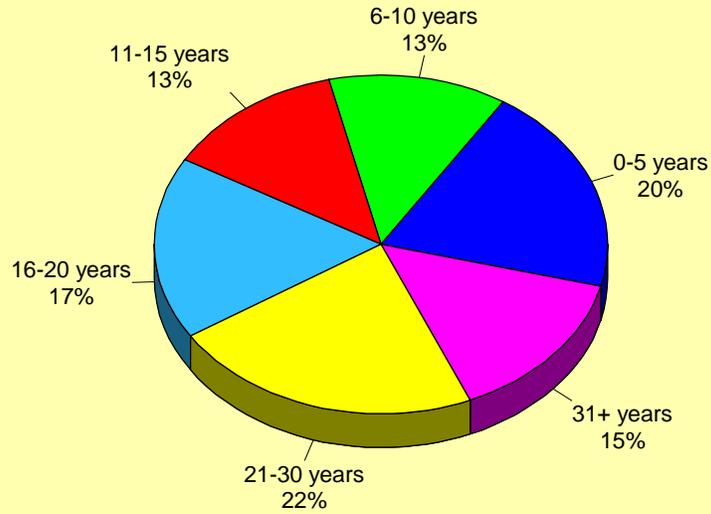


Source: ETC Institute (2018)



Q33. Demographics: How many years have you lived in the City of Plano?

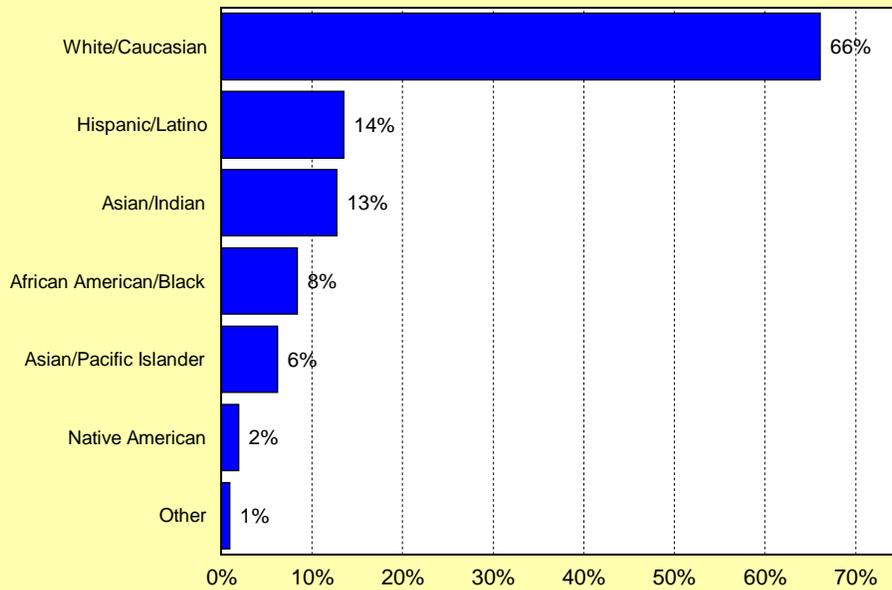
by percentage of respondents



Source: ETC Institute (2018)

Q34. Demographics: Race/Ethnicity

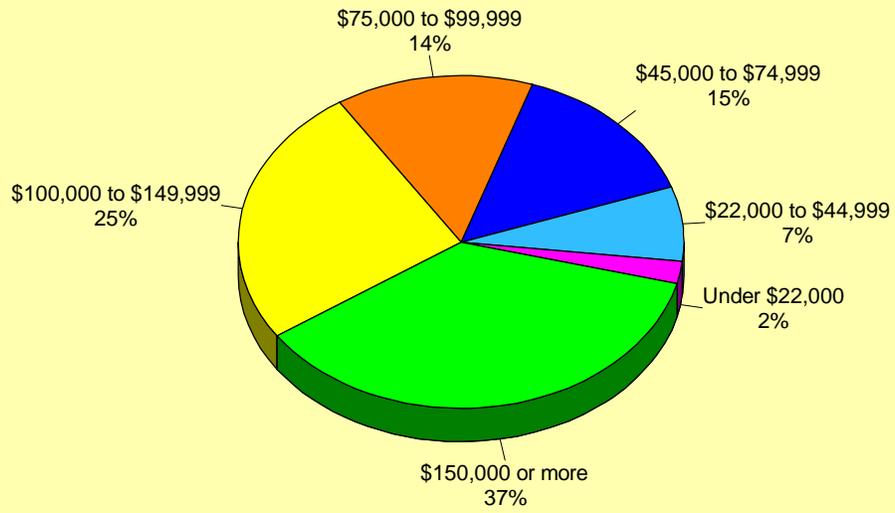
by percentage of respondents (multiple choices could be made)



Source: ETC Institute (2018)

Q35. Demographics: What is your total annual household income?

by percentage of respondents



Source: ETC Institute (2018)

Section 2

Priority Investment Rating

Priority Investment Rating

City of Plano, Texas

The **Priority Investment Rating (PIR)** was developed by ETC Institute to provide governments with an objective tool for evaluating the priority that should be placed on parks and recreation investments. The Priority Investment Rating was developed by ETC Institute to identify the facilities and programs residents think should receive the highest priority for investment. The priority investment rating reflects the importance residents place on items (sum of top 4 choices) and the unmet needs (needs that are only being partly or not met) for each facility/program relative to the facility/program that rated the highest overall. Since decisions related to future investments should consider both the level of unmet need and the importance of facilities and programs, the PIR weights each of these components equally.

The PIR reflects the sum of the Unmet Needs Rating and the Importance Rating as shown in the equation below:

$$\text{PIR} = \text{UNR} + \text{IR}$$

For example, suppose the Unmet Needs Rating for mountain bike trails is 86.1 (out of 100) and the Importance Rating for mountain bike trails is 31.7 (out of 100), the Priority Investment Rating for mountain bike trails is 117.8 (out of 200).

How to Analyze the Charts:

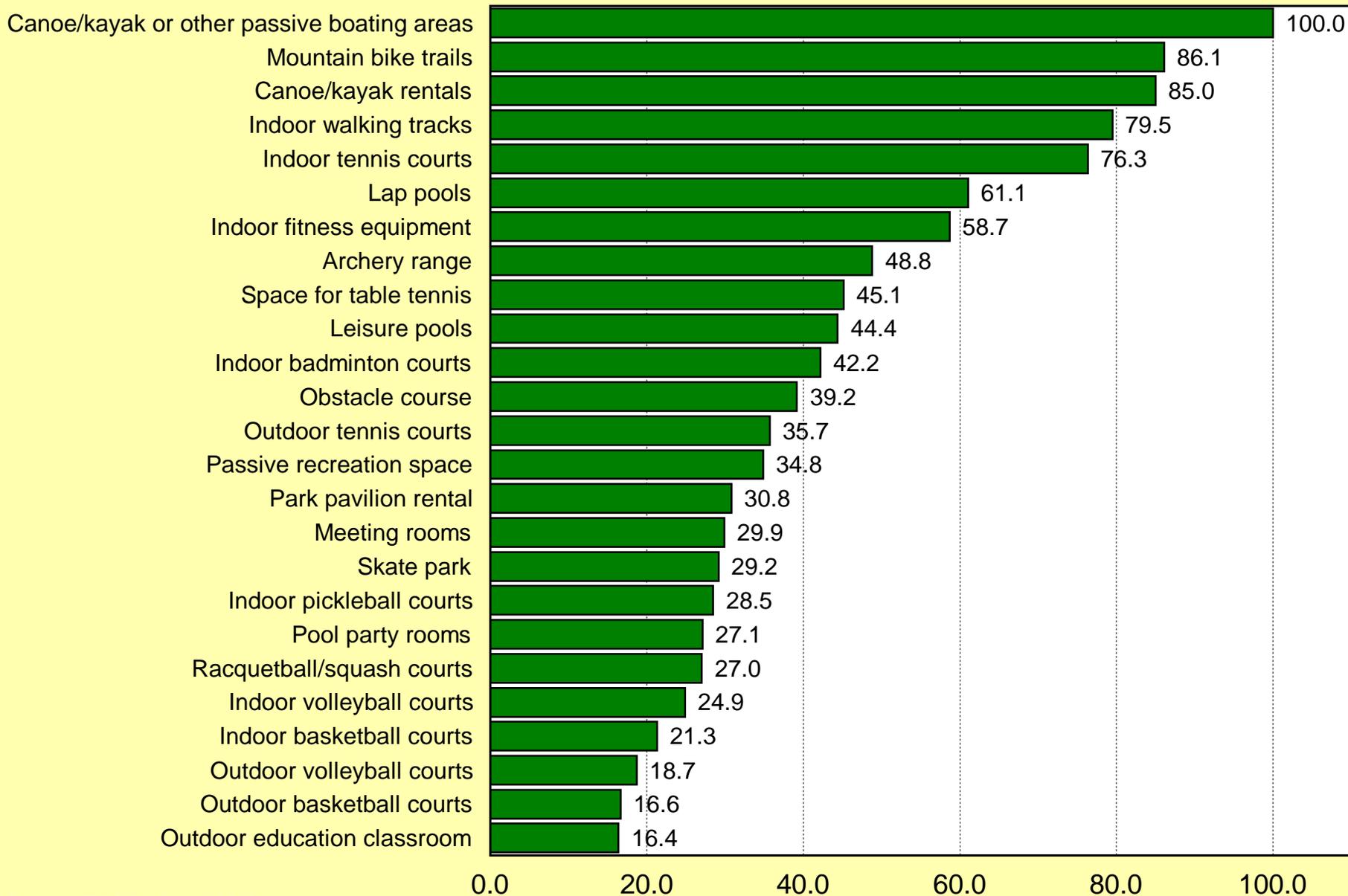
- **High Priority Areas** are those with a PIR of at least 100. A rating of 100 or above generally indicates there is a relatively high level of unmet need and residents generally think it is important to fund improvements in these areas. Improvements in this area are likely to have a positive impact on the greatest number of households.
- **Medium Priority Areas** are those with a PIR of 50-99. A rating in this range generally indicates there is a medium to high level of unmet need or a significant percentage of residents generally think it is important to fund improvements in these areas.
- **Low Priority Areas** are those with a PIR below 50. A rating in this range generally indicates there is a relatively low level of unmet need and residents do not think it is important to fund improvements in these areas. Improvements may be warranted if the needs of very specialized populations are being targeted.

The following pages show the Unmet Needs Rating, Importance Rating, and Priority Investment Rating for amenities/facilities and programs.

Unmet Needs Rating for Amenities or Facilities

the rating for the item with the most unmet need=100

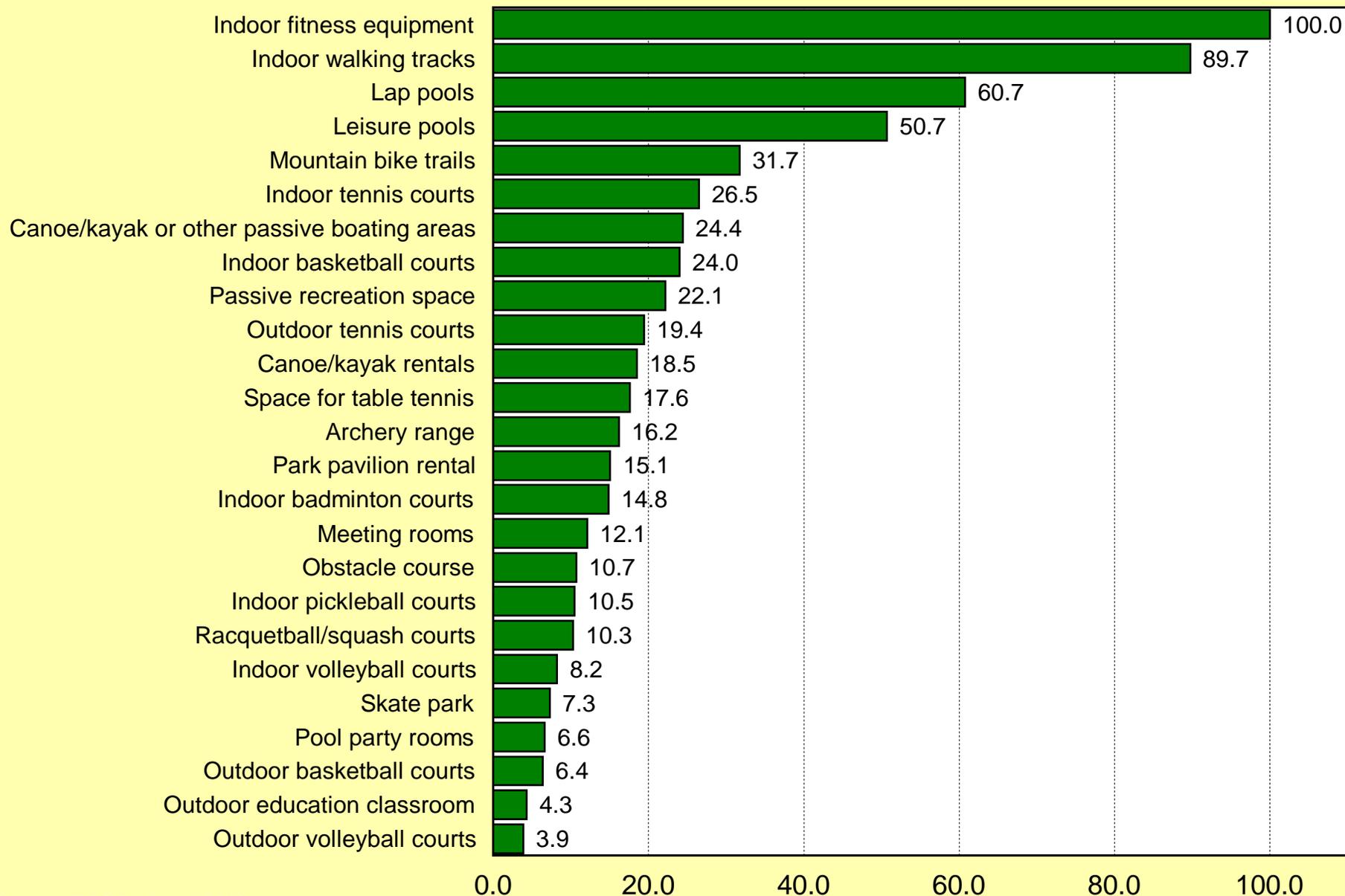
the rating of all other items reflects the relative amount of unmet need for each item compared to the item with the most unmet need



Source: ETC Institute (2018)

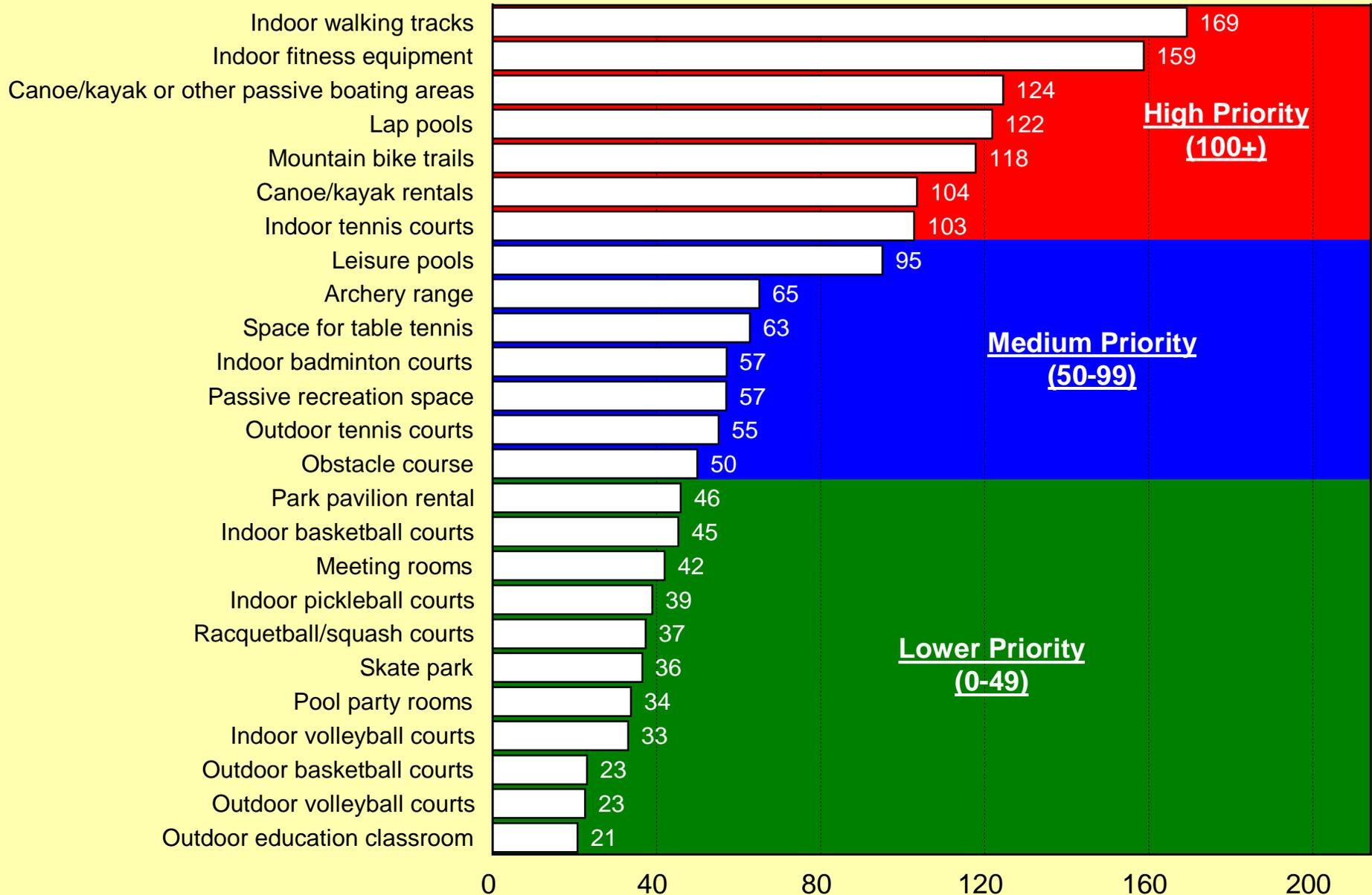
Importance Rating for Amenities or Facilities

the rating for the item rated as the most important=100
 the rating of all other items reflects the relative level of importance for each item compared to the item rated as the most important



Source: ETC Institute (2018)

Top Priorities for Investment for Amenities or Facilities Based on the Priority Investment Rating

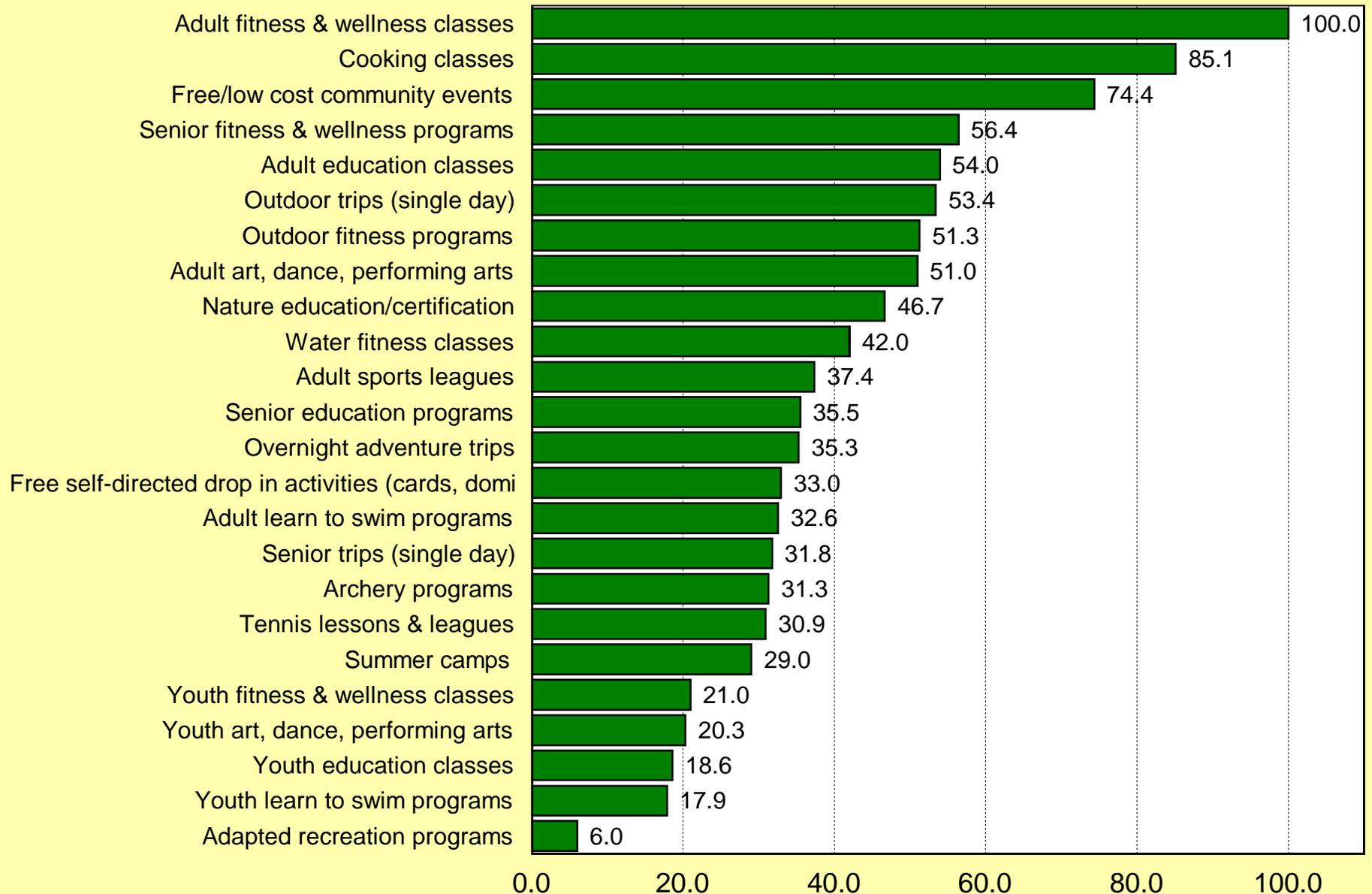


Source: ETC Institute (2018)

Unmet Needs Rating for Programs

the rating for the item with the most unmet need=100

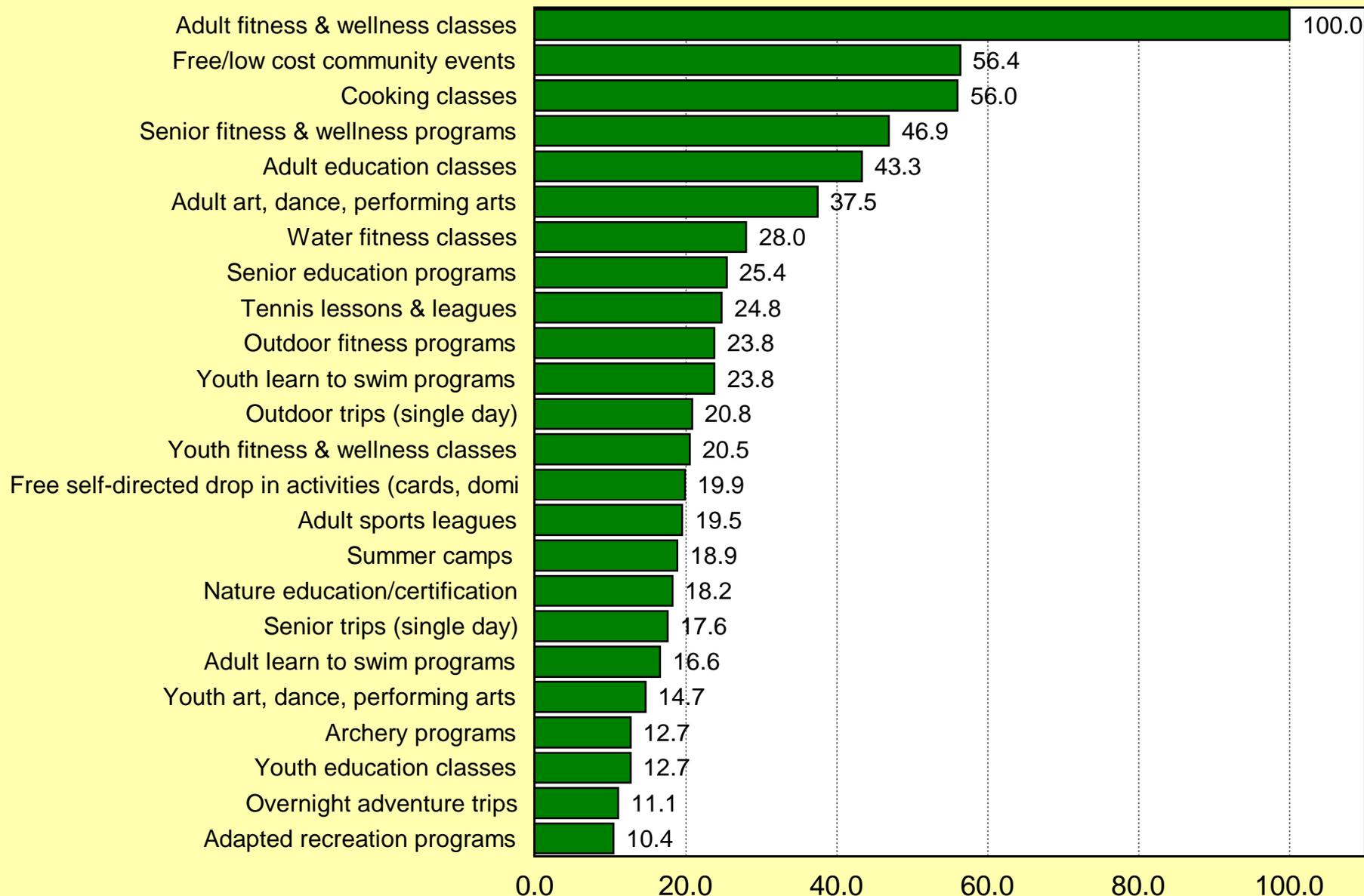
the rating of all other items reflects the relative amount of unmet need for each item compared to the item with the most unmet need



Source: ETC Institute (2018)

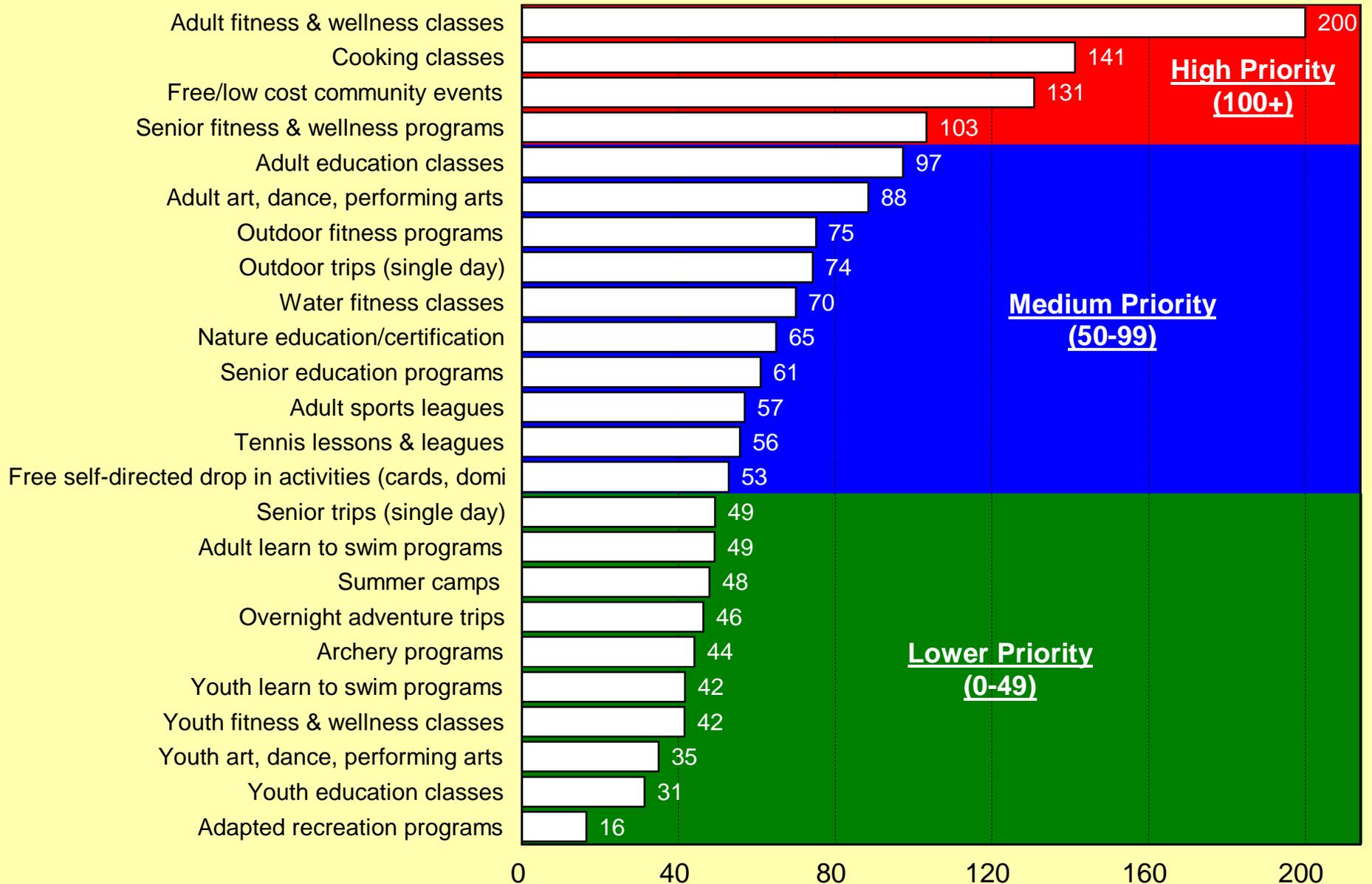
Importance Rating for Programs

the rating for the item rated as the most important=100
 the rating of all other items reflects the relative level of importance for each item compared to the item rated as the most important



Source: ETC Institute (2018)

Top Priorities for Investment for Programs Based on the Priority Investment Rating



Source: ETC Institute (2018)

Section 3

Benchmarking Analysis

Benchmarking Summary Report

City of Plano, Texas

Since 1998, ETC Institute has conducted household surveys for needs assessments, feasibility studies, customer satisfaction, fees and charges comparisons, and other parks and recreation issues in more than 400 communities in 49 states across the country.

The results of these surveys has provided an unparalleled data base of information to compare responses from household residents in client communities to “National Averages” and therefore provide a unique tool to “assist organizations in better decision making.”

Communities within the data base include a full-range of municipal and county governments from 20,000 in population through over 1 million in population. They include communities in warm weather climates and cold weather climates, mature communities and some of the fastest growing cities and counties in the country.

“National Averages” have been developed for numerous strategically important parks and recreation planning and management issues including: customer satisfaction and usage of parks and programs; methods for receiving marketing information; reasons that prevent members of households from using parks and recreation facilities more often; priority recreation programs, parks, facilities and trails to improve or develop; priority programming spaces to have in planned community centers and aquatic facilities; potential attendance for planned indoor community centers and outdoor aquatic centers; etc.

Results from household responses for Plano, Texas were compared to National Benchmarks to gain further strategic information. A summary of all tabular comparisons are shown on the following page.

Note: The benchmarking data contained in this report is protected intellectual property. Any reproduction of the benchmarking information in this report by persons or organizations not directly affiliated with the City of Plano is not authorized without written consent from ETC Institute.

Benchmarking for Plano, Texas		
	National Average	Plano 2018
Recreation programs that respondent households have a need for		
Adult fitness and wellness programs	49%	48%
Adult continuing education programs	28%	25%
Adult arts, dance, performing arts	21%	21%
Water fitness programs	27%	19%
Nature programs/environmental education	30%	15%
Tennis lessons and leagues	15%	14%
Adult sports programs	23%	13%
Youth summer camp programs	19%	12%
Youth art, dance, performing arts	15%	10%
Youth fitness and wellness programs	17%	10%
Youth Learn to Swim programs	22%	10%

Benchmarking for Plano, Texas		
	National Average	Plano 2018
Most important recreation programs (sum of top choices)		
Adult fitness and wellness programs	30%	31%
Adult continuing education programs	15%	13%
Adult arts, dance, performing arts	9%	12%
Water fitness programs	11%	9%
Tennis lessons and leagues	5%	8%
Youth Learn to Swim programs	11%	7%
Adult sports programs	10%	6%
Nature programs/environmental education	14%	6%
Youth fitness and wellness programs	6%	6%
Youth summer camp programs	8%	6%
Youth art, dance, performing arts	5%	5%

Benchmarking for Plano, Texas		
	National Average	Plano 2018
Parks and recreation facilities that respondent households have a need for		
Indoor running/walking track	39%	52%
Lap Lanes for Swimming (indoor)	29%	40%
Mountain bike trails	22%	24%
Canoe/kayak or other passive boating areas	27%	22%
Indoor basketball courts (Gymnasiums)	20%	22%
Indoor Tennis	24%	19%
Tennis Courts	21%	17%
Meeting Space/conference center	33%	12%
Indoor volleyball courts	16%	11%
Outdoor basketball/multi-use courts	20%	10%
Skateboarding Park/Area	11%	10%
Most important parks and recreation facilities (sum of top choices)		
Indoor running/walking track	15%	39%
Lap lanes for swimming (indoor)	10%	27%
Mountain bike trails	7%	14%
Indoor Tennis	4%	12%
Canoe/kayak or other passive boating areas	10%	11%
Indoor basketball courts (Gymnasiums)	4%	11%
Tennis Courts	6%	9%
Meeting Space/conference center	8%	5%
Indoor volleyball courts	2%	4%
Outdoor basketball/multi-use courts	4%	3%
Skateboarding Area	2%	3%

Section 4

Tabular Data

Q1. Which facility have you USED MOST in the past year?

<u>Q1. Which facility have you used most in past year</u>	<u>Number</u>	<u>Percent</u>
Carpenter Park Recreation Center	86	18.5 %
Harry Rowlinson Natatorium	1	0.2 %
Jack Carter Pool	23	4.9 %
Liberty Recreation Center	18	3.9 %
Oak Point Nature & Retreat Center	31	6.7 %
Oak Point Recreation Center	31	6.7 %
Plano Aquatic Center	14	3.0 %
Plano Senior Recreation Center	11	2.4 %
Tom Muehlenbeck Recreation Center	77	16.5 %
Haven't used any of these facilities in past year	163	35.0 %
<u>Not provided</u>	<u>11</u>	<u>2.4 %</u>
Total	466	100.0 %

Q2. How often do you visit a Plano Recreation Center or pool?

<u>Q2. How often do you visit a Plano Recreation Center or pool</u>	<u>Number</u>	<u>Percent</u>
Daily	6	1.3 %
Several times per week	76	16.3 %
Several times per month	56	12.0 %
Several times per year	136	29.2 %
Never	174	37.3 %
<u>Not provided</u>	<u>18</u>	<u>3.9 %</u>
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q2. How often do you visit a Plano Recreation Center or pool? (without "not provided")**

<u>Q2. How often do you visit a Plano Recreation Center or pool</u>	<u>Number</u>	<u>Percent</u>
Daily	6	1.3 %
Several times per week	76	17.0 %
Several times per month	56	12.5 %
Several times per year	136	30.4 %
Never	174	38.8 %
Total	448	100.0 %

Q3. Please CHECK ALL of the following items that prevent you from visiting Plano Recreation Centers or pools more often.

Q3. All items that prevent you from visiting Plano

<u>Recreation Centers or pools more often</u>	<u>Number</u>	<u>Percent</u>
Lack of time	165	35.4 %
Desired programs are not offered	34	7.3 %
Hours of programming are not convenient	47	10.1 %
Inconvenient locations	21	4.5 %
Membership fees are too high	49	10.5 %
I do not know what is offered	83	17.8 %
Use other private facilities	72	15.5 %
Too crowded	47	10.1 %
Classes are not included in membership fees	54	11.6 %
Class fees are too high	26	5.6 %
Lack of interest	51	10.9 %
Nothing. I visit them as often as I like	94	20.2 %
Other	40	8.6 %
Total	783	

Q3-13. Other

<u>Q3-13. Other</u>	<u>Number</u>	<u>Percent</u>
AGE AND HANDICAP	1	2.5 %
CHILD CARE FOR KIDS UNDER 2	1	2.5 %
Confined mostly to home	1	2.5 %
Desire facilities are not available	1	2.5 %
Did not realize it was available	1	2.5 %
Didn't know it existed	1	2.5 %
Doesn't accept Silver Sneakers	1	2.5 %
East Plano has a huge South Asian community	1	2.5 %
GYM	1	2.5 %
Have a full schedule	1	2.5 %
Home pool	1	2.5 %
Hope Jack Carter Pool would open around 10 am	1	2.5 %
I HAVE MY OWN POOL AND GYM MEMBERSHIP	1	2.5 %
I attend a better gym	1	2.5 %
I belong to a gym	1	2.5 %
I do take advantage of green belt and parks (Capstone, e.g.)	1	2.5 %
I had a health issue that kept me from attending	1	2.5 %
I play tennis at High Point Tennis Center	1	2.5 %
JUST DON'T DO ANY OF THESE THINGS	1	2.5 %
KIDS GROWN. DON'T USE IT LIKE WE USED TO	1	2.5 %
Loud, unruly children	1	2.5 %
NO CHILDCARE	3	7.5 %
NOISE FROM FOOTBALL MACHINE	1	2.5 %
New to Plano	1	2.5 %
Not essential as annual fee is very reasonable	1	2.5 %
Other interests	1	2.5 %
PHYSICAL LIMITS	1	2.5 %
Pool at home	1	2.5 %
Pool was being repaired	1	2.5 %
Procrastination	1	2.5 %
So many kids and overcrowding	1	2.5 %
The basketball floor is too hard. It should be wood floor by standard	1	2.5 %
The sign up process on the day that registration opens is a mad scramble	1	2.5 %
Time to open and close and weekend are important	1	2.5 %
Wasn't aware that Plano had recreation center pool	1	2.5 %
Waste of tax dollars when you look at our roads and infrastructures	1	2.5 %
We belong to other gyms in Plano	1	2.5 %
<u>We hope to take advantage of the facilities next summer</u>	<u>1</u>	<u>2.5 %</u>
Total	40	100.0 %

Q4. If a second senior recreation center for those who are age 50 or older was built near the central/western section of the city, would you or members of your household use it?

Q4. Would you use it if a second senior recreation center was built near central/western section of

City?	Number	Percent
Yes	125	26.8 %
No	85	18.2 %
Not sure	141	30.3 %
No one in our household is age 50+	106	22.7 %
Not provided	9	1.9 %
Total	466	100.0 %

WITHOUT NOT PROVIDED

Q4. If a second senior recreation center for those who are age 50 or older was built near the central/western section of the city, would you or members of your household use it? (without "not provided")

Q4. Would you use it if a second senior recreation center was built near central/western section of

City?	Number	Percent
Yes	125	27.4 %
No	85	18.6 %
Not sure	141	30.9 %
No one in our household is age 50+	106	23.2 %
Total	457	100.0 %

Q5. If the membership price, programming, and amenities were the same, which ONE of the following types of recreation center would you prefer to attend?

Q5. Which recreation center would you prefer to attend if membership price, programming, & amenities were the same

	Number	Percent
A recreation center only for adults age 50+	103	22.1 %
A recreation center only for adults	126	27.0 %
A recreation center for all ages	212	45.5 %
Not provided	25	5.4 %
Total	466	100.0 %

WITHOUT NOT PROVIDED

Q5. If the membership price, programming, and amenities were the same, which ONE of the following types of recreation center would you prefer to attend? (without "not provided")

Q5. Which recreation center would you prefer to attend if membership price, programming, & amenities were the same

	Number	Percent
A recreation center only for adults age 50+	103	23.4 %
A recreation center only for adults	126	28.6 %
A recreation center for all ages	212	48.1 %
Total	441	100.0 %

Q6. What age range do you MOST PREFER to take classes with?

Q6. What age range do you most prefer to take classes with	Number	Percent
My age or younger	51	10.9 %
Similar in age to me	211	45.3 %
My age or older	28	6.0 %
Any age	147	31.5 %
Not provided	29	6.2 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q6. What age range do you MOST PREFER to take classes with? (without "not provided")**

Q6. What age range do you most prefer to take classes with	Number	Percent
My age or younger	51	11.7 %
Similar in age to me	211	48.3 %
My age or older	28	6.4 %
Any age	147	33.6 %
Total	437	100.0 %

Q7. Please indicate if you or any member of your household has a need for each type of amenity or facility listed below.

(N=466)

	Yes	No
Q7-1. Archery range	11.6%	88.4%
Q7-2. Canoe/kayak or other passive boating areas	21.5%	78.5%
Q7-3. Canoe/kayak rentals	18.5%	81.5%
Q7-4. Indoor badminton courts	11.6%	88.4%
Q7-5. Indoor fitness equipment	56.7%	43.3%
Q7-6. Indoor pickleball courts	8.8%	91.2%
Q7-7. Indoor tennis courts	18.5%	81.5%
Q7-8. Indoor basketball courts	21.5%	78.5%
Q7-9. Indoor volleyball courts	11.2%	88.8%
Q7-10. Indoor walking tracks	52.1%	47.9%
Q7-11. Lap pools	39.9%	60.1%
Q7-12. Leisure pools	35.2%	64.8%
Q7-13. Meeting rooms	12.2%	87.8%
Q7-14. Mountain bike trails	24.0%	76.0%
Q7-15. Obstacle course	9.4%	90.6%
Q7-16. Outdoor basketball courts	9.7%	90.3%
Q7-17. Outdoor education classroom	7.1%	92.9%
Q7-18. Outdoor tennis courts	17.0%	83.0%
Q7-19. Outdoor volleyball courts	5.6%	94.4%
Q7-20. Park pavilion rental	20.6%	79.4%
Q7-21. Passive recreation space	20.6%	79.4%

Q7. Please indicate if you or any member of your household has a need for each type of amenity or facility listed below.

	Yes	No
Q7-22. Pool party rooms	12.0%	88.0%
Q7-23. Racquetball/squash courts	13.5%	86.5%
Q7-24. Skate park	9.9%	90.1%
Q7-25. Space for table tennis	17.8%	82.2%
Q7-26. Other	10.3%	89.7%

Q7. If "Yes," please rate how well your needs for amenities/facilities of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

(N=412)

	Fully met	Mostly met	Partly met	Not met
Q7-1. Archery range	6.8%	9.1%	11.4%	72.7%
Q7-2. Canoe/kayak or other passive boating areas	4.7%	2.4%	30.6%	62.4%
Q7-3. Canoe/kayak rentals	4.1%	4.1%	20.3%	71.6%
Q7-4. Indoor badminton courts	18.2%	9.1%	38.6%	34.1%
Q7-5. Indoor fitness equipment	43.4%	36.0%	15.4%	5.3%
Q7-6. Indoor pickleball courts	17.6%	17.6%	20.6%	44.1%
Q7-7. Indoor tennis courts	8.1%	9.5%	12.2%	70.3%
Q7-8. Indoor basketball courts	39.6%	40.7%	16.5%	3.3%
Q7-9. Indoor volleyball courts	24.4%	31.1%	22.2%	22.2%
Q7-10. Indoor walking tracks	43.0%	26.6%	15.5%	15.0%
Q7-11. Lap pools	40.1%	29.3%	19.1%	11.5%
Q7-12. Leisure pools	47.6%	27.3%	16.8%	8.4%
Q7-13. Meeting rooms	19.6%	31.4%	23.5%	25.5%
Q7-14. Mountain bike trails	13.1%	15.2%	32.3%	39.4%
Q7-15. Obstacle course	5.6%	11.1%	25.0%	58.3%
Q7-16. Outdoor basketball courts	22.9%	42.9%	20.0%	14.3%
Q7-17. Outdoor education classroom	19.2%	34.6%	19.2%	26.9%
Q7-18. Outdoor tennis courts	20.3%	37.7%	17.4%	24.6%
Q7-19. Outdoor volleyball courts	9.5%	23.8%	28.6%	38.1%
Q7-20. Park pavilion rental	40.3%	29.9%	18.2%	11.7%
Q7-21. Passive recreation space	36.3%	30.0%	20.0%	13.8%

Q7. If "Yes," please rate how well your needs for amenities/facilities of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

	Fully met	Mostly met	Partly met	Not met
Q7-22. Pool party rooms	28.6%	26.2%	21.4%	23.8%
Q7-23. Racquetball/squash courts	20.0%	40.0%	18.2%	21.8%
Q7-24. Skate park	17.9%	23.1%	25.6%	33.3%
Q7-25. Space for table tennis	23.2%	26.1%	31.9%	18.8%
Q7-26. Other	12.2%	14.6%	29.3%	43.9%

Q7-26. Other

<u>Q7-26. Other</u>	<u>Number</u>	<u>Percent</u>
Adult leisure soccer fields	1	2.1 %
BALL ROOM DANCE, LINE DANCE FOR SENIORS	1	2.1 %
BIKE TRAILS	1	2.1 %
BILLIARDS	1	2.1 %
CHILDCARE	1	2.1 %
Climbing wall	1	2.1 %
Cricket grounds	1	2.1 %
Cricket pitches	1	2.1 %
Dance area for aerobics, Zumba, or ballroom dancing	1	2.1 %
Dog park	3	6.3 %
Fishing	1	2.1 %
Fishing areas	1	2.1 %
Fix up High Point like we voted for	1	2.1 %
GOLF INSTRUCTION	1	2.1 %
Geriatric trainers for arthritics or for seniors with range of motion issues	1	2.1 %
Group exercise rooms	1	2.1 %
HANDGUN TRAINING	1	2.1 %
Handball courts, and dance style classes for older during morning hours	1	2.1 %
Hot tub and indoor walking track	1	2.1 %
I have been on a 3 year program and system program	1	2.1 %
ICE SKATING	1	2.1 %
INDOOR SHOOTING RANGE	1	2.1 %
Indoor room with wooden floor for dance class and/or social dancing	1	2.1 %
Library	1	2.1 %
Outdoor walking trails/recreation space that is shaded by trees	1	2.1 %
PADDLE BOARDS	1	2.1 %
PISTOL SHOOTING RANGE	1	2.1 %
Pickleball	1	2.1 %
RIFLE RANGE	1	2.1 %
SAUNA	1	2.1 %
SHOOTING AND CLAY RANGE	1	2.1 %
SHOOTING RANGE	1	2.1 %
SOFTBALL FIELD	1	2.1 %
SPLASH PAD	1	2.1 %
Sauna, steam room, hot tub , exerciser machines	1	2.1 %
Studio space for mat pilates	1	2.1 %
TABLE TENNIS	1	2.1 %
TRAILS	1	2.1 %
Table Games	1	2.1 %
Trap shooting range	1	2.1 %
WALKING TRAILS	1	2.1 %
Walking trails	2	4.2 %
YOGA	2	4.2 %
<u>Yoga and pilates/healthy living</u>	1	2.1 %
Total	48	100.0 %

Q8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household?

<u>Q8. Top choice</u>	<u>Number</u>	<u>Percent</u>
Archery range	5	1.1 %
Canoe/kayak or other passive boating areas	12	2.6 %
Canoe/kayak rentals	5	1.1 %
Indoor badminton courts	13	2.8 %
Indoor fitness equipment	108	23.2 %
Indoor pickleball courts	3	0.6 %
Indoor tennis courts	19	4.1 %
Indoor basketball courts	12	2.6 %
Indoor volleyball courts	7	1.5 %
Indoor walking tracks	54	11.6 %
Lap pools	30	6.4 %
Leisure pools	32	6.9 %
Meeting rooms	1	0.2 %
Mountain bike trails	15	3.2 %
Obstacle course	1	0.2 %
Outdoor basketball courts	2	0.4 %
Outdoor education classroom	2	0.4 %
Outdoor tennis courts	9	1.9 %
Passive recreation space	12	2.6 %
Racquetball/squash courts	3	0.6 %
Skate park	4	0.9 %
Space for table tennis	4	0.9 %
Other	19	4.1 %
None chosen	94	20.2 %
Total	466	100.0 %

Q8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household?

Q8. 2nd choice	Number	Percent
Archery range	7	1.5 %
Canoe/kayak or other passive boating areas	14	3.0 %
Canoe/kayak rentals	10	2.1 %
Indoor badminton courts	6	1.3 %
Indoor fitness equipment	55	11.8 %
Indoor pickleball courts	8	1.7 %
Indoor tennis courts	13	2.8 %
Indoor basketball courts	18	3.9 %
Indoor volleyball courts	3	0.6 %
Indoor walking tracks	69	14.8 %
Lap pools	41	8.8 %
Leisure pools	24	5.2 %
Meeting rooms	7	1.5 %
Mountain bike trails	16	3.4 %
Obstacle course	2	0.4 %
Outdoor basketball courts	3	0.6 %
Outdoor education classroom	2	0.4 %
Outdoor tennis courts	14	3.0 %
Park pavilion rental	9	1.9 %
Passive recreation space	12	2.6 %
Pool party rooms	4	0.9 %
Racquetball/squash courts	5	1.1 %
Skate park	1	0.2 %
Space for table tennis	3	0.6 %
Other	6	1.3 %
None chosen	114	24.5 %
Total	466	100.0 %

Q8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household?

Q8. 3rd choice	Number	Percent
Archery range	10	2.1 %
Canoe/kayak or other passive boating areas	14	3.0 %
Canoe/kayak rentals	9	1.9 %
Indoor badminton courts	7	1.5 %
Indoor fitness equipment	25	5.4 %
Indoor pickleball courts	2	0.4 %
Indoor tennis courts	12	2.6 %
Indoor basketball courts	9	1.9 %
Indoor volleyball courts	5	1.1 %
Indoor walking tracks	41	8.8 %
Lap pools	38	8.2 %
Leisure pools	31	6.7 %
Meeting rooms	10	2.1 %
Mountain bike trails	14	3.0 %
Obstacle course	6	1.3 %
Outdoor basketball courts	4	0.9 %
Outdoor education classroom	4	0.9 %
Outdoor tennis courts	8	1.7 %
Outdoor volleyball courts	2	0.4 %
Park pavilion rental	9	1.9 %
Passive recreation space	9	1.9 %
Pool party rooms	4	0.9 %
Racquetball/squash courts	8	1.7 %
Skate park	7	1.5 %
Space for table tennis	13	2.8 %
Other	5	1.1 %
None chosen	160	34.3 %
Total	466	100.0 %

Q8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household?

Q8. 4th choice	Number	Percent
Archery range	11	2.4 %
Canoe/kayak or other passive boating areas	10	2.1 %
Canoe/kayak rentals	14	3.0 %
Indoor badminton courts	4	0.9 %
Indoor fitness equipment	16	3.4 %
Indoor pickleball courts	9	1.9 %
Indoor tennis courts	10	2.1 %
Indoor basketball courts	10	2.1 %
Indoor volleyball courts	2	0.4 %
Indoor walking tracks	19	4.1 %
Lap pools	15	3.2 %
Leisure pools	16	3.4 %
Meeting rooms	7	1.5 %
Mountain bike trails	20	4.3 %
Obstacle course	13	2.8 %
Outdoor basketball courts	4	0.9 %
Outdoor education classroom	1	0.2 %
Outdoor tennis courts	9	1.9 %
Outdoor volleyball courts	6	1.3 %
Park pavilion rental	13	2.8 %
Passive recreation space	12	2.6 %
Pool party rooms	5	1.1 %
Racquetball/squash courts	5	1.1 %
Skate park	3	0.6 %
Space for table tennis	16	3.4 %
Other	7	1.5 %
None chosen	209	44.8 %
Total	466	100.0 %

SUM OF TOP 4 CHOICES**Q8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household? (top 4)**

Q8. Sum of Top 4 Choices	Number	Percent
Archery range	33	7.1 %
Canoe/kayak or other passive boating areas	50	10.7 %
Canoe/kayak rentals	38	8.2 %
Indoor badminton courts	30	6.4 %
Indoor fitness equipment	204	43.8 %
Indoor pickleball courts	22	4.7 %
Indoor tennis courts	54	11.6 %
Indoor basketball courts	49	10.5 %
Indoor volleyball courts	17	3.6 %
Indoor walking tracks	183	39.3 %
Lap pools	124	26.6 %
Leisure pools	103	22.1 %
Meeting rooms	25	5.4 %
Mountain bike trails	65	13.9 %
Obstacle course	22	4.7 %
Outdoor basketball courts	13	2.8 %
Outdoor education classroom	9	1.9 %
Outdoor tennis courts	40	8.6 %
Outdoor volleyball courts	8	1.7 %
Park pavilion rental	31	6.7 %
Passive recreation space	45	9.7 %
Pool party rooms	13	2.8 %
Racquetball/squash courts	21	4.5 %
Skate park	15	3.2 %
Space for table tennis	36	7.7 %
Other	37	7.9 %
None chosen	94	20.2 %
Total	1381	

Q9. Please indicate if you or any member of your household has a need for each type of program listed below.

(N=466)

	Yes	No
Q9-1. Adapted recreation programs	4.1%	95.9%
Q9-2. Adult art, dance, performing arts	21.0%	79.0%
Q9-3. Adult education classes	24.7%	75.3%
Q9-4. Adult fitness & wellness classes	48.3%	51.7%
Q9-5. Adult learn to swim programs	12.2%	87.8%
Q9-6. Adult sports leagues	12.7%	87.3%
Q9-7. Archery programs	8.8%	91.2%
Q9-8. Cooking classes	27.0%	73.0%
Q9-9. Free self-directed drop in activities (cards, dominos, board games, etc.)	13.7%	86.3%
Q9-10. Free/low cost community events	28.1%	71.9%
Q9-11. Nature education/certification	15.2%	84.8%
Q9-12. Outdoor fitness programs	18.5%	81.5%
Q9-13. Outdoor trips (single day)	17.6%	82.4%
Q9-14. Overnight adventure trips	10.9%	89.1%
Q9-15. Senior education programs	15.7%	84.3%
Q9-16. Senior fitness & wellness programs	27.5%	72.5%
Q9-17. Senior trips (single day)	14.8%	85.2%
Q9-18. Summer camps	12.4%	87.6%
Q9-19. Tennis lessons & leagues	14.4%	85.6%
Q9-20. Water fitness classes	18.7%	81.3%
Q9-21. Youth art, dance, performing arts	10.3%	89.7%

Q9. Please indicate if you or any member of your household has a need for each type of program listed below.

	Yes	No
Q9-22. Youth education classes	9.2%	90.8%
Q9-23. Youth fitness & wellness classes	9.9%	90.1%
Q9-24. Youth learn to swim programs	9.7%	90.3%
Q9-25. Other	2.1%	97.9%

Q9. If "Yes," please rate how well your needs for programs of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

(N=370)

	Fully met	Mostly met	Partly met	Not met
Q9-1. Adapted recreation programs	15.4%	46.2%	38.5%	0.0%
Q9-2. Adult art, dance, performing arts	11.6%	24.6%	33.3%	30.4%
Q9-3. Adult education classes	15.9%	26.8%	37.8%	19.5%
Q9-4. Adult fitness & wellness classes	15.6%	30.1%	37.0%	17.3%
Q9-5. Adult learn to swim programs	10.0%	20.0%	40.0%	30.0%
Q9-6. Adult sports leagues	6.8%	15.9%	38.6%	38.6%
Q9-7. Archery programs	0.0%	6.7%	33.3%	60.0%
Q9-8. Cooking classes	6.2%	11.1%	32.1%	50.6%
Q9-9. Free self-directed drop in activities (cards, dominos, board games, etc.)	6.5%	30.4%	26.1%	37.0%
Q9-10. Free/low cost community events	7.1%	23.5%	39.8%	29.6%
Q9-11. Nature education/certification	8.7%	10.9%	43.5%	37.0%
Q9-12. Outdoor fitness programs	5.5%	21.8%	34.5%	38.2%
Q9-13. Outdoor trips (single day)	1.9%	18.5%	35.2%	44.4%
Q9-14. Overnight adventure trips	0.0%	15.2%	36.4%	48.5%
Q9-15. Senior education programs	14.8%	25.9%	38.9%	20.4%
Q9-16. Senior fitness & wellness programs	16.1%	30.1%	28.0%	25.8%
Q9-17. Senior trips (single day)	14.6%	29.2%	29.2%	27.1%
Q9-18. Summer camps	11.4%	27.3%	36.4%	25.0%
Q9-19. Tennis lessons & leagues	18.2%	25.5%	23.6%	32.7%
Q9-20. Water fitness classes	13.2%	27.9%	32.4%	26.5%
Q9-21. Youth art, dance, performing arts	19.4%	29.0%	32.3%	19.4%

Q9. If "Yes," please rate how well your needs for programs of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

	Fully met	Mostly met	Partly met	Not met
Q9-22. Youth education classes	12.5%	34.4%	40.6%	12.5%
Q9-23. Youth fitness & wellness classes	16.7%	27.8%	41.7%	13.9%
Q9-24. Youth learn to swim programs	29.0%	22.6%	29.0%	19.4%
Q9-25. Other	20.0%	0.0%	20.0%	60.0%

Q9-25. Other

Q9-25. Other	Number	Percent
COMPUTER CLASS OF PROBLEM SOLVING	1	10.0 %
Computer classes	1	10.0 %
FIREARMS SAFETY TRAINING	1	10.0 %
Gun safety and trng for women	1	10.0 %
RIFLE LESSONS	1	10.0 %
Resistance wave pool	1	10.0 %
Teenage and Young Adult	1	10.0 %
Yoga	2	20.0 %
Yoga Pilates	1	10.0 %
Total	10	100.0 %

Q10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household?

Q10. Top choice	Number	Percent
Adapted recreation programs	9	1.9 %
Adult art, dance, performing arts	18	3.9 %
Adult education classes	17	3.6 %
Adult fitness & wellness classes	74	15.9 %
Adult learn to swim programs	8	1.7 %
Adult sports leagues	7	1.5 %
Archery programs	1	0.2 %
Cooking classes	20	4.3 %
Free self-directed drop in activities (cards, dominos, board games, etc.)	6	1.3 %
Free/low cost community events	20	4.3 %
Nature education/certification	2	0.4 %
Outdoor fitness programs	1	0.2 %
Outdoor trips (single day)	1	0.2 %
Overnight adventure trips	4	0.9 %
Senior education programs	8	1.7 %
Senior fitness & wellness programs	25	5.4 %
Senior trips (single day)	6	1.3 %
Summer camps	9	1.9 %
Tennis lessons & leagues	15	3.2 %
Water fitness classes	9	1.9 %
Youth art, dance, performing arts	7	1.5 %
Youth education classes	6	1.3 %
Youth fitness & wellness classes	4	0.9 %
Youth learn to swim programs	14	3.0 %
Other	8	1.7 %
None chosen	167	35.8 %
Total	466	100.0 %

Q10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household?

Q10. 2nd choice	Number	Percent
Adapted recreation programs	2	0.4 %
Adult art, dance, performing arts	18	3.9 %
Adult education classes	18	3.9 %
Adult fitness & wellness classes	33	7.1 %
Adult learn to swim programs	5	1.1 %
Adult sports leagues	8	1.7 %
Archery programs	7	1.5 %
Cooking classes	25	5.4 %
Free self-directed drop in activities (cards, dominos, board games, etc.)	11	2.4 %
Free/low cost community events	23	4.9 %
Nature education/certification	7	1.5 %
Outdoor fitness programs	12	2.6 %
Outdoor trips (single day)	9	1.9 %
Overnight adventure trips	1	0.2 %
Senior education programs	10	2.1 %
Senior fitness & wellness programs	18	3.9 %
Senior trips (single day)	4	0.9 %
Summer camps	8	1.7 %
Tennis lessons & leagues	11	2.4 %
Water fitness classes	9	1.9 %
Youth art, dance, performing arts	7	1.5 %
Youth education classes	7	1.5 %
Youth fitness & wellness classes	7	1.5 %
Youth learn to swim programs	5	1.1 %
Other	1	0.2 %
None chosen	200	42.9 %
Total	466	100.0 %

Q10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household?

Q10. 3rd choice	Number	Percent
Adult art, dance, performing arts	13	2.8 %
Adult education classes	11	2.4 %
Adult fitness & wellness classes	21	4.5 %
Adult learn to swim programs	9	1.9 %
Adult sports leagues	9	1.9 %
Archery programs	5	1.1 %
Cooking classes	17	3.6 %
Free self-directed drop in activities (cards, dominos, board games, etc.)	5	1.1 %
Free/low cost community events	22	4.7 %
Nature education/certification	5	1.1 %
Outdoor fitness programs	13	2.8 %
Outdoor trips (single day)	15	3.2 %
Overnight adventure trips	2	0.4 %
Senior education programs	10	2.1 %
Senior fitness & wellness programs	15	3.2 %
Senior trips (single day)	8	1.7 %
Summer camps	5	1.1 %
Tennis lessons & leagues	5	1.1 %
Water fitness classes	11	2.4 %
Youth art, dance, performing arts	4	0.9 %
Youth education classes	5	1.1 %
Youth fitness & wellness classes	12	2.6 %
Youth learn to swim programs	5	1.1 %
Other	2	0.4 %
None chosen	237	50.9 %
Total	466	100.0 %

Q10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household?

Q10. 4th choice	Number	Percent
Adapted recreation programs	4	0.9 %
Adult art, dance, performing arts	4	0.9 %
Adult education classes	16	3.4 %
Adult fitness & wellness classes	15	3.2 %
Adult learn to swim programs	2	0.4 %
Adult sports leagues	4	0.9 %
Archery programs	5	1.1 %
Cooking classes	18	3.9 %
Free self-directed drop in activities (cards, dominos, board games, etc.)	6	1.3 %
Free/low cost community events	16	3.4 %
Nature education/certification	12	2.6 %
Outdoor fitness programs	8	1.7 %
Outdoor trips (single day)	5	1.1 %
Overnight adventure trips	9	1.9 %
Senior education programs	9	1.9 %
Senior fitness & wellness programs	9	1.9 %
Senior trips (single day)	7	1.5 %
Summer camps	5	1.1 %
Tennis lessons & leagues	4	0.9 %
Water fitness classes	11	2.4 %
Youth art, dance, performing arts	3	0.6 %
Youth fitness & wellness classes	6	1.3 %
Youth learn to swim programs	10	2.1 %
Other	2	0.4 %
None chosen	276	59.2 %
Total	466	100.0 %

SUM OF TOP 4 CHOICES**Q10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household? (top 4)**

Q10. Sum of Top 4 Choices	Number	Percent
Adapted recreation programs	15	3.2 %
Adult art, dance, performing arts	53	11.4 %
Adult education classes	62	13.3 %
Adult fitness & wellness classes	143	30.7 %
Adult learn to swim programs	24	5.2 %
Adult sports leagues	28	6.0 %
Archery programs	18	3.9 %
Cooking classes	80	17.2 %
Free self-directed drop in activities (cards, dominos, board games, etc.)	28	6.0 %
Free/low cost community events	81	17.4 %
Nature education/certification	26	5.6 %
Outdoor fitness programs	34	7.3 %
Outdoor trips (single day)	30	6.4 %
Overnight adventure trips	16	3.4 %
Senior education programs	37	7.9 %
Senior fitness & wellness programs	67	14.4 %
Senior trips (single day)	25	5.4 %
Summer camps	27	5.8 %
Tennis lessons & leagues	35	7.5 %
Water fitness classes	40	8.6 %
Youth art, dance, performing arts	21	4.5 %
Youth education classes	18	3.9 %
Youth fitness & wellness classes	29	6.2 %
Youth learn to swim programs	34	7.3 %
Other	13	2.8 %
None chosen	167	35.8 %
Total	1151	

Q11. For each day of the week, please indicate your preferred time to take a class or attend a recreation program.

(N=466)

	Early morning (5am-8am)	Morning (8am-noon)	Afternoon (noon-4pm)	Early evening (4pm-8pm)	Late evening (8pm-10pm)	Would not participate on this day
Q11-1. Monday	12.5%	18.6%	10.1%	30.1%	13.6%	15.2%
Q11-2. Tuesday	12.1%	16.4%	11.6%	30.9%	14.2%	14.8%
Q11-3. Wednesday	12.3%	18.5%	9.9%	29.8%	15.4%	14.1%
Q11-4. Thursday	11.8%	17.7%	11.6%	29.8%	15.6%	13.4%
Q11-5. Friday	11.5%	19.7%	10.1%	28.0%	12.8%	17.9%
Q11-6. Saturday	8.2%	34.0%	20.1%	9.2%	6.3%	22.3%
Q11-7. Sunday	6.3%	24.7%	20.3%	10.7%	4.7%	33.2%

Q12. Please rate the importance of each of the following items using a scale of 1 to 5, where 5 means "very important" and 1 means "not at all important."

(N=466)

	Extremely important	Very important	Somewhat important	Not important	Not at all important	Don't know
Q12-1. Add additional cardio equipment in recreation centers	12.0%	7.1%	19.1%	21.0%	20.8%	20.0%
Q12-2. Add additional weight equipment in recreation centers	13.9%	8.2%	25.5%	18.9%	13.7%	19.7%
Q12-3. Add High Intensity Interval Training (HIIT) equipment in recreation centers	17.0%	9.4%	29.0%	13.9%	9.2%	21.5%
Q12-4. Add outdoor fitness & cardio training areas to parks	15.7%	9.2%	24.2%	20.2%	8.4%	22.3%
Q12-5. Build a new senior center west of Coit Road	18.5%	9.2%	23.2%	15.9%	11.8%	21.5%
Q12-6. Provide an adult court facility (e.g., basketball, volleyball, badminton, pickleball)	16.5%	10.9%	25.8%	15.9%	8.6%	22.3%
Q12-7. Increase social spaces in recreation centers	17.2%	10.7%	29.4%	12.9%	6.4%	23.4%
Q12-8. Expand paddling infrastructure (access/paddling trails)	18.9%	10.5%	25.8%	15.5%	5.4%	24.0%
Q12-9. Expand adult athletic leagues	19.3%	11.2%	30.0%	11.4%	4.5%	23.6%
Q12-10. Expand youth recreation programs	19.5%	7.5%	26.0%	15.7%	8.4%	23.0%
Q12-11. Expand senior programs in recreation centers	15.2%	6.2%	23.8%	21.2%	10.9%	22.5%
Q12-12. Develop additional off-road/mountain bike trails	16.7%	11.2%	23.6%	16.7%	9.2%	22.5%
Q12-13. Provide a new competition/lap pool	20.0%	11.4%	26.2%	11.4%	7.5%	23.6%
Q12-14. Provide a new leisure pool	17.8%	9.4%	26.8%	13.7%	8.6%	23.6%
Q12-15. Add additional meeting/event space	22.3%	13.5%	27.9%	7.7%	3.4%	25.1%
Q12-16. Add additional pool party room/space	22.7%	12.9%	28.1%	9.0%	2.4%	24.9%

Q12. Please rate the importance of each of the following items using a scale of 1 to 5, where 5 means "very important" and 1 means "not at all important."

	Extremely important	Very important	Somewha- t important	Not important	Not at all important	Don't know
Q12-17. Develop an obstacle training course	21.2%	10.1%	27.0%	12.4%	4.3%	24.9%
Q12-18. Build an archery range	24.5%	12.7%	23.2%	11.4%	4.1%	24.2%
Q12-19. Provide an outdoor education classroom	21.2%	11.2%	28.1%	11.8%	2.6%	25.1%

WITHOUT DON'T KNOW

Q12. Please rate the importance of each of the following items using a scale of 1 to 5, where 5 means "very important" and 1 means "not at all important." (without "don't know")

(N=466)

	Extremely important	Very important	Somewhat important	Not important	Not at all important
Q12-1. Add additional cardio equipment in recreation centers	15.0%	8.8%	23.9%	26.3%	26.0%
Q12-2. Add additional weight equipment in recreation centers	17.4%	10.2%	31.8%	23.5%	17.1%
Q12-3. Add High Intensity Interval Training (HIIT) equipment in recreation centers	21.6%	12.0%	36.9%	17.8%	11.7%
Q12-4. Add outdoor fitness & cardio training areas to parks	20.2%	11.9%	31.2%	26.0%	10.8%
Q12-5. Build a new senior center west of Coit Road	23.5%	11.7%	29.5%	20.2%	15.0%
Q12-6. Provide an adult court facility (e.g., basketball, volleyball, badminton, pickleball)	21.3%	14.1%	33.1%	20.4%	11.0%
Q12-7. Increase social spaces in recreation centers	22.4%	14.0%	38.4%	16.8%	8.4%
Q12-8. Expand paddling infrastructure (access/paddling trails)	24.9%	13.8%	33.9%	20.3%	7.1%
Q12-9. Expand adult athletic leagues	25.3%	14.6%	39.3%	14.9%	5.9%
Q12-10. Expand youth recreation programs	25.3%	9.7%	33.7%	20.3%	10.9%
Q12-11. Expand senior programs in recreation centers	19.7%	8.0%	30.7%	27.4%	14.1%
Q12-12. Develop additional off-road/mountain bike trails	21.6%	14.4%	30.5%	21.6%	11.9%
Q12-13. Provide a new competition/lap pool	26.1%	14.9%	34.3%	14.9%	9.8%
Q12-14. Provide a new leisure pool	23.3%	12.4%	35.1%	18.0%	11.2%
Q12-15. Add additional meeting/event space	29.8%	18.1%	37.2%	10.3%	4.6%
Q12-16. Add additional pool party room/space	30.3%	17.1%	37.4%	12.0%	3.1%

Q12. Please rate the importance of each of the following items using a scale of 1 to 5, where 5 means "very important" and 1 means "not at all important." (without "don't know")

	Extremely important	Very important	Somewhat important	Not important	Not at all important
Q12-17. Develop an obstacle training course	28.3%	13.4%	36.0%	16.6%	5.7%
Q12-18. Build an archery range	32.3%	16.7%	30.6%	15.0%	5.4%
Q12-19. Provide an outdoor education classroom	28.4%	14.9%	37.5%	15.8%	3.4%

Q13. Do you or any members of your household have a library card for Plano Public Library?

Q13. Do you have a library card for Plano Public

<u>Library</u>	<u>Number</u>	<u>Percent</u>
Yes	356	76.4 %
No	92	19.7 %
Not provided	18	3.9 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q13. Do you or any members of your household have a library card for Plano Public Library? (without "not provided")**

Q13. Do you have a library card for Plano Public

<u>Library</u>	<u>Number</u>	<u>Percent</u>
Yes	356	79.5 %
No	92	20.5 %
Total	448	100.0 %

WITHOUT NOT PROVIDED**Q14. Services. Please indicate whether you or members of your household use and are aware of each of the following services offered by the Plano Public Library.**

(N=466)

	Use	Aware, but do not use	Not aware it was offered	Not provided
Q14-1. Books	64.2%	27.0%	2.4%	6.4%
Q14-2. DVDs	30.0%	55.2%	5.8%	9.0%
Q14-3. Audiobooks	24.0%	56.4%	9.0%	10.5%
Q14-4. STEAM Kits (materials to experiment with Science, Technology, Engineering, Arts, & Math)	6.2%	35.4%	45.5%	12.9%
Q14-5. Sensory Backpacks (materials for children with special needs)	0.9%	30.0%	54.1%	15.0%
Q14-6. Bilingual Backpacks (materials to learn & practice languages)	1.3%	29.0%	56.0%	13.7%
Q14-7. Launchpads (preloaded learning tablets)	3.6%	23.0%	60.5%	12.9%
Q14-8. Playaways (preloaded audiobooks)	5.4%	23.2%	57.9%	13.5%
Q14-9. Binge Boxes (themed DVD sets)	2.1%	29.2%	54.9%	13.7%
Q14-10. World Languages (books, DVDs & audiobooks in different languages)	4.9%	36.3%	44.4%	14.4%
Q14-11. 3D Printing	3.4%	22.7%	61.4%	12.4%

Q14. Services. Please indicate whether you or members of your household use and are aware of each of the following services offered by the Plano Public Library. (without "not provided")

(N=466)

	Use	Aware, but do not use	Not aware it was offered
Q14-1. Books	68.6%	28.9%	2.5%
Q14-2. DVDs	33.0%	60.6%	6.4%
Q14-3. Audiobooks	26.9%	63.1%	10.1%
Q14-4. STEAM Kits (materials to experiment with Science, Technology, Engineering, Arts, & Math)	7.1%	40.6%	52.2%
Q14-5. Sensory Backpacks (materials for children with special needs)	1.0%	35.4%	63.6%
Q14-6. Bilingual Backpacks (materials to learn & practice languages)	1.5%	33.6%	64.9%
Q14-7. Launchpads (preloaded learning tablets)	4.2%	26.4%	69.5%
Q14-8. Playaways (preloaded audiobooks)	6.2%	26.8%	67.0%
Q14-9. Binge Boxes (themed DVD sets)	2.5%	33.8%	63.7%
Q14-10. World Languages (books, DVDs & audiobooks in different languages)	5.8%	42.4%	51.9%
Q14-11. 3D Printing	3.9%	26.0%	70.1%

WITHOUT NOT PROVIDED**Q15. Digital Services. Please indicate whether you or members of your household use and are aware of each of the following digital services offered by the Plano Public Library.**

(N=466)

	Use	Aware, but do not use	Not aware it was offered	Not provided
Q15-1. Use search box on library home page (EBSCO Discovery) to find materials/articles	30.9%	25.3%	32.0%	11.8%
Q15-2. Get financial/investment information through Morningstar	1.7%	17.4%	67.6%	13.3%
Q15-3. Download eAudiobooks through OverDrive or rbDigital	12.7%	21.9%	52.1%	13.3%
Q15-4. Check out eBooks through OverDrive or Ebsco Host	15.0%	21.5%	50.2%	13.3%
Q15-5. Check out foreign language eBooks through OverDrive	1.5%	24.5%	59.4%	14.6%
Q15-6. Engage one-on-one with a live online tutor through Tutor.com	0.6%	15.2%	69.5%	14.6%
Q15-7. Use study guides & take practice tests through Learning Express	1.5%	13.7%	69.5%	15.2%
Q15-8. Read digital magazines through rbDigital or Flipster	2.8%	19.7%	63.3%	14.2%
Q15-9. Stream educational videos through Kanopy	2.1%	13.1%	69.5%	15.2%
Q15-10. Take online courses through Lynda.com	1.5%	17.6%	66.1%	14.8%
Q15-11. Get information from a library blog (Kid's Brain, Plano Reads, Digital Creation Space, Job/College Resources)	3.0%	17.8%	63.9%	15.2%
Q15-12. Find sales leads & marketing information through Reference USA	1.1%	12.4%	70.2%	16.3%
Q15-13. Use library mobile app to access digital services	12.9%	19.1%	53.2%	14.8%

Q15. Digital Services. Please indicate whether you or members of your household use and are aware of each of the following digital services offered by the Plano Public Library. (without "not provided")

(N=466)

	Use	Aware, but do not use	Not aware it was offered
Q15-1. Use search box on library home page (EBSCO Discovery) to find materials/articles	35.0%	28.7%	36.3%
Q15-2. Get financial/investment information through Morningstar	2.0%	20.0%	78.0%
Q15-3. Download eAudiobooks through OverDrive or rbDigital	14.6%	25.2%	60.1%
Q15-4. Check out eBooks through OverDrive or Ebsco Host	17.3%	24.8%	57.9%
Q15-5. Check out foreign language eBooks through OverDrive	1.8%	28.6%	69.6%
Q15-6. Engage one-on-one with a live online tutor through Tutor.com	0.8%	17.8%	81.4%
Q15-7. Use study guides & take practice tests through Learning Express	1.8%	16.2%	82.0%
Q15-8. Read digital magazines through rbDigital or Flipster	3.3%	23.0%	73.8%
Q15-9. Stream educational videos through Kanopy	2.5%	15.4%	82.0%
Q15-10. Take online courses through Lynda.com	1.8%	20.7%	77.6%
Q15-11. Get information from a library blog (Kid's Brain, Plano Reads, Digital Creation Space, Job/College Resources)	3.5%	21.0%	75.4%
Q15-12. Find sales leads & marketing information through Reference USA	1.3%	14.9%	83.8%
Q15-13. Use library mobile app to access digital services	15.1%	22.4%	62.5%

WITHOUT NOT PROVIDED**Q16. Programs. Please indicate whether you or members of your household use and are aware of each of the following programs offered by the Plano Public Library.**

(N=466)

	Use	Aware, but do not use	Not aware it was offered	Not provided
Q16-1. Artist in Residence art workshops	2.8%	22.1%	60.7%	14.4%
Q16-2. Reading Readiness Storytimes	6.2%	38.6%	39.1%	16.1%
Q16-3. Sensory Storytime (for children with special needs)	1.1%	28.5%	53.4%	17.0%
Q16-4. Family STEAM workshops (science, technology, engineering, arts, & math)	2.4%	24.5%	56.2%	17.0%
Q16-5. Digital creation classes (using Adobe InDesign, Illustrator, Photoshop)	1.1%	21.9%	60.7%	16.3%
Q16-6. Art exhibits (view art in libraries or exhibit as an artist)	8.6%	27.5%	47.9%	16.1%
Q16-7. Job search seminars	1.1%	27.0%	56.0%	15.9%
Q16-8. Pop-Up Author visits (best-selling & nationally known)	3.2%	25.1%	56.4%	15.2%
Q16-9. Genealogy classes	2.8%	25.3%	56.0%	15.9%
Q16-10. Technology skill development classes (Microsoft Word, Excel)	2.1%	30.3%	51.9%	15.7%

Q16. Programs. Please indicate whether you or members of your household use and are aware of each of the following programs offered by the Plano Public Library. (without "not provided")

(N=466)

	Use	Aware, but do not use	Not aware it was offered
Q16-1. Artist in Residence art workshops	3.3%	25.8%	70.9%
Q16-2. Reading Readiness Storytimes	7.4%	46.0%	46.5%
Q16-3. Sensory Storytime (for children with special needs)	1.3%	34.4%	64.3%
Q16-4. Family STEAM workshops (science, technology, engineering, arts, & math)	2.8%	29.5%	67.7%
Q16-5. Digital creation classes (using Adobe InDesign, Illustrator, Photoshop)	1.3%	26.2%	72.6%
Q16-6. Art exhibits (view art in libraries or exhibit as an artist)	10.2%	32.7%	57.0%
Q16-7. Job search seminars	1.3%	32.1%	66.6%
Q16-8. Pop-Up Author visits (best-selling & nationally known)	3.8%	29.6%	66.6%
Q16-9. Genealogy classes	3.3%	30.1%	66.6%
Q16-10. Technology skill development classes (Microsoft Word, Excel)	2.5%	35.9%	61.6%

Q17. Please CHECK ALL of the following ways you learn about library events and classes.

Q17. Ways you learn about library events & classes	Number	Percent
Library website	194	41.6 %
ENGAGE brochure	58	12.4 %
Social media	70	15.0 %
Mobile app	42	9.0 %
In library (e.g. staff, signage)	224	48.1 %
Other	27	5.8 %
Total	615	

Q17-6. Other

Q17-6. Other	Number	Percent
Dallas Morning News	1	3.7 %
EMAIL NEWSLETTER	1	3.7 %
Email	3	11.1 %
Emails about annual book sale	1	3.7 %
Emails from library	1	3.7 %
FRIENDS	1	3.7 %
Friend who uses the library regularly	1	3.7 %
Have not use the library	1	3.7 %
Haven't used	1	3.7 %
Impact Magazine	1	3.7 %
Internet or mailings	1	3.7 %
Newspaper	1	3.7 %
Nextdoor	1	3.7 %
Not using library resource due to inconvenient location	1	3.7 %
ONLINE	1	3.7 %
ONLINE NEWS	1	3.7 %
PRINT MEDIA	1	3.7 %
Plano Star Courier	1	3.7 %
This survey	1	3.7 %
Word of mouth	5	18.5 %
Word of mouth and general knowledge	1	3.7 %
Total	27	100.0 %

Q18. Frequency of Use. Please indicate how often you have visited each of the following libraries in the past year.

(N=466)

	Daily	Weekly	Monthly	Once a year	Never	Not provided
Q18-1. Davis	0.4%	7.1%	13.9%	15.9%	40.8%	21.9%
Q18-2. Haggard	0.6%	5.6%	17.4%	16.7%	35.2%	24.5%
Q18-3. Harrington	0.9%	2.6%	5.4%	12.4%	50.2%	28.5%
Q18-4. Parr	0.0%	1.1%	6.0%	12.7%	50.4%	29.8%
Q18-5. Schimelpfenig	0.4%	2.6%	11.2%	15.9%	42.9%	27.0%
Q18-6. www.PlanoLibrary.org	1.9%	7.5%	22.1%	11.2%	31.3%	26.0%

WITHOUT NOT PROVIDED**Q18. Frequency of Use. Please indicate how often you have visited each of the following libraries in the past year. (without "not provided")**

(N=466)

	Daily	Weekly	Monthly	Once a year	Never
Q18-1. Davis	0.5%	9.1%	17.9%	20.3%	52.2%
Q18-2. Haggard	0.9%	7.4%	23.0%	22.2%	46.6%
Q18-3. Harrington	1.2%	3.6%	7.5%	17.4%	70.3%
Q18-4. Parr	0.0%	1.5%	8.6%	18.0%	71.9%
Q18-5. Schimelpfenig	0.6%	3.5%	15.3%	21.8%	58.8%
Q18-6. www.PlanoLibrary.org	2.6%	10.1%	29.9%	15.1%	42.3%

Q19. When you visit a Plano library, how often do you interact with a staff member?

Q19. How often do you interact with a staff member when you visit a Plano library	Number	Percent
Always	62	13.3 %
Sometimes	179	38.4 %
Rarely	125	26.8 %
I do not use any Plano libraries	78	16.7 %
Not provided	22	4.7 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q19. When you visit a Plano library, how often do you interact with a staff member? (without "not provided")**

Q19. How often do you interact with a staff member when you visit a Plano library	Number	Percent
Always	62	14.0 %
Sometimes	179	40.3 %
Rarely	125	28.2 %
I do not use any Plano libraries	78	17.6 %
Total	444	100.0 %

Q20. Which THREE of the following roles and services of the library are MOST IMPORTANT to you and members of your household?

Q20. What roles & services of library are most important to you	Number	Percent
Support job seekers	44	9.4 %
Support local economic development with job skills training & resources	59	12.7 %
Provide quiet places for reading & individual study	208	44.6 %
Support group-study & collaboration	43	9.2 %
Support education & literacy for children & adults	174	37.3 %
Provide resources for reading/listening/viewing	225	48.3 %
Serve as a resource of community information	104	22.3 %
Foster civic engagement with space & opportunity to build community	28	6.0 %
Help individuals use technology tools to find, use & analyze information	70	15.0 %
Support individuals in creating & sharing their digital content (e.g. art, music, video)	16	3.4 %
Provide services to support our diverse community	62	13.3 %
Other	13	2.8 %
Total	1046	

Q20-12. Other

Q20-12. Other	Number	Percent
CHILDREN ACTIVITIES	1	7.7 %
Childrens area storytime, puppet show etc	1	7.7 %
Davis Library gets very noisy with children running and screaming	1	7.7 %
Engaging adult programming	1	7.7 %
Genealogy	1	7.7 %
Genealogy resources	2	15.4 %
Source of interesting and educational materials	1	7.7 %
Stay home	1	7.7 %
Voting	3	23.1 %
We took our son to see a little reptile show	1	7.7 %
Total	13	100.0 %

Q21. Please rate your level of agreement with each of the following statements concerning the potential benefits of Plano Public Library using a scale of 1 to 5, where 5 means "strongly agree" and 1 means "strongly disagree."

(N=466)

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Not provided
Q21-1. Library provides high quality services	44.6%	30.0%	11.2%	0.6%	0.6%	12.9%
Q21-2. Library is innovative	30.7%	30.9%	21.9%	0.9%	1.3%	14.4%
Q21-3. Library is an important provider of literacy services in the community	45.9%	27.9%	12.2%	0.6%	0.6%	12.7%
Q21-4. Library is an important provider of services to children & teens in the community	44.8%	28.8%	10.5%	1.1%	0.6%	14.2%
Q21-5. Library is a place that enhances academic achievement	42.3%	28.1%	13.9%	0.9%	0.9%	13.9%
Q21-6. Library is an important resource for small businesses	15.9%	20.0%	42.3%	3.4%	2.1%	16.3%
Q21-7. Library is a cultural hub of the community	18.7%	26.0%	32.0%	6.0%	1.9%	15.5%
Q21-8. Library is a safe neutral place to discuss community issues	18.9%	25.3%	33.3%	4.7%	1.5%	16.3%
Q21-9. Library contributes significantly to economic vitality of the community	24.2%	26.4%	29.0%	2.6%	1.9%	15.9%
Q21-10. Library is a source of community pride	39.1%	26.4%	16.7%	1.7%	0.9%	15.2%
Q21-11. Library is a good value for my tax dollars (average household pays \$43/annually through property taxes)	47.0%	23.0%	12.7%	1.1%	1.1%	15.2%
Q21-12. Library provides opportunities for self-improvement	39.7%	29.4%	15.2%	0.2%	0.9%	14.6%
Q21-13. Library's services represent diversity of our community	32.6%	22.5%	25.5%	2.4%	1.3%	15.7%

WITHOUT NOT PROVIDED

Q21. Please rate your level of agreement with each of the following statements concerning the potential benefits of Plano Public Library using a scale of 1 to 5, where 5 means "strongly agree" and 1 means "strongly disagree." (without "not provided")

(N=466)

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Q21-1. Library provides high quality services	51.2%	34.5%	12.8%	0.7%	0.7%
Q21-2. Library is innovative	35.8%	36.1%	25.6%	1.0%	1.5%
Q21-3. Library is an important provider of literacy services in the community	52.6%	31.9%	14.0%	0.7%	0.7%
Q21-4. Library is an important provider of services to children & teens in the community	52.3%	33.5%	12.3%	1.3%	0.8%
Q21-5. Library is a place that enhances academic achievement	49.1%	32.7%	16.2%	1.0%	1.0%
Q21-6. Library is an important resource for small businesses	19.0%	23.8%	50.5%	4.1%	2.6%
Q21-7. Library is a cultural hub of the community	22.1%	30.7%	37.8%	7.1%	2.3%
Q21-8. Library is a safe neutral place to discuss community issues	22.6%	30.3%	39.7%	5.6%	1.8%
Q21-9. Library contributes significantly to economic vitality of the community	28.8%	31.4%	34.4%	3.1%	2.3%
Q21-10. Library is a source of community pride	46.1%	31.1%	19.7%	2.0%	1.0%
Q21-11. Library is a good value for my tax dollars (average household pays \$43/annually through property taxes)	55.4%	27.1%	14.9%	1.3%	1.3%
Q21-12. Library provides opportunities for self-improvement	46.5%	34.4%	17.8%	0.3%	1.0%
Q21-13. Library's services represent diversity of our community	38.7%	26.7%	30.3%	2.8%	1.5%

Q22. How do you prefer to learn something new?

<u>Q22. How do you prefer to learn something new</u>	<u>Number</u>	<u>Percent</u>
Taught one-on-one	105	22.5 %
Online (available anytime)	243	52.1 %
In-person in a class	223	47.9 %
Webinar/tutorial	100	21.5 %
Total	671	

Q23. Do you subscribe to the Library's monthly eNewsletter, "Check It Out"?

<u>Q23. Do you subscribe to library's monthly eNewsletter, "Check It Out"</u>	<u>Number</u>	<u>Percent</u>
Yes	61	13.1 %
No	405	86.9 %
Total	466	100.0 %

Q24. Overall, how would you rate the importance of Plano Public Library to yourself and members of your household?

Q24. How would you rate importance of Plano

<u>Public Library to you & your household</u>	<u>Number</u>	<u>Percent</u>
Very important	200	42.9 %
Important	163	35.0 %
Not important	54	11.6 %
Not at all important	21	4.5 %
Not provided	28	6.0 %
Total	466	100.0 %

WITHOUT NOT PROVIDED

Q24. Overall, how would you rate the importance of Plano Public Library to yourself and members of your household? (without "not provided")

Q24. How would you rate importance of Plano

<u>Public Library to you & your household</u>	<u>Number</u>	<u>Percent</u>
Very important	200	45.7 %
Important	163	37.2 %
Not important	54	12.3 %
Not at all important	21	4.8 %
Total	438	100.0 %

Q25. Overall, how would you rate the importance of Plano Public Library to the future of the Plano community?

Q25. How would you rate importance of Plano Public Library to the future of Plano community

	Number	Percent
Very important	276	59.2 %
Important	142	30.5 %
Not important	16	3.4 %
Not at all important	7	1.5 %
Not provided	25	5.4 %
Total	466	100.0 %

WITHOUT NOT PROVIDED

Q25. Overall, how would you rate the importance of Plano Public Library to the future of the Plano community? (without "not provided")

Q25. How would you rate importance of Plano Public Library to the future of Plano community

	Number	Percent
Very important	276	62.6 %
Important	142	32.2 %
Not important	16	3.6 %
Not at all important	7	1.6 %
Total	441	100.0 %

Q30. How many people in your household are...

	<u>Mean</u>	<u>Sum</u>
number	2.84	1302
Under age 5	0.10	45
Ages 5-9	0.15	70
Ages 10-14	0.21	96
Ages 15-19	0.21	94
Ages 20-24	0.18	82
Ages 25-34	0.20	90
Ages 35-44	0.36	163
Ages 45-49	0.22	99
Ages 50-54	0.21	98
Ages 55-64	0.51	235
Ages 65-74	0.34	158
Ages 75+	0.16	72

Q31. What is your age?

<u>Q31. Your age</u>	<u>Number</u>	<u>Percent</u>
18-34	81	17.4 %
35-44	83	17.8 %
45-54	109	23.4 %
55-64	96	20.6 %
65+	90	19.3 %
Not provided	7	1.5 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q31. What is your age? (without "not provided")**

<u>Q31. Your age</u>	<u>Number</u>	<u>Percent</u>
18-34	81	17.6 %
35-44	83	18.1 %
45-54	109	23.7 %
55-64	96	20.9 %
65+	90	19.6 %
Total	459	100.0 %

Q32. What is your gender?

<u>Q32. Your gender</u>	<u>Number</u>	<u>Percent</u>
Male	230	49.4 %
Female	235	50.4 %
Not provided	1	0.2 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q32. What is your gender? (without "not provided")**

<u>Q32. Your gender</u>	<u>Number</u>	<u>Percent</u>
Male	230	49.5 %
Female	235	50.5 %
Total	465	100.0 %

Q33. How many years have you lived in the City of Plano?

Q33. How many years have you lived in City of Plano	Number	Percent
0-5	90	19.3 %
6-10	57	12.2 %
11-15	59	12.7 %
16-20	78	16.7 %
21-30	101	21.7 %
31+	67	14.4 %
Not provided	14	3.0 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q33. How many years have you lived in the City of Plano? (without "not provided")**

Q33. How many years have you lived in City of Plano	Number	Percent
0-5	90	19.9 %
6-10	57	12.6 %
11-15	59	13.1 %
16-20	78	17.3 %
21-30	101	22.3 %
31+	67	14.8 %
Total	452	100.0 %

Q34. Please CHECK ALL of the following that describe your race/ethnicity.

<u>Q34. Your race/ethnicity</u>	<u>Number</u>	<u>Percent</u>
African American/Black	39	8.4 %
Asian/Indian	59	12.7 %
White/Caucasian	308	66.1 %
Hispanic/Latino	63	13.5 %
Native American	9	1.9 %
Asian/Pacific Islander	29	6.2 %
Other	4	0.9 %
Total	511	

Q34-7. Other

<u>Q34-7. Other</u>	<u>Number</u>	<u>Percent</u>
European	1	25.0 %
French and Spanish	1	25.0 %
KURDISH	1	25.0 %
Mixed	1	25.0 %
Total	4	100.0 %

Q35. What is your total annual household income?

Q35. What is your total annual household income	Number	Percent
Under \$22K	8	1.7 %
\$22K-\$44,999	26	5.6 %
\$45K-\$74,999	55	11.8 %
\$75K-\$99,999	53	11.4 %
\$100K-\$149,999	95	20.4 %
\$150K+	137	29.4 %
Not provided	92	19.7 %
Total	466	100.0 %

WITHOUT NOT PROVIDED**Q35. What is your total annual household income? (without "not provided")**

Q35. What is your total annual household income	Number	Percent
Under \$22K	8	2.1 %
\$22K-\$44,999	26	7.0 %
\$45K-\$74,999	55	14.7 %
\$75K-\$99,999	53	14.2 %
\$100K-\$149,999	95	25.4 %
\$150K+	137	36.6 %
Total	374	100.0 %

Section 5

Survey Instrument



2018 City of Plano Parks and Recreation and Library Needs Assessment

The City of Plano would like your input to help determine park and recreation and library priorities for our community. This survey will take 15-20 minutes to complete. When you are finished, return your survey in the enclosed postage-paid, return-reply envelope. If you prefer, you can also complete the survey at www.planosurvey.com. We greatly appreciate your time!

Plano Parks and Recreation

1. Which facility have you USED MOST in the past year?

- | | |
|---|---|
| <input type="checkbox"/> (01) Carpenter Park Recreation Center | <input type="checkbox"/> (06) Oak Point Recreation Center |
| <input type="checkbox"/> (02) Harry Rowlinson Natatorium | <input type="checkbox"/> (07) Plano Aquatic Center |
| <input type="checkbox"/> (03) Jack Carter Pool | <input type="checkbox"/> (08) Plano Senior Recreation Center |
| <input type="checkbox"/> (04) Liberty Recreation Center | <input type="checkbox"/> (09) Tom Muehlenbeck Recreation Center |
| <input type="checkbox"/> (05) Oak Point Nature and Retreat Center | <input type="checkbox"/> (10) Haven't used any of these facilities in the past year |

2. How often do you visit a Plano Recreation Center or pool?

- | | | |
|---|--|------------------------------------|
| <input type="checkbox"/> (1) Daily | <input type="checkbox"/> (3) Several times per month | <input type="checkbox"/> (5) Never |
| <input type="checkbox"/> (2) Several times per week | <input type="checkbox"/> (4) Several times per year | |

3. Please CHECK ALL of the following items that prevent you from visiting Plano Recreation Centers or pools more often.

- | | |
|---|---|
| <input type="checkbox"/> (01) Lack of time | <input type="checkbox"/> (08) Too crowded |
| <input type="checkbox"/> (02) Desired programs are not offered | <input type="checkbox"/> (09) Classes are not included in membership fees |
| <input type="checkbox"/> (03) Hours of programming are not convenient | <input type="checkbox"/> (10) Class fees are too high |
| <input type="checkbox"/> (04) Inconvenient locations | <input type="checkbox"/> (11) Lack of interest |
| <input type="checkbox"/> (05) Membership fees are too high | <input type="checkbox"/> (12) Nothing; I visit them as often as I like |
| <input type="checkbox"/> (06) I do not know what is offered | <input type="checkbox"/> (13) Other: _____ |
| <input type="checkbox"/> (07) Use other private facilities | |

4. If a second senior recreation center for those who are age 50 or older was built near the central/western section of the city, would you or members of your household use it?

- (1) Yes (2) No (3) Not Sure (4) No one in our household is age 50+

5. If the membership price, programming, and amenities were the same, which ONE of the following types of recreation center would you prefer to attend?

- | | |
|--|---|
| <input type="checkbox"/> (1) A recreation center only for adults age 50+ | <input type="checkbox"/> (3) A recreation center for all ages |
| <input type="checkbox"/> (2) A recreation center only for adults | |

6. What age range do you MOST PREFER to take classes with?

- (1) My age or younger (2) Similar in age to me (3) My age or older (4) Any age

7. Please indicate if you or any member of your household has a need for each type of amenity or facility listed below by circling either "Yes" or "No." If "Yes," please rate how well your needs for amenities/facilities of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

Type of Amenity or Facility	Do you have a need for this amenity/facility?		If "Yes," how well are your needs being met?			
	Yes	No	Fully Met	Mostly Met	Partly Met	Not Met
01. Archery range	Yes	No	4	3	2	1
02. Canoe/kayak or other passive boating areas	Yes	No	4	3	2	1
03. Canoe/kayak rentals	Yes	No	4	3	2	1
04. Indoor badminton courts	Yes	No	4	3	2	1
05. Indoor fitness equipment	Yes	No	4	3	2	1
06. Indoor pickleball courts	Yes	No	4	3	2	1
07. Indoor tennis courts	Yes	No	4	3	2	1
08. Indoor basketball courts	Yes	No	4	3	2	1
09. Indoor volleyball courts	Yes	No	4	3	2	1
10. Indoor walking tracks	Yes	No	4	3	2	1
11. Lap pools	Yes	No	4	3	2	1
12. Leisure pools	Yes	No	4	3	2	1
13. Meeting rooms	Yes	No	4	3	2	1
14. Mountain bike trails	Yes	No	4	3	2	1
15. Obstacle course	Yes	No	4	3	2	1
16. Outdoor basketball courts	Yes	No	4	3	2	1
17. Outdoor education classroom	Yes	No	4	3	2	1
18. Outdoor tennis courts	Yes	No	4	3	2	1
19. Outdoor volleyball courts	Yes	No	4	3	2	1
20. Park pavilion rental	Yes	No	4	3	2	1
21. Passive recreation space	Yes	No	4	3	2	1
22. Pool party rooms	Yes	No	4	3	2	1
23. Racquetball/squash courts	Yes	No	4	3	2	1
24. Skate park	Yes	No	4	3	2	1
25. Space for table tennis	Yes	No	4	3	2	1
26. Other: _____	Yes	No	4	3	2	1

8. Which FOUR types of amenities/facilities from the list in Question 7 are MOST IMPORTANT to your household? [Write in your answers below using the numbers from the list in Question 7, or circle "NONE."]

1st: ____ 2nd: ____ 3rd: ____ 4th: ____ NONE

9. Please indicate if you or any member of your household has a need for each type of program listed below by circling either "Yes" or "No." If "Yes," please rate how well your needs for programs of this type are being met by Plano Parks and Recreation and/or other private sector agencies.

Type of Program	Do you have a need for this program?		If "Yes," how well are your needs being met?			
	Yes	No	Fully Met	Mostly Met	Partly Met	Not Met
01. Adapted recreation programs	Yes	No	4	3	2	1
02. Adult art, dance, performing arts	Yes	No	4	3	2	1
03. Adult education classes	Yes	No	4	3	2	1
04. Adult fitness and wellness classes	Yes	No	4	3	2	1
05. Adult learn to swim programs	Yes	No	4	3	2	1
06. Adult sports leagues	Yes	No	4	3	2	1
07. Archery programs	Yes	No	4	3	2	1
08. Cooking classes	Yes	No	4	3	2	1
09. Free self-directed drop in activities (cards, dominos, board games, etc.)	Yes	No	4	3	2	1
10. Free/low cost community events	Yes	No	4	3	2	1
11. Nature education/certification	Yes	No	4	3	2	1
12. Outdoor fitness programs	Yes	No	4	3	2	1
13. Outdoor trips (single day)	Yes	No	4	3	2	1
14. Overnight adventure trips	Yes	No	4	3	2	1
15. Senior education programs	Yes	No	4	3	2	1
16. Senior fitness and wellness programs	Yes	No	4	3	2	1
17. Senior trips (single day)	Yes	No	4	3	2	1
18. Summer camps	Yes	No	4	3	2	1
19. Tennis lessons and leagues	Yes	No	4	3	2	1
20. Water fitness classes	Yes	No	4	3	2	1
21. Youth art, dance, performing arts	Yes	No	4	3	2	1
22. Youth education classes	Yes	No	4	3	2	1
23. Youth fitness and wellness classes	Yes	No	4	3	2	1
24. Youth learn to swim programs	Yes	No	4	3	2	1
25. Other: _____	Yes	No	4	3	2	1

10. Which FOUR types of programs from the list in Question 9 are MOST IMPORTANT to your household? [Write in your answers below using the numbers from the list in Question 9, or circle "NONE."]

1st: ____ 2nd: ____ 3rd: ____ 4th: ____ NONE

11. For each day of the week, please indicate your preferred time to take a class or attend a recreation program. [Select only ONE time period per day or select "None".]

Day of the Week	Early Morning (5am - 8am)	Morning (8am - noon)	Afternoon (noon - 4pm)	Early Evening (4pm - 8pm)	Late Evening (8pm - 10pm)	Wouldn't participate on this day
1. Monday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
2. Tuesday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
3. Wednesday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
4. Thursday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
5. Friday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
6. Saturday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None
7. Sunday	5am-8am	8am-noon	Noon-4pm	4pm-8pm	8pm-10pm	None

12. Please rate the importance of each of the following items using a scale of 1 to 5, where 5 means "Very Important" and 1 means "Not at All Important."

		Very Important	Important	Neutral	Not Important	Not at All Important
01.	Add additional cardio equipment in recreation centers	5	4	3	2	1
02.	Add additional weight equipment in recreation centers	5	4	3	2	1
03.	Add High Intensity Interval Training (HIIT) equipment in recreation centers	5	4	3	2	1
04.	Add outdoor fitness and cardio training areas to parks	5	4	3	2	1
05.	Build a new senior center west of Coit Road	5	4	3	2	1
06.	Provide an adult court facility (e.g., basketball, volleyball, badminton, pickleball)	5	4	3	2	1
07.	Increase social spaces in the recreation centers	5	4	3	2	1
08.	Expand paddling infrastructure (access/paddling trails)	5	4	3	2	1
09.	Expand adult athletic leagues	5	4	3	2	1
10.	Expand youth recreation programs	5	4	3	2	1
11.	Expand senior programs in recreation centers	5	4	3	2	1
12.	Develop additional off-road/mountain bike trails	5	4	3	2	1
13.	Provide a new competition/lap pool	5	4	3	2	1
14.	Provide a new leisure pool	5	4	3	2	1
15.	Add additional meeting/event space	5	4	3	2	1
16.	Add additional pool party room/space	5	4	3	2	1
17.	Develop an obstacle training course	5	4	3	2	1
18.	Build an archery range	5	4	3	2	1
19.	Provide an outdoor education classroom	5	4	3	2	1

Plano Public Library

13. Do you or any members of your household have a library card for Plano Public Library?

___(1) Yes ___(2) No

14. Services. Please indicate whether you or members of your household use and are aware of each of the following services offered by the Plano Public Library.

Services	Use	Aware, but do Not Use	Not Aware it Was Offered	
01.	Books	3	2	1
02.	DVDs	3	2	1
03.	Audiobooks	3	2	1
04.	STEAM Kits (materials to experiment with Science, Technology, Engineering, Arts, and Math)	3	2	1
05.	Sensory Backpacks (materials for children with special needs)	3	2	1
06.	Bilingual Backpacks (materials to learn and practice languages)	3	2	1
07.	Launchpads (preloaded learning tablets)	3	2	1
08.	Playaways (preloaded audiobooks)	3	2	1
09.	Binge Boxes (themed DVD sets)	3	2	1
10.	World Languages (books, DVDs and audiobooks in different languages)	3	2	1
11.	3D Printing	3	2	1

15. Digital Services. Please indicate whether you or members of your household use and are aware of each of the following digital services offered by the Plano Public Library.

Digital Services	Use	Aware, but do Not Use	Not Aware it Was Offered
01. Use the search box on the library home page (EBSCO Discovery) to find materials/articles	3	2	1
02. Get financial/investment information through Morningstar	3	2	1
03. Download eAudiobooks through OverDrive or rbDigital	3	2	1
04. Check out eBooks through OverDrive or Ebsco Host	3	2	1
05. Check out foreign language eBooks through OverDrive	3	2	1
06. Engage one-on-one with a live online tutor through Tutor.com	3	2	1
07. Use study guides and take practice tests through Learning Express	3	2	1
08. Read digital magazines through rbDigital or Flipster	3	2	1
09. Stream educational videos through Kanopy	3	2	1
10. Take online courses through Lynda.com	3	2	1
11. Get information from a library blog (Kid's Brain, Plano Reads, Digital Creation Space, Job/College Resources)	3	2	1
12. Find sales leads and marketing information through Reference USA	3	2	1
13. Use the library mobile app to access digital services	3	2	1

16. Programs. Please indicate whether you or members of your household use and are aware of each of the following programs offered by the Plano Public Library.

Programs	Use	Aware, but do Not Use	Not Aware it Was Offered
01. Artist in Residence art workshops	3	2	1
02. Reading Readiness Storytimes	3	2	1
03. Sensory Storytime (for children with special needs)	3	2	1
04. Family STEAM workshops (science, technology, engineering, arts, and math)	3	2	1
05. Digital creation classes (using Adobe InDesign, Illustrator, Photoshop)	3	2	1
06. Art exhibits (view art in the libraries or exhibit as an artist)	3	2	1
07. Job search seminars	3	2	1
08. Pop-Up Author visits (best-selling and nationally known)	3	2	1
09. Genealogy classes	3	2	1
10. Technology skill development classes (Microsoft Word, Excel)	3	2	1

17. Please CHECK ALL of the following ways you learn about library events and classes.

- (1) Library website (3) Social media (5) In the library (e.g. staff, signage)
 (2) ENGAGE brochure (4) Mobile App (6) Other: _____

18. Frequency of Use. Please indicate how often you have visited each of the following libraries in the past year.

Libraries	Daily	Weekly	Monthly	Once a Year	Never
1. Davis	5	4	3	2	1
2. Haggard	5	4	3	2	1
3. Harrington	5	4	3	2	1
4. Parr	5	4	3	2	1
5. Schimelpfenig	5	4	3	2	1
6. www.PlanoLibrary.org	5	4	3	2	1

19. When you visit a Plano library, how often do you interact with a staff member?

___(1) Always ___(2) Sometimes ___(3) Rarely ___(4) I do not use any Plano libraries [Answer Q19a.]

19a. Why don't you use Plano libraries?

20. Which THREE of the following roles and services of the library are MOST IMPORTANT to you and members of your household?

- ___(01) Support job seekers
- ___(02) Support local economic development with job skills training and resources
- ___(03) Provide quiet places for reading and individual study
- ___(04) Support group-study and collaboration
- ___(05) Support education and literacy for children and adults
- ___(06) Provide resources for reading/listening/viewing
- ___(07) Serve as a resource of community information
- ___(08) Foster civic engagement with space and opportunity to build community
- ___(09) Help individuals use technology tools to find, use and analyze information
- ___(10) Support individuals in creating and sharing their digital content (e.g. art, music, video)
- ___(11) Provide services to support our diverse community
- ___(12) Other: _____

21. Please rate your level of agreement with each of the following statements concerning the potential benefits of Plano Public Library using a scale of 1 to 5, where 5 means "Strongly Agree" and 1 means "Strongly Disagree."

Benefits	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
01. The library provides high quality services	5	4	3	2	1
02. The library is innovative	5	4	3	2	1
03. The library is an important provider of literacy services in the community	5	4	3	2	1
04. The library is an important provider of services to children and teens in the community	5	4	3	2	1
05. The library is a place that enhances academic achievement	5	4	3	2	1
06. The library is an important resource for small businesses	5	4	3	2	1
07. The library is a cultural hub of the community	5	4	3	2	1
08. The library is a safe neutral place to discuss community issues	5	4	3	2	1
09. The library contributes significantly to the economic vitality of the community	5	4	3	2	1
10. The library is a source of community pride	5	4	3	2	1
11. The library is a good value for my tax dollars (average household pays \$43/annually through property taxes)	5	4	3	2	1
12. The library provides opportunities for self-improvement	5	4	3	2	1
13. The library's services represent the diversity of our community	5	4	3	2	1

22. How do you prefer to learn something new?

___(1) Taught one-on-one ___(2) Online (available anytime) ___(3) In-person in a class ___(4) Webinar/Tutorial

23. Do you subscribe to the Library's monthly eNewsletter, "Check It Out"? ___(1) Yes ___(2) No

24. Overall, how would you rate the importance of Plano Public Library to yourself and members of your household?

___(1) Very important ___(2) Important ___(3) Not important ___(4) Not at all important

25. Overall, how would you rate the importance of Plano Public Library to the future of the Plano community?

___(1) Very important ___(2) Important ___(3) Not important ___(4) Not at all important

26. If the library could make one improvement, what would it be?

27. What would get you to use the library more than you do now?

28. What library class or program would you like to see added?

29. Do you have any additional suggestions for the Parks and Recreation Department or Plano Public Library?

Demographics

30. How many people in your household are...

Under age 5: ___ Ages 15-19: ___ Ages 35-44: ___ Ages 55-64: ___
 Ages 5-9: ___ Ages 20-24: ___ Ages 45-49: ___ Ages 65-74: ___
 Ages 10-14: ___ Ages 25-34: ___ Ages 50-54: ___ Ages 75+: ___

31. What is your age? _____ years

32. What is your gender? ___(1) Male ___(2) Female

33. How many years have you lived in the City of Plano? _____ years

34. Please CHECK ALL of the following that describe your race/ethnicity.

___(1) African American/Black ___(4) Hispanic/Latino ___(7) Other: _____
 ___(2) Asian/Indian ___(5) Native American
 ___(3) White/Caucasian ___(6) Asian/Pacific Islander

35. What is your total annual household income?

___(1) Under \$22,000 ___(3) \$45,000-\$74,999 ___(5) \$100,000-\$149,999
 ___(2) \$22,000-\$44,999 ___(4) \$75,999-\$99,999 ___(6) \$150,000 or more

This concludes the survey. Thank you for your time!
 Return your completed survey in the enclosed return-reply envelope addressed to:
 ETC Institute, 725 W. Frontier Circle, Olathe, KS 66061

Your responses will remain completely confidential.
 The address information on the right will ONLY be used to help identify areas with special interests.
 Thank you.



Research Proposal For A
Market Sustainability Study

Prepared For:
City of Prairie Village
Johnson County Library
YMCA of Greater Kansas City

Prepared By:
Wiese Research Group
August 26, 2019

Primary Contact: Cathy Morrissey, President • cmorrissey@wraresearch.com
1121 N. 102nd Court, Suite 100 • Omaha NE 68114 • 402-391-7734 (Ext. 210)



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August 26, 2019

Mr. Mark Hulet, SVP Operations & Risk
YMCA of Greater Kansas City
3100 Broadway, Suite 1020
Kansas City, MO 64111

Dear Mark,

This letter serves to convey our interest in assisting The City of Prairie Village, the Johnson County Library, and the YMCA of Greater Kansas City in completing the research project outlined in the RFP for a Market Sustainability Study, dated August 9, 2019.

We feel that our experience and capabilities align extremely well with the project under consideration, and we understand the value of “listening to the public” on matters that impact their community. During our company’s 35+ year history, we have completed numerous projects for the YMCA as well as other organizations (public and private) to assess community needs and gather input of this nature.

The key staff at WRG who would be working on this assignment would include myself, John Latta, Brigitte Chizek, and Tom Wiese, all of whom have been working together as a team for over 25 years. More background concerning the qualifications of our team has been included in this document, but suffice it to say that collectively we bring a wealth of market research experience to the table for any project we undertake.

All of us at WRG appreciate this opportunity to be considered, and will look forward to working with you should we be selected to partner with you on this important research study.

Best Regards,

Cathy Morrissey
President
Wiese Research Group, LLC.

BACKGROUND

The City of Prairie Village, the Board of Directors for the Johnson County Library, and the YMCA of Greater Kansas City are interested in conducting a *market sustainability study to determine the feasibility of constructing a new Prairie Village Community Center/YMCA and new Johnson County Library branch in the community of Prairie Village*. The research being proposed would take the form of telephone surveys with a cross section of adults who reside in the potential service area for both the community center and library branch being considered.

Wiese Research Group (WRG) has conducted numerous studies similar to the one envisioned here, but each situation is a bit different and unique. It should be noted that this research proposal has been based on the objectives outlined in the RFP and brief communications with the client to this point. Oftentimes as research projects move through the initial design and/or development stages, detailed needs assessment discussions regarding the specific objectives can result in changes to the recommended approach. Therefore, this proposal should be considered a “working document” that can be revised or modified, if necessary, to best meet the client’s informational needs.

RESEARCH OBJECTIVES

The specific research objectives and possible topics to be addressed in this study for all three stakeholders (the Community Center, the City, and the Library) have been outlined in the RFP and therefore are not enumerated herein. WRG has reviewed these informational areas and believe they will provide an excellent “starting point” for further discussions and survey development. Based on our previous experience with similar assignments, and after a more thorough needs assessment with key stakeholders to discuss the informational objectives in greater detail, the desired research goals will be more specifically determined and prioritized. Final objectives would then be refined during the questionnaire development process, described later in this document.

SAMPLING DESIGN

With any research project, it is critically important to accurately define and understand the population or populations to be studied. The population is the group from which all sampling takes place and to which the results must eventually be projected. Since this is a general community study, essentially all adults (18+) residing within the appropriate service area for the proposed community center and library branch would be included in the “population of interest.”

Geographically speaking, the market area to be surveyed for this project has been initially defined by the following Kansas and Missouri zip codes: 66202, 66204, 66205, 66206, 66207, 66208, 66212, 64112, 64113, and 64114.

WRG would obtain the necessary sample lists within the designated area to be surveyed. These lists would include both landline phones as well as wireless phone numbers. Including the latter in the contact regimen is critical in order to obtain a representative final sample, particularly given the preponderance of cell-only households (and lack of landlines among younger residents in particular).

WRG will establish approximate quotas by geography and age/gender groups and will work toward achieving a final sample initially screened that reflects actual household characteristics. If the final obtained sample varies appreciably from the actual population characteristics due to difficulties in filling some particularly hard to reach demographics, statistical weighting could be utilized to adjust the final sample to be representative of the target market.

Total sample size options ranging from n=300 to n=500 respondents are being provided for consideration. While each of these proposed sample options would likely provide sufficient stability for analyzing results *in total*, WRG would recommend one of the larger options if greater reliability is desired, particularly when analyzing findings across various respondent groups (i.e., by level of interest in the proposed facilities, by demographics, by household characteristics, etc.).

ACCURACY OF RESULTS

The accuracy of research results when random sampling is utilized is a function of both the sample size as well as the obtained results for any given question. The chart which follows depicts the error ranges that would be achieved for each of the proposed total sample sizes, as well as for selected subsamples, given various obtained result percentages.

Expected Standard Error Ranges For Selected Sample Sizes*									
Sample Size	For obtained results of...								
	10%	20%	30%	40%	50%	60%	70%	80%	90%
n=500	±2.6	±3.5	±4.0	±4.3	±4.4	±4.3	±4.0	±3.5	±2.6
n=400	±2.9	±3.9	±4.5	±4.8	±4.9	±4.8	±4.5	±3.9	±2.9
n=300	±3.4	±4.5	±5.2	±5.5	±5.7	±5.5	±5.2	±4.5	±3.4
n=200	±4.2	±5.5	±6.4	±6.8	±6.9	±6.8	±6.4	±5.5	±4.2
n=100	±5.9	±7.8	±9.0	±9.6	±9.8	±9.6	±9.0	±7.8	±5.9
n=50	±8.3	±11.1	±12.7	±13.6	±13.9	±13.6	±12.7	±11.1	±8.3

**Ranges expressed as percentage points at the 95% confidence level.*

It can be seen from the preceding chart that the expected error ranges are not that different between the total sample options of n=500 and n=400 or between n=400 and n=300. However, when results are analyzed by various sub-groups or market segments (i.e., age group, gender, those with a higher propensity to use the new community center or library, households with children, etc.), having a larger sample allows for more statistical reliability when considering these smaller subsamples which carry a much greater margin of error.

METHOD OF SAMPLE CONTACT

Given the types of information desired and the need for quantifiable and projectable results, WRG views telephone as the preferred sample contact methodology for this project. Telephone offers a number of advantages over other methods, including control over the sample so as to ensure it is representative of the population being studied, higher response rates and therefore more accurate results, and the ability for interviewers to probe for complete and meaningful replies to any open-ended questions. Other self-selected methodologies, such as mail or online surveys, have an inherent “response bias” which is impossible to measure. More importantly, it stands to

reason that those with greater interest in a new community center or library would be more motivated to complete a mail or online survey on this topic, resulting in utilization projections that are likely to be inflated.

All calling would take place from WRG’s central interviewing facilities during the evening (5pm to 8:30pm) on weekdays and during the day (10am to 4pm) on Saturdays. Up to 5 callback attempts will be made to reach a sampled respondent (excluding refusals and other non-working numbers).

Trained and experienced interviewers from WRG’s staff will collect the data. Each interviewer working on this project will be fully briefed on the proper administration of the questionnaire prior to sample contact, and interviews in progress will be monitored by supervisors so as to ensure accuracy and completeness of the data collected. WRG also digitally records interviews for quality control purposes.

QUESTIONNAIRE DEVELOPMENT

Asking the right questions in an unbiased manner and in such a way that will provide “actionable” results is critical to the success of any research undertaking. To this end, WRG uses a collaborative approach to survey development. While WRG has developed questionnaires for other similar studies and would draw on this experience when designing a survey for this project, the process would still begin with thorough needs assessment discussions between the various stakeholders and WRG. This will serve to “fine tune” the specific informational objectives, allowing WRG to create an initial questionnaire draft. This draft would then be mutually reviewed and revised, with subsequent drafts prepared by WRG, until all interested parties are satisfied that the survey instrument developed will meet the informational objectives.

The final, approved survey would be CATI scripted and fully tested prior to study launch. While it is not possible to know the exact length of the questionnaire at this point, WRG has provided budgets assuming a 15-minute survey (on-phone administration time), and this estimated length is based on the objectives described in the RFP and what would typically be required for a study of this nature. After pilot testing, if the actual survey length varies from this estimate, budgets can be adjusted accordingly (up or down) or changes can be made to the questionnaire and/or sample size to stay within the available budget. The final cost and specs would then be agreed upon prior to the start of interviewing.

DATA ANALYSIS AND DELIVERABLES

Upon completion of the interviewing, WRG’s in-house coding department would categorize the responses to any open-ended questions. Rather than using pre-codes on screen for open-ended questions, WRG lets the actual responses dictate the coded categories of replies. We find this provides far more accurate results than when pre-codes are used, especially when verbatim replies have been fully probed for clarity and specifics by trained interviewers.

All data would then be cleaned and processed by WRG, with Tabular Results generated showing frequency and percentage findings for the total sample, as well as across relevant demographic segments. These crosstabs would be provided as a reference document, along with the raw data

file in the client’s preferred format (typically SPSS or Excel). Additional banners would also be provided upon request, at no added cost.

From analysis of the Tabular Results and accompanying statistics, WRG would prepare a comprehensive written report that will include a graphic presentation of the results, detailed interpretive discussion of what WRG feels are the key findings as they relate to planning or decision making. WRG would also be available to present the results of this study by phone or in person at a meeting designed for this purpose. As requested, an example report from a similar previous project completed by WRG has been provided under separate cover.

TIME FRAME

From the time notice to proceed is given, we would anticipate that at least two weeks would be needed for the questionnaire development, review, and revision process. Once the final questionnaire has been approved, CATI programming and pilot-testing takes a few days, while approximately two to three weeks would be needed for data collection, depending on the sample size selected. Another few days should be allowed for coding the open-ended responses and data processing the results.

Therefore, from the time interviewing begins, Tabular Results would be available in about three to four weeks, with another two weeks needed to prepare the Summary Report. This turnaround time would also depend to some degree on WRG’s field availability when the project is awarded (if delayed). However, assuming client availability for up-front discussions and timely survey approval, WRG does not anticipate having any problems meeting the time line as outlined in the RFP (final results by November 15, 2019).

BUDGET ESTIMATES

Given the scope of work and assumptions outlined in this proposal, WRG would complete this project for the following estimated costs (+/-10%):

Budget Estimates for Proposed Sample Size Options			
Sample Size Option:	n=300	n=400	n=500
Interview Length:	15-Minute	15-Minute	15-Minute
Estimated Project Cost:	\$21,900	\$26,600	\$31,000

The preceding budgets include all costs associated with the research project as outlined herein, with the exception of any travel expenses incurred by a WRG Associate for client requested in-person meetings (mileage to/from Omaha). However, it should be noted that the above costs are still only estimates based on an assumed survey length. Once the final survey has been pilot-tested to determine the actual interview length, firm cost quotes can be provided.

WRG’s normal procedure is to bill for one-half of the total project amount at the time questionnaire development begins, with the balance due once the scope of work agreed upon has been completed.

ADD-ON OPTION FOR CITY OF PRAIRIE VILLAGE OBJECTIVES

Given that the City of Prairie Village is a subset of the total area to be surveyed for this study, WRG is proposing an optional “add-on” approach for achieving greater stability for research results that pertain only to those who reside within the city limits of Prairie Village. That is, since only about one-fourth of all households in the 10-zip code area fall into Prairie Village proper, study objectives that might be relevant for only residents of the City (e.g., support of certain funding options) would be based on a much smaller subsample size. For example, if the total number of surveys completed is $n=400$, only about 100 of those respondents would be expected to live within the city limits. As mentioned in the “Accuracy of Results” section of the proposal, these city-specific results would therefore be subject to a much greater margin of error.

If greater stability is desired for any of the issues explored in this study that are based on the City of Prairie Village residents only, WRG could program the survey (or just the relevant portions of the survey) for web administration and City residents could then complete the survey online. This would be very cost efficient and, in fact, additional city-specific objectives beyond those included in the market sustainability study could also be included, if desired. Ideally, the City would be able to invite residents to participate by including a link to the web-based survey in a newsletter or mailing that is already going to all residents.

Census data shows there are approximately 20K households within the Prairie Village city limits. If all of these households were given the opportunity to complete the online survey, we would expect that perhaps 1% to 2% (if not more) would actually do so, yielding anywhere from 200 to 400 additional respondents.

Excluding the cost of the mailing (which if the link can simply be added to an existing mail piece the City would be sending anyway, no additional outlay would be required), this optional approach to achieve a larger sample of Prairie Village residents would add approximately \$3,000 to \$5,000 to the study cost, depending on the survey length and additional deliverables needed from WRG. We would be happy to discuss this option in more detail if the client so desires.

WRG KEY STAFF

The following provides the names and backgrounds of key WRG personnel who will be responsible for completing certain elements of the proposed project:

Cathy Morrissey, President, would be the Project Manager for this study and have overall responsibility for this assignment as well as serve as the key contact. She has been with WRG for 30+ years, consulting with clients and performing functions related to study design, project management, survey development, focus group moderation, and data analysis/reporting. Cathy's expertise includes designing studies and analyzing research results for clients across a number of different industries and for a wide variety of research objectives. She graduated from the University of Northern Iowa with a Bachelor's degree in Business Management, and holds a Master of Business Administration (MBA) degree from Drake University.

John Latta, Project Manager/Research Support, has been with WRG for over 25 years and assists with a wide variety of tasks, including building and compiling custom business-to-business prospect databases for clients; acquiring and managing all B2B and client research samples and databases, project management, and analyst support with preparing deliverables for ongoing and ad hoc research projects. John has a BS in Economics from Nebraska Wesleyan University and an MBA from Southern Methodist University.

Brigitte Chizek, Data Processing Manager, has been with WRG for over 20 years and coordinates all data processing functions, including CATI scripting and testing, online survey programming and testing, data tabulation, and statistical analyses. Brigitte has a Bachelor of Arts degree in Psychology from the University of Nebraska-Omaha.

Tom Wiese, Founder and Consultant, has 40+ years of experience in marketing research and has personally been involved in the completion of over 3,000 studies. He is available to consult on all projects WRG completes. Tom graduated from the University of Nebraska-Lincoln with a Bachelor's in Business Administration and completed partial work on a Masters in Marketing from UNL.

It is important to note that should WRG be selected, it would be these highly-experienced research professionals who will be handling various components of the project. That is, all WRG personnel assigned to this project have worked together as a team for many years and bring excellent perspectives to any research undertaking.

WRG EXPERIENCE & PROFESSIONAL QUALIFICATIONS

Wiese Research Group (WRG) is a wholly-owned subsidiary of The MSR Group LLC. We are a full-service market research firm in existence for over 35 years, located in Omaha, Nebraska. WRG has completed literally thousands of research studies listening to both consumer and business respondents across a wide variety of industries and for a diversity of informational objectives.

Our mission is to conduct high quality primary research, meeting or exceeding the informational needs of our clients as well as their expectations in terms of responsiveness and overall satisfaction with not only the project but the relationship.

Our staff of full-time associates includes experienced project managers, production and facility managers, research analysts, data specialists, programmers, and support staff. Key staff members have anywhere from 20 to 40+ years of market research experience.

- WRG employs its own staff of full-time and part-time telephone interviewers. We have a state-of-the-art call center with CATI interviewing stations that are equipped with digital recording capabilities for quality control. In addition to telephone, we are fully-equipped to conduct online surveys, using either client-supplied emails or panels provided by one of our list partners.
- One of WRG's strengths is the ability to translate research objectives into question items that yield the most "actionable" information possible. However, the data collected is only as good as the interviewers conducting the survey. Interviewers on staff are extensively trained and continuously monitored and given feedback. We set and maintain very high standards to ensure the accuracy and completeness of the information we provide to clients.
- WRG is able to provide complete research services (in-house) or any elements of a given study to coincide with the internal capabilities of the client. For example, WRG can handle just data collection and tabulation if desired using a client provided survey or can complete a project from start to finish including needs assessment, questionnaire development, sampling design, data collection, coding, tabulation, statistical analyses, full interpretive reporting, and in-person presentation.
- WRG enjoys deeply entrenched client relationships with growth coming largely from strong client retention and referrals. Many of our client relationships have existed for years or even decades, underscoring WRG's high level of performance and strong client satisfaction.

WRG has completed several studies for various YMCA or other wellness center organizations as well as for public institutions (school districts, municipalities, etc.) where the objectives included measuring community needs and opinions, utilization levels, price sensitivity, etc., with research results used to assist in determining the feasibility of new facility or to gauge support for a proposed bond to fund a new building or improvements.

The total number of research projects conducted (in our history) that we would consider to be "similar" to this one would be too numerous to count. However, three of these previous projects have been described in the following section of this proposal. It is important to note that the WRG staff members responsible for executing this project also performed the work for these studies.

WRG CLIENT REFERENCES

WRG is providing the following client references and brief project descriptions. Studies completed for these clients are similar in scope to that being proposed here, and the WRG staff highlighted earlier also worked on these projects.

Amy Blaser, Vice President – Physician Relations & Business Development

Columbus Community Hospital

4600 38th Street, Columbus, NE 68601

Phone: 402-562-3371

Email: aebblaser@columbushosp.org

- CCH and Columbus Family YMCA were partnering to provide both medical rehab services and wellness/fitness programs under one roof in a newly constructed facility, with a planned full-service childcare facility adjacent to or next door. WRG conducted a general community study (phone survey) and provided the full scope of research services, from study design to presentation of results to hospital and YMCA administrators/staff. (Facility opened and has met if not exceeded expectations)

Greg Youell, Executive Director

Metropolitan Area Planning Agency (MAPA)

2222 Cuming Street Omaha, NE 68102

Phone: 402-444-6866

Email: gyouell@mapacog.org

- Wiese Research completed a telephone research study for the Metropolitan Area Planning Agency (MAPA) pertaining to the Heartland 2050 Regional Plan. The objectives of the study included gaining citizen input on priorities and reaction to a variety of initiatives. For this study, WRG was involved in designing the survey instrument in collaboration with MAPA staff and a consultant, obtaining appropriate sample, completing the telephone interviewing, tabulating findings, and preparing a written summary report.

Shaun Scott, Superintendent

Adams Central Public Schools

P.O. Box 1088, Onawa, NE 68902

Phone: 402-463-3285

Email: shawn.scott@adams-central.org

- Phone survey with registered voters in the Adams Central Public Schools district to gain insight into what questions/concerns they had about the single-site elementary school decision, measure support/opposition for two proposed sites, and explore factors that would impact acceptance of the proposed bond issue referendum. (Results identified best site for gaining approval and referendum passed).



YMCA OF GREATER KANSAS CITY SMITHVILLE FEASIBILITY STUDY

Summary Report
July 2018



INTRODUCTION TO THE SUMMARY REPORT

INTRODUCTION

In preparing this summary of research findings, the intent has been to present the information deemed most important and to discuss those findings in a way that will be meaningful and understandable to the reader. Since summaries by their very nature are not comprehensive, it cannot be expected that all results of potential value will be thoroughly discussed or presented in this report. Therefore, the reader should consider not only this document, but also the comprehensive Tabular Results, provided under separate cover, for a more thorough review of the findings.

For this report, Wiese Research Associates, Inc. (WRA) has relied on its professional research experience in selecting data for presentation and, where deemed appropriate, has forwarded some possible interpretations with regard to how these results might influence planning or decision making. It is important to emphasize, however, that these interpretations are certainly not meant to be the only possible conclusions that can be drawn from the information obtained in this study. Further, no final recommendations or suggested courses of action have been included. Rather, YMCA of Greater Kansas City management must consider these results, along with information and knowledge possessed outside the scope of this study, when making final determinations and decisions based on the research.

The format of this report consists of a bullet-point discussion of selected findings alongside charts and graphs providing a “visual” presentation of the results, followed by an Executive Summary of key takeaways. This is preceded by a brief description of the study methodology employed for this research.

STUDY METHODOLOGY



BACKGROUND & STUDY OBJECTIVES

The YMCA of Greater Kansas City is considering opening a new YMCA facility that would serve Smithville and surrounding areas. To assist in determining the feasibility and market demand for such a facility, a research study was conducted to provide an assessment of the community's support for and likely utilization of a new YMCA located in Smithville. More specifically, the following informational objectives were accomplished in this study:

- *Obtained market penetration levels for health club and fitness facilities currently utilized by residents in this market, as well as the types of memberships possessed (individual, two adults, family).*
- *Estimated the likelihood to utilize a YMCA facility located in Smithville, assuming a reasonable cost, and then at specified price points (for various types of memberships). These results were then used to estimate potential membership units.*
- *Assessed the relative importance consumers place on specific features and amenities that are currently under consideration for the new YMCA location.*
- *Measured potential demand for (likelihood to use) specific exercise/activity options the YMCA facility could offer.*
- *Among those employed outside the home, the incidence of workplace-sponsored wellness programs was determined, along with employees' willingness to join the new YMCA facility if their employer paid for 10% of the membership fee.*
- *Gauged the likelihood to consider using medical-based programs if provided at the new YMCA facility, as well as the impact recommendations from a physician could have on program utilization. Three price points for a 12-week program were also evaluated.*

SAMPLING DESIGN

With any research study, it is critically important to accurately define and understand the population to be studied. The population is the group from which all sampling takes place and to which the results must eventually be projected. Since this was a "general community" study, essentially all adults residing within the new facility's potential trade area (defined by zip codes) was included in the "population of interest."



STUDY METHODOLOGY

The total sample for this study consisted of n=301 respondents. Samples were drawn from both cell/wireless and age-targeted listed household (landline) phone numbers for the area. To ensure that a representative cross-section of the community was interviewed, geographic and age/gender quotas were established based on population statistics for the survey area and these quotas were met to the extent possible given the available sample. The chart below shows the geographic distribution of the obtained sample by zip code (partial zip for Kearney), which closely matched the actual household proportions.

Zip Code	Town	Household Count	% Of Total Households	Obtained Sample	% Of Obtained Sample
64048	Holt, MO	1560	4.0%	12	4.0%
64060	Kearney, MO*	4061	10.5%	35	11.6%
64089	Smithville, MO	4701	12.1%	46	15.3%
64154	Kansas City, MO	4797	12.3%	36	12.0%
64155	Kansas City, MO	8977	23.1%	69	22.9%
64156	Kansas City, MO	2015	5.2%	15	5.0%
64157	Kansas City, MO	6400	16.5%	40	13.3%
64164	Kansas City, MO	95	0.2%	0	0.0%
64165	Kansas City, MO	85	0.2%	1	0.3%
64166	Kansas City, MO	108	0.3%	1	0.3%
64167	Kansas City, MO	118	0.3%	1	0.3%
64439	Dearborn, MO	683	1.8%	8	2.7%
64444	Edgerton, MO	531	1.4%	6	2.0%
64454	Gower, MO	983	2.5%	5	1.7%
64465	Lathrop, MO	1755	4.5%	11	3.7%
64477	Plattsburg, MO	1378	3.5%	8	2.7%
64492	Trimble, MO	608	1.6%	7	2.3%
TOTAL		38855	100%	301	100%

**Includes only households West of I-35 and within 2 miles East of I-35 (estimated to be 77% of total zip).*

ACCURACY OF RESULTS

The accuracy of research results when random sampling is utilized is a function of both the sample size as well as the obtained results for any given question. The chart below depicts the error ranges achieved for the total sample size, as well as for selected subsamples, given various obtained result percentages.

Expected Standard Error Ranges For Selected Sample Sizes*									
Sample Size	For Obtained Results Of ...								
	10%	20%	30%	40%	50%	60%	70%	80%	90%
n=301	±3.4	±4.5	±5.2	±5.5	±5.7	±5.5	±5.2	±4.5	±3.4
n=200	±4.2	±5.5	±6.4	±6.8	±6.9	±6.8	±6.4	±5.5	±4.2
n=150	±4.8	±6.4	±7.3	±7.8	±8.0	±7.8	±7.3	±6.4	±4.8
n=100	±5.9	±7.8	±9.0	±9.6	±9.8	±9.6	±9.0	±7.8	±5.9
n=50	±8.3	±11.1	±12.7	±13.6	±13.9	±13.6	±12.7	±11.1	±8.3

**Ranges expressed as percentage points at the 95% confidence level.*

It can be seen from the preceding chart that the *maximum* standard error range for n=301 respondents is ±5.7 percentage points (50% result) at the 95% confidence level, with error ranges diminishing on a continuum as the obtained result percentages for that sample size move closer to one end (e.g., 10%) or the other (e.g., 90%). Of course, when findings for various sub-samples or smaller market segments are being considered, results are subject to a greater margin of error. Throughout the report, results that are shown for sub-samples with fewer than 30 respondents (n<30) are noted with an asterisk, and the reader is cautioned to not over-interpret these findings due to the rather large margin of error (suggest possible trends only).

METHOD OF SAMPLE CONTACT

Telephone was the sample contact methodology for this study. Calling took place from WRA's central interviewing facilities, using its own staff of trained and experienced interviewers. Each interviewer working on this project was fully briefed on the proper administration of the questionnaire prior to sample contact, and interviews in progress were monitored by supervisors and recorded to ensure accuracy.

The questionnaire administered to respondents averaged 14-15 minutes on the phone. A copy of this survey instrument can be found in Appendix A, and all results presented in this document include a question number reference should the reader wish to review the exact wording of a particular item on the survey.

INTERVIEWING DATES

All interviewing for this project was completed between June 14 and July 10, 2018. Research results are in one way much like a financial balance sheet in that they represent the situation only at a given point in time. Consumer awareness, opinions, and behaviors can and often do change over time. Therefore, when referring to these study results, it is important to keep in mind the time period during which data was collected.

SAMPLE CHARACTERISTICS

To provide greater insight into who was "listened to" in this study from a demographic standpoint, the reader is referred to the sample characteristics chart on the following page. This chart shows the profile of respondents when the total responding to that particular question is considered (or projected to the total sample).



SAMPLE CHARACTERISTICS

Category	% of Total Sample Responding (n≈301)
GENDER	
Male	50%
Female	50%
AGE	
18-34	16%
35-44	22%
45-54	22%
55-64	20%
65 Or Older	20%
HOUSEHOLD INCOME	
Under \$25,000	6%
\$25,000 To Under \$50,000	10%
\$50,000 To Under \$75,000	18%
\$75,000 To \$100,000	20%
Over \$100,000	46%
CHILD UNDER 18 IN HOUSEHOLD	
Yes	41%
No	59%

Category	% of Total Sample Responding (n≈301)
OWN/RENT	
Own	91%
Rent	9%
MARITAL STATUS	
Married/Living With Partner	78%
Single	13%
Widowed/Divorced/Separated	9%
WORK IN DOWNTOWN KC	
Yes	29%
No	71%
WORK IN SMITHVILLE	
Yes	9%
No	91%
SMITHVILLE CITY LIMITS	
Live Within City Limits	10%
Outside City Limits	90%

(Reference: SQ2, SQ3, Q1, Q16, Q18-21)

STUDY FINDINGS

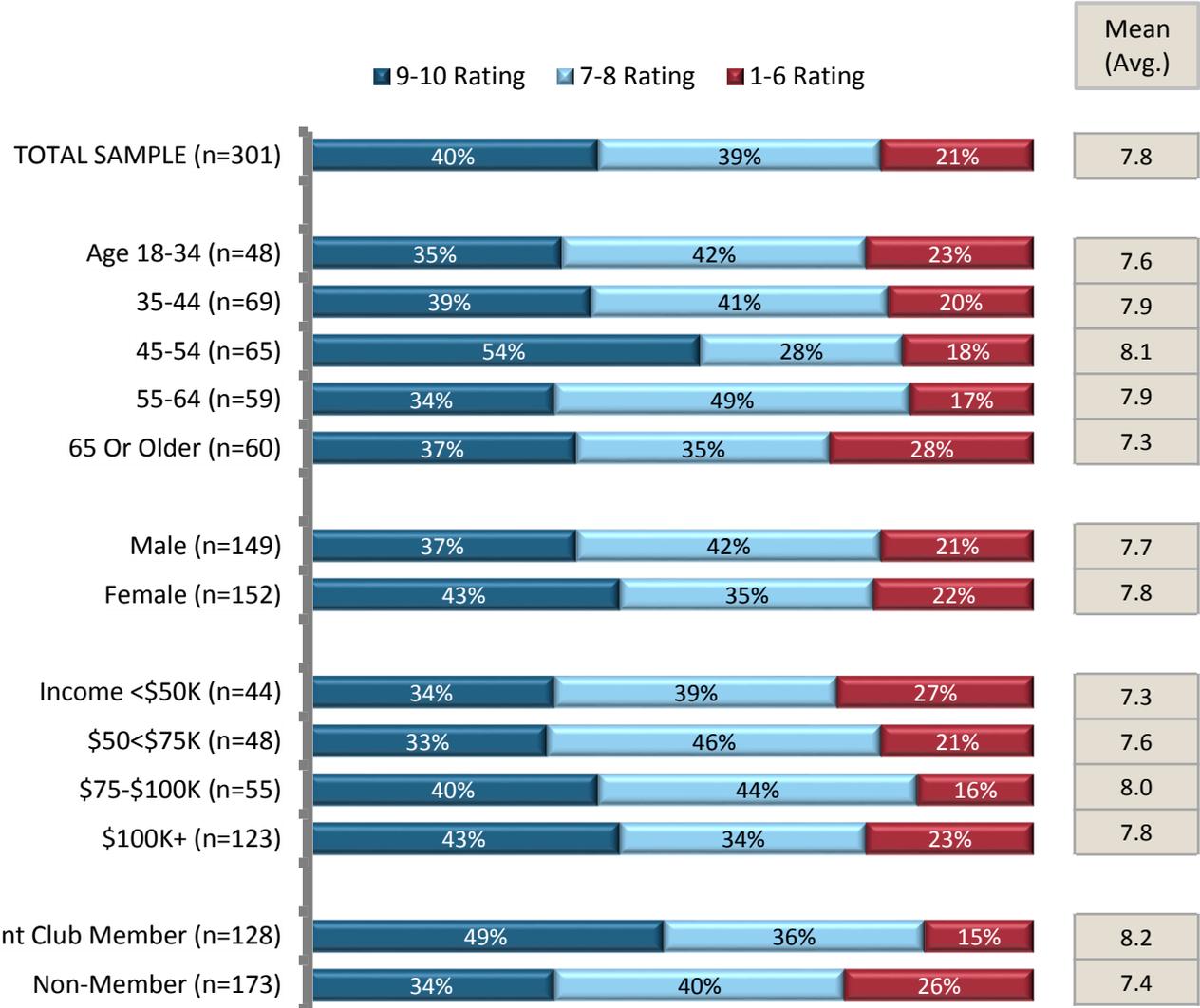


RATING OF ONE'S INTEREST IN BECOMING HEALTHIER THROUGH EXERCISE/FITNESS ACTIVITIES

Overall interest in wanting to become healthier through regular exercise or engaging in fitness-related activities appears to be fairly strong in this area.

Percentage of total sample segment.

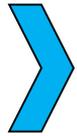
10-POINT SCALE: 1 = NOT AT ALL INTERESTED to 10 = EXTREMELY INTERESTED



(Reference: Q2)

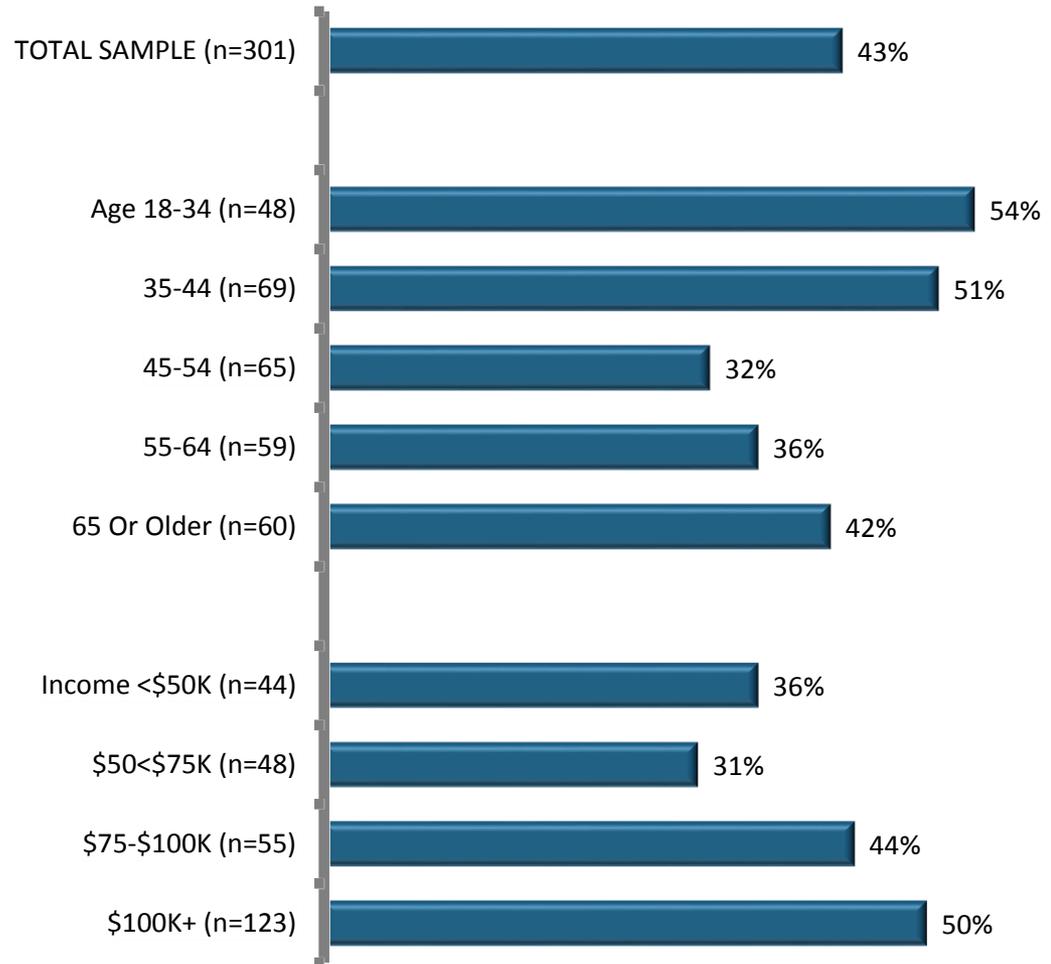


INCIDENCE OF HEALTH CLUB OR FITNESS CENTER MEMBERSHIP BY ANYONE IN HOUSEHOLD



Results here project that about 4 in 10 households (43%) in the area have at least one membership to a health club or fitness center.

Percentage of sample segment indicating membership to health club/fitness center.



(Reference: Q3)

- These results varied by age group, with health club/fitness center memberships being most prevalent among those under age 45; and rather than diminishing as age increases, those age 45-54 are least likely to be members. The fact that this age group was earlier seen to have a greater interest in becoming healthier via fitness and exercise either helps explain this trend or perhaps points to a potential market opportunity.
- Incidence of such memberships also directly correlates with one's household income, as might be expected.
- These trends should be kept in mind when reviewing interest levels for the proposed YMCA in Smithville, as those already tied to a membership elsewhere could impact consideration of the new facility.



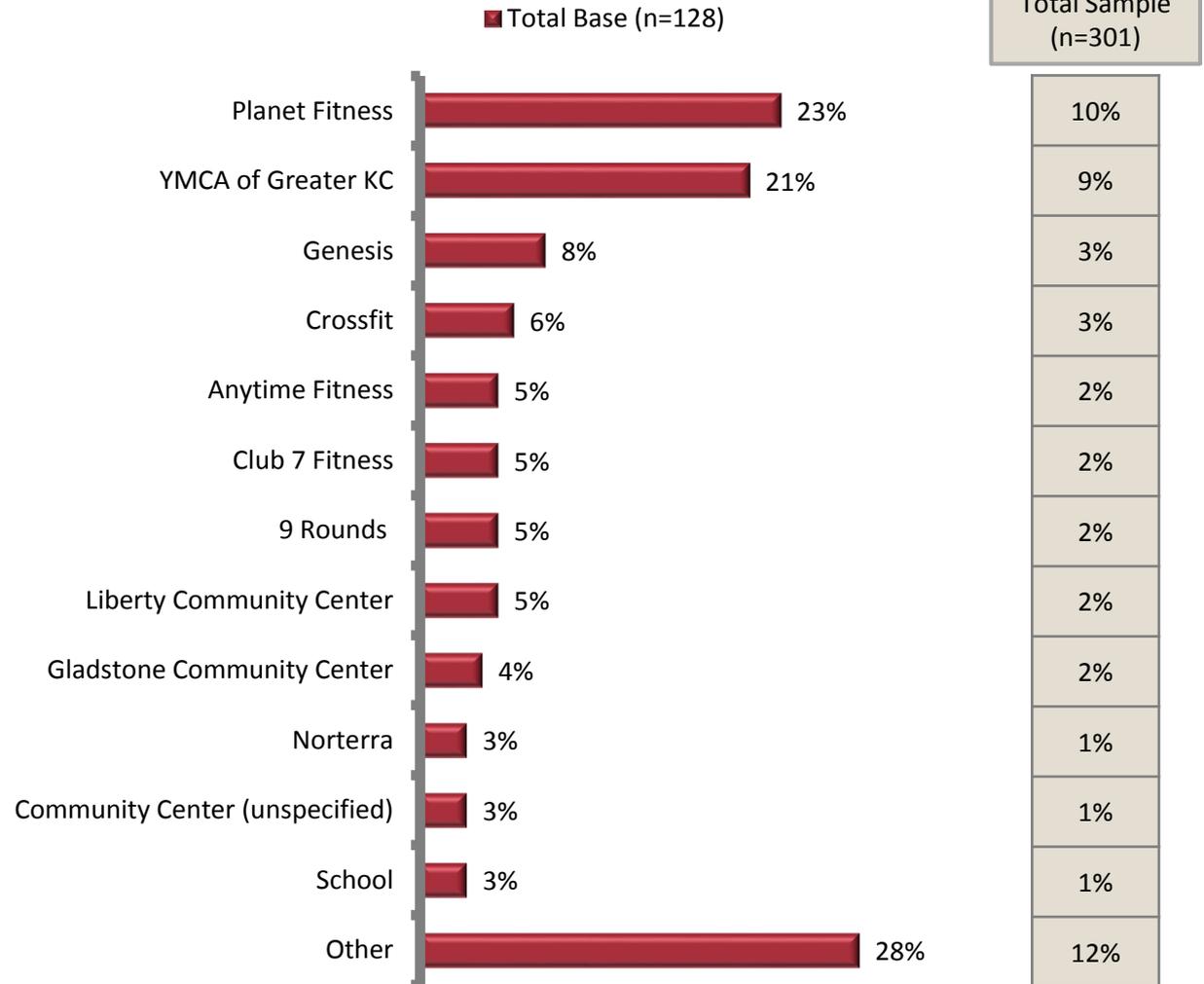
HEALTH CLUB OR FITNESS CENTER MEMBERSHIP SHARES



Planet Fitness appears to be the strongest competitor in the health club membership space, followed closely by existing YMCA facilities.

- Besides Planet Fitness and the YMCA, no other facility appears to have a large share of the health club/fitness center market. Rather, this market is fragmented across several smaller competitors.
- It appears from these results that a new YMCA facility in Smithville could very well “cannibalize” or take away some business from existing YMCA of Greater Kansas City locations. The extent to which these current facilities rely on memberships from this area must be factored into the equation when deciding whether or not to add a Smithville branch.

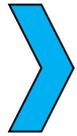
BASE: Those households with a membership mentioning they belong to that facility.



Multiple (3) replies accepted.
(Reference: Q3A)

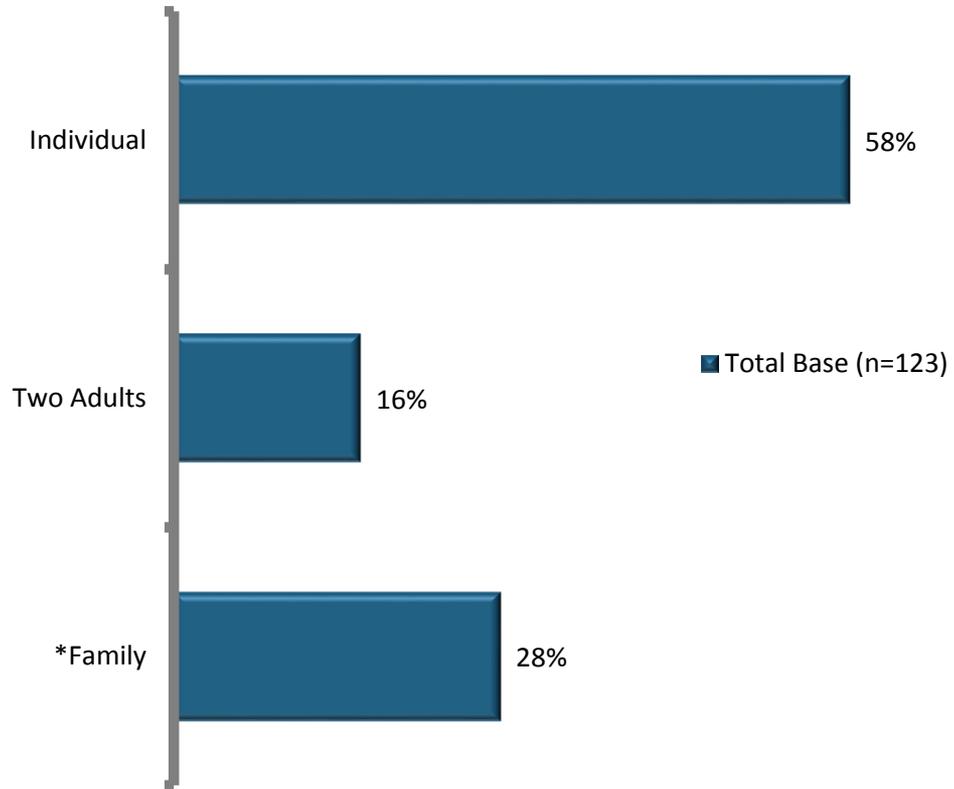


TYPE OF HEALTH CLUB/FITNESS CENTER MEMBERSHIPS POSSESSED BY HOUSEHOLD



Individual memberships are currently the most common in this market, with a majority (58%) of those belonging to a health club/fitness center having this type of membership, followed at quite a distance by family memberships (28%).

Percentage of those households with at least one membership mentioning that type.

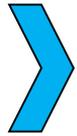


- While not shown here, expected differences were found in these results by age and marital status (i.e., younger and single residents are more likely to have individual memberships while family memberships are more common among middle-aged residents with children).
- These membership types may or may not be indicative of the type of YMCA membership residents could have an interest in should a YMCA facility be placed in Smithville. That is, to some degree they may be driven by the nature of available facilities currently in the area.

*Includes memberships for single parent plus dependent(s).
Multiple (3) replies accepted.
(Reference: Q3B)



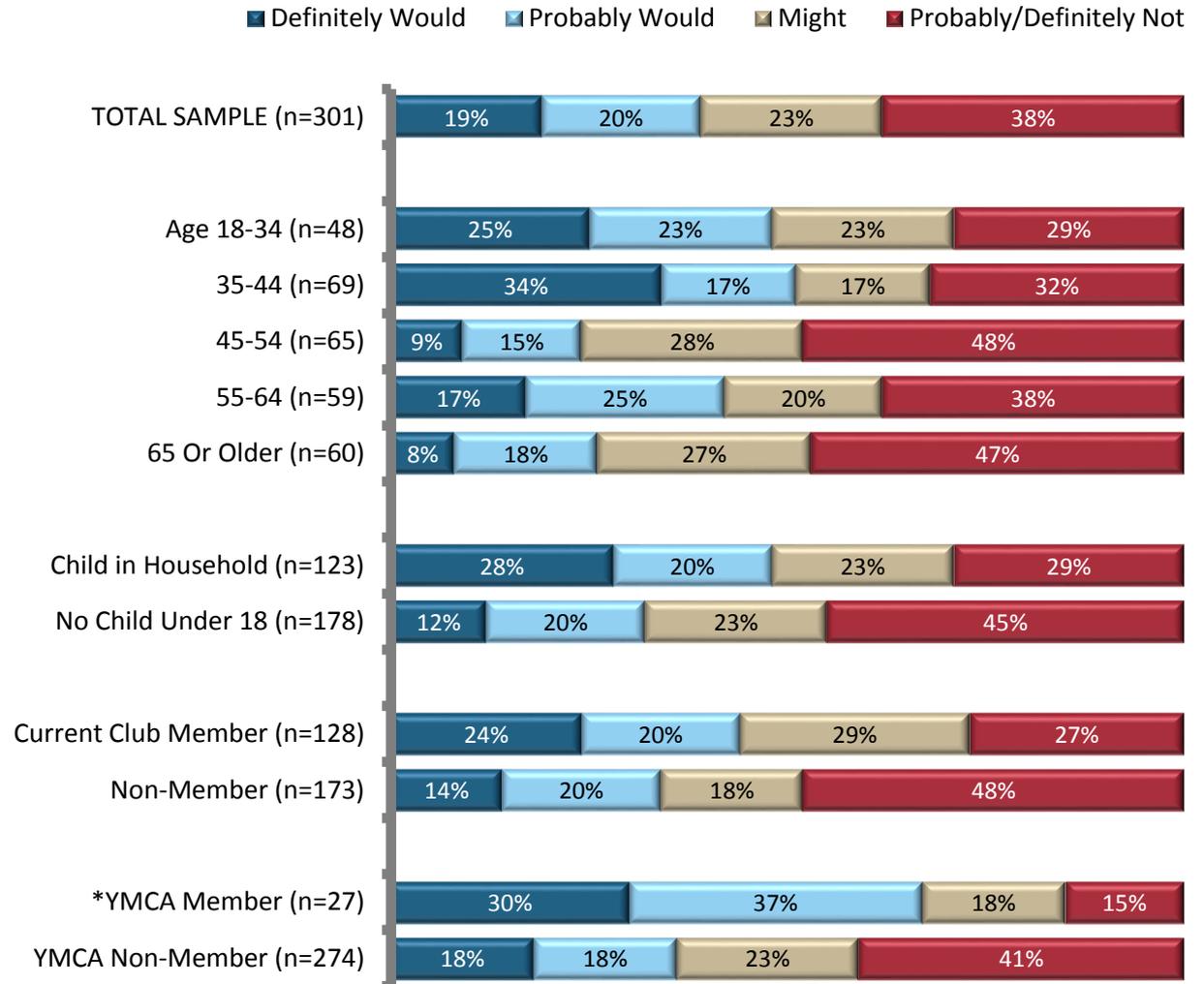
LIKELIHOOD TO USE NEW SMITHVILLE YMCA WITH INDOOR SWIMMING POOL (Assuming Reasonable Cost)



Assuming a reasonable cost and if it includes an indoor pool, about 4 in 10 respondents indicated they would *at least probably* use a new YMCA facility located in Smithville (near highways 169 and 92), including 19% who said they *definitely would*.

- Demographic trends worth noting include a stronger propensity to use this new YMCA facility among those under the age of 45 and when children under 18 are present in the household.
- Interestingly, current health club or fitness center membership does *not* diminish potential interest, with those already belonging to a gym (including the YMCA) actually more likely than non-members to consider using a new YMCA located in Smithville, again assuming a reasonable cost and an indoor pool. Additionally, the level of interest expressed by non-members is encouraging.

Percentage of sample segment.
*Caution: Small sample size (n<30)



(Reference: Q4)



WHY ARE YOU NOT LIKELY TO USE NEW YMCA IN SMITHVILLE?

The primary reason for not being likely to use a new YMCA facility located in Smithville largely had to do with proximity (too far away or inconvenient location).

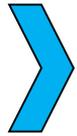
Base: Those who “probably/definitely would not” use new Smithville YMCA.

Volunteered Response	% Base Sample Mentioning (n=117)
Too Far Away/Inconvenient Location	56%
No Interest	13%
Use another gym/home gym/office gym	12%
Prefer different location/other YMCA	9%
No Time	8%
Health Reasons	4%
Other	10%

Multiple (3) replies accepted.
(Reference: Q5A)



WHAT WOULD YOUR LIKELIHOOD TO USE THE NEW YMCA IN SMITHVILLE DEPEND ON?



Turning to what one's potential interest might depend on, not surprisingly price or cost-related factors were cited most often, followed by location or distance concerns.

- Other less frequently mentioned issues or features that could impact consideration of the new facility or "tip the scale" in favor of using this YMCA include hours of operation, the pool, and the specific activities or services to be offered.

Base: Those who "might" use new Smithville YMCA.

Volunteered Response	% Base Sample Mentioning (n=69)
Reasonable Price/Cost	39%
Location/Distance	29%
Hours Of Operation	10%
Pool	10%
Activities Offered/Services	9%
Time	7%
Fitness Equipment	7%
Offered Yoga	3%
How Easy It Is To Get There	3%
Child Care	3%
Need To See It/Try It	3%
My Interest	3%
All Other Replies	16%
Don't Know	2%

Multiple (3) replies accepted.
(Reference: Q5B)

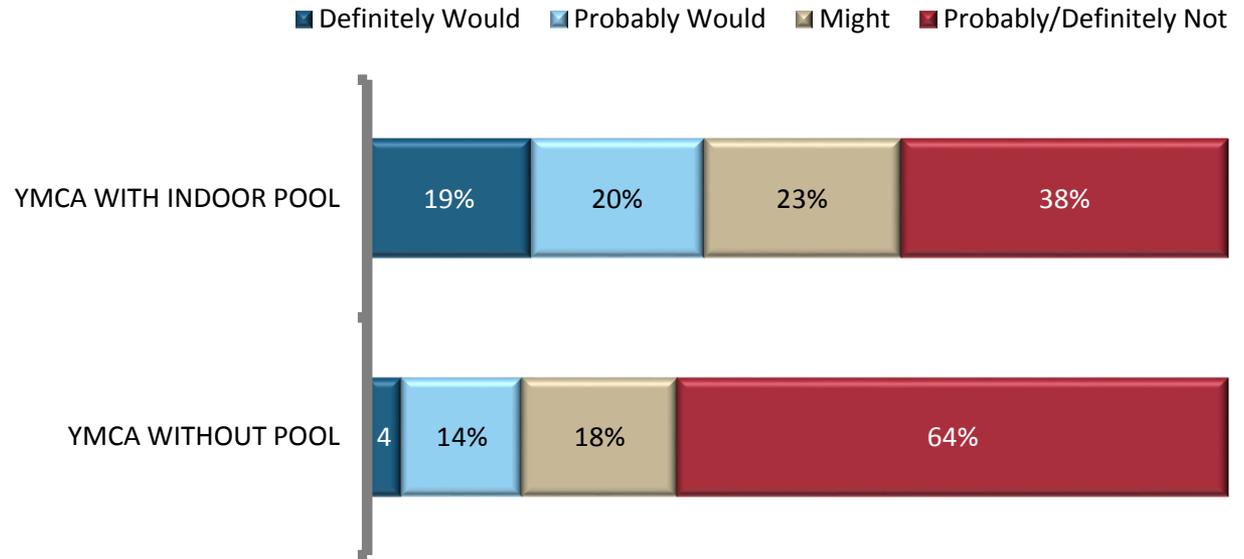


LIKELIHOOD TO USE SMITHVILLE YMCA WITH INDOOR POOL VERSUS WITHOUT INDOOR POOL (Assuming Reasonable Cost)



Propensity to use results are seen here to be far more favorable for a YMCA in Smithville that includes an indoor pool versus one without a pool.

Percentage of total sample/n=301.



- Further review of these results show that fully one-third of those who definitely would (and over half of those who probably would) consider using this new YMCA if it had an indoor pool indicated they probably or definitely would *not* use it without the swimming pool.
- These results make a solid case for featuring an indoor pool should the YMCA decide to open a Smithville branch location.

Likelihood To Use WITHOUT Pool	Likelihood To Use WITH Indoor Pool			
	Definitely Would (n=56)	Probably Would (n=59)	Might (n=69)	Definitely/Probably Not (n=117)
Definitely Would	20%	2%	--	--
Probably Would	25%	27%	9%	4%
Might	23%	14%	43%	3%
Definitely/Probably Not	32%	57%	48%	93%

(Reference: Q4, Q6)

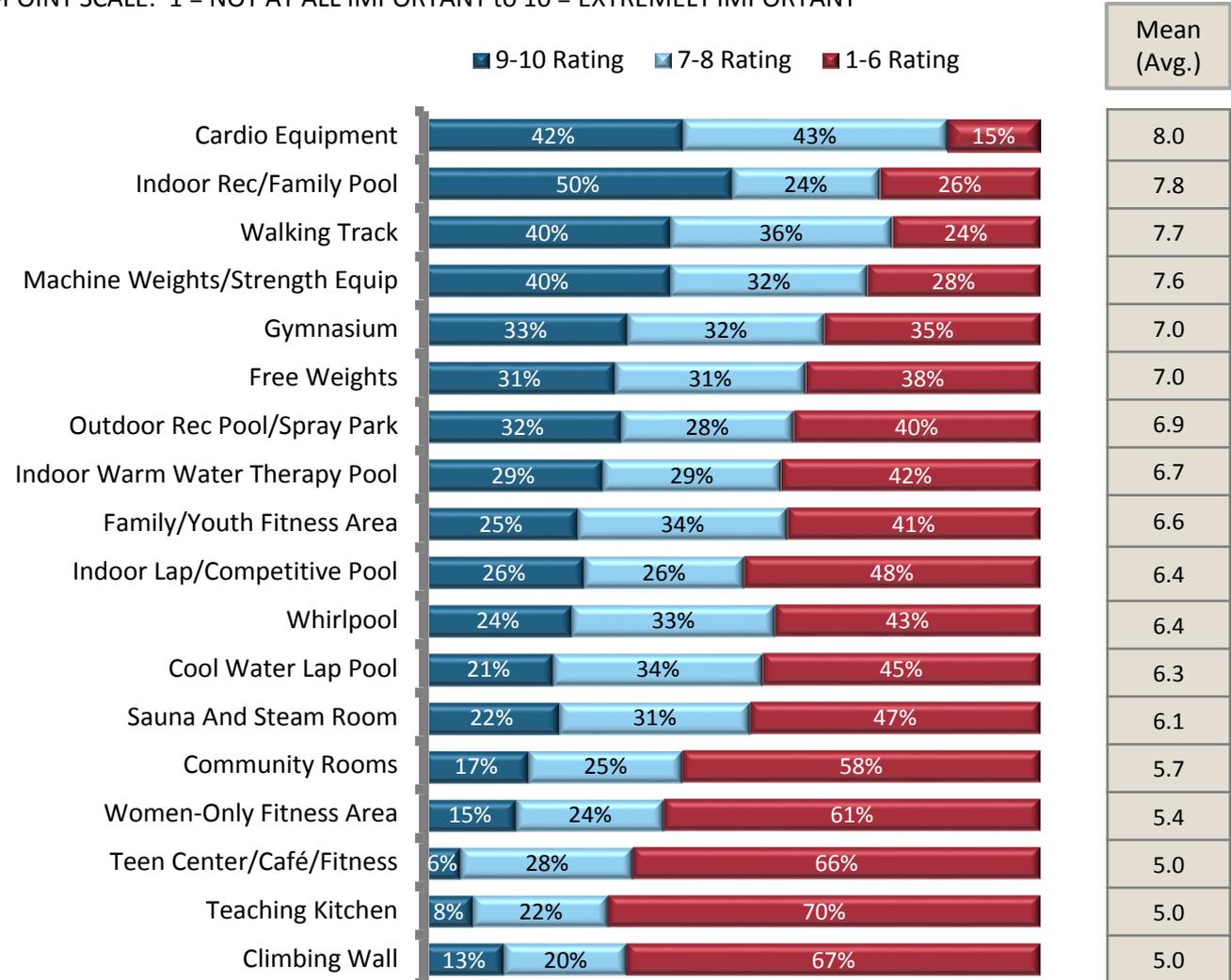


IMPORTANCE OF POSSIBLE FEATURES/AMENITIES TO INCLUDE IN YMCA (Among Potential Interest Segment)

Cardio equipment, an indoor rec/family pool, walking track, and machine weights/strength training equipment “top the list” as the most important features and amenities to include in the new Smithville YMCA.

Percentage of those who at least might use new facility, able to rate (n≈192).

10-POINT SCALE: 1 = NOT AT ALL IMPORTANT to 10 = EXTREMELY IMPORTANT



(Reference: Q7)

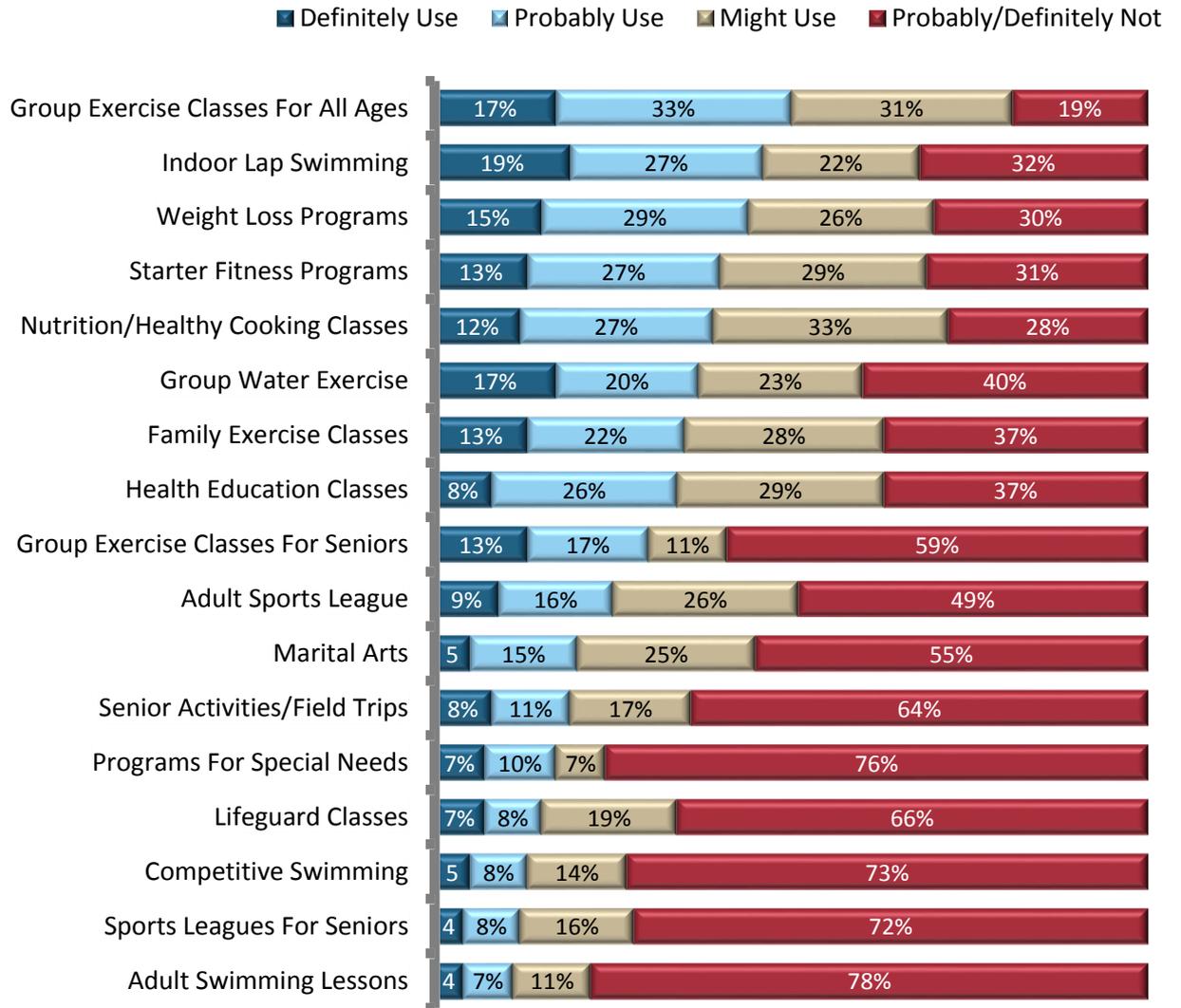


LIKELIHOOD TO USE SELECTED PROGRAMS/SERVICES IN NEXT FEW YEARS (Among Potential Interest Segment)

Group exercise classes for all ages is seen to be of possible interest to the greatest number of potential users, followed closely by indoor lap swimming and weight loss programs. Starter fitness, nutrition/healthy cooking classes, group water exercise, family exercise, and health education classes also have fairly widespread appeal (over one-third would at least probably use).

- At the other end of the continuum, and as might be expected, potential interest appears to be far more narrow for adult swimming lessons, sports leagues for seniors, competitive swimming, lifeguard classes, programs for individuals with special needs, and senior activities/field trips. That is not to say the demand for these services is non-existent, but rather interest in these particular programs will likely be more limited, if offered.

Percentage of those who at least might use new facility (n=192).



(Reference: Q8)



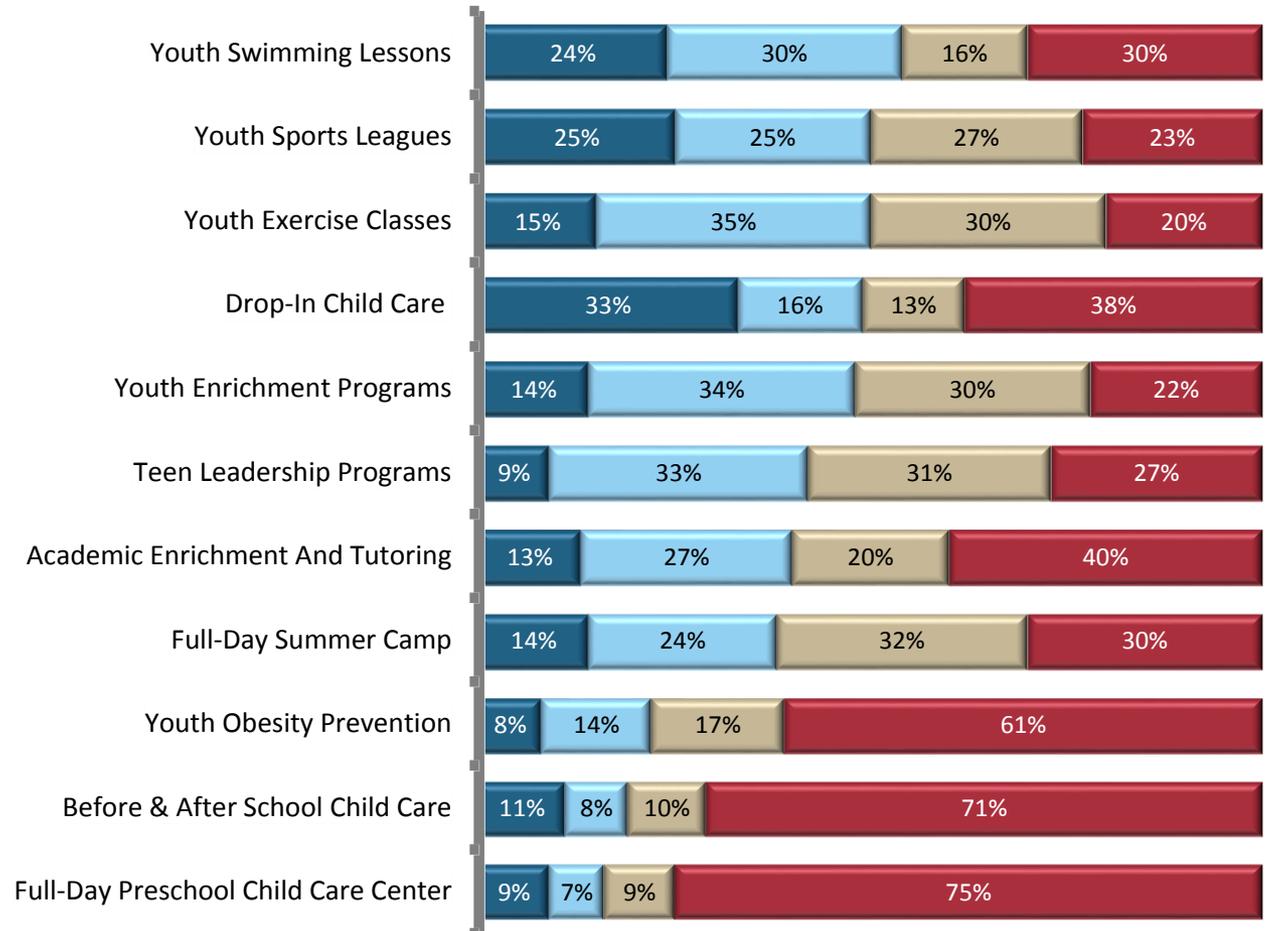
LIKELIHOOD TO USE SELECTED *YOUTH* PROGRAMS/SERVICES (Among Potential Interest Segment With Children Under 18)

Percentage of those who at least might use new facility with children under 18 in household (n=88).



Several of the youth programs and services evaluated, including drop-in child care (while parents work out) have fairly broad appeal among the potential interest segment with children under 18 in the household.

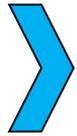
■ Definitely Use ■ Probably Use ■ Might Use ■ Probably/Definitely Not



(Reference: Q8)



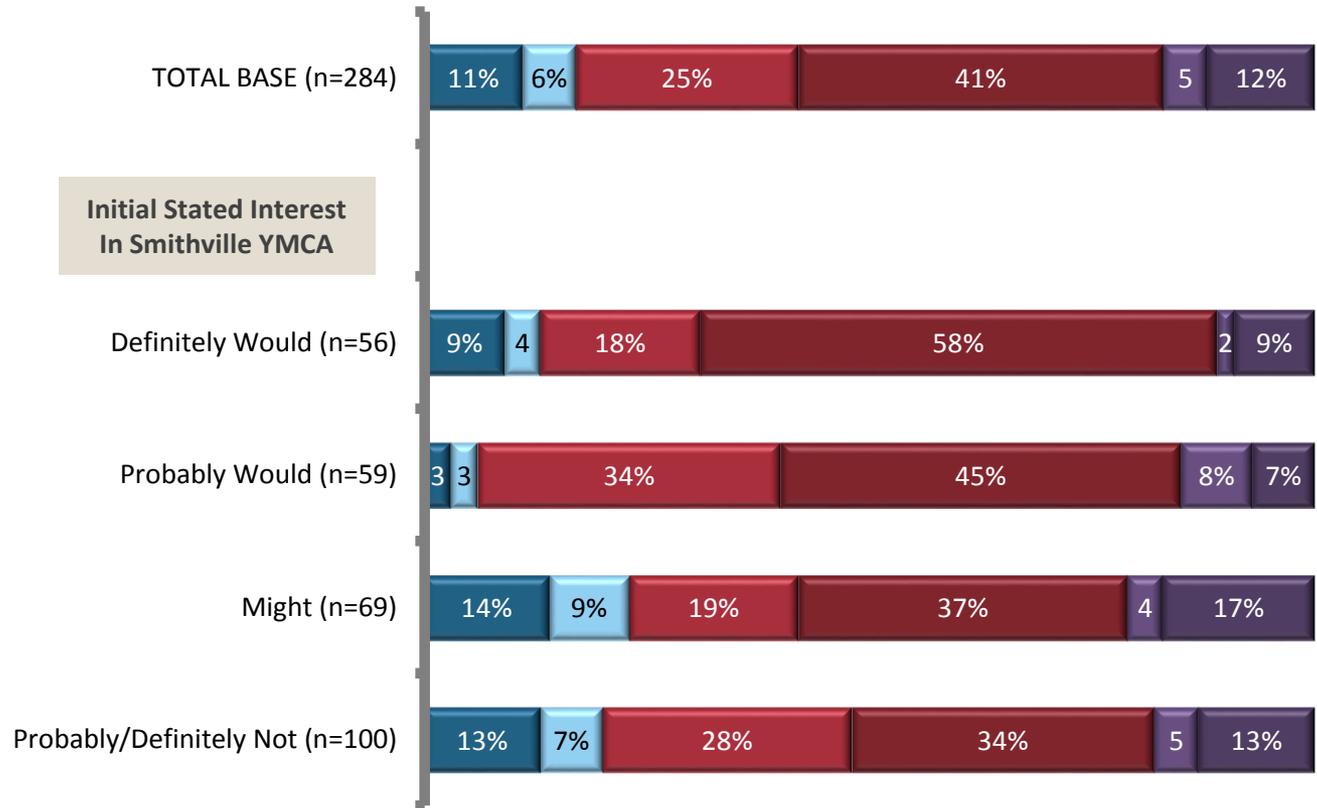
TYPE OF YMCA MEMBERSHIP THAT BEST FITS HOUSEHOLD SITUATION ASSUMING POTENTIAL INTEREST AND REASONABLE COST



It is evident from these results that the YMCA appeals largely to those households most interested in a family membership (i.e., two adults with children).

Base: Those able to classify household into potential membership type.

- One Adult
- Two Adults
- One Senior 65+
- One Adult w/Children
- Two Adults w/Children
- Two Seniors 65+



Initial Stated Interest In Smithville YMCA

- While earlier results showed that the greatest share of gym membership types that already exist in this market are for individuals, potential YMCA memberships are far more likely to be family or two adult memberships.
- Replies to this question determined the type of membership respondents were asked to consider when measuring price sensitivity, and these results follow.

(Reference: Q4, Q9)



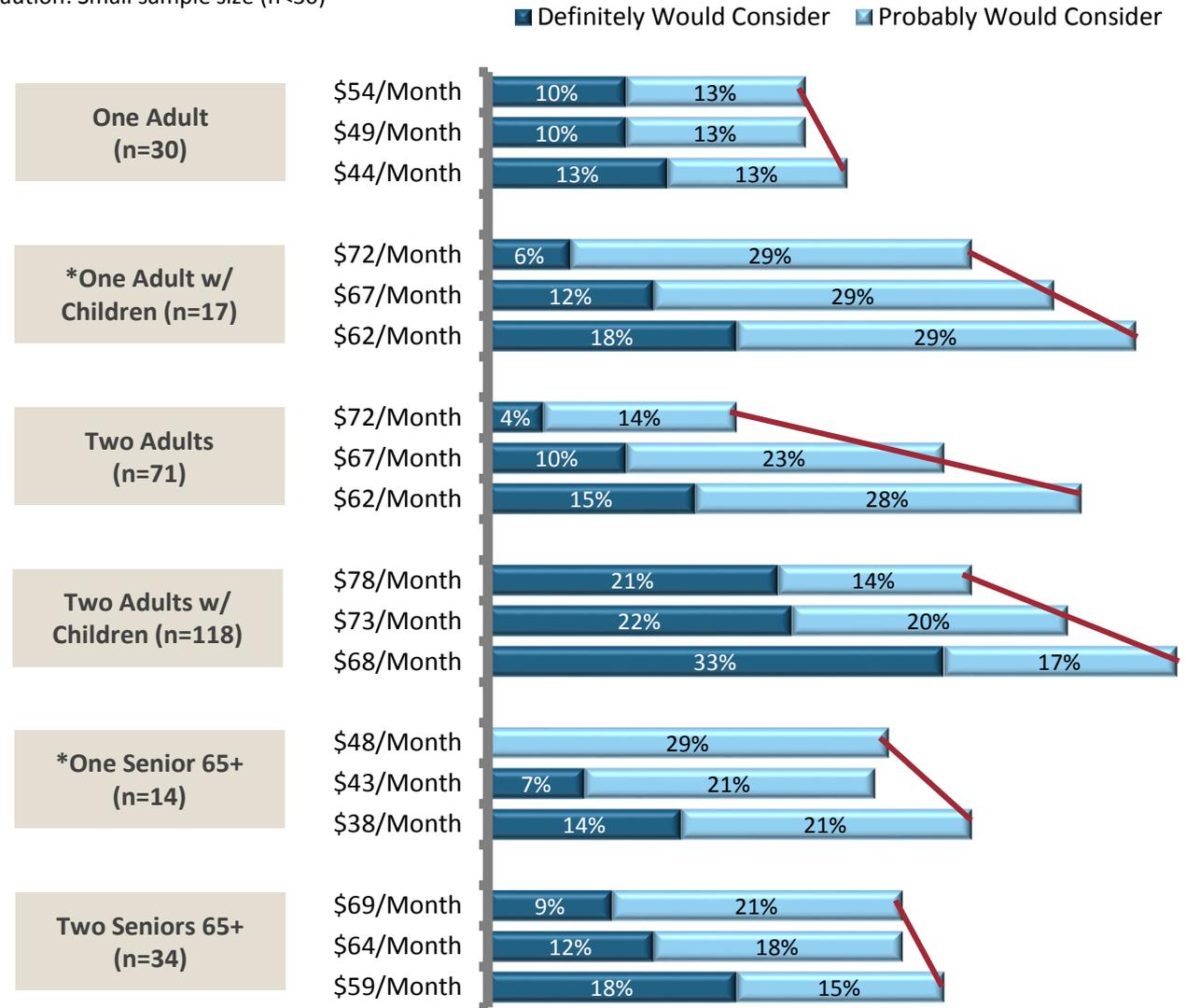
LIKELIHOOD TO CONSIDER SMITHVILLE YMCA AT SPECIFIED MONTHLY PRICE POINTS (BY TYPE OF MEMBERSHIP)



Although based on very small sample sizes in some cases, it appears that the greatest price sensitivity exists for those considering a membership for *two adults*, while demand for *one adult* memberships is more price inelastic.

- For households where a *one adult with children* membership is the best fit, a rather dramatic increase in potential interest can be seen when the monthly fee goes from \$72 down to \$62. Price elasticity for the *two adults with children* membership type is most evident between the \$68 and \$73 price points, but then appears to diminish when going from \$73 to \$78/month.
- Again, while sample sizes are quite small, price sensitivity does appear to be greater for *one senior 65+* than *two seniors 65+* memberships.
- Perhaps offering an introductory rate at these lower price points might be worth considering to encourage trial and attract a greater share of the market.

Percentage of sample segment.
*Caution: Small sample size (n<30)



(Reference: Q10)



ESTIMATED NUMBER OF HOUSEHOLDS PROJECTED TO JOIN YMCA IN SMITHVILLE BY TYPE OF MEMBERSHIP AT VARIOUS PRICE POINTS

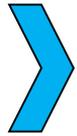
The projections presented here provide what would consider to be conservative, moderate, and aggressive estimates of potential membership units for the Smithville YMCA, based on stated intentions (factored down to predict behavior).

Type Of Membership	% Of Total By Type	# Of Households By Type	CONSERVATIVE ESTIMATE (30% Definitely)			MODERATE ESTIMATE (40% Definitely + 5% Probably)			AGGRESSIVE ESTIMATE (50% Definitely + 10% Probably)		
			% w/High Potential and # Of Households Projected To Join At...			% w/High Potential and # Of Households Projected To Join At...			% w/High Potential and # Of Households Projected To Join At...		
			High Price	Mid Price	Low Price	High Price	Mid Price	Low Price	High Price	Mid Price	Low Price
One Adult	11%	4,274	128 3.0%	128 3.0%	167 3.9%	201 4.7%	201 4.7%	252 5.9%	269 6.3%	269 6.3%	333 7.8%
One Adult With Children	6%	2,331	42 1.8%	84 3.6%	126 5.4%	91 3.9%	147 6.3%	203 8.7%	138 5.9%	207 8.9%	277 11.9%
Two Adults	25%	9,714	117 1.2%	291 3.0%	437 4.5%	223 2.3%	505 5.2%	719 7.4%	330 3.4%	709 7.3%	1,001 10.3%
Two Adults With Children	40%	15,542	979 6.3%	1,026 6.6%	1,539 9.9%	1,414 9.1%	1,523 9.8%	2,191 14.1%	1,849 11.9%	2,020 13.0%	2,829 18.2%
One Senior 65+	6%	2,331	0 0.0%	49 2.1%	98 4.2%	35 1.5%	91 3.9%	156 6.7%	68 2.9%	131 5.6%	212 9.1%
Two Seniors 65+	12%	4,663	126 2.7%	168 3.6%	252 5.4%	219 4.7%	266 5.7%	373 8.0%	308 6.6%	364 7.8%	490 10.5%
TOTAL	100%	38,855	1,392 3.6%	1,746 4.5%	2,619 6.7%	2,183 5.6%	2,733 7.0%	3,894 10.0%	2,962 7.6%	3,700 9.5%	5,142 13.2%
Average Monthly Fee (All Types):			\$74.29	\$68.24	\$63.19	\$73.54	\$67.93	\$62.96	\$73.25	\$67.82	\$62.86
Projected Revenue Per Month:			\$103,416	\$119,154	\$165,498	\$160,545	\$185,649	\$245,175	\$216,960	\$250,942	\$323,226

- Researchers tend to agree that when measuring potential interest, the “definitely would” responses are the best metric for predicting actual behavior. However, the ability to convert even those intentions into YMCA enrollment and/or program participation will depend on a number of factors, and these memberships will not occur overnight. Factors impacting both initial and eventual membership levels include everything from the ability to create awareness and interest through a strong marketing campaign, to the design and execution of the facility itself.



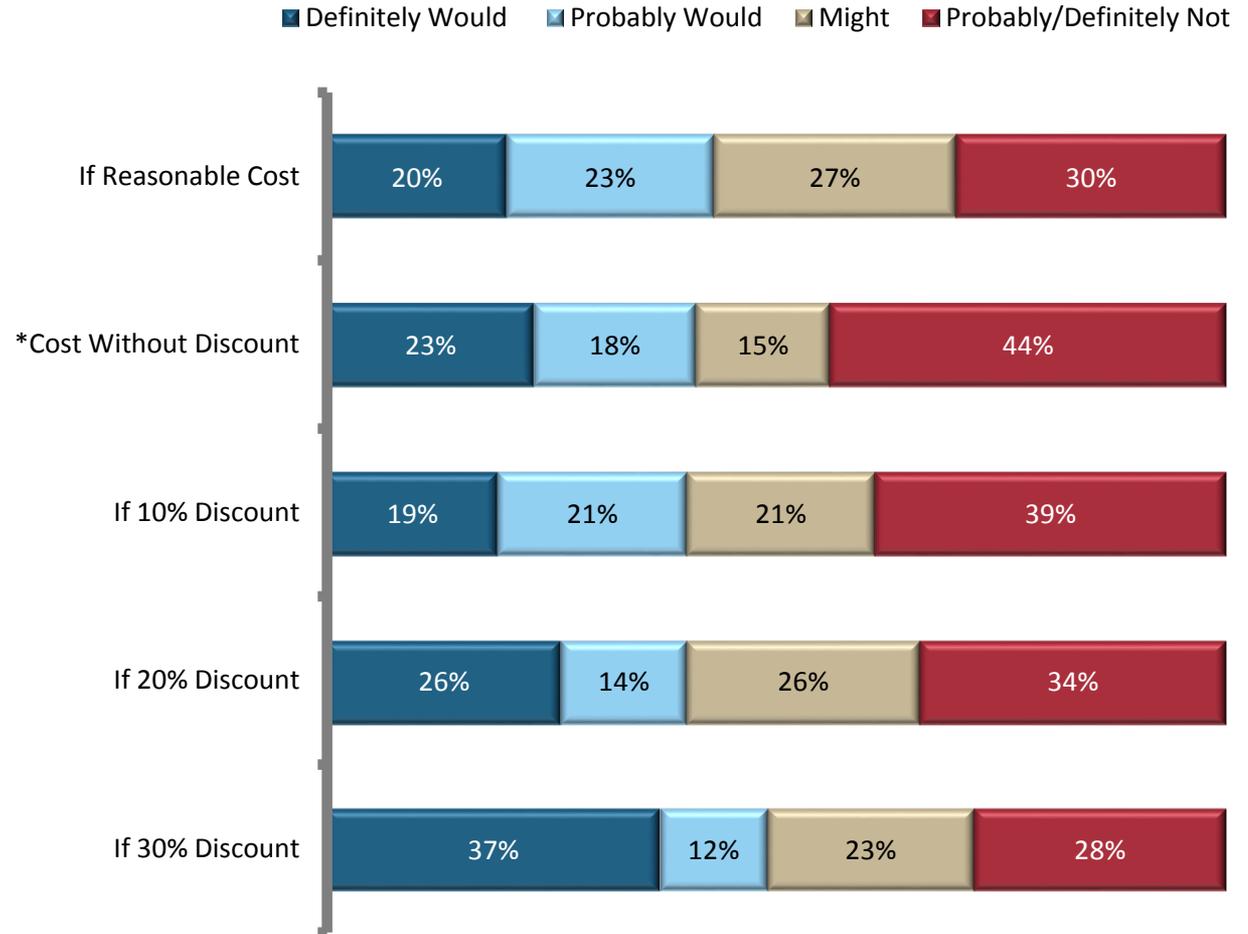
IMPACT OF FINANCIAL ASSISTANCE ON LIKELIHOOD TO CONSIDER YMCA MEMBERSHIP AMONG LOWER-INCOME HOUSEHOLDS



As expected, offering financial assistance to lower income households (under \$50K) has an impact on YMCA membership consideration, but only if the discount is substantial.

- Results here show that the segment of lower income households indicating they *definitely would* consider joining the new YMCA in Smithville if the membership fee was discounted by 10% is not much different than intentions expressed when “assuming a reasonable cost” or at the mid-point prices tested for the various types of memberships. However, this *definitely would* segment does increase to a meaningful degree given a 30% discount.

Percentage of those with household incomes under \$50K last year, able to rate (n≈44).



*Combined results at specified mid-point price for applicable membership type. (Reference: Q4, Q10, Q11)

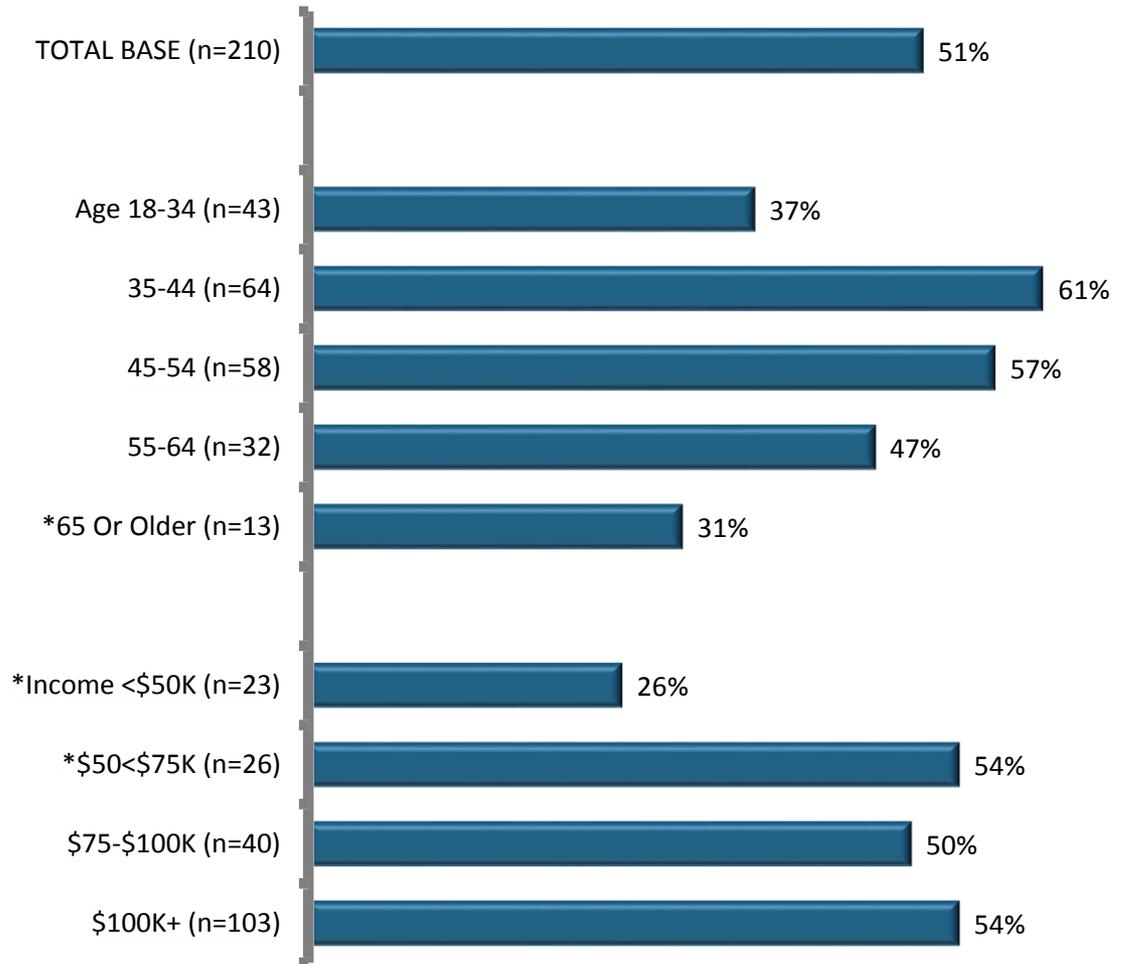


INCIDENCE OF CURRENT EMPLOYER OFFERING ANY TYPE OF WORKPLACE-SPONSORED WELLNESS PROGRAMS

In total, 70% of the respondents in this study were employed outside the home, and results here would project that about one-half of these individuals work for an employer that offers some type of workplace-sponsored wellness program.

Base: Those employed outside the home.

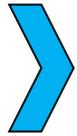
*Caution: Small sample size



(Reference: Q12A)



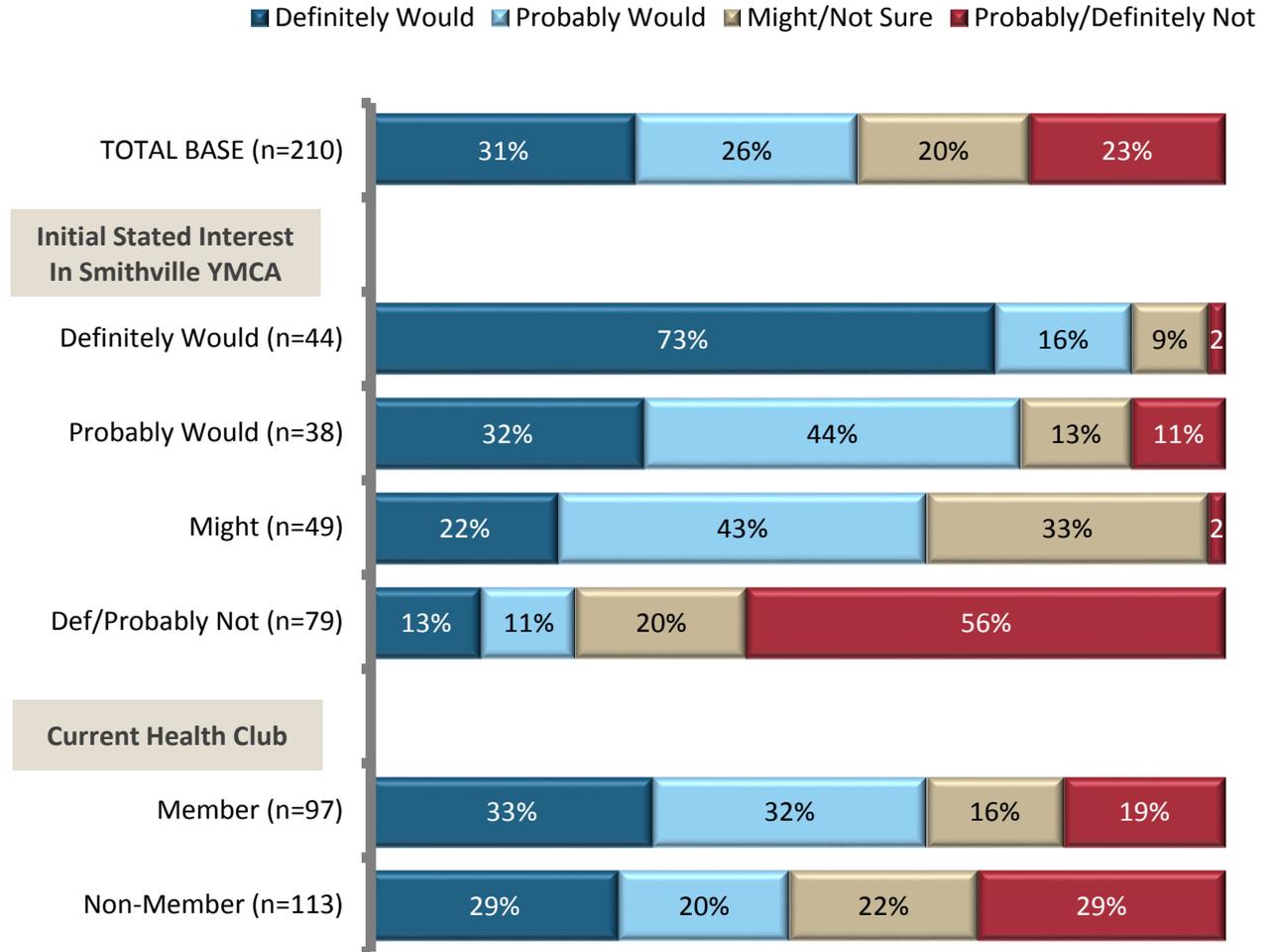
LIKELIHOOD TO PARTICIPATE IN EMPLOYER-SPONSORED WELLNESS PROGRAM AT YMCA IN SMITHVILLE



Likely participation levels for an employer-sponsored wellness and fitness program at the new YMCA facility in Smithville are encouraging.

- As one would logically expect, those with greater initial interest in using the proposed Smithville YMCA are also more likely to participate in an employer-sponsored wellness program at this facility. However, what is worth noting here is that even some of those *not* initially interested in using this YMCA *at least might* participate in programs held here if sponsored by their employer.
- Again, current health club or fitness membership seems to have little bearing on this potential interest, with those already belonging to a gym being as likely as non-members to consider using an employer-sponsored program at a new YMCA in Smithville.

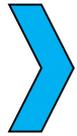
Base: Those employed outside the home.



(Reference: Q12B)

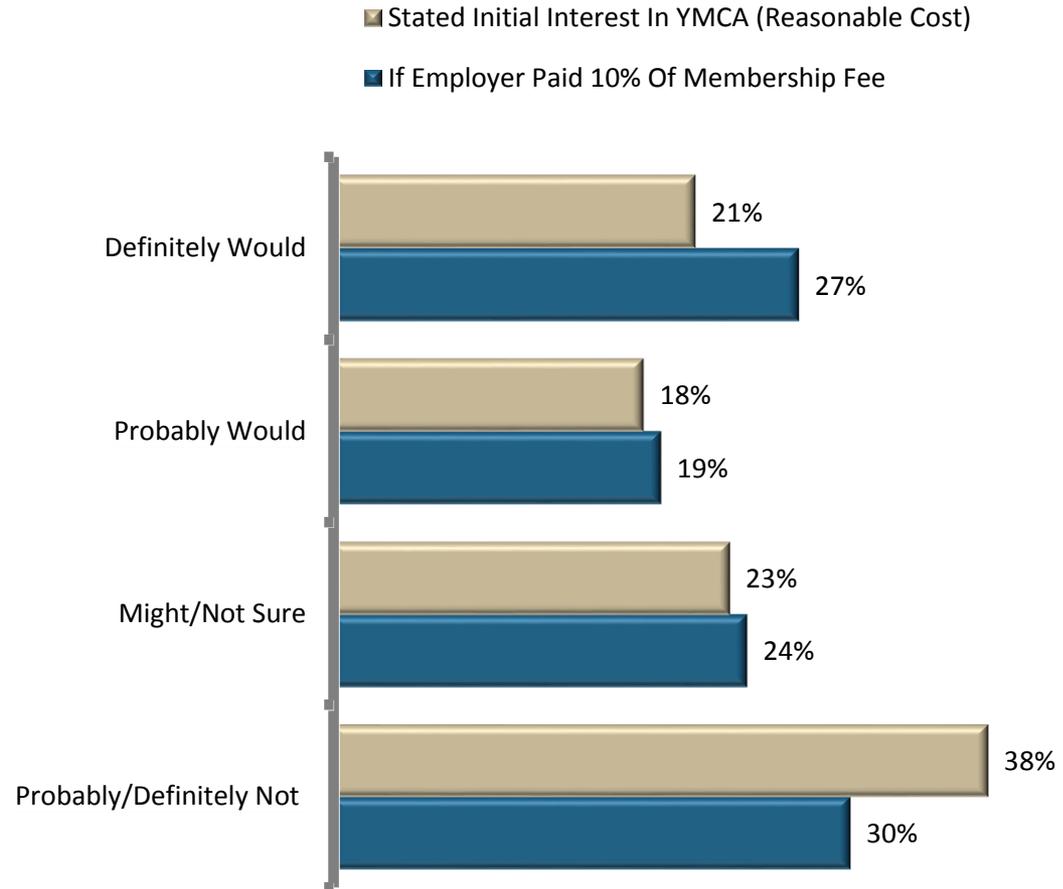


LIKELIHOOD TO JOIN YMCA IN SMITHVILLE IF EMPLOYER PAID 10% OF MEMBERSHIP FEE (VERSUS INITIAL STATED INTEREST)



Results here would suggest that the impact on enrollment would be very modest if employers paid 10% of one's membership fee to join the YMCA.

Base: Those employed outside the home (n=210)



(Reference: Q4, Q12C)



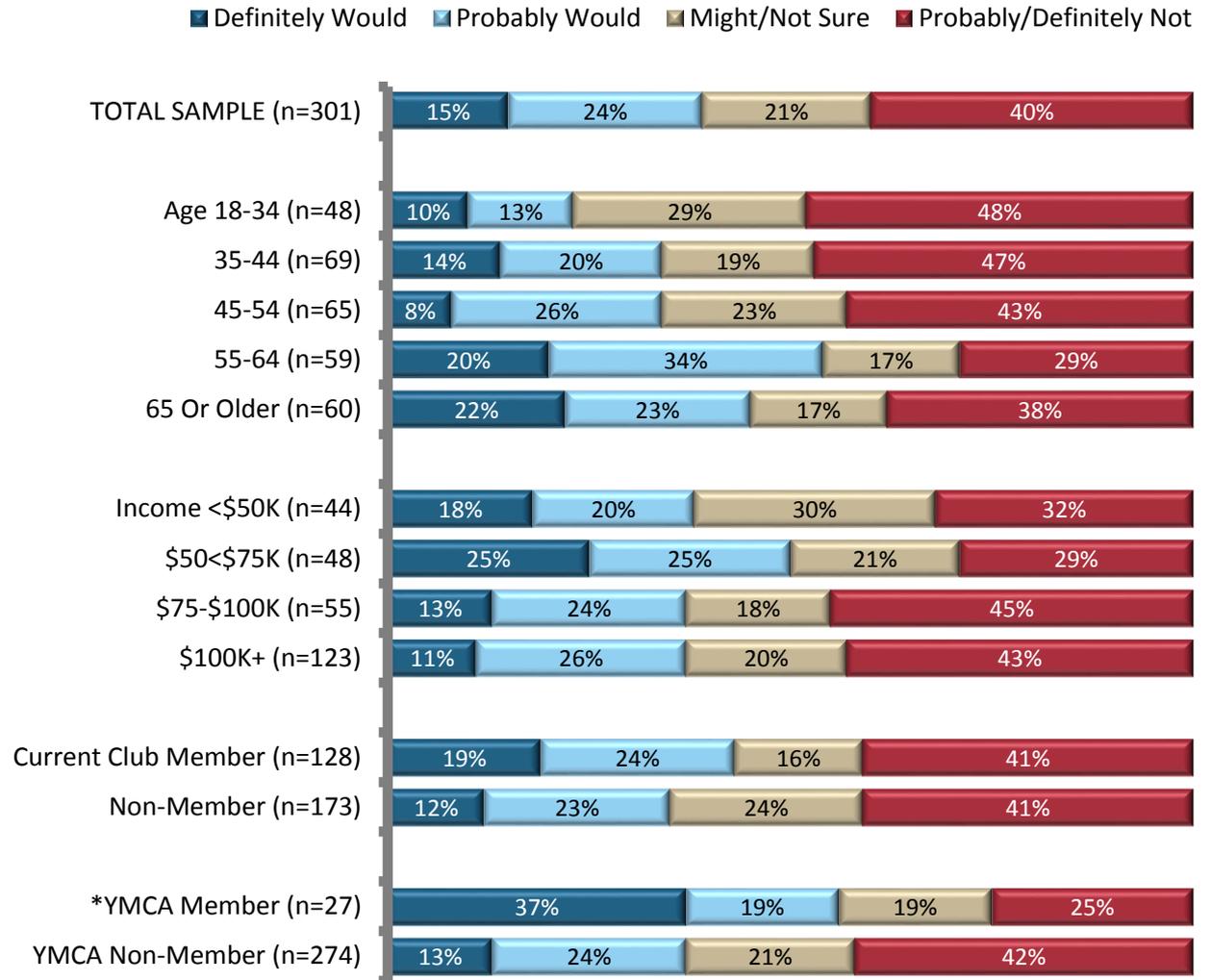
LIKELIHOOD TO USE MEDICAL-BASED PROGRAMS AT YMCA IN SMITHVILLE (Assuming Reasonable Cost)

The likelihood to use medical-based programs designed to prevent or help manage various chronic diseases or health issues, if offered at the new YMCA in Smithville, was also explored and are comparable to results previously seen for use of the facility in general.

- As might be expected, these types of programs have greater appeal among those over the age of 55. Also, lower to middle income households (some likely to be fixed retirement incomes) are more likely than their higher income counterparts to use these programs.
- Results were fairly consistent by health club or fitness members versus non-members, with the exception of those already belonging to an existing YMCA being far more likely than their counterparts to consider using medical-based programs that might be offered at the new Smithville location.

Percentage of sample segment.

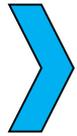
*Caution: Small sample size (n<30)



(Reference: Q13)



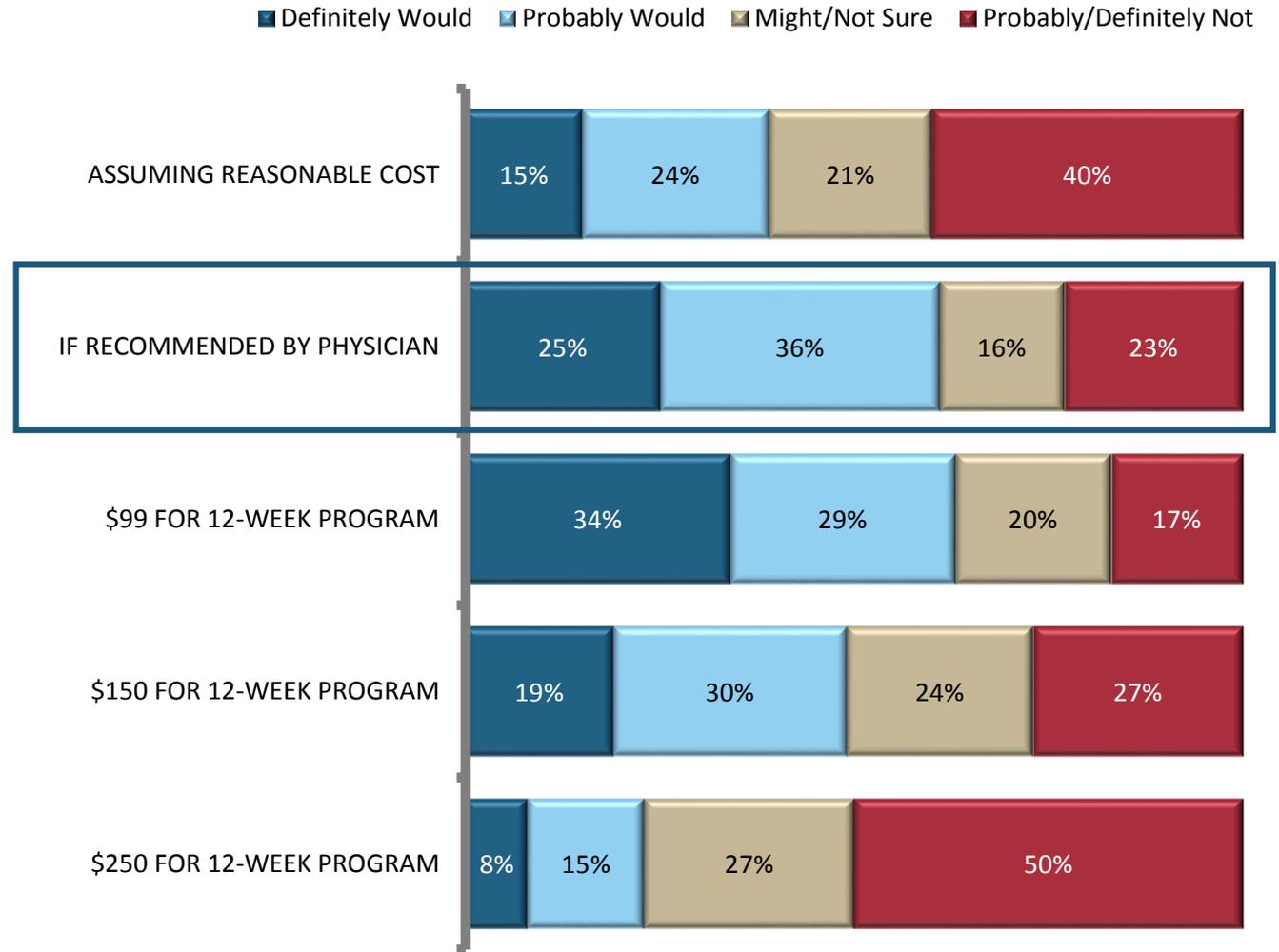
LIKELIHOOD TO USE MEDICAL-BASED PROGRAMS AT YMCA IN SMITHVILLE IF RECOMMENDED BY PHYSICIAN AND AT VARIOUS PRICE POINTS



The impact of physician recommendations on potential utilization of medical-based programs at a new YMCA in Smithville appears to be significant based on these results.

- If recommended by their physician, fully 6 in 10 of the residents surveyed said they *at least probably would* use medical-based programs at the YMCA (25% definitely would), assuming a reasonable cost.
- Further questioning regarding what a 12-week program might cost shows that the \$99 price point seems more than reasonable, while a \$250 program would certainly restrict usage to a much smaller portion of the potential interest group.

Percentage of total sample (n=301).



(Reference: Q13A & Q14A-C)



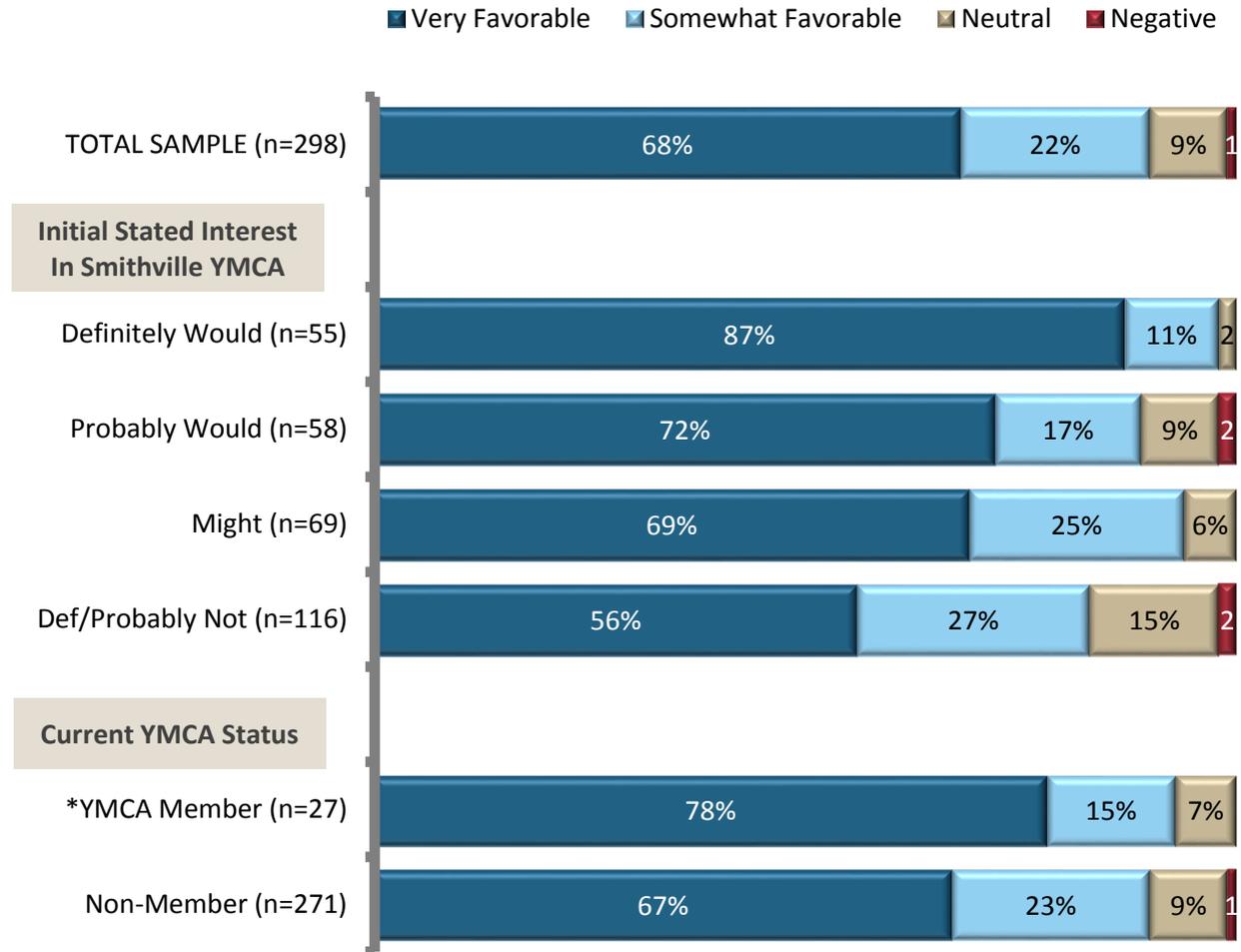
OPINION OF YMCA ORGANIZATION AND ITS IMPACT ON COMMUNITIES



Impressions of the YMCA organization and its impact on communities are quite positive in this market, with very few residents having a negative opinion.

- Fully two-thirds of the residents surveyed in this study hold a “very favorable” opinion of the YMCA, while 9 in 10 have at least a somewhat favorable impression.
- When reviewing these results by one’s likelihood to consider the proposed YMCA in Smithville, it can be seen that while the opinions of those who expressed definite interest are more favorable, even those with little or no interest tend to have positive impressions of the YMCA organization (or at worst are neutral).
- It is also encouraging to see the extent to which “very favorable” impressions exist among both current YMCA members and non-members.

Percentage of sample segment (able to rate).
 *Caution: Small sample size (n<30)



(Reference: Q15)

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

This Executive Summary has been prepared to highlight what WRA feels are the key takeaways from this research study. Any interpretations presented here represent the professional research opinion of WRA and are based on findings from this study alone. Other interpretations are also quite possible and, of course, there are factors outside the scope of this study which will need to be taken into account as these findings are being used for planning and decision-making, should the YMCA of Greater Kansas City proceed with plans to locate a new branch in Smithville.

- At the present time, approximately four in ten households in this market currently possess at least one membership to a health club or fitness center and in the majority of instances, these are individual memberships.
- Key competition for a new YMCA facility in Smithville is likely to come from Planet Fitness, followed closely by several existing YMCA of Greater Kansas City locations collectively. The YMCA membership share is 21%, nearly equal to that of Planet Fitness (23%), while the remainder of the market is comprised of several smaller competitors, each with only a modest share of the health club/fitness business.
- The extent to which a new Smithville YMCA would “cannibalize” business at the current YMCA of Greater KC facilities must be carefully considered and factored into the equation before deciding to locate here or not. If these existing YMCA locations do not rely heavily on memberships from this area, the incremental gains in business may well be sufficient to support a Smithville branch.
- Potential interest appears to exist to a meaningful degree for a new YMCA in Smithville, assuming a reasonable cost. However, the propensity to consider using such a facility diminishes rather dramatically if there is no indoor pool. Suffice it to say that these results build a strong case for including an indoor pool in the final design should you locate here.
- Interestingly, those who already belong to a health club or fitness center are more likely than their counterparts to consider using the proposed new YMCA facility, suggesting that potential utilization would not be limited to just those without a current gym membership (i.e., taking some share away from existing fitness centers seems likely based on these results).
- In addition to an indoor pool (recreation/family pool, specifically), other facility features or amenities with the broadest appeal and therefore most important to include will be cardio equipment, walking track, and machine weights/strength training equipment. Conversely, while appealing to some, far fewer potential patrons were interested in a climbing wall, teaching kitchen, teen center, women’s only fitness area, and community rooms.
- As far as specific programs or services, group exercise classes for all ages, indoor lap swimming, and weight loss programs garnered the greatest interest, followed by starter fitness, nutrition/healthy cooking classes, group water exercise, family exercise, and health education classes. Several youth-based programs and drop-in child care also appealed to meaningful segments of potential members with children in their household.



EXECUTIVE SUMMARY (Continued)

- While existing health club and fitness center memberships in this area are largely for individuals (versus two adult or family), results gauging the type of membership that would “best fit” one’s household situation among those with a stronger propensity to use the new YMCA in Smithville show that family memberships (two adults with children) are likely to be most prevalent, followed by two adult memberships.
- Rates for various membership types evaluated in this study suggest that those potentially interested in *two adult* or *one adult with children* memberships are likely to be the most price sensitive, while *one adult* memberships seem to be the least price sensitive. Still, these results would suggest that offering a lower introductory rate might be worth considering to encourage trial and attract a greater share of the market.
- Stated intentions to consider joining a new YMCA in Smithville at various price points were used to arrive at market projections estimating potential membership levels. Of course, one cannot expect stated interest, even at the “definitely would consider” level, to translate directly into actual behavior and therefore these intentions were factored down to provide conservative, moderate, and aggressive estimates. Depending on the membership fee, these results would project that from 3.6% to 6.7% of households at the low end (more conservative) to 7.6% to 13.2% at the high end (more aggressive) would join the Smithville YMCA. Still, it is important to note that survey results are subject to a margin of error and are just a “snapshot in time.” Furthermore, several factors besides current perceptions and enrollment intentions are likely to influence actual behavior. These factors include the ability to create awareness and interest through a strong marketing campaign, as well as the design of the facility itself and solid execution of the programs offered so as to maximize appeal and eventual market share.
- In addition to more traditional fitness programs, the likelihood to use medical-based programs at a new Smithville YMCA appears to be promising, especially if such programs were recommended by a physician. When various cost options were explored, paying \$99 for a 12-week program seemed to be quite palatable, while interest in this type of program diminishes rather substantially at the \$250 price point.
- The YMCA organization and its impact on communities is held in high regard by the majority of residents in this market, especially among those who expressed a strong interest in possible membership. This positive image will undoubtedly contribute to the success of building enrollment should the YMCA of Greater Kansas City add a branch location in Smithville.

SURVEY INSTRUMENT



Marketplace Intelligence

***Consumer Research: Residents' Reaction
and Willingness to Support a New
Community Center/YMCA and Library in
Prairie Village***

August 21, 2019

Prepared for:

**The City of Prairie Village
The YMCA of Greater Kansas City
The Johnson County Library**

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Objectives

The primary purpose of this study is to provide unbiased data to the City of Prairie Village, the YMCA of Greater Kansas City, the Johnson County Library, Johnson County and any additional partners regarding the scope of opportunities and challenges for expansion of YMCA and Library facilities and programming in Prairie Village. As envisioned, this Community Center/YMCA is intended to be a key component of a public service campus to also include a potential new library as well as City Hall, outdoor pool and opportunities for other amenities.

Specifically, this research will estimate membership demand (in member units) and program participation for the proposed Community Center/YMCA at a specified site in Prairie Village in close proximity to the current site of the Paul Henson Family YMCA.

Key in this research, is identifying those facilities, programs and services that will drive membership and are of greatest interest to local residents that can be provided at this Center by the YMCA and other partners, including those already named as well as a possible healthcare concern.

This research will also determine demand for a new Library including interest in possible new and innovative services and delivery mechanisms.

Important in defining the goals and objectives of this research is assuring that the all partners are treated equally with each organization's needs being completely addressed. A great deal of the experience PB&A has in completing this type of research includes studies that have local governments, school districts, libraries, and healthcare providers as key participants in conjunction with a YMCA.

Whether directly addressed or not, the recommended research by PB&A will meet or exceed every objective and deliverable outlined in the RFP.

The following information will be gathered and analyzed:

- An assessment, on an unaided and aided basis, of community needs and wants in terms of health, recreation, sports, and related social service programs that can be offered by the new Community Center/YMCA.
- The relative demand and desire for specific facilities (gym, wellness center, group exercise studios, child watch etc.), programs (group exercise, diet and weight loss, etc.) and areas of focus (parent/child, youth development, youth sports, disease/injury prevention and recovery, etc.) from this Center, and a rank ordering of the extent to which each will/will not contribute to growth in membership/usage.

New Community Center/YMCA and Library Feasibility Research for Prairie Village

- Determine what type of facilities and programs should be carried over from the existing Paul Henson Family YMCA and what enhancements should be added to maximize usage and enjoyment.
- Project demand and price elasticity of demand for this new Community Center/YMCA. That is, what impact will cost have on membership/usage?
- Determination of the scope of Community Center/YMCA facilities the area can and is willing to support. If consideration is being given to opening the Center in phases, ascertain what facilities and programs must be included first to assure adequate membership and community support.
- Based upon a proven model and primary data collected in this research, the number of member units this new Community Center/YMCA can anticipate, based upon potential specific offerings.
- Demonstrate the extent to which having the YMCA manage and program the Community Center adds or detracts from residents' support and interest in joining.
- Establish how programs should be priced and or bundled/unbundled relative to the cost of membership.
- Evaluation of the current level of awareness, image, and personal relevance of the Y and the Y mission within the primary market area for the Community Center.
- Evaluation of the current level of usage, awareness, image, and personal relevance of the existing Corinth Public Library and the mission of the Library within the primary market area for this public service campus.
- Ascertain whether area residents want a new library with improved and expanded services/conveniences (drive-thru, Youth and Kids, Author visits, book clubs, Early Childhood Literacy, Parents and Seniors, etc.) and if these improvements will encourage greater library usage.
- Ascertain the impact of locating the new Library on the public service campus closer to other community amenities on interest and usage of Library offerings.
- Understand the potential impact of joint programming between the Community Center/YMCA and the Library on overall demand for each entity.
- Measure the impact (in terms of member units transferring usage) opening the new Prairie Village Community Center as a YMCA will have on membership at the other existing branches of the YMCA of Greater Kansas City.

New Community Center/YMCA and Library Feasibility Research for Prairie Village

- Taxpayer/voter reaction to the idea of public funds being used to build/support the proposed new Community Center/YMCA. This questioning can include measurement of how many City/County residents are likely to vote to have taxpayer money spent for this purpose and if this support is dependent on money being spent with/without their taxes increasing.
- Identification of other factors that may help or hinder the success of the public service campus and these new community assets including reaction to other potential partners (healthcare provider, school system, etc.).

PB&A believes if this study is completed carefully, the resulting data will be of great value to the City of Prairie Village, Johnson County, Johnson County Library, the YMCA, and the residents of the area, whether the ultimate decision is to move forward with the opening of a new Community Center/YMCA or not.

Study Approach

PB&A recommends that this research be completed as follows:

Phase One: A review of secondary demographic and psychographic information. This review will include data available from a variety of sources including the City of Prairie Village, the Johnson County Library, Johnson County, the YMCA of Greater Kansas City, Y-USA, SEER Analytics, GRO Development and SDR, among others.

Phase Two: A minimum of four focus groups, moderated by Phil Balducci. The primary goal of these sessions is to provide input for the design of the questionnaires to be used in the quantitative phases of research to follow. These focus groups will help assure that the questions being asked and the issues addressed are specific to Prairie Village and the goals of the local community.

- **Group One:** The first focus group will be composed of YMCA leaders and volunteers responsible for the planning and execution of this research. An important goal of this conversation and the other focus groups is to uncover as many issues and concerns as possible, as well as to assure that everyone involved is comfortable with the research process.
- **Group Two:** The second focus group will be composed of formal and informal leaders from Prairie Village and Johnson County, who may or may not be friends of the YMCA, but who are important within the geographic area to be studied. PB&A expects that this session will include representatives from any and all potential partner organizations.
- **Group Three:** Front line staff from the Paul Henson Family YMCA.
- **Group Four:** Staff from the Corinth Library.

New Community Center/YMCA and Library Feasibility Research for Prairie Village

- **Optional:** At no additional cost to any of the partner organizations, PB&A will, within reason, complete as many other focus groups as desired. Suggested audiences are, students from schools in the area, seniors living in Prairie Village and surrounding communities, and City Hall employees.
- If there are a limited number of community leaders (3-4) or other individuals key to the success of this important project that are unable to attend the focus groups, Phil Balducci will call them contact them personally and conduct a one-on-one, in-depth interview by telephone.

Phase Three: Completion of 400 interviews with a random sample of area residents who live within the City of Prairie Village and Johnson County that make up the estimated primary market area of the new Community Center/YMCA.

Three types of data collection will be blended to provide as balanced and unbiased a sample and results as possible. Doing the type of sampling proposed is essential to accurate data gathering. PB&A has successfully implemented an ever-improving sampling methodology on more than 350 YMCA/community research projects including multiple, past research studies on behalf of the YMCA of Greater Kansas City.

First, PB&A will generate a random, household telephone sample. The calling plan will be designed in such a manner that every telephone household, regardless of whether or not a number is listed, has an equal probability of being included in the study. This sample will be constructed on the US Census Block level to assure that all and only those who live within the pre-determined geographic area are included.

PB&A will attempt five callbacks before replacing a household selected for inclusion in the sample with another home. All interviewing will be completed on weekday evenings between the hours of 5PM and 8PM, as well as during the daytime on at least one weekend. PB&A will utilize a multilingual and multi-cultural interviewing team and as such, within reason, respondents will be able to participate in their language of first choice. PB&A uses a computer based sample platform but intentionally does not have “computer generated dialing”.

PB&A will overlay an electronic survey (email and cellphone) to capture an adequate share of residents who rely only on their mobile devices and no longer have a land line telephone. It is important to note that the quality of sample available for this type of survey varies significantly from location to location. Based upon our preliminary observation, it appears that we can indeed purchase a sufficiently high quality sample of the approximate PMA for the proposed new Community Center/YMCA in Prairie Village.

The overall error range for this phase is $\pm 5.0\%$ at the 95% confidence level.

Phase Four: Completion of a **minimum** of 300 online interviews with members of the Paul Henson Family YMCA and any other branches of the YMCA of Greater Kansas City who could possibly want to use the resources of the new Community Center/

YMCA and Library. These YMCA member surveys are in addition to the area resident interviews recommended in Phase Three and are necessary to measure potential cannibalization of existing YMCA members from the YMCA of Greater Kansas City to the new Community Center/ YMCA.

PB&A will send an email invitation to every Y member that has provided an accurate email address to the Y. Typically, these studies yield significantly larger ending sample sizes than what is listed in our research outline and we expect the same from the YMCA of Greater Kansas City.

Phase Five: Optional and highly recommended. If the Johnson County Library maintains an email database of current library card holders/library users, PB&A will send an email invitation to everyone on that list asking them to participate in an electronic survey. The purpose being to understand their usage and behavior relative to existing Library services, including their level of satisfaction, as well as their interest and reaction toward a new Library on the public service campus in Prairie Valley should it open. **This augmentation is offered to the partnership at no additional cost.**

A Note of Caution

This study will not, nor does PB&A believe we or any other consumer research company should provide an assessment of potential operating costs including debt service and plant or program operating costs, nor does it include a complete, financial feasibility study or an estimate of the amount of capital contributions likely to be raised in the community being studied.

These matters need to be completed by the partnership and the YMCA with qualified financial professionals. Our data will feed into this type of analysis, but in no manner do we believe the company providing the required consumer research should be hired to meet this request. **As a generally accepted principle, marketplace data collection and analysis should be kept independent from additional consultation and financial plan preparation.** Should the partnership in conjunction with the YMCA of Greater Kansas City desire help in these matters, PB&A recommends contacting the Y-USA consultant for the area and that you consider relying on the expertise and best practices of Y-USA and GRO Development.

Responsibilities of PB&A Marketplace Intelligence

- Moderation of four or more focus groups.
- Design of survey instruments.
- Sample design.
- Interviewer instruction and supervision.
- Complete telephone/online interviews.
- Data coding and tabulation.
- Professional analysis of data.
- Final, comprehensive written report.
- Oral presentation of results by Phil Balducci (if desired).

PB&A will provide an electronic copy of the final report and will assist each partner in preparation of any type of presentation materials deemed necessary.

Phil Balducci will, if desired, return to Prairie Village to present the findings and lead a discussion of the research conclusions. There is no charge for this presentation except for direct travel expenses. This presentation(s) can be formal or informal, but our typical format includes an explanation of key findings, conclusions, and recommendations using PowerPoint and individual handouts, including group discussion, and question and answer session.

After the final report and presentation, PB&A will be available for further consultation at no charge and will work closely with the City, County, Library and the YMCA to put together additional materials that may aid in bringing the story of the potential new facilities to the community.

Phil Balducci and the Prairie Valley Community

Phil Balducci, will be the primary contact for this project, and will be the author of this study. Phil will be available at no cost to any member of the study team 24 hours a day by phone 813-760-3811 (cell) or email (phil@pbaresearch.com).

Phil holds an advanced degree from the Georgia Institute of Technology (Georgia Tech) in Research Methodologies (MSIM). He is president and founder in 1986 of PB&A Marketplace Intelligence. His company (PB&A) has worked successfully with more than 350 large and small Y associations across the country, as well as the YMCA of the USA and the YMCA Retirement Fund.

Phil became involved in the Y movement more than twenty years ago as a volunteer for the Tampa YMCA. PB&A offers local Ys and their partners research and analytical services that meet and exceed industry standards for quality and integrity at reasonable costs.

In addition to these community-based research initiatives, PB&A works with a wide variety of the highly regarded companies and organizations, including Latitude Margaritaville, Mercedes Benz, Audi, Liberty Mutual, Dunkin' Brands, the CIA, and the American Cancer Society, among others. **Our work with for-profit corporations allows PB&A to significantly reduce the cost of many YMCA research projects. We are happy to offer a reduction in cost to your partnership.**

In the recent past, we have completed multiple research studies for the YMCA of Greater Kansas City to aid the association in identifying opportunities and mapping future growth. We plan on building on our already significant local knowledge developed by this research.

Our Current YMCA Workload

At any given time, PB&A is in the process of working with multiple YMCAs, cities, counties and other community groups. We have just finished studies for the Greater Peoria Family YMCA, YMCA of Springfield (IL), the YMCA of Jefferson County (IL), the Kosciusko Community YMCA (IN), the Hastings Family YMCA (NE), the Youngstown YMCA (OH), YMCA of Metropolitan Washington (DC), the YMCA of Greater Seattle (WA), and the YMCA of Metropolitan Los Angeles (CA).

We are currently working with the YMCA of Greater Lansing (MI), the YMCA of Northwest Florida, Litchfield Unlimited (IL), the YMCA of Northern Utah, YMCA of the Peninsula (VA), and the YMCA of Central Virginia.

Please feel free to contact any of the YMCAs we have had the pleasure of serving over the years. Here are a number of great executives we have worked with in the past year or so, that you may find helpful:

Diana Zita, CEO, Hamilton Area YMCA: 609-581-9622

Jim Swanson, CEO, Kosciusko Community YMCA: 574-269-9622

Andy Thornton President & CEO, Greater Peoria family YMCA: 309-692-7631

Angie Sowle, CEO, YMCA of Springfield: 217-544-9846

Jay Parker, CEO, YMCA of Central Virginia: 434-582-1900

Beth Scheller, COO, YMCA of Youngstown: 330-480-5656

Michele Rulnick, President & CEO, YMCA of Northern Middlesex County: 860-347-6907

Chris Pallatto, Ex Dir., Valley Shore Family YMCA: 866-399-9622

Stacie Peugh, CEO, YMCA Cape Cod: 1-800-339-9622

Mark Dengler, COO, YMCA of Metropolitan Los Angeles: 213-380-6448

Timeline

This research will require 5 weeks from the time of questionnaire approval to completion of a full written report. An important step in completing this study in a timely manner is beginning to plan, schedule, and recruit focus group participants as soon as possible. PB&A is prepared to begin this research immediately and we will not have an issue meeting the desired timeline.

Pricing

The cost of this research is \$15,950. This cost is reduced from \$21,950. PB&A would very much enjoy working on this important study with the residents of Prairie Village and Johnson County, the City, Johnson County, the Johnson County Library and the YMCA of Greater Kansas City. This cost reduction is our way of showing our commitment to the growth of your community and the YMCA movement.

The lower price does not mean we will compromise quality or attention to detail. It includes all aspects of the research except the cost of travel for Phil Balducci to Prairie Village for the focus groups, and if desired the presentation of the final results. This travel will be kept as reasonable as possible.

As the managing authority, the YMCA will be billed 50% of research costs upon acceptance of this project and the remaining 50% upon completion of the final report.

If acceptable as proposed, please sign and date, and return a copy of this executed contract to us. We will return a countersigned copy along with the initial invoice. If any changes or explanations are necessary, please do not hesitate to give us a call.

Agreed and accepted:

PB&A, Inc.

By: _____

Name: Phil Balducci

Title: President

Date: August 21, 2019

The YMCA of Greater Kansas City

By: _____

Name: _____

Title: _____

Date: _____

INTRODUCTION:

Good afternoon/evening, I'm calling on behalf of the City of Prairie Village, the YMCA, and Johnson County Library, conducting a survey about wellness, recreation, and community services, and could really use your help. My name is ____ with Wiese Research and I can assure you, this is not a sales call, we just need your opinions.

1 Respondent

XX **(CELL OWNER UNDER 18) (THANK & TERMINATE)**
(INSERT STANDARD INTRO SCREEN DISPOS)

This call may be recorded for quality control purposes only.

SQ1. To confirm I dialed into one of the qualified areas for this study, can I please have your zip code?
(OPEN-ENDED) (VERIFY ZIP CODE VIA READBACK ON NEXT SCREEN)

1 64112

2 64113

3 64114

4 66202

5 66204

6 66205

7 66206

8 66207

9 66208

10 66212

96 **(OTHER) (SPECIFY) (ONCE CONFIRMED, EXPLAIN OUT OF AREA, THANK & TERM)**

97 **(REFUSED) (THANK & TERMINATE)**

SQ2. And to ensure we represent all age groups in the study, can I please have your age? **(OPEN-ENDED)**
(IF "REFUSED" – SAY:) I just need your age range, for quota purposes, in order to continue. **(THEN READ CATEGORIES)**

1 Under 18 **(THANK & TERMINATE)**

2 18 to 24

3 25 to 34

4 35 to 44

5 45 to 54

6 55 to 64

7 65 or older

8 **(STILL REFUSED) (THANK & TERMINATE)**

SQ3. Gender **(RECORD ONLY– DO NOT ASK)**

(ASK ONLY IF CANNOT DETERMINE BY VOICE:) To confirm, am I speaking with a male or female?

1 Male

2 Female

3 (Other)

1. And are there any children under 18 living in your household? **(OPEN-ENDED)**

1 Yes

2 No

2. Does anyone in your household currently have a membership to any gym, health club, recreation or fitness center? **(OPEN-ENDED)**

- 1 Yes
- 2 No **(SKIP TO Q4)**
- 3 **(NOT SURE) (SKIP TO Q4)**

3A. To which gym, health club, recreation or fitness centers do you or other household members belong? **(OPEN-ENDED) (ACCEPT UP TO 3 REPLIES)**

- 1 Barre Fitness
- 2 City Gym KC
- 3 Genesis Health Club
- 4 Jewish Community Center
- 5 Matt Ross Community Center
- 6 Orange Theory
- 7 Paul Henson YMCA in PRAIRIE VILLAGE
- 8 Planet Fitness
- 9 Prairie Life Fitness
- 10 Red Bridge YMCA
- 11 Title Boxing
- 12 Woodside
- 13 YMCA **(SPECIFY LOCATION:)**
- 96 **(OTHER – SPECIFY FACILITY NAME AND TOWN:)**
- 97 **(REFUSED)**
- 98 **(NO OTHERS)**
- 99 **(DON'T KNOW) (SKIP TO Q4)**

3B. **(IF ONLY ONE MENTION IN Q3A, SAY:)** Is that membership for an individual, you and a spouse, or a family? **(IF 2+ MENTIONS IN Q3A, SAY:)** Are those memberships for an individual, you and a spouse, or a family? **(OPEN-ENDED – ACCEPT MULTIPLE REPLIES)**

- 1 Individual
- 2 Respondent and spouse
- 3 Family (includes single parent plus dependents)
- 4 **(DON'T KNOW)**

4. During the past 12 months, have you or others in your household used or been to... **(INSERT A-C)**

- A The Prairie Village pool complex?
- B The Paul Henson YMCA in Prairie Village?
- C The Corinth **(KOR-inth)** branch of the Johnson County Library in Prairie Village?

- 1 Yes
- 2 No
- 3 **(NOT SURE)**

6. **(READ SLOWLY)** At the present time, the City of Prairie Village, in partnership with the YMCA and Johnson County Library, is considering construction of a NEW Community and Civic Center facility located near City Hall, at Harmon Park. This would REPLACE the Paul Henson YMCA and include a full range of recreation and fitness facilities, gymnasium, indoor pools, wellness programs, public meeting rooms, a large gathering or reception space with a kitchen, as well as a new library on the same campus or nearby that would replace the existing Corinth branch.

How likely would YOU OR OTHERS IN YOUR HOUSEHOLD be to use this new Prairie Village YMCA Community and Civic Center, assuming the cost was what you considered to be reasonable? Do you think you **(READ RESPONSES)**

(IF "DON'T KNOW" SAY:) I'm sorry, don't know is not an option for this question...just your best guess is fine.

- 1 DEFINITELY would
- 2 PROBABLY would
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT

(ASK Q6A IF Q6=4-5. OTHERWISE SKIP TO Q6B)

6A. Why are you NOT likely to use this new Prairie Village YMCA Community and Civic Center?

(OPEN-ENDED & CLARIFY ANY VAGUE RESPONSES – RECORD SPECIFIC REASONS)

(ASK Q6B IF Q6=3. OTHERWISE SKIP TO Q6C)

6B. What would your likelihood to use this new Prairie Village YMCA Community and Civic Center depend on?

(OPEN-ENDED & CLARIFY ANY VAGUE RESPONSES – RECORD SPECIFIC REASONS)

(IF Q6=4-5, SKIP TO Q9. OTHERWISE, ASK:)

7. Next, I'm going to mention several possible facility features and amenities that a new YMCA Community and Civic Center located in Prairie Village could include. For each one, please rate how important having that feature would be for YOU OR SOMEONE IN YOUR HOUSEHOLD, using a 1 to 10 scale where "1" equals NOT AT ALL IMPORTANT and "10" equals EXTREMELY IMPORTANT. **(ROTATE A-W) (REPEAT SCALE AS NEEDED)**

- A Cardio equipment
- B Climbing wall
- C Community rooms
- D Cool water lap pool
- E Free weights
- F Gymnasium
- G Indoor recreation or family pool
- H Indoor warm water therapy pool
- I Indoor lap or competitive swim pool
- J Machine weights and strength training equipment
- K Outdoor recreation pool and spray park
- L Sauna and steam room
- M Teaching kitchen
- N Walking track
- O Whirlpool
- P Women-only fitness area
- Q Family/youth fitness area
- R Teen center with computers, interactive games, café and fitness
- S Lazy river
- T Drop-in childcare while parents workout
- U Multi-use meeting rooms open to the public
- V Large community gathering or reception space with a kitchen
- W Public library on the same campus

- 1 Not at all important
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10 Extremely important
- 11 **(DON'T KNOW)**

8. Now, I'm going to mention several possible programs and services that could be offered at this YMCA Community and Civic Center located in Prairie Village. For each one, please tell me how likely YOU OR SOMEONE IN YOUR HOUSEHOLD would be to use that program or service in the next few years, assuming the cost was reasonable. The first one is...**(INSERT A-Y / ROTATE GROUPS)**
(READ RESPONSES THE FIRST FEW TIMES, THEN AS NEEDED)
(IF "DON'T KNOW" SAY:) I'm sorry, don't know is not an option for this question...just your best guess is fine.

SWIMMING

- A Adult swimming lessons
- B **(ASK ONLY IF Q1=1)** Youth swimming lessons
- C Indoor lap swimming
- D Group water exercise classes
- E Competitive swimming
- F Lifeguard classes
- G Lazy river

EXERCISE/ FITNESS/ WEIGHT LOSS

- H Family exercise classes
- I Group exercise classes for individuals of all ages
- J **(ASK ONLY IF Q1=1)** Youth exercise classes
- K Group exercise classes for seniors
- L Starter fitness programs
- M Weight loss programs
- N Martial arts

SPORTS

- O Adult sports leagues
- P Sports leagues for seniors
- Q **(ASK ONLY IF Q1=1)** Youth sports leagues

HEALTH EDUCATION

- R Health education classes
- S Nutrition and healthy cooking classes
- T **(ASK ONLY IF Q1=1)** Youth obesity prevention program

OTHER

- U Programs for individuals with special needs
- V Senior activities such as card clubs, field trips, and seminars
- W **(ASK ONLY IF Q1=1)** Teen leadership programs
- X **(ASK ONLY IF Q1=1)** Youth enrichment programs
- Y **(ASK ONLY IF Q1=1)** Drop-in childcare while parents workout

- 1 Would you DEFINITELY use that program
- 2 PROBABLY use
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT

9. As you may know, a variety of different types of memberships are available to anyone interested in joining a YMCA. If you and/or others in your household WERE TO EVER CONSIDER joining and using the proposed Prairie Village YMCA, which of the following describes the type of membership that would BEST FIT your household situation and POTENTIAL interest, assuming a reasonable cost? **(READ RESPONSES)**

(IF “DON’T KNOW” SAY:) I’m sorry, don’t know is not an option for this question...just your best guess is fine.

- 1 One adult
- 2 One adult with children
- 3 Two adults
- 4 Two adults with children
- 5 One senior age 65+
- 6 Two seniors age 65+
- 7 (DO NOT READ) **(NO POTENTIAL INTEREST OF ANY TYPE) (SKIP TO Q11)**

10. How likely would you be to consider a membership for **[INSERT Q9 REPLY]** to this new Prairie Village YMCA if the cost was **(INSERT A-C/ D-F/ G-I/ J-L/ M-O AS APPROPRIATE, UNTIL “DEFINITELY WOULD” REPLY OBTAINED, THEN SKIP TO Q11)**

(READ RESPONSES)

(IF “DON’T KNOW” SAY:) I’m sorry, don’t know is not an option for this question...just your best guess is fine.

(IF Q9=1, ASK A-C)

- A \$59 per month
- B \$54 per month
- C \$49 per month

(IF Q9=2-3, ASK D-F)

- D \$80 per month
- E \$75 per month
- F \$70 per month

(IF Q9=4, ASK G-I)

- G \$89 per month
- H \$84 per month
- I \$79 per month

(IF Q9=5, ASK J-L)

- J \$51 per month
- K \$46 per month
- L \$41 per month

(IF Q9=6, ASK M-O)

- M \$75 per month
- N \$70 per month
- O \$65 per month

- 1 Do you think you DEFINITELY would
- 2 PROBABLY would
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT

11. **(READ SLOWLY)** It's possible that this Prairie Village YMCA Community and Civic Center could partner with a hospital in the area and also provide MEDICAL-BASED programs designed to prevent or help manage various chronic diseases or health issues, such as blood pressure management, cardiac rehab, weight loss management, or arthritis therapy, just to name a few. Please tell me how likely YOU OR SOMEONE IN YOUR HOUSEHOLD would be to use these types of MEDICAL-BASED programs if offered at the Prairie Village Community Center/YMCA, assuming a reasonable cost. Do you think you **(READ RESPONSES)**

- 1 DEFINITELY would
- 2 PROBABLY would
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT
- 6 **(NOT SURE)**

12. Again, assuming a reasonable cost, how likely would you or someone in your household be to use any of these types of medical-based programs at this Prairie Village YMCA Community and Civic Center IF RECOMMENDED BY A PHYSICIAN? Do you think you **(READ RESPONSES)**

- 1 DEFINITELY would
- 2 PROBABLY would
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT **(SKIP TO Q14)**
- 6 **(NOT SURE)**

13. And assuming a doctor did recommend or refer you to one of these medical-based programs at this Prairie Village YMCA Community and Civic Center, how likely would you be to pay **(INSERT A-C IN ORDER UNTIL "DEFINITELY WOULD" REPLY OBTAINED, THEN SKIP TO Q14) (READ RESPONSES)**
(IF "DON'T KNOW" SAY:) I'm sorry, don't know is not an option for this question...just your best guess is fine.

- A \$250 for a 12-week program?
B What if the cost was \$150 for a 12-week program?
C What if the cost was \$99 for a 12-week program?

- 1 Do you think you DEFINITELY would
- 2 PROBABLY would
- 3 Might
- 4 Probably NOT
- 5 Or, definitely NOT
- 6 **(NOT SURE)**

14. As mentioned earlier, the Johnson County Library is considering closing its existing Corinth branch and is considering placing a new library on the SAME CAMPUS as the proposed Prairie Village YMCA Community and Civic Center. Another option would be to place this new library at a SEPARATE LOCATION. For you personally, would you prefer that the new library in Prairie Village be ...**(READ RESPONSES – ROTATE ORDER OF 1-2)**

- 1 On the same campus **(SKIP TO Q15)**
- 2 A separate location
- 3 Or, does that not really matter to you one way or the other? **(SKIP TO Q15)**
- 4 **(NOT SURE) (SKIP TO Q15)**

14A. If you knew that placing the new library on the SAME CAMPUS as the YMCA Community and Civic Center would lower the cost to operate the branch, would you **(READ RESPONSES)**

- 1 Still prefer a separate location for the library
- 2 Or, would locating the library on the same campus be fine
- 3 **(NOT SURE)**

15. How likely are you or others in your household to use a new Johnson County Library branch in Prairie Village?
Do you think you **(READ RESPONSES)**

- 1 DEFINITELY will
- 2 PROBABLY will
- 3 Might
- 4 Probably NOT **(SKIP TO Q18)**
- 5 Or, definitely NOT **(SKIP TO Q18)**
- 6 **(NOT SURE)**

16. If you had a choice, would you prefer that this new library branch in Prairie Village **(READ RESPONSES – ROTATE ORDER OF 1-2)**

- 1 Have the same look and feel as the current branch
- 2 Have a more contemporary or modern design
- 3 Or, does that not really matter to you one way or the other?
- 4 **(NOT SURE)**

17. Next, please rate how important the following LIBRARY features would be for you or someone in your household, using a 1 to 10 scale where “1” equals NOT AT ALL IMPORTANT and “10” equals EXTREMELY IMPORTANT. **(ROTATE A-D) (REPEAT SCALE AS NEEDED)**

- A Free Wi-Fi
- B Small study rooms where 4-6 people could meet
- C Large meeting rooms where 20-40 people could meet
- D Drive-thru option for picking up and/or returning materials

- 1 Not at all important
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10 Extremely important
- 11 **(DON'T KNOW)**

(ASK Q18 IF SQ1=4-9 – POTENTIAL PRAIRIE VILLAGE RESIDENT . OTHERWISE SKIP TO DEMOS)

18. Do you live within the city limits of Prairie Village? **(OPEN-ENDED)**

- 1 Yes
- 2 No **(SKIP TO DEMOS)**
- 3 **(NOT SURE)**

19. In order to construct the proposed YMCA Community and Civic Center, the City may need to increase taxes for a time period of up to 30 years. If the amount of tax increase was what you considered to be reasonable, what type of tax change would you be most likely to support? **(READ RESPONSES)**

- 1 Sales tax
- 2 Property tax **(SKIP TO Q19B)**
- 3 A combination of both property and sales tax **(SKIP TO Q19C)**
- 4 Or, would you not support a tax increase of any type **(SKIP TO Q19D)**
- 5 **(DON'T KNOW/REFUSED) (SKIP TO Q20)**

(IF Q19=1, ASK:)

19A. Why do you prefer the SALES TAX funding option?

(OPEN-ENDED) (PROBE FOR CLARITY/SPECIFICS) (ACCEPT MULTIPLE REASONS)

(IF Q19=2, ASK:)

19B. Why do you prefer the PROPERTY TAX funding option?

(OPEN-ENDED) (PROBE FOR CLARITY/SPECIFICS) (ACCEPT MULTIPLE REASONS)

(IF Q19=3, ASK:)

19C. Why do you prefer the COMBINATION OF BOTH PROPERTY AND SALES TAX funding option?

(OPEN-ENDED) (PROBE FOR CLARITY/SPECIFICS) (ACCEPT MULTIPLE REASONS)

(IF Q19=4, ASK:)

19D. Why would you NOT support a tax increase of any type?

(OPEN-ENDED) (PROBE FOR CLARITY/SPECIFICS) (ACCEPT MULTIPLE REASONS)

(IF Q19=4, SKIP TO Q21. OTHERWISE ASK:)

20. Again, in order to fund the proposed YMCA Community and Civic Center, would you support some type of increased tax if the MONTHLY AMOUNT you had to pay was **(INSERT A-E IN ORDER UNTIL "YES" REPLY OBTAINED, THEN SKIP TO Q21)? (READ RESPONSES AS NEEDED)**

- A Above \$30 per month
- B What about up to \$30 per month?
- C What about up to \$20 per month?
- D What about up to \$15 per month?
- E What about up to \$10 per month?

- 1 Yes – willing to pay that amount
- 2 No – would NOT pay that amount
- 3 **(NOT SURE/DEPENDS)**

21. Are you currently a registered voter? **(OPEN-ENDED)**

- 1 Yes
- 2 No
- 3 **(DON'T KNOW)**

21A. How likely are you to vote on this issue if there was a special mail-in ballot sent to all registers voters in Prairie Village? Do you think you would **(READ RESPONSES)**

- 1 Definitely vote
- 2 Probably vote
- 3 Might
- 4 Probably NOT vote
- 5 Or, definitely NOT vote
- 6 **(DON'T KNOW/REFUSED)**

(DEMOS)

And now I have just a few last questions for classification purposes only.

(ASK Q22 ONLY IF Q9=7. OTHERWISE SKIP TO Q23)

22. Which of the following BEST describes your household? **(READ RESPONSES)**

- 1 One adult
- 2 **(READ ONLY IF Q1=1)** One adult with children
- 3 Two adults
- 4 **(READ ONLY IF Q1=1)** Two adults with children
- 5 One senior age 65+
- 6 Two seniors age 65+
- 7 **(OTHER – SPECIFY:)**

23. Do you own or rent your current residence? **(OPEN-ENDED)**

- 1 Own
- 2 Rent
- 3 **(REFUSED)**

24. What is your current marital status? **(READ RESPONSES)**

- 1 Married/living with partner
- 2 Single
- 3 Widowed, divorced, or separated
- 4 **(REFUSED)**

25. Considering all wage earners for your household, was your total household income, before taxes, in 2018...? **(READ RESPONSES)**

- 1 Under \$50,000
- 2 \$50,000 to under \$75,000
- 3 \$75,000 to under \$100,000
- 4 \$100,000 to \$150,000
- 5 Or, over \$150,000
- 6 **(REFUSED)**

That concludes the interview. I just need to verify that I reached you at **(INSERT PHONE NUMBER)**
(IF NOT CORRECT, RECORD NUMBER:)

In case my supervisor wants to verify I completed this survey, can I please have your first name? **(RECORD NAME)**

Thanks so much for your time and opinions – have a great evening/day!

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this 15 day of July, 2019, by and between the **City of Prairie Village, Kansas** with its principal office located at 7700 Mission Road, Prairie Village, Kansas 66208 ("the City"), the **Board of Directors of the Johnson County Library, Johnson County, Kansas**, with administrative offices located at 9875 W. 87th St., Overland Park, Kansas 66212 ("JCL"), and the **YMCA of Greater Kansas City, a Missouri not-for-profit corporation** ("the YMCA"). The City, JCL, and the YMCA are occasionally referred to in this MOU individually as "Party" and collectively as "Parties."

RECITALS

- A. The City is a Kansas municipal corporation and is authorized to enter this MOU by the powers vested in it by Article 12, Section 5 of the Kansas Constitution.
- B. JCL is a quasi-municipal corporation organized under the laws of the state of Kansas and is authorized to enter this MOU by the powers vested in it by K.S.A. 12-1223 *et seq.* JCL presently operates the Corinth Library at 8100 Mission Road in the City.
- C. The YMCA is a charitable organization exempt from federal taxation pursuant to section 501(c)(3) of Title 26 of the United States Code. The YMCA owns property on which the Paul Henson Family YMCA is operated at 4200 W. 79th Street, Prairie Village, Kansas.
- D. JCL, the City, and the YMCA desire to study the possibility of constructing a community recreation and wellness center ("Center") and a new Johnson County Library branch facility ("Branch") (collectively Center and Branch are "Project") on land that is in closer proximity to the City's Harmon Park, swimming pools, and tennis courts, including a study of the market sustainability of undertaking such a Project, taking into account the needs of JCL, the YMCA, and the City.
- F. The parties accordingly desire to enter into this MOU to set forth the terms pursuant to which they will collaborate in studying the market feasibility of constructing the Project, including a new Branch operated by JCL and Center operated by YMCA.

AGREEMENTS

NOW, THEREFORE, for the mutual promises and covenants contained herein, the Parties incorporate by reference the Recitals set forth above in this MOU and agree as follows:

1. PROJECT STUDY.

A. The Parties agree to collaborate on a plan to study the possibility of constructing the Project on City land that is in close proximity to the City's Harmon Park, swimming pools, and tennis courts ("Project Study"), taking into account the plans of JCL, City, and YMCA.

B. The area designated for the Project Study ("Project Study Area") is shown as indicated on the attached diagram attached hereto and incorporated herein by reference as Exhibit A.

C. The Project Study may consist of three phases: (I) Market Sustainability Study; (II) Community Engagement Evaluation; and (III) Project Site Design Study. This MOU provides for the Parties to participate in a Market Sustainability Study as part of the Project Study.

2. MARKET SUSTAINABILITY STUDY.

A. The Parties will procure third-party consultants or professionals to provide and conduct a market sustainability study of the Project to begin not later than September 30, 2019 ("Market Sustainability Study"). City, JCL, and YMCA will cooperate to select consultants or professionals to conduct the Market Sustainability Study.

B. The Market Sustainability Study's purpose is to provide a thorough analysis of the current level of services and amenities in the area similar to those that would exist at the Project; identify existing gaps in services and recommend methods where the Project can fill those gaps; propose what the Project may provide patrons in terms of services and function; explore how City, JCL, and YMCA could mutually benefit from locating the Project in the Project Study Area; describe how the Center could be operated in an economically viable manner; and seek feedback from participants as to which services and amenities they would use and to what extent they would be willing to pay for such services and amenities.

C. The Parties estimate the cost to procure the Market Sustainability Study will be not more than \$50,000. The Parties commit to share in the costs of this Market Sustainability Study in amounts not more than the following (or in equivalent portions if the total cost is less than \$50,000):

1. JCL – \$20,000.00;
2. City - \$20,000.00; and
3. YMCA - \$10,000.00.

D. City, JCL, and YMCA will collaborate on messaging and communications during the Project Study and the Market Sustainability Study. The Parties' messaging and communications with the Public will be cohesive and coordinated by the City.

E. Upon completion of the Market Sustainability Study, the City, JCL, and YMCA will consider the results of the Market Sustainability Study. Each Party, at that Party's sole discretion, will determine the feasibility of that Party participating in the Project or further studying the Project in future phases of the Project Study as described in Section 1.C.

3. SCHEDULE. City, JCL, and YMCA agree to diligently pursue the Market Sustainability Study. In the event the Parties intend, based upon each Party's sole, respective discretion, to proceed with future Phases II and III of the Project Study for Community

Engagement Evaluation and Project Site Design Study, then the Parties will consider additional memoranda of understanding to initiate those phases of the Project Study.

4. APPROVAL OF THIS MOU. Each Party represents and warrants that this MOU has been properly authorized and approved to be effective.

5. NO LIMITATION OF POWER.

A. Nothing in this MOU shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the Constitution of the state of Kansas and the United States, statutes, or by general law.

B. Nothing in this MOU shall be construed as a limitation on the powers, rights, authority, duty and responsibility conferred upon and vested in JCL, the City, or the YMCA by the laws and Constitution of the state of Kansas and the United States.

6. COOPERATION. The Parties agree to exercise good faith and cooperate with each other to conduct the studies contemplated herein.

7. NOTICES. Any notice, request, approval, demand, instruction, or other communication to be given to either party hereunder, unless specifically stated otherwise herein, shall be in writing and shall be conclusively deemed to be delivered (i) when personally delivered, (ii) when deposited in the U.S. mail, sent by certified mail return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by facsimile with a confirmed receipt, but in all cases addressed to the parties as follows:

To JCL: Sean Casserley, County Librarian
Johnson County Central Library
9875 W. 87th St.
Overland Park, KS 66212
Phone: 913-826-4600
Fax: 913-826-4730
Email: CasserleyS@jocolibrary.org

With a Copy to: Fred J. Logan, Jr.
Logan, Logan & Watson, L.C.
8340 Mission Rd., Suite 106
Prairie Village, KS 66206
Phone: 913-381-1121
Fax: 913-381-6546
Email: flogan@loganlaw.com

To CITY: Wes Jordan, City Administrator
7700 Mission Road
Prairie Village, KS 66208
Phone: (913) 385-4621

Fax: (913) 381-7755
E-mail: wjordan@pvkansas.com

With a Copy to:

To YMCA: Mark Hulet
YMCA of Greater Kansas City
3100 Broadway, Suite 1020
Kansas City, Missouri 64111
Phone: 816.360.3318
Email: MarkHulet@KansasCityYMCA.org

With a Copy to: Amanda Yoder
Lathrop Gage LLP
2345 Grand Blvd, Suite 2200
Kansas City, Missouri 64108
Phone: 816.460.5810
Email: ayoder@lathropgage.com

8. GENERAL MATTERS.

A. This MOU shall be governed by and construed under the laws of the state of Kansas.

B. No party shall assign this MOU without the written consent of all Parties.

C. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this MOU. This MOU constitutes the entire agreement between the Parties and supersedes all prior agreements, whether written or oral, covering the same subject matter. This MOU may be modified or amended only upon written instrument executed by the Parties required to consent to such amendment.

D. No member of the Governing Body, official or employee of the City shall be personally liable to JCL, or any successor in interest to JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by the City.

E. No member of the Board of Directors, official or employee of JCL shall be personally liable or obligated to perform the obligations of JCL, pursuant to the provisions of this MOU or for any default or breach of the MOU by JCL.

June 14, 2019

F. The signatories to this MOU covenant and represent that each is fully authorized to enter and to execute this MOU on behalf of the named party.

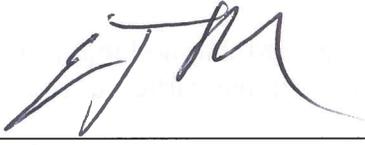
G. It is agreed that nothing in this MOU is intended to, nor does it create or establish a joint venture between the Parties, or as constituting any agency relationship.

H. Nothing contained in this MOU shall be construed to confer upon any other party the rights of a third-party beneficiary.

The parties have executed this MOU on the date first written above.

[Remainder of page intentionally left blank; Signature Pages and Exhibit A follow]

CITY OF PRAIRIE VILLAGE, KANSAS

By: 
Eric Mikkelson, Mayor

Attest:


City Clerk

Approved As To Form:

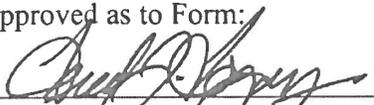


**BOARD OF DIRECTORS OF JOHNSON
COUNTY LIBRARY**

By: 
Bethany Griffith
Chair

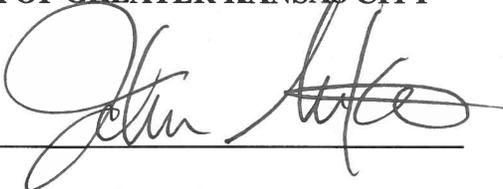
Attest:

Amy Amos Ruo
Secretary

Approved as to Form:

Fred J. Logan, Jr., Board Attorney

MOU Phase I
June 14, 2019

YMCA OF GREATER KANSAS CITY

By: 

Name: John Mikos

Title: President and CEO

EXHIBIT A
PROJECT STUDY AREA DIAGRAM





ADMINISTRATION

Council Meeting Date: October 21, 2019

COU2019-44 **Consider approval of Ordinance No. 2408 to issue Industrial Revenue Bonds (Silvercrest at Meadowbrook - Senior Housing)**

Motions:

Approve Ordinance No 2408 authorizing the City of Prairie Village, Kansas, to issue Industrial Revenue Bonds in an amount not to exceed \$35,000,000 to finance the costs of acquiring, constructing and equipping the facility for the benefit of Silvercrest at Meadowbrook, LLC, and certain documents and actions in connection with the issuance of said bonds (sales tax exemption only).

BACKGROUND

The bonds are being issued for the purpose of obtaining sales tax exemption on construction materials and furniture, fixtures, and equipment for the construction of a senior housing facility located in Meadowbrook Park.

The developer agreement for Meadowbrook Park development outlines the structure for the financing of the public improvements associated with the project. The financial structure includes the issuance of Industrial Revenue Bonds (IRB) and the sales tax savings being paid to the City to be used to finance a portion of the park improvements.

The bonds will be purchased by the developer, and the developer will be obligated to make all payments on the bonds and pay all costs related to the bonds. The City will have no liability with respect to repayment of the bonds, and the developer will also indemnify the City relating to the bonds.

Kevin Wempe of Gilmore & Bell will attend the meeting on Monday, October 21st to present and discuss the Ordinance and accompanying documents.

ATTACHMENTS

- Ordinance No. 2408
- Lease Agreement
- Base Lease Agreement
- Bond Indenture
- Bond Purchase Agreement
- Board of Tax Appeals Informational Statement

PREPARED BY:

Lisa Santa Maria, Finance Director

Date: October 2, 2019

ORDINANCE NO. 2408

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF PRAIRIE VILLAGE, KANSAS OF NOT TO EXCEED \$35,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (SILVERCREST AT MEADOWBROOK, LLC PROJECT), SERIES 2019, TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SILVERCREST AT MEADOWBROOK, LLC AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

WHEREAS, the City of Prairie Village, Kansas (the “Issuer”) is a municipal corporation and political subdivision duly organized and validly as a city of the first class; and

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (collectively, the “Act”), to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes; and

WHEREAS, pursuant to the Act, the Issuer proposes to issue its Taxable Industrial Revenue Bonds (Silvercrest at Meadowbrook, LLC Project), Series 2019 (the “Bonds”), in an aggregate principal amount not to exceed \$35,000,000, for the purpose of (a) acquiring, constructing and equipping a commercial project generally located at 9300 and 9340 Parkside Drive (the “Project”) for Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Company”), and (b) paying certain costs of issuance, all as further described in the hereinafter referred to Bond Indenture and Lease Agreement; and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Bond Indenture”), by and between the Issuer and UMB Bank, N.A., as Bond Trustee (the “Bond Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement dated as of the date set forth therein (the “Base Lease”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Bond Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project will be acquired, constructed and equipped and pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay Lease Payments (as defined in the Bond Indenture) sufficient to pay the principal of and premium, if any, and interest on, the Bonds; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the Issuer execute and deliver certain documents and that the Issuer take certain other actions as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:

Section 1. Findings and Determinations. The Issuer hereby makes the following findings and determinations with respect to the Company and the Bonds to be issued by the Issuer, based upon representations made to the Issuer:

(a) The Company has properly requested the Issuer's assistance in financing the costs of the Project;

(b) The issuance of the Bonds for the purpose of providing funds to finance the costs of the Project is in furtherance of the public purposes set forth in the Act; and

(c) The Bonds are being issued for a valid purpose under and in accordance with the provisions of the Act.

Section 2. Authorization of the Bonds. The Issuer is hereby authorized to issue the Bonds in the aggregate principal amount of not to exceed \$35,000,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the Bond Indenture. The Bonds shall bear interest at an interest rate not to exceed 2.00% per annum, and shall mature not later than the year 2022, and shall have such redemption provisions, including premiums, and other terms as set forth in the Bond Indenture. The final terms of the Bonds shall be specified in the Bond Indenture, and the signatures of the officers of the Issuer executing such Bond Indenture shall constitute conclusive evidence of their approval and the Issuer's approval thereof.

Section 3. Limited Obligations. The Bonds shall be limited obligations of the Issuer, payable solely from the sources and in the manner as provided in the Bond Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Bond Indenture) to the Bond Trustee and in favor of the owners of the Bonds, as provided in the Bond Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general credit or against its taxing power.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the City Clerk), and the Issuer is hereby authorized to execute and deliver each of such documents (the "Issuer Documents") with such changes therein (including the dated date thereof) as shall be approved by the officials of the Issuer executing such documents, such officials' signatures thereon being conclusive evidence of their approval and the Issuer's approval thereof:

(a) Bond Indenture providing for the issuance thereunder of the Bonds and setting forth the terms and provisions applicable to the Bonds, including a pledge and assignment by the Issuer of the Trust Estate to the Bond Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Bond Indenture;

(b) Base Lease Agreement under which the Company will lease to the Issuer the property financed and refinanced with the proceeds of the Bonds in consideration of the Issuer's deposit of the proceeds of the Bonds into the funds described in the Bond Indenture;

(c) Lease Agreement under which the Issuer will make the proceeds of the Bonds available to the Company for the purposes herein described in consideration of payments that will be sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds; and

(d) Bond Purchase Agreement, pursuant to which the Company will purchase the Bonds under the conditions set forth therein.

Section 5. Execution of Bonds and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds by manual or facsimile signature and to deliver the Bonds to the Bond Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Bond Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of and as the act and deed of the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest, by manual or facsimile signature, to the Bonds, the Issuer Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 6. Further Authority. The Issuer shall, and the officials, agents and employees of the Issuer are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any credit enhancement and security documents, arbitrage certificate, redemption notices, closing certificates and tax forms, as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Issuer Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in full force immediately after its adoption by the governing body of the Issuer and publication of this Ordinance or a summary thereof in the official newspaper of the Issuer.

[Balance of page intentionally left blank]

PASSED by the governing body of the City of Prairie Village, Kansas on October 21, 2019 and **APPROVED AND SIGNED** by the Mayor.

(Seal)

Mayor

ATTEST:

City Clerk

(PUBLISHED IN *THE LEGAL RECORD* ON OCTOBER 22, 2019)

SUMMARY OF ORDINANCE NO. 2408

On October 21, 2019, the governing body of the City of Prairie Village, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF PRAIRIE VILLAGE, KANSAS OF NOT TO EXCEED \$35,000,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (SILVERCREST AT MEADOWBROOK, LLC PROJECT), SERIES 2019, TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR SILVERCREST AT MEADOWBROOK, LLC AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

The bonds approved by the Ordinance are being issued in an aggregate principal amount not to exceed \$35,000,000, for the purpose of (a) acquiring, constructing and equipping a commercial project located approximately at the northeast corner of Nall Avenue and 94th Terrace for Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Company”), and (b) paying certain costs of issuance. The bonds shall be limited obligations of the City payable from lease payments to be made by the Company in amounts sufficient to pay the principal of and premium, if any, and interest on the bonds. The bonds and interest thereon shall not be deemed to constitute a debt or liability of the City, the State of Kansas (the “State”) or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the bonds shall not, directly, indirectly or contingently, obligate the City, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.pvkansas.com.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: October 21, 2019.

City Attorney

Draft: September 24, 2019

LEASE AGREEMENT

Dated as of November 1, 2019

Between

CITY OF PRAIRIE VILLAGE, KANSAS

And

SILVERCREST AT MEADOWBROOK, LLC

\$35,000,000
(Aggregate Maximum Principal Amount)
Taxable Industrial Revenue Bonds
(Silvercrest at Meadowbrook, LLC Project)
Series 2019

Certain rights, title and interest of the City of Prairie Village, Kansas in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Bond Trustee under a Bond Trust Indenture dated as of November 1, 2019, between the Issuer and the Bond Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Lease Agreement”), dated as of November 1, 2019, between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation and political subdivision organized and existing under the laws of the State of Kansas (the “Issuer”), and **SILVERCREST AT MEADOWBROOK, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (the “Company”);

RECITALS

1. The Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, construct and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm, or corporation with respect to said facilities, to issue revenue bonds for such purposes, and to secure the payment of such bonds as provided in the Act.

2. The Issuer is authorized pursuant to the Act and an Ordinance duly passed by the governing body of the Issuer to issue \$35,000,000 maximum principal amount of Taxable Industrial Revenue Bonds (Silvercrest at Meadowbrook, LLC Project), Series 2019 (the “Bonds”), under the hereinafter described Bond Indenture for the purpose of providing funds to (a) acquire, construct and equip a commercial project to be generally located at 9300 and 9340 Parkside Drive in Prairie Village, Kansas (collectively, the “Project”) and (b) pay certain costs related to the issuance of the Bonds.

3. The Issuer desires to lease the Project to the Company and the Company desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements set forth in this Lease Agreement, the Issuer and the Company covenant and agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions of Words and Terms. For all purposes of this Lease Agreement, except as otherwise provided or unless the context otherwise requires, words and terms used in this Lease Agreement have the same meanings as set forth in **Section 101** of the Bond Indenture.

Section 1.2. Rules of Construction. For all purposes of this Lease Agreement, except as otherwise provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Lease Agreement:

- (a) The defined terms referred to in this Article include the plural as well as the singular.
- (b) All accounting terms not otherwise defined herein or in the Bond Indenture shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles to the extent applicable.

(c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

(d) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) The Article and section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer represents and warrants to the Company and the Bond Trustee as follows:

(a) *Organization and Issuer.* The Issuer (1) is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Bond Indenture, to enter into, execute and deliver this Lease Agreement, the Bond Indenture and the other Transaction Documents required to be executed and delivered by the Issuer in connection with the issuance of the Bonds and to carry out its obligations hereunder and thereunder, and (3) by all necessary corporate action has been duly authorized to execute and deliver this Lease Agreement, the Bond Indenture and the other Transaction Documents required to be executed and delivered by it in connection with the issuance of the Bonds, acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this Lease Agreement, the Bond Indenture, and any other Transaction Documents by the Issuer will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Issuer is a party or by which it or any of its property is bound or, to the best of its knowledge, any of the constitutional or statutory rules or regulations applicable to the Issuer or its property.

Section 2.2. Representations by the Company. The Company represents and warrants to the Issuer and the Bond Trustee as follows:

(a) *Organization.* The Company (1) is a limited liability company duly organized and validly existing under the laws of the State of Delaware and duly authorized to conduct business in the State of Kansas and (2) has lawful power and authority to enter into, execute and deliver this Lease Agreement and any other Transaction Documents required to be executed and delivered by it in connection with the issuance of the Bonds and to carry out its obligations hereunder and thereunder, and by all necessary corporate action has been duly authorized to execute and deliver this Lease Agreement and other required Transaction Documents, acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this Lease Agreement and other Transaction Documents by the Company will not conflict with or result in a breach of any of

the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Company is a party or by which it or any of its property is bound or its articles of organization, operating agreement, or to the best of its knowledge, any of the rules or regulations applicable to the Company or its property.

(c) *Licenses, Permits and Approvals.* The Company is duly authorized and has, or will obtain, all necessary licenses and permits to occupy and operate its facilities under the laws, rulings, regulations and ordinances of the State of Kansas and the departments, agencies and political subdivisions thereof, and the Company has obtained, or will obtain, all requisite approvals of federal, state, regional and local governmental bodies relating to the acquisition, construction, equipping and operation of its facilities. To the best of its knowledge, the Company's facilities are in all material respects in compliance with all applicable federal, state and local zoning, subdivision, environmental, pollution control and other laws, rules, regulations, codes and ordinances.

(d) *Pending Litigation.* No litigation, proceedings or investigations are pending or, to the knowledge of the Company, threatened against the Company, except, if any, litigation involving claims, the probable recoveries in which and the estimated costs and expenses of defense of which, based upon the advice of litigation counsel to the Company, will (1) be entirely within the Company's applicable insurance policy limits (subject to applicable deductibles) or are not in excess of the total of the available reserves held under the Company's applicable self-insurance program, or (2) if adversely determined will not materially and adversely affect the financial condition or operations of the Company. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Company, threatened against the Company seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Bond Indenture, the Bonds, this Lease Agreement or any other required Transaction Documents by the Issuer, or this Lease Agreement or any other required Transaction Documents by the Company, or which would in any manner challenge or adversely affect the corporate existence or powers of the Company to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Company of the terms and provisions of this Lease Agreement or any other Transaction Documents to which it is a party.

(e) *Project.* The Project is located wholly within the corporate limits of the City of Prairie Village, Kansas and will comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of its knowledge, without independent investigation, the Project will comply with all other applicable laws, rules and regulations.

Section 2.3. Survival of Representations. All representations of the Issuer and the Company contained in this Lease Agreement or in any certificate or other instrument delivered by the Issuer and the Company pursuant to this Lease Agreement, the Bond Indenture, or any other Transaction Document, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations.

ARTICLE III

GRANT OF LEASEHOLD; COMPLETION OF PROJECT

Section 3.1. Granting of Leasehold Estate. Concurrently with the issuance of the Bonds, the Company has leased the Project to the Issuer pursuant to the Base Lease. The Issuer hereby rents, subleases, and lets the Project to the Company, and the Company hereby rents, subleases, and hires the

Project from the Issuer, for the rentals and upon and subject to the terms and conditions herein contained. The Project consists of the real and personal property described in **Schedule 1** of this Lease Agreement.

Section 3.2. Lease Term. This Lease Agreement shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease Agreement, shall have an initial term commencing as of the date of this Lease Agreement and terminating on November 1, 2022.

Section 3.3. Use of Proceeds. The proceeds of the Bonds shall be deposited with the Bond Trustee and shall be administered, disbursed and applied for the purposes and in the manner as provided in the Bond Indenture and this Lease Agreement.

The Company agrees to comply with all of the provisions set forth in the Bond Indenture applicable to it and to perform all obligations of the Company set out in the Bond Indenture.

Section 3.4. Possession and Use of the Project.

(a) The Issuer covenants and agrees that, as long as no Event of Default under this Lease Agreement shall have occurred, the Company shall have sole and exclusive possession of the Project (subject to the Issuer's right of access pursuant to **Section 6.11** hereof) and shall and may peaceably and quietly have, hold, and enjoy the Project during the term of this Lease Agreement. The Issuer covenants and agrees that it will not take any action, other than pursuant to **Article VII** of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the term of this Lease Agreement and will, at the request and expense of the Company, defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Lease Agreement, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act. The Company shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions, and requirements of all federal, state, local, and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Company shall also comply with the mandatory requirements, rules, and regulations of all insurers under the policies required to be carried under the provisions of **Article VI** hereof. The Company shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, with prior written notice to the Issuer, at its own cost and expense, to contest or review, by legal or other appropriate procedures, the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction, or requirement, or any such requirement, rule, or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.5. Sublease by the Company. The Company may rent and sublease all or portions of the Project for use by others in the normal course of its business. Any such subleases entered into after the effective date of this Lease Agreement shall be subject and subordinate in all respects to the provisions of this Lease Agreement. Nothing in this Lease Agreement shall allow the Issuer, its successor or assigns, to disturb the rights of a sublessee to use the Project under the terms and conditions as set forth in such sublessee's sublease with the Company. The Company has or intends to sublease the Project to a third party operator of the Project and thus any obligation of the Company hereunder shall be interpreted as an obligation that the Company will satisfy or will cause to be satisfied by such sublessee/operator.

Section 3.6. Subordination to Lender. The Issuer acknowledges that the Company may grant a mortgage and/or other security (each, a “Mortgage”) on the Project to a lender (each, a “Mortgagee”) during the term of this Lease Agreement. The Issuer agrees that in such case this Lease Agreement would be subject to and subordinate to any such Mortgage and that the Mortgagee shall not be required to grant any rights of nondisturbance with respect to this Lease Agreement. Upon the request of the Company, the Issuer shall provide any additional documentation evidencing such subordination as required by the Mortgagee.

ARTICLE IV

PAYMENT PROVISIONS

Section 4.1. Lease Payments. The Company shall make the following payments as rentals under this Lease Agreement (“Lease Payments”) and to provide for payment of the interest on and principal of, and redemption premium, if any, on the Bonds, directly to the Bond Trustee, for the account of the Issuer, for deposit of immediately available monies in the Debt Service Fund, on the following dates, and otherwise as set out below:

(a) *Debt Service Fund--Interest:* On or before **11:00 a.m.** Prairie Village, Kansas time on each Interest Payment Date on the Bonds, an amount which is not less than the interest to become due on that Interest Payment Date; provided, however that the Company may be entitled to certain credits on such payments as permitted under **Section 4.2** of this Lease Agreement.

(b) *Debt Service Fund--Principal:* On or before **11:00 a.m.** Prairie Village, Kansas time on each principal payment date on the Bonds, an amount which is not less than the next installment of principal due on the Bonds on the next principal payment date by maturity; provided, however, that the Company may be entitled to certain credits on such payments as permitted under **Section 4.2** of this Lease Agreement.

(c) *Debt Service Fund--Redemption:* On or before the Business Day required by this Lease Agreement or the Bond Indenture, the amount required to redeem Bonds then Outstanding if the Company exercises its right to redeem Bonds under any provision of the Bond Indenture or if any Bonds are required to be redeemed under any provision of the Bond Indenture.

Notwithstanding any schedule of payments set forth in this Lease Agreement, the Company shall make payments and shall be liable therefor at the times and in the amounts (including interest, principal, and redemption premium, if any) equal to the amounts to be paid as interest, principal and redemption premium, if any, whether at maturity or by optional or mandatory redemption upon all Bonds from time to time Outstanding under the Bond Indenture. So long as the Company owns the Bond, it may make payments required under this **Section 4.1** by making entries on its records, without making payments to the Bond Trustee.

Unpaid Lease Payments shall bear interest at the applicable rate of interest on the Bonds. Any interest charged and collected on an unpaid Lease Payment shall be deposited to the credit of the Debt Service Fund and applied to pay interest on overdue amounts in accordance with the Bond Indenture.

Section 4.2. Credits on Lease Payments. Notwithstanding any provision contained in this Lease Agreement or in the Bond Indenture to the contrary, in addition to any credits resulting from the payment or prepayment of Lease Payments from other sources:

(a) any moneys deposited by the Bond Trustee or the Company in the Debt Service Fund as interest (including moneys received as accrued interest from the sale of the Bonds and any initial deposit made from the proceeds of the sale of the Bonds) shall be credited against the obligation of the Company to pay Lease Payments corresponding to interest on the Bonds as the same becomes due;

(b) any moneys deposited by the Bond Trustee or the Company in the Debt Service Fund as principal shall be credited against the obligation of the Company to pay Lease Payments corresponding to principal of the Bonds as the same becomes due in the order of maturity thereof, except that prepayments for purposes of making an optional deposit into the Debt Service Fund for the redemption of Bonds shall be applied to the maturities of the Bonds to be redeemed or purchased, delivered and canceled from the proceeds of such optional deposit;

(c) the principal amount of Bonds and maturity purchased by the Company and delivered to the Bond Trustee, or purchased by the Bond Trustee and canceled, shall be credited against the obligation of the Company to pay Lease Payments corresponding to principal of such Bonds so purchased; provided, however, that deposit of a Bond of one maturity may not be credited against a payment which would be used, in the normal course, to retire a Bond of another maturity; and

(d) the investment income accruing to the Debt Service Fund and the amount of any moneys transferred by the Bond Trustee from any other fund held under the Bond Indenture and deposited in the Debt Service Fund as interest or principal shall be credited against the obligation of the Company to pay interest or principal, as the case may be, as the same become due.

Section 4.3. Additional Payments. The Company shall make the following additional payments to the following Persons:

(a) *Issuer Fees.* The Company shall pay to the Issuer upon demand, its reasonable expenses, including attorneys' fees, incurred by the Issuer in relation to the Bonds and the transactions contemplated by this Lease Agreement, the Bond Indenture and any of the Transaction Documents.

(b) *Bond Trustee Fees and Professional Fees.* The Company shall pay to the Bond Trustee and any Paying Agent, registrars, counsel, accountants, engineers and other Persons when due, all reasonable fees, charges and expenses of such Persons for services rendered under the Bond Indenture and under any of the Transaction Documents and expenses incurred in the performance of such services under the Bond Indenture and any of the Transaction Documents for which such Persons are entitled to payment or reimbursement.

(c) *Advances By Bond Trustee.* The Company shall pay to the Bond Trustee, the amount of all advances of funds made by the Bond Trustee under the provisions of this Lease Agreement or the Bond Indenture, with interest thereon at the prime rate plus 2% announced from time to time by the Bond Trustee.

(d) *Costs of Enforcement.* In the event the Company defaults under any of the provisions of this Lease Agreement, the Bond Indenture or any other Transaction Document, and the Bond Trustee employs attorneys or incurs other fees, charges and expenses for the collection of required payments or the enforcement of performance or observance of any obligation or agreement on the part of the Company contained in this Lease Agreement, the Company on demand therefor shall pay to the Bond Trustee the reasonable fees of such attorneys and such other fees, charges and expenses so incurred by the Bond Trustee. The Company also shall pay, and shall indemnify the Issuer and the Bond Trustee from and against, all costs, claims, liabilities, losses, expenses and charges, including reasonable counsel fees, incurred for the collection of payments due or for the enforcement or performance or observance of any

covenant or agreement of the Company under this Lease Agreement, the Bond Indenture or any other Transaction Document.

(e) *Taxes and Assessments.* The Company also covenants and agrees, at its expense, to pay all taxes and assessments of any type or character charged to the Issuer or to the Bond Trustee affecting the amount available to the Issuer or the Bond Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including property and other taxes and assessments assessed or levied by any public agency or governmental Issuer of whatsoever character having power to levy taxes or assessments) but excluding any taxes based upon the capital and/or income of the Bond Trustee or any other Person other than the Company; provided, however, that the Company shall have the right to protest any such taxes or assessments and to require the Issuer or the Bond Trustee, as the case may be, at the Company's expense, to protest and contest any such taxes or assessments assessed or levied upon them and that the Company shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest, or contest would materially adversely affect the rights or interests of the Issuer or the Bond Trustee.

(f) *Other Amounts Payable.* The Company shall pay to the Person or Persons entitled thereto, any other amounts which the Company has agreed to pay under this Lease Agreement, the Bond Indenture and any other Transaction Document.

Section 4.4. Prepayment of Lease Payments. The Company shall have and is granted the option to prepay from time to time the amounts payable under this Lease Agreement in sums sufficient to redeem or to pay or cause to be paid all or part of the Bonds in accordance with the provisions of the Bond Indenture. Upon written notice and direction by the Company to the Issuer to redeem Bonds subject to optional redemption under the Bond Indenture, the Issuer shall forthwith take or cause to be taken all steps (other than the payment of the money required for such redemption) necessary under the applicable redemption provisions of the Bond Indenture to effect redemption of all or part of the then Outstanding Bonds, as may be specified by the Company, on the date established for such redemption. Whenever any Bonds shall have been called for optional redemption under any provision of the Bond Indenture, the Company shall deposit with the Bond Trustee moneys in such amounts required and at such times to redeem such Bonds, including the principal, redemption premium, if any, and accrued interest thereon to the redemption date. The Company further agrees that in the event the payment of principal of and interest on the Bonds is accelerated upon the occurrence of an Event of Default under the Bond Indenture, all Lease Payments payable for the remainder of the term of this Lease Agreement shall be accelerated and prepayment shall be made hereunder in such amounts. Any such prepayments shall be deposited in the Debt Service Fund, and applied by the Bond Trustee in accordance with the provisions of the Bond Indenture. The Company may also prepay all or any portion of the Lease Payments by providing for the payment of all or any portion of the Bonds in accordance with **Article X** of the Bond Indenture.

Section 4.5. Obligations Absolute and Unconditional. The obligations of the Company under this Lease Agreement are absolute and unconditional. The Company shall pay all Lease Payments and other payments due under this Lease Agreement and perform its obligations, covenants and agreements under this Lease Agreement, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment, discrimination or defense or any right of termination or cancellation arising from any circumstances whatsoever, and regardless of the invalidity of any portion of this Lease Agreement, and, to the extent permitted by law, the Company waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease Agreement or which releases or purports to release the Company therefrom. Nothing in this Lease Agreement shall be construed as a waiver by the Company of any rights or claims the Company may have against the Issuer under this Lease Agreement or otherwise, but any recovery upon such rights or claims

shall be had from the Issuer separately, it being the intent of this Lease Agreement that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease Agreement for the benefit of the owners of the Bonds.

Section 4.6. Assignment of Issuer's Rights. Under the Bond Indenture, the Issuer has pledged, assigned, transferred in trust and granted a security interest to the Bond Trustee in all of the Issuer's rights, title and interest under this Lease Agreement accruing to or vested in the Issuer (except for the Issuer's rights to payment of its fees and expenses and the Issuer's right to indemnification in certain circumstances and as otherwise expressly set forth in this Lease Agreement) as security for the Bonds, and such rights, title and interest may be exercised, protected and enforced for or on behalf of the owners of the Bonds in conformity with this Lease Agreement, the Bond Indenture and the other Transaction Documents. The Bond Trustee is hereby given the right to enforce, as assignee of the Issuer, the performance of the obligations of the Company under this Lease Agreement, and the Company hereby consents to the same and agrees that the Bond Trustee may enforce such rights as provided in this Lease Agreement and in the Bond Indenture and the other Transaction Documents. This Lease Agreement recognizes that the Bond Trustee is a third party creditor-beneficiary of this Lease Agreement.

ARTICLE V

[RESERVED]

ARTICLE VI

GENERAL COVENANTS AND PROVISIONS

Section 6.1. Corporate Existence. Except as otherwise expressly provided in this Lease Agreement, the Company shall (1) preserve and keep in full force and effect its corporate or other separate legal existence, (2) remain qualified to do business and conduct its affairs in each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification, and (3) maintain its status as a limited liability company.

Section 6.2. Maintenance and Use of Property. The Company shall cause the Project and all of its property used or useful in the conduct of its business and operations to be maintained, preserved and kept in good repair and working order and condition and in as safe condition as its operations will permit and will make all repairs, renewals, replacements and improvements thereof necessary for the efficient and advantageous conduct of its business and operations. Nothing in this Section shall obligate the Company to preserve, repair, renew or replace any element or unit of the Project or any of its property no longer used or no longer useful in the conduct of its business, or prevent the Company from discontinuing the operation of any element or unit of the Project or any of its property or from removing or demolishing any building or buildings, if in its judgment (evidenced, in the case of such a cessation other than in the ordinary course of business, by a determination by its governing board) such discontinuance is desirable in the conduct of its business and not disadvantageous in any material respect to the owners of the Bonds. The Company may make additions, alterations and changes to the Project or its property so long as such additions, alterations and changes are made in compliance with the provisions of this Lease Agreement and will not result in a violation of the provisions of this Lease Agreement, and the Company may dispose of any property as permitted by this Lease Agreement.

The duly authorized agents of the Bond Trustee, as assignee of the Issuer, and the Bond Trustee's attorneys and agents, shall have the right at all reasonable times and with prior notice to the Company to

enter the property of the Company, or any parts thereof, for the purpose of inspecting the property of the Company to insure compliance with this Section; provided that such parties shall coordinate with the Company and any sublessee/operator of the Project to ensure that such entry upon and inspection of the property does not disturb the operation of the Project.

Section 6.3. Compliance With Laws and Regulations. The Company shall conduct its affairs and carry on its business and operations in such manner as to comply with any and all applicable laws of the United States of America and the several states thereof and to observe and conform to all valid orders, regulations or requirements of any governmental authority applicable to the conduct of its business and operations and the ownership of its property; provided, however, that nothing contained in this Lease Agreement shall require the Company to comply with, observe and conform to any such law, order, regulation or requirement of any governmental authority so long as the validity thereof shall be contested by the Company in good faith by appropriate proceedings, provided that the Company shall have set aside on its books adequate reserves with respect to such contest and such contest shall not materially impair the ability of the Company to meet its obligations under this Lease Agreement.

Section 6.4. Payment of Taxes and Other Charges. The Company shall pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Company or its property or any part thereof or upon any income therefrom; provided, however, that the Company shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Company shall have established and shall maintain adequate reserves on its books for the payment of the same.

Section 6.5. Licenses and Permits. The Company shall procure and maintain all licenses and permits necessary or desirable in the operation of its business and affairs.

Section 6.6. Insurance. The Company shall maintain, or cause to be maintained at its sole cost and expense, insurance with respect to its property, the operation thereof and its business against such casualties, contingencies and risks (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in amounts not less than is customary and adequate in the case of organizations engaged in the same or similar activities and similarly situated and as is adequate to protect its property and operations. The Company shall annually review the insurance it maintains pursuant hereto as to whether such insurance is customary and adequate. The Company's property insurance policy with respect to the Project shall name the Issuer and the Bond Trustee as additional insureds and the Trustee as a loss payee thereunder. The Company's general liability policy shall name each of the Issuer and the Bond Trustee as an additional insured.

All such insurance shall be maintained with responsible insurance carriers. Each policy or other contract for such insurance under which the Issuer or Trustee is named an additional insured or loss payee shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least ten (10) days after written notice of cancellation to the Company, the Bond Trustee, and the Issuer.

The Company shall deposit with the Bond Trustee and Issuer, at the closing of the Bonds, and annually on November 1 a certificate or certificates of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Company may maintain a single policy, blanket or umbrella policies, or a combination thereof, in which event the Company shall deposit with the Bond Trustee a certificate or certificates of the respective insurers as to the amount of coverage in force upon the property of the Company.

Section 6.7. Indemnity. The Company shall pay and indemnify and save the Issuer and the Bond Trustee and their respective council members, directors, officers, employees and agents harmless from and against all loss, liability, damage or expense arising out of the issuance of the Bonds and the execution of this Lease Agreement and the other Transaction Documents, including, but not limited to, claims for loss or damage to any property or injury to or death of any person, asserted by or on behalf of any person, firm, corporation or governmental entity arising out of or in any way connected with any property of the Company, or the conditions, occupancy, use, possession, conduct or management of, or any work done in or about such property including without limitation environmental contamination and the clean-up thereof. The Company shall also pay and indemnify and save the Issuer and the Bond Trustee and their respective council members, directors, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by the Company in any action or proceeding brought by reason of any such claim, demand, expense, penalty, fine or tax. If any action or proceeding is brought against the Issuer or the Bond Trustee or their respective council members, directors, officers, employees or agents by reason of any such claim or demand, the Company, upon notice from the Issuer or the Bond Trustee, covenants to resist and defend such action or proceeding on demand of the Issuer or the Bond Trustee or their respective council members, directors, officers, employees or agents. Notwithstanding the foregoing, neither the Issuer nor the Bond Trustee nor their respective council members, directors, officers, employees or agents shall be indemnified against loss, liability damage or expense for damage caused by their own grossly negligent, willful and malicious acts or omissions or grossly negligent, willful and malicious acts or omissions of their own council members, directors, officers, employees or agents. The Company shall also pay and indemnify the Issuer and the Bond Trustee from and against, all costs, expenses and charges, including reasonable counsel fees, incurred after default of the Company in enforcing any covenant or agreement of the Company contained in this Lease Agreement, the Bond Indenture or the other Transaction Documents.

Company will indemnify, defend and hold harmless the Issuer and the Bond Trustee, and their respective members, officers, directors, employees, agents and shareholders from and against any and all actions, claims, demands, losses, damages, fines, penalties, interest charges, liabilities, judgments and costs of every kind, including (a) those arising under any Hazardous Materials Laws, (b) any loss in value of the Project, (c) all foreseeable consequential damages, (d) the costs of any required or necessary repair, cleanup or detoxification of the Project, and the preparation and implementation of any closure, remedial or other required plans, and (e) all reasonable costs and expenses incurred by the Issuer or the Bond Trustee, or their respective members, officers, directors, employees, agents and shareholders:

1. for, with respect to, or as a direct or indirect result of (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Project of any Hazardous Material, regardless of whether or not caused by, or within the control of, Company or any predecessor in title or any employees, agents, contractors or subcontractors of Company, or any third persons at any time, occupying or present on or otherwise affecting the Project; or (ii) the transport, treatment, storage or disposal of Hazardous Materials to or at any location by Company or by any other party directly or indirectly affiliated with it, or at the direction or on behalf of any of them;
2. arising out of or related to any breach of Company's obligations or warranties under, or any inaccuracy or incompleteness of the representations made in, this **Section 6.7**, regardless of whether any of such actions or circumstances were or will be in compliance with applicable laws, regulations, codes or ordinances; or

3. arising out of the enforcement or attempted enforcement of the indemnity, defense and save harmless covenants contained in this **Section 6.7**.

For purposes of this **Section 6.7** the following terms will have the definitions below:

1. The phrase “**Hazardous Material**” will mean and include any oil, flammable explosives, radioactive materials, asbestos in any form, underground fuel tanks, hazardous, toxic or dangerous waste, chemical, substance or related material, urea formaldehyde foam insulation, polychlorinated biphenyls, or radon gas including substances defined as such in (or for purposes of) or which may give rise to liability under any Hazardous Materials Laws.
2. The phrase “**Hazardous Materials Laws**” will mean and include (i) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601, *et. seq.*; (ii) the Hazardous Materials Transportation Act, as amended 49 U.S.C. Section 1801, *et. seq.*; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; (iv) the Clean Water Act, 33 U.S.C. Sections 466, *et seq.*; (v) the Safe Drinking Water Act, 14 U.S.C. Sections 1401-1450; (vi) the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2629; and all regulations issued pursuant thereto and any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Section 6.8. Assignment by the Company. The Company shall not assign this Lease Agreement and the other Transaction Documents, as a whole or in part, without the prior written consent of the Issuer and the Bondowner, unless the following conditions are met:

(a) No assignment shall relieve the Company from primary liability for any of its obligations under this Lease Agreement, and in the event of any such assignment, the Company shall continue to remain primarily liable for payment of the amounts specified in this Lease Agreement and the performance and observance of the other agreements to be performed and observed by the Company under this Lease Agreement to the same extent as though no assignment had been made.

(b) The assignee shall assume the obligations of the Company under this Lease Agreement and the other Transaction Documents, to the extent of the interest assigned.

(c) The Company shall, prior to the effective date of such assignment furnish or cause to be furnished to the Issuer and the Bond Trustee a true and complete copy of each assignment and assumption of obligations.

Section 6.9. Damage, Destruction and Condemnation.

In the event of damage to or destruction of the Project, or any portion thereof, resulting from fire or other casualty, or in the event the Project, or any portion thereof, is condemned or taken for any public or quasi-public use or title thereto is found to be deficient, the Net Proceeds of such insurance, condemnation or taking shall be paid directly to the Company.

The Company agrees that, to the extent permitted by law, it will forthwith replace, repair, reconstruct or restore the Project to substantially the same or an improved condition or utility value as existed prior to the event affecting the Project and will to the extent necessary apply the Net Proceeds

received by the Company to the payment or reimbursement of the costs of such replacement, repair, reconstruction or restoration. Any remaining balance not required for said purpose shall be retained by the Company.

Section 6.10. Financial Statements and Other Information. The Company shall keep proper books of record and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to the properties, business and affairs of the Company in accordance with generally accepted accounting principles.

Section 6.11. Access to the Project and Inspection; Operation of the Project. The duly authorized agents of the Issuer and the Bond Trustee shall have the right, at all reasonable times upon the furnishing of reasonable written notice under the circumstances, to enter upon the Project and to examine and inspect the Project; provided that such parties shall coordinate with the Company and any sublessee/operator of the Project to ensure that such entry upon and inspection of the property does not disturb the operations of the Project. The Company will execute, acknowledge and deliver all such further documents and do all such other acts and things as may be necessary to grant to the Issuer and the Bond Trustee such right of entry. The duly authorized agents of the Issuer and the Bond Trustee shall also be permitted, at all reasonable times upon reasonable notice under the circumstances, to examine the books and records of the Company with respect to the Project and the obligations of the Company hereunder.

Section 6.12. Depreciation and Investment Tax Credit. The Issuer agrees that any depreciation or investment tax credit with respect to the Project or any part thereof shall be made available to the Company, and the Issuer will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation or investment tax credit.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Events of Default. The term “Event of Default,” wherever used in this Lease Agreement, means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any Lease Payment or Additional Payment within five (5) days following when due and payable; or

(b) default in the performance, or breach, of any covenant or agreement of the Company in this Lease Agreement (other than a covenant or agreement a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of **60** days after there has been given to the Company by the Issuer or the Bond Trustee or to the Company and the Bond Trustee by the owners of at least **10%** in principal amount of the Bonds Outstanding, a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default cannot be fully remedied within such **60**-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the Company shall immediately upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(c) any representation or warranty made by the Company in this Lease Agreement or in any other Transaction Documents or in any written statement or certificate furnished to the Issuer or the Bond

Trustee or the purchaser of any Bond in connection with the sale of any Bond or furnished by the Company pursuant to this Lease Agreement proves untrue in any material respect as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within **60** days after there has been given to the Company by the Issuer, the Bond Trustee or to the Company and the Bond Trustee by the owners of at least **10%** in principal amount of the Bonds Outstanding, a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default cannot be fully remedied within such **60**-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the Company shall immediately upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(d) the entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Company, or adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of the Company under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, Bond Trustee, sequestrator (or other similar official) of or for the Company or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order remains unstayed and in effect for a period of **60** consecutive days; or

(e) the commencement by the Company of a voluntary case, or the institution by it of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, Bond Trustee, sequestrator (or other similar official) of the Company or any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

(f) the occurrence and continuance of any “Event of Default” specified in the Bond Indenture that has not been waived.

Promptly after any officer of the Company may reasonably be deemed to have knowledge of a default hereunder, the Company will deliver to the Bond Trustee a written notice specifying the nature and period of existence thereof and the action the Company is taking and proposes to take with respect thereto.

Section 7.2. Acceleration of Maturity; Rescission and Annulment. If an Event of Default under this Lease Agreement occurs and is continuing, the Bond Trustee, as assignee of the Issuer, may, and if requested by the owners of not less than **25%** in principal amount of the Bonds Outstanding shall, by written notice to the Company and the Issuer, declare all Lease Payments to be due and payable, and upon any such declaration such Lease Payments shall become immediately due and payable.

At any time after such a declaration of acceleration has been made, but before any judgment or decree for payment of money due on the Lease has been obtained by the Bond Trustee as hereinafter in this Article provided, the Bond Trustee may, by written notice to the Company, rescind and annul such declaration and its consequences if

(a) the Company has deposited with the Bond Trustee a sum sufficient to pay

- (1) all overdue Lease Payments,
 - (2) interest upon overdue Lease Payments at the rate or rates prescribed therefor in this Lease Agreement,
 - (3) all sums paid or advanced by the Bond Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Issuer and the Bond Trustee, its agents and counsel; and
- (b) all events of default, other than the non-payment of the Lease Payments which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 7.7** of this Lease Agreement.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

Section 7.3. Exercise of Remedies by the Bond Trustee. Upon the occurrence and continuance of any Event of Default under this Lease Agreement, unless the same is waived as provided in this Lease Agreement, the Bond Trustee, as assignee of the Issuer, shall have the following rights and remedies, in addition to any other rights and remedies provided under this Lease Agreement or by law:

(a) *Right to Bring Suit, Etc.* The Bond Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the Lease Payments including interest on overdue Lease Payments, and any other sums due under this Lease Agreement, to realize on or to foreclose any of its interests or liens under this Lease Agreement, to enforce and compel the performance of the duties and obligations of the Company as set forth in this Lease Agreement and to enforce or preserve any other rights or interests of the Bond Trustee under this Lease Agreement existing at law or in equity.

(b) *Exercise of Remedies at Direction of Bondowners.* If requested in writing to do so by the owners of not less than **25%** in principal amount of Bonds Outstanding and if indemnified as provided in **Section 802(e)** of the Bond Indenture, the Bond Trustee shall be obligated to exercise such one or more of the rights and remedies conferred by this Article as the Bond Trustee shall deem most expedient in the interests of the bondowners.

(c) *Termination.* The Issuer or the Bond Trustee may, by notice to the Company given at any time thereafter while the Company is in default in the payment of Lease Payments or in the performance of any other obligation under this Lease Agreement, elect to terminate this Lease Agreement upon no less than 60 days, and if all defaults shall not have then been cured, on the date so specified, this Lease Agreement shall thereupon be terminated. The Bond Trustee may take whatever action at law or in equity which may appear necessary or desirable to collect Lease Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease Agreement.

Section 7.4. Application of Moneys Collected. Any moneys collected by the Bond Trustee pursuant to this Article (after the deductions for payment of costs and expenses of proceedings resulting in the collection of such moneys) together with any other sums then held by the Bond Trustee as part of the Trust Estate, shall be applied as provided in **Article VII** of the Bond Indenture and, in case of the distribution of such money on account of principal (or premium, if any) or interest on the Bonds, shall be credited against amounts due on the Lease.

Section 7.5. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Bond Trustee is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 7.6. Delay or Omission Not Waiver. No delay or omission of the Bond Trustee to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such event of default or an acquiescence therein. Every right and remedy given by this Article or by law to the Bond Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Bond Trustee.

Section 7.7. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Bond Trustee as provided in this Article, the Owners of a majority in principal amount of the Bonds Outstanding may, by written notice delivered to the Bond Trustee and the Company, on behalf of the Owners of all the Bonds waive any past default hereunder and its consequences, except a default:

- (a) in the payment of the principal of (or premium, if any) or interest on any Bond, or
- (b) in respect of a covenant or provision hereof which under **Article VIII** cannot be modified or amended without the consent of the owner of each Outstanding Bond affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Lease Agreement; but no such waiver shall extend to or affect any subsequent or other default or impair any right or remedy consequent thereon.

Section 7.8. Advances by Bond Trustee. If the Company fails to make any payment or perform any of its covenants in this Lease Agreement, the Bond Trustee may, at any time and from time to time, use and apply any moneys held by it under the Bond Indenture, or make advances, to effect payment or performance of any such covenant on behalf of the Company. All moneys so used or advanced by the Bond Trustee, together with interest at the Bond Trustee's announced prime rate plus 2% per annum, shall be repaid by the Company upon demand and such advances shall be secured under the Bond Indenture prior to the Bonds. For the repayment of all such advances the Bond Trustee shall have the right to use and apply any moneys at any time held by it under the Bond Indenture but no such use of moneys or advance shall relieve the Company from any default hereunder.

ARTICLE VIII

SUPPLEMENTAL LEASE AGREEMENTS

Section 8.1. Supplemental Lease Agreements without Consent of Bondowners. Without the consent of the Owners of any Bonds, the Issuer and the Company may from time to time enter into one or more Supplemental Lease Agreements, in form satisfactory to the Bond Trustee, for any of the following purposes:

(a) to correct or amplify the description of any property of the Company at any time subject to this Lease Agreement, or to subject to this Lease Agreement additional property or to more precisely identify any project financed or refinanced out of the proceeds of any Bonds, or to substitute or add additional property thereto; or

(b) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of the Lease, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed; or

(c) to evidence the succession of another entity to the Company and the assumption by any such successor of the covenants of the Company herein contained; or

(d) to add to the covenants of the Company or to the rights, powers and remedies of the Bond Trustee for the benefit of the Owners of all of the Bonds or to surrender any right or power herein conferred upon the Company; or

(e) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions, with respect to matters or questions arising under this Lease Agreement, which shall not be inconsistent with the provisions of this Lease Agreement, provided such action shall not adversely affect the interests of the Owners of the Bonds.

Section 8.2. Supplemental Lease Agreements with Consent of Bondowners. With the consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such Supplemental Lease Agreement, the Issuer and the Company may enter into Supplemental Lease Agreements, acceptable to the Bond Trustee, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Lease Agreement or of modifying in any manner the rights of the Bond Trustee and the Owners of the Bonds under this Lease Agreement; provided, however, that no such Supplemental Lease Agreement shall, without the consent of the owner of each Outstanding Bond affected thereby,

(a) change the due date of any Lease Payments or reduce the amount thereof, or change any place of payment where, or the coin or currency in which, the Lease Payments are payable, or impair the right to institute suit for the enforcement of any such payment on or after the due date thereof; or

(b) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose Owners is required for any such Supplemental Lease Agreement, or the consent of whose Owners is required for any waiver provided for in this Lease Agreement of compliance with certain provisions of this Lease Agreement or certain defaults hereunder and their consequences; or

(c) modify any of the provisions of this Section, except to increase any percentage provided thereby or to provide that certain other provisions of this Lease Agreement cannot be modified or waived without the consent of the Owner of each Bond affected thereby.

The Bond Trustee may in its discretion determine whether or not any Bonds would be affected by any Supplemental Lease Agreement and any such determination shall be conclusive upon the Owners of all Bonds, whether theretofore or thereafter authenticated and delivered hereunder. The Bond Trustee shall not be liable for any such determination made in good faith.

It shall not be necessary for the required percentage of Owners of Bonds under this Section to approve the particular form of any proposed Supplemental Lease Agreement, but it shall be sufficient if such act shall approve the substance thereof.

Section 8.3. Execution of Supplemental Lease Agreements. In executing or consenting to any Supplemental Lease Agreement permitted by this Article, the Issuer and the Bond Trustee shall receive, and, subject to **Section 801** of the Bond Indenture, shall be fully protected and may conclusively rely upon, an Opinion of Bond Counsel addressed to the Bond Trustee and the Issuer stating that the execution of such Supplemental Lease Agreement is authorized or permitted by this Lease Agreement and the Act. The Bond Trustee may, but shall not be obligated to, consent to any such Supplemental Lease Agreement which affects the Bond Trustee's own rights, duties or immunities under this Lease Agreement or otherwise.

Section 8.4. Effect of Supplemental Lease Agreements. Upon the execution of any Supplemental Lease Agreement under this Article, this Lease Agreement shall be modified in accordance therewith and such Supplemental Lease Agreement shall form a part of this Lease Agreement and the Act for all purposes; and the Company, the Issuer, the Bond Trustee and every owner of Bonds theretofore or thereafter authenticated and delivered under the Bond Indenture shall be bound thereby.

Section 8.5. Reference in Bonds to Supplemental Lease Agreements. Bonds authenticated and delivered after the execution of any Supplemental Lease Agreement pursuant to this Article may, and if required by the Bond Trustee shall, bear a notation in form approved by the Bond Trustee as to any matter provided for in such Supplemental Lease Agreement. If the Issuer shall so determine, new Bonds so modified as to conform, in the opinion of the Bond Trustee and the Issuer, to any such Supplemental Lease Agreement may be executed by the Issuer and authenticated and delivered by the Bond Trustee in exchange for Outstanding Bonds.

ARTICLE IX

OPTION TO TERMINATE

Section 9.1. Option to Terminate. The Company shall have, and is hereby granted, the option to terminate the Issuer's interest in the Base Lease at any time prior to the expiration of the term of this Lease Agreement upon payment and discharge of all Bonds pursuant to **Article X** of the Bond Indenture. To exercise such option the Company shall give written notice to the Issuer and to the Bond Trustee, if any of the Bonds shall then be unpaid or provision for their payment shall not have been made in accordance with the provisions of the Bond Indenture, and shall specify therein the date of termination, which date shall be not less than 15 nor more than 45 days from the date such notice is mailed. The termination fee payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

(a) the full amount which is required to provide the Issuer and the Bond Trustee with funds sufficient, in accordance with the terms of the Bond Indenture, to pay at maturity or to redeem and pay in full (A) the principal of all of the Outstanding Bonds, (B) all interest due thereon to date of maturity or redemption, which ever first occurs, and (C) all costs, expenses and premiums incident to the redemption and payment of the Bonds in full, and

(b) an amount of money equal to the Issuer's, Bond Trustee's and Paying Agent's fees and expenses under the Bond Indenture and this Lease Agreement accrued and to accrue until such redemption of the Bonds.

Section 9.2. Termination of Base Lease. At the termination of the Base Lease, the Issuer will deliver to the Company upon receipt of the purchase price the following:

- (a) If the Bond Indenture shall not at the time have been satisfied in full, a release from the Bond Trustee of the Project.
- (b) Documents terminating the Base Lease.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1. Covenants under Transaction Documents. The Company shall deliver to the Bond Trustee all reports, opinions and other documents required to be submitted to the Bond Trustee at the times required by this Lease Agreement and the Bond Indenture and all other Transaction Documents, and shall perform or cause to be performed all covenants and agreements required on the part of the Company contained in this Lease Agreement and the Bond Indenture and any other Transaction Documents. This Lease Agreement, all supplements to this Lease Agreement, and all other Transaction Documents shall be delivered to and held by the Bond Trustee.

Section 10.2. Further Assurances. The Company will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the Bond Trustee may reasonably require for accomplishing the purposes of the Bond Indenture this Lease Agreement and all other Transaction Documents.

Section 10.3. Payments Due on Saturdays, Sundays and Holidays. If the day for any payment due under this Lease Agreement is not a Business Day, then such payment may be made on the next succeeding Business Day without additional interest and with the same force and effect as if made on the specified date for payment.

Section 10.4. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Lease Agreement to be given to or filed with the Issuer, the Bond Trustee, the Company or the Owners of the Bonds if the same is given or filed in the manner and at the addresses specified in the Bond Indenture. Notwithstanding the forgoing, any notice required under this Lease Agreement shall be provided in writing to the party receiving such notice.

Section 10.5. Immunity of Officers, Employees and Commissioners of the Issuer and the Company. No recourse shall be had for the payment of the Lease Payments or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Lease Agreement or any other of the Transaction Documents against any past, present or future officer, council member, Bond Trustee, director, employee or agent of the Issuer or the Company, or, respectively, of any successor municipal or private corporation thereto, as such, either directly or through the Issuer, the Company, or respectively, any successor municipal or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, commissioners, directors, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Lease Agreement.

Section 10.6. Limitation on Issuer Obligations. Any other term or provision in this Lease Agreement or in any other Transaction Documents or elsewhere to the contrary notwithstanding:

(a) Any and all obligations (including without limitation, fees, claims, demands, payments, damages, liabilities, penalties, assessments and the like) of or imposed upon the Issuer or its commissioner, officers, agents, employees, representatives, advisors or assigns, whether under this Lease Agreement or any of the other Transaction Documents or elsewhere and whether arising out of or based upon a claim or claims of tort, contract, misrepresentation, or any other or additional legal theory or theories whatsoever (collectively the "Obligations"), shall in all events be absolutely limited obligations and liabilities, payable solely out of the following, if any, available at the time the Obligation in question is asserted:

(1) Bond proceeds and investment earnings therefrom; and

(2) Payments derived from the Bonds, the Bond Indenture (including the Trust Estate to the extent provided in this Bond Indenture) and this Lease Agreement (except for the fees and expenses of the Issuer and the Issuer's right to indemnification under this Lease Agreement under certain circumstances and as otherwise expressly set forth therein);

(the above provisions (1) and (2) being collectively referred to as the "exclusive sources of the Obligations").

(b) The Obligations shall not be deemed to constitute a debt or liability of the State of Kansas or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer or the State of Kansas or of any other political subdivision thereof, but shall be payable solely from and out of the exclusive sources of the Obligations and shall otherwise impose no liability whatsoever, primary or otherwise, upon the Issuer or the State of Kansas or any other political subdivision thereof or any charge upon their general credit or taxing power.

(c) In no event shall any council member, officer, agent, employee, representative or advisor of the Issuer, or any successor or assign of any such person or entity, be liable, personally or otherwise, for any Obligation.

Section 10.7. No Violations of Law. At no time and in no event will the Company permit, suffer or allow any of the proceeds of the Bonds to be transferred to any Person in violation of, or to be used in any manner which is prohibited by, the Act or any other state or federal law.

Section 10.8. Benefit of Lease Agreement. This Lease Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Company and their respective successors and assigns. Except as stated herein, nothing in this Lease Agreement or in the Bond Indenture or the Bonds, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, any benefit or any legal or equitable right, remedy or claim under this Lease Agreement.

Section 10.9. Severability. If any provision in this Lease Agreement, the Bond Indenture or the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.10. Counterparts. This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 10.11. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 10.12. Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 10.13. Termination of Lease Agreement Pursuant to Section 8.1(b) of the Base Lease Agreement. This Lease Agreement shall automatically terminate and be of no further force and effect upon the termination of the Base Lease Agreement pursuant to **Article VIII** thereof.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Issuer and the Company have caused this Lease Agreement to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____

Name: Eric Mikkelson

Title: Mayor

ATTEST:

Name: Adam Geffert

Title: City Clerk

SILVERCREST AT MEADOWBROOK, LLC,
a Delaware limited liability company

By: _____
Name: Christopher R. Held
Title: Authorized Signatory

SCHEDULE 1

Project Description

All buildings, improvements, equipment, furnishings and machinery owned or leased by the Company and paid for in whole or in part with the proceeds of the Bonds and located or to be located on the land described on the attached **Exhibit A**.

EXHIBIT A

LEGAL DESCRIPTION

Lots 5 and 6, MEADOWBROOK PARK, THIRD PLAT, a subdivision in the City of Prairie Village, Johnson County, Kansas

Draft: September 24, 2019

BASE LEASE AGREEMENT

Dated as of November 1, 2019

Between

**SILVERCREST AT MEADOWBROOK, LLC
as Lessor**

And

**CITY OF PRAIRIE VILLAGE, KANSAS,
as Lessee**

Relating to:

**\$35,000,000
(Aggregate Maximum Principal Amount)
City of Prairie Village, Kansas
Taxable Industrial Revenue Bonds
(Silvercrest at Meadowbrook, LLC Project)
Series 2019**

BASE LEASE AGREEMENT

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BASE LEASE AGREEMENT

THIS BASE LEASE AGREEMENT dated as of November 1, 2019 (this “Base Lease Agreement”), by and between **SILVERCREST AT MEADOWBROOK, LLC**, a limited liability company organized and existing under the laws of the State of Delaware, as Lessor (the “Company”), and **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas, as Lessee (the “Issuer”). Capitalized terms not defined elsewhere herein shall have the meanings set forth in **Article I**.

RECITALS:

1. The Company has requested that the Issuer issue \$35,000,000 maximum principal amount of Taxable Industrial Revenue Bonds Silvercrest at Meadowbrook, LLC Project), Series 2019 (the “Bonds”), pursuant to the Bond Trust Indenture of even date herewith (the “Bond Indenture”) between the Issuer and UMB Bank, N.A., as trustee (the “Bond Trustee”) for the purpose of providing funds to (a) acquire, construct and equip a commercial facility to be generally located at 9300 and 9340 Parkside Drive in Prairie Village, Kansas (collectively, the “Project”), and (b) pay certain costs related to the issuance of the Bonds.

2. In order to satisfy the requirements of the Act, the Issuer proposes to purchase and acquire a leasehold interest in the Project pursuant to this Base Lease Agreement and proposes to sublease the Project to the Company pursuant to the Lease Agreement dated as of November 1, 2019, between the Issuer, as sublessor, and the Company, as sublessee (the “Lease Agreement”), for rentals which will be sufficient to provide for the payment of the principal, redemption premium, if any, and interest on the Bonds.

3. The Company proposes to lease the Project to the Issuer and the Issuer desires to lease the Project from the Company upon the terms and conditions and for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Bond Indenture.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by Company. The Company represents and warrants that:

(a) The Company is a limited liability company duly organized and existing under the laws of the State of Delaware, has power and authority to own its properties and carry on its business as now being conducted, and is duly qualified to do such business in the State of Kansas and wherever else such qualification is required.

(b) Neither the execution and delivery of this Base Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Base Lease Agreement conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) The Company is the owner of the Project.

Section 2.2. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Base Lease Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Base Lease Agreement, acting by and through its duly authorized officers. The Issuer agrees that it will do or use its best efforts to cause to be done all things necessary to preserve and keep in full force and effect the Issuer's existence.

(b) The Issuer is authorized, and has taken all necessary action, to issue the Bonds to provide funds for the purposes set forth in the Bond Indenture, and proposes by the Lease Agreement to sublease the Project to the Company.

(c) No member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

ARTICLE III

LEASE OF THE PROJECT

Section 3.1. Lease of the Project. The Company hereby, rents, leases and lets to the Issuer the Company's interest in the Project, which Project is described on **Exhibit A**, attached hereto and incorporated herein, and the Issuer rents, leases and hires the Project from the Company, for rentals and upon and subject to the terms and conditions herein set forth, for a term commencing on the date hereof and ending on November 1, 2022; provided, however, this Base Lease Agreement shall remain in full force and effect so long as any obligation of the Company under the Lease Agreement shall be outstanding and so long as the Lease Agreement shall remain in effect (the "Lease Term"), unless sooner terminated in a manner provided for herein, provided that the Company shall not exercise any right so reserved in any manner that will interfere with any rights of the Issuer hereunder.

ARTICLE IV

QUIET ENJOYMENT; RENTAL PROVISIONS

Section 4.1. Quiet Enjoyment. The Company hereby covenants and agrees that it will not take any action, other than pursuant to **Article V, VII or VIII** of this Base Lease Agreement, to prevent the Issuer from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request of the Issuer, and at the expense of the Company, cooperate with the Issuer

in order that the Issuer may have quiet and peaceable possession and enjoyment of the Project and will defend the Issuer's enjoyment thereof against all parties.

Section 4.2. Consideration and Rentals. The Issuer shall deposit the proceeds from the sale of the Bonds with the Bond Trustee in accordance with the Bond Indenture. Such deposit shall constitute full and complete payment of all rentals due hereunder and following such deposit the Issuer shall not have any obligation to make any payments to any Person in connection with this Base Lease Agreement.

Section 4.3. Sublease by Issuer. It is understood and agreed by the Issuer and the Company that the Issuer will sublease the Project to the Company pursuant to the Lease Agreement. The Issuer shall at no time agree to any amendment or modification of the provisions of the Lease Agreement without the prior written consent of the Company and the Bond Trustee.

Section 4.4. Payment of Taxes. The Company covenants and agrees that it will, from time to time, promptly pay and discharge or cause to be paid and discharged when due and prior to delinquency all taxes, assessments and other governmental charges lawfully imposed upon the Project or any part thereof or upon the income and profits thereof.

ARTICLE V

SPECIAL COVENANTS

Section 5.1. Granting of Easements. If no Event of Default under this Base Lease Agreement shall have happened and be continuing, the Company may, to the extent permitted under the Bond Indenture, at any time or times (a) grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any property included in the Project, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine. The Issuer agrees that it will execute and deliver or will cause and direct the Bond Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer and the Bond Trustee of (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Company Representative requesting such instrument, and (iii) a certificate executed by the Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, is permitted by the Bond Indenture, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Bond Indenture.

Section 5.2. Indemnification. (a) The Company releases the Issuer from, agrees that the Issuer shall not be liable for, and indemnifies the Issuer against, all liabilities, losses, damages (including reasonable attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Issuer on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (ii) any breach or default on the part of the Company in the performance of any covenant or agreement of the Company under the Transaction Documents, or any related document, or arising from any act or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof; (iv) the provision of any information by the Company to the Issuer furnished in connection with the authorization, issuance and sale of the Bonds (including, without limitation, any information furnished by the Company for inclusion in, or as a basis for preparation of, the information statements filed by the Issuer) or arising from (1) any

errors or omissions by the Company of any nature whatsoever such that the Bonds, when delivered to the owners thereof, are not validly issued and binding obligations of the Issuer or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer furnished by or attributable to the Company relating to the issuance of the Bonds or pertaining to the financial condition of the Company which, if known to the original purchaser, might be considered a material factor in its decision to purchase the Bonds; and (v) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii) and (iv) above brought thereon; provided, however, the indemnification contained in this paragraph shall not extend to the Issuer if such loss, claim, damage, liability or expense is the result of (a) the Issuer's (or any employees or agents thereof) negligence or willful misconduct, or (b) the Issuer not following the valid written instructions of the Company or the Owner of the Bonds relating to the Bonds delivered to the Issuer pursuant to the terms of the Transaction Documents.

(b) In case any action or proceeding is brought against the Issuer in respect of which indemnity may be sought hereunder, the Issuer shall promptly give notice of that action or proceeding to the Company, and the Company upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Issuer to give that notice shall not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company. The Issuer may employ separate counsel and participate in the defense at its own expense. The Company shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected members of the City Council, officials, officers, attorneys, accountants, financial advisors, staff and employees of the Issuer. Such indemnification is intended to and shall be enforceable by the Issuer to the full extent permitted by law.

ARTICLE VI

ASSIGNMENT, SUBLEASING AND MORTGAGING

Section 6.1. No Assignment, Subleasing and Mortgaging of the Project by the Issuer. The Issuer agrees that, except for the assignment of its interest in the Lease Agreement to the Bond Trustee pursuant to the Bond Indenture, it will not sell, assign, convey, mortgage, encumber or otherwise dispose of its interest in this Base Lease Agreement or any part of its interest in the Project except as permitted by this Base Lease Agreement and the Lease Agreement during the Lease Term. If the laws of the State of Kansas at the time shall so permit, nothing contained in this Section shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of the complete interest of the Issuer in the Project to, any municipal or public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of leasing the Project; provided that, upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Base Lease Agreement to be kept and performed by the Issuer, shall be expressly assumed in writing by such entity resulting from such consolidation or surviving such merger or to which the Issuer's complete interest in the Project shall be transferred.

Section 6.2. Subordination to Lender. The Issuer acknowledges that the Company may grant a mortgage, assignment of rents and leases, UCC financing statements and other security documents (each, a "Mortgage") on the Project to a lender (each, a "Mortgagee") during the term of this Base Lease Agreement. The Issuer agrees that in such case this Base Lease Agreement would be subject to and subordinate to any such Mortgage and that the Mortgagee shall not be required to grant any rights of

nondisturbance with respect to this Base Lease Agreement. Upon the request of the Company, the Issuer shall provide any additional documentation evidencing such subordination as required by the Mortgagee.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Events of Default. An “Event of Default” or “default” shall mean, wherever used in this Base Lease Agreement, any failure by the Issuer to observe and perform any covenant, condition or agreement in this Base Lease Agreement on its part to be observed or performed and the lapse of a period of 60 days after written notice, specifying such failure and requesting that it be remedied, given to the Issuer and the Bond Trustee by the Company, unless the Company shall agree in writing to an extension of such time prior to its expiration.

Section 7.2. Remedies on Default. Whenever an Event of Default specified in **Section 7.1** hereof shall have happened and be continuing, the Company shall have the option to provide for the termination of this Base Lease Agreement in the manner provided in **Article VIII**. The Issuer and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Base Lease Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity; provided, however, no remedy shall be exercised against such party in any manner which may impair the payment of principal of, premium, if any, or interest on any of the Bonds.

Section 7.3. Performance by Issuer. The Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Company in writing, or shall have received the instrument to be executed, and at the Issuer’s option shall have received from the Company assurance or indemnity satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. Nothing in this Section is intended to imply that the Issuer must take any action or execute any instrument unless specifically required to do so by this Base Lease Agreement.

ARTICLE VIII

EARLY TERMINATION OF THIS BASE LEASE AGREEMENT

Section 8.1. Early Termination of this Base Lease Agreement.

(a) In the event the Company shall cause all of the Bonds to be paid in the manner set forth in **Article X** of the Bond Indenture, the Company shall be entitled to terminate this Base Lease Agreement prior to the end of the Lease Term upon written notice to the Issuer and the Bond Trustee. Upon such termination the Issuer shall deliver to the Company any instruments which may be reasonably required by the Company to evidence such termination and the relinquishment of all of the Issuer’s rights and interest in the Project and in this Base Lease Agreement.

(b) In the event that any Mortgagee exercises its rights of foreclosure pursuant to the terms of any Mortgage of the Project and subsequently takes title to the Project, such Mortgagee, shall be entitled to terminate this Base Lease Agreement upon five (5) days written notice to the Issuer, provided, that if the holder of any of the Bonds is an entity other than the Mortgagee or the lessee under the Lease Agreement, the Company shall remain liable for all outstanding amounts owed to Issuer under this Base

Lease Agreement or the Lease Agreement, including, but not limited to, the payment of principal, premium, if any, or interest on any of the Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given to the appropriate notice address by the methods set forth in the Bond Indenture. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Bond Trustee and to the purchaser of the Bonds. A duplicate copy of each notice given by the Issuer or the Company or either of them to the Bond Trustee shall also be given to the other party hereto. The Issuer, the Company and the Bond Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2. Binding Effect. This Base Lease Agreement shall inure to the benefit of and shall be binding upon Issuer, the Company and their respective successors and assigns. The Bond Trustee shall be third-party beneficiary of this Base Lease Agreement.

Section 9.3. Severability. In the event any provision of this Base Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amounts Remaining in Funds and Accounts. It is agreed by the parties hereto that any amounts remaining in the Funds and Accounts under the Bond Indenture upon (i) expiration or sooner termination of this Base Lease Agreement as provided herein or after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Indenture), and (ii) payment of fees and expenses of the Bond Trustee in accordance with the Bond Indenture, shall be paid in accordance with the provisions of the Bond Indenture.

Section 9.5. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of **Article X** of the Bond Indenture), this Base Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the Bond Trustee and the Bondowner.

Section 9.6. Execution in Counterparts. This Base Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7. Applicable Law. This Base Lease Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 9.8. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9.9. Captions. The captions or headings in this Base Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Base Lease Agreement.

IN WITNESS WHEREOF, the Issuer has caused this Base Lease Agreement to be executed in its name and its seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Base Lease Agreement to be executed in its name and attested by its duly authorized officers all as of the date first above written.

SILVERCREST AT MEADOWBROOK, LLC,
a Delaware limited liability company

By: _____
Name: Christopher R. Held
Title: Authorized Signatory

CITY OF PRAIRIE VILLAGE, KANSAS

(Seal)

By: _____

Name: Eric Mikkelson

Title: Mayor

ATTEST:

Name: Adam Geffert

Title: City Clerk

EXHIBIT A

Description of the Project

All buildings, improvements, equipment, furnishings and machinery owned or leased by the Company and paid for in whole or in part with the proceeds of the Bonds and located or to be located on the following property:

LEGAL DESCRIPTION

Lots 5 and 6, MEADOWBROOK PARK, THIRD PLAT, a subdivision in the City of Prairie Village, Johnson County, Kansas

BOND TRUST INDENTURE

Dated as of November 1, 2019

Between

CITY OF PRAIRIE VILLAGE, KANSAS

And

**UMB BANK, N.A.,
as Bond Trustee**

\$35,000,000
(Aggregate Maximum Principal Amount)
Taxable Industrial Revenue Bonds
(Silvercrest at Meadowbrook, LLC Project)
Series 2019

BOND TRUST INDENTURE

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- Exhibit A - Form of Bonds
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- Exhibit C - Form of Disbursement Request - Project Fund
- Exhibit D - Form of Investment Letter

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BOND TRUST INDENTURE

BOND TRUST INDENTURE dated as of November 1, 2019 (the “Bond Indenture”), between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas (the “Issuer”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set out under the laws of the State of Kansas, and having its principal corporate trust office located in the City of Kansas City, Missouri, as trustee (the “Bond Trustee”);

RECITALS

1. The Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, construct and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm, or corporation with respect to said facilities, to issue revenue bonds for such purposes, and to secure the payment of such bonds as provided in the Act.

2. The Issuer is authorized pursuant to the Act and an Ordinance duly passed by the governing body of the Issuer to issue \$35,000,000 maximum principal amount of Taxable Industrial Revenue Bonds (Silvercrest at Meadowbrook, LLC Project), Series 2019 (the “Bonds”), under this Bond Indenture for the purpose of providing funds to Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Company”), to provide funds to (a) acquire, construct and equip a commercial facility to be generally located at 9300 and 9340 Parkside Drive in Prairie Village, Kansas (collectively, the “Project”), and (b) pay certain costs related to the issuance of the Bonds.

3. The Company will lease the Project to the Issuer pursuant to the Base Lease Agreement of even date herewith (the “Base Lease”) between the Company and the Issuer.

4. The Issuer will lease the Project to the Company pursuant to the Lease Agreement of even date herewith (the “Lease Agreement”) between the Issuer and the Company.

5. All things necessary to make the Bonds, when authenticated by the Bond Trustee and issued as provided in this Bond Indenture, the valid, legal and binding obligations of the Issuer, and to constitute this Bond Indenture a valid, legal and binding pledge and assignment of the property, rights, interests and revenues made herein for the security of the payment of the Bonds, have been done and performed, and the execution and delivery of this Bond Indenture and the execution and issuance of the Bonds, subject to the terms of this Bond Indenture, have in all respects been duly authorized.

GRANTING CLAUSES

To declare the terms and conditions upon which Bonds are to be authenticated, issued and delivered, to secure the payment of all of the Bonds issued and Outstanding under this Bond Indenture from time to time according to their tenor and effect, to secure the performance and observance by the Issuer of all the covenants, agreements and conditions contained in this Bond Indenture and in consideration of the premises, the acceptance by the Bond Trustee of the trusts created by this Bond Indenture, the purchase and acceptance of the Bonds by the Owners thereof, the Issuer hereby transfers in trust, pledges and assigns to the Bond Trustee, and hereby grants a security interest to the Bond Trustee in, the property described in paragraphs (a), (b) and (c) below (said property referred to herein as the “Trust Estate”):

- (a) all right, title and interest of the Issuer in and to the Base Lease and the Project; and
- (b) all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) in, to and under (1) the Lease Agreement, including all Lease Payments and other payments owing to the Issuer and paid by the Company under the Lease Agreement (except the Issuer's rights to payment of its fees and expenses and to indemnification as set forth in the Lease Agreement and as otherwise expressly set forth therein), and (2) all financing statements or other instruments or documents evidencing, securing or otherwise relating to the Lease Agreement; and
- (c) any and all other property (real, personal or mixed) of every kind and nature from time to time, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security under this Bond Indenture by the Issuer or by anyone in its behalf or with its written consent, to the Bond Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The Bond Trustee shall hold in trust and administer the Trust Estate upon the terms and conditions set forth in this Bond Indenture for the equal and pro rata benefit and security of each and every Owner of Bonds, without preference, priority or distinction as to participation in the lien, benefit and protection of this Bond Indenture of one Bond over or from the others, except as otherwise expressly provided herein.

NOW, THEREFORE, the Issuer covenants and agrees with the Bond Trustee, for the equal and proportionate benefit of the respective Owners of the Bonds, that all Bonds are to be issued, authenticated and delivered and the Trust Estate is to be held and applied by the Bond Trustee, subject to the further covenants, conditions and trusts hereinafter set forth, as follows:

ARTICLE I

DEFINITIONS, RULES OF CONSTRUCTION

Section 101. Definitions of Words and Terms. For all purposes of this Bond Indenture, except as otherwise provided or unless the context otherwise requires, the following words and terms used in this Bond Indenture shall have the following meanings:

“Act” means K.S.A. 12-1740 to 12-1749d, inclusive, as amended.

“Base Lease” means the Base Lease Agreement of even date herewith, between the Company and the Issuer, as from time to time amended in accordance with the provisions of the Base Lease Agreement.

“Bond” or **“Bonds”** means any bond or bonds of the series of Taxable Industrial Revenue Bonds (Silvercrest at Meadowbrook, LLC Project), Series 2019, aggregating the maximum principal amount of \$35,000,000, issued, authenticated and delivered under and pursuant to this Bond Indenture.

“Bond Indenture” means this Bond Trust Indenture as originally executed by the Issuer and the Bond Trustee, as from time to time amended and supplemented by Supplemental Bond Indentures in accordance with the provisions of this Bond Indenture.

“Bond Trustee” means UMB Bank, N.A., Kansas City, Missouri, and its successor or successors and any other corporation or association which at any time may be substituted in its place pursuant to and at the time serving as trustee under this Bond Indenture.

“Bondowner”, “Owner” or “Registered Owner” means the Person in whose name a Bond is registered on the bond register and does not mean any beneficial owner of Bonds whether through the book-entry only system or otherwise.

“Business Day” means a day other than (a) a Saturday, Sunday or legal holiday, (b) a day on which banking institutions in any city in which the principal office of the Bond Trustee or any Paying Agent are required or authorized by law to remain closed, or (c) a day on which The Depository Trust Company is closed for business.

“Company” means Silvercrest at Meadowbrook, LLC, a Delaware limited liability company and its successors and assigns.

“Company Representative” means the President, any Vice President or the Manager of the Company or such other person or persons at the time designated to act on behalf of the Company in matters relating to this Bond Indenture and the Lease Agreement as evidenced by a written unanimous consent of the Company furnished to the Issuer and the Bond Trustee. Such consent may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Company Representative.

“Costs of Issuance” means issuance costs with respect to the Bonds described in Section 147(g) of the Internal Revenue Code and any regulations thereunder, including but not limited to the following:

- (a) counsel fees (including bond counsel, underwriter’s counsel, Issuer’s counsel, as well as any other specialized counsel fees incurred in connection with the borrowing);
- (b) trustee and paying agent fees;
- (c) accountant fees and other expenses related to issuance of the Bonds;
- (d) fees and expenses of the Issuer incurred in connection with the issuance of the Bonds.

“Costs of Issuance Fund” means the fund by that name created by **Section 401** of this Bond Indenture.

“Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease Agreement, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond hereof.

“Debt Service Fund” means the fund by that name created by **Section 401** of this Bond Indenture.

“Defeasance Obligations” means:

- (a) Government Obligations which are not subject to redemption prior to maturity; or

- (b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:
- (1) the obligations (A) are not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;
 - (2) the obligations are secured by cash or noncallable Government Obligations that may be applied only to payment of principal of, premium, if any, and interest payments on such obligations;
 - (3) the sufficiency of such cash and noncallable Government Obligations to pay in full all principal of, interest, and premium, if any, on such obligations has been verified by the report of an independent certified public accountant (a "Verification") and no substitution of Government Obligations shall be permitted except with cash or other Government Obligations and upon delivery of a new Verification;
 - (4) such cash and Government Obligations serving as security for the obligations are held in an irrevocable escrow by an escrow agent or a trustee in trust for the owners of such obligations, at least one year has passed since the establishment of such escrow and the issuer of such obligations is not, and has not been since the establishment of such escrow, a debtor in a proceeding commenced under the United States Bankruptcy Code;
 - (5) the Bond Trustee has received an Opinion of Counsel that such cash and Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent;
 - (6) the Bond Trustee has received an Opinion of Bond Counsel delivered in connection with the original issuance of such obligations to the effect that the interest on such obligations was exempt for purposes of federal income taxation, and the Bond Trustee has received an Opinion of Bond Counsel delivered in connection with the establishment of the irrevocable escrow to the effect that the establishment of the escrow will not result in the loss of any exemption for purposes of federal income taxation to which interest on such obligations would otherwise be entitled;
 - (7) the Bond Trustee has received an unqualified opinion of nationally recognized bankruptcy counsel to the effect that the payment of principal of and interest on such obligations made from such escrow would not be avoidable as preferential payments and recoverable under the United States Bankruptcy Code should the obligor or any other person liable on such obligations become a debtor in a proceeding commenced under the United States Bankruptcy Code; and
 - (8) the obligations are rated in the highest rating category by a nationally recognized securities rating service.

“Electronic Notice” means notice transmitted through a time-sharing terminal or facsimile machine, if operative as between any two parties, or if not operative, in writing or by telephone (promptly confirmed in writing).

“Event of Default” means (a) with respect to this Bond Indenture any event or occurrence as defined in **Section 701** of this Bond Indenture, and (b) with respect to the Lease Agreement any event or occurrence as defined in **Section 7.1** of the Lease Agreement.

“Government Obligations” means the following:

- (a) bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed by, the United States of America; and
- (b) evidences of direct ownership of a proportionate or individual interest in future interest or principal payments on specified direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian in form and substance satisfactory to the Bond Trustee.

“Insurance Consultant” means an individual or firm, selected by the Company and acceptable to the Bond Trustee, qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of the Company and having a favorable reputation for skill and experience in such surveys and such recommendations, which individual or firm shall have no interest, direct or indirect, in the Company and in the case of an individual, shall not be a director, officer or employee of the Company, and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a director, officer or employee of the Company and who may be a broker or agent with whom the Company transacts business.

“Interest Payment Date” means each November 1, commencing November 1, 2020, and the Maturity Date.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and, when appropriate, any statutory predecessor or successor thereto, and all applicable regulations (whether proposed, temporary or final) thereunder and any applicable official rulings, announcements, notices, procedures and judicial determinations relating to the foregoing.

“Issuer” means the City of Prairie Village, Kansas, a municipal corporation and political subdivision duly created and existing under the laws of the State of Kansas, and its successors and assigns.

“Issuer Representative” means the Mayor, the City Administrator or Finance Director of the Issuer, and such other person or persons at the time designated to act on behalf of the Issuer in matters relating to this Bond Indenture and the Lease Agreement as evidenced by a written certificate furnished to the Company and the Bond Trustee containing the specimen signature of such person or persons and signed on behalf of the Issuer by its Mayor, the City Administrator or Finance Director. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Issuer Representative.

“Lease Agreement” means the Lease Agreement of even date herewith, between the Issuer and the Company as from time to time amended by Supplemental Lease Agreements in accordance with the provisions of the Lease Agreement.

“Lease Payments” means the payments referred to in **Section 4.1** of the Lease Agreement.

“Maturity Date” means November 1, 2022.

“Officer’s Certificate” means a written certificate of the Company signed by the Company Representative, which certificate shall be deemed to constitute a representation of, and shall be binding upon, the Company with respect to matters set forth therein, and which certificate in each instance, including the scope, form, substance and other aspects thereof, is acceptable to the Bond Trustee.

“Opinion of Bond Counsel” means a written opinion of Gilmore & Bell, P. C., or any other legal counsel acceptable to the Issuer and the Bond Trustee who shall be nationally recognized as expert in matters pertaining to the validity of obligations of governmental or other public issuers.

“Opinion of Counsel” means a written opinion of any legal counsel acceptable to the Company and the Bond Trustee and, to the extent the Issuer is asked to take action in reliance thereon, the Issuer, who may be counsel to the Company.

“Original Purchaser” means Silvercrest at Meadowbrook, LLC, a Delaware limited liability company and its successors and assigns.

“Outstanding” means with respect to Bonds, as of the date of determination, all Bonds theretofore authenticated and delivered under this Bond Indenture, except:

- (a) Bonds theretofore canceled by the Bond Trustee or delivered to the Bond Trustee for cancellation as provided in **Section 208** of this Bond Indenture;
- (b) Bonds for whose payment or redemption money or Defeasance Obligations in the necessary amount has been deposited with the Bond Trustee or any Paying Agent in trust for the Owners of such Bonds as provided in **Section 1001** of this Bond Indenture, provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to this Bond Indenture or provision therefor satisfactory to the Bond Trustee has been made;
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Bond Indenture; and
- (d) Bonds alleged to have been destroyed, lost or stolen which have been paid as provided in **Section 207** of this Bond Indenture.

“Owner”, “Bondowner” or “Registered Owner” means the Person in whose name a Bond is registered on the Bond Register and does not mean any beneficial owner of Bonds whether through the book-entry only system or otherwise.

“Paying Agent” means the Bond Trustee and any other commercial bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated pursuant to this Bond Indenture or any Supplemental Bond Indenture as paying agent for any Bonds at which the principal of, redemption premium, if any, and interest on such Bonds shall be payable.

“Permitted Investments” means, if and to the extent the same are at the time legal for investment of funds held under this Bond Indenture:

- (a) Government Obligations;
- (b) bonds, notes or other obligations of any state of the United States or any political subdivision of any state, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) certificates of deposit or time or demand deposits constituting direct obligations of any bank, bankholding company, savings and loan association, trust company or other financial institution (including without limitation the Bond Trustee and its affiliates), except that investments may be made only in certificates of deposit or time or demand deposits which are:
 - (1) Insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Company, or any other similar United States Government deposit insurance program then in existence; or
 - (2) Continuously and fully secured by securities described in paragraph (a) above, which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time or demand deposits; or
 - (3) Issued by a bank, bank holding company, savings and loan association, trust company or other financial institution whose outstanding unsecured long-term debt is rated at the time of issuance in either of the two highest rating categories by a nationally recognized rating service;
- (d) repurchase agreements with any bank, bank holding company, savings and loan association, trust company or other financial institution (including without limitation the Bond Trustee and its affiliates) organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in paragraph (a) above and which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreements, provided that each such repurchase agreement conforms to current industry standards as to form and time, is in commercially reasonable form, is for a commercially reasonable period, results in transfer of legal title to identified Government Obligations which are segregated in a custodial or trust account for the benefit of the Bond Trustee, and further provided that Government Obligations acquired pursuant to such repurchase agreements shall be valued at the lower of the then current market value thereof or the repurchase price thereof set forth in the applicable repurchase agreement;
- (e) investment agreements constituting an obligation of a bank, bankholding company, savings and loan association, trust company, insurance company, financial institution (including without limitation the Bond Trustee and its affiliates) or other credit provider whose outstanding unsecured long-term debt is rated at the time of such agreement in either of the two highest rating categories by a nationally recognized rating service;
- (f) short term discount obligations of the Federal Home Loan Mortgage Corp., Federal National Mortgage Association and the Government National Mortgage Association; and

- (g) money market mutual funds that are registered with the federal Securities and Exchange Commission (SEC), meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940 and that are rated in either of the two highest categories by a nationally recognized rating service.

“Person” means any natural person, firm, association, corporation, partnership, joint stock company, a joint venture, trust, unincorporated organization or firm, or a government or any agency or political subdivision thereof or other public body.

“Project” means acquiring, constructing and equipping a commercial facility to be located on the Meadowbrook property in Prairie Village, Kansas, all to be located on the real property described in **Schedule 1** of the Lease Agreement; provided, however, that the Company may make changes and amendments to the Project as provided in the Lease Agreement.

“Project Costs” means the costs permitted under the Act to be paid out of proceeds of the Bonds incurred in the acquisition, construction and equipping of the Project other than Costs of Issuance, including without limitation any cost of the Project that may be capitalized or amortized in accordance with generally accepted accounting principles.

“Project Fund” means the fund by that name created by **Section 401** of this Bond Indenture.

“Regular Record Date” means the close of business on the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding the Interest Payment Date.

“Supplemental Bond Indenture” means any indenture supplemental or amendatory to this Bond Indenture entered into by the Issuer and the Bond Trustee pursuant to **Article IX** of this Bond Indenture.

“Supplemental Lease Agreement” means any agreement supplemental or amendatory to the Lease Agreement entered into by the Issuer and the Company pursuant to **Article VIII** of the Lease Agreement.

“Transaction Documents” means this Bond Indenture, the Bonds, the Base Lease, the Lease Agreement, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing; provided, however, that when the words “Transaction Documents” are used in the context of the authorization, execution, delivery, approval or performance of Transaction Documents by a particular party, the same shall mean only those Transaction Documents that provide for or contemplate authorization, execution, delivery and approval by such party.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Bond Indenture.

“United States Bankruptcy Code” means the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“Written Request” means, with reference to the Company, a request in writing signed by a Company Representative, or any other officers designated by the Company to sign such Written Requests.

Section 102. Rules of Construction. For all purposes of this Bond Indenture, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Bond Indenture:

- (a) The terms defined in this Article include the plural as well as the singular.

- (b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles to the extent applicable.
- (c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- (d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Bond Indenture as a whole and not to any particular Article, Section or other subdivision.
- (f) The Article and section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.
- (g) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

ARTICLE II

THE BONDS

Section 201. Authorization and Terms of Bonds. No Bonds may be issued under this Bond Indenture except in accordance with the provisions of this Article. The total principal amount of Bonds that may be issued under this Bond Indenture is limited as provided in this Section.

There shall be issued under and secured by this Bond Indenture a series of Bonds designated “Taxable Industrial Revenue Bonds (Silvercrest At Meadowbrook, LLC Project), Series 2019” (the “Bonds”), in the aggregate maximum principal amount of \$35,000,000 for the purpose of providing funds to (1) acquire, construct and equip the Project, and (2) pay certain Costs of Issuance.

The Bonds shall be dated the date of their original issuance and delivery, and shall mature on the Maturity Date, subject to prior redemption as provided in **Article III** hereof.

The Bonds shall bear interest from their date or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the interest rate determined in accordance with **Section 202** hereof, payable on each Interest Payment Date as herein provided until payment of the principal or redemption price thereof is made or provided for, whether at maturity, upon redemption, acceleration or otherwise.

The Bonds shall be issuable as fully registered bonds without coupons in substantially the form set forth in **Exhibit A** attached to this Bond Indenture, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Bond Indenture in the denomination of \$0.01 or any multiple thereof. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

The Bonds shall be executed in the manner set forth herein and delivered to the Bond Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Bond Trustee the following documents shall be filed with the Bond Trustee:

- (a) A copy, certified by the City Clerk or Deputy City Clerk of the Issuer, of the Ordinance passed by the governing body of the Issuer authorizing the issuance of the Bonds and the execution of this Bond Indenture, the Base Lease, the Lease Agreement and the other Transaction Documents to which it is a party.
- (b) A copy, certified by an authorized officer of the Company, of the resolutions adopted by the Company authorizing the execution and delivery of the Base Lease, the Lease Agreement and the other Transaction Documents to which it is a party, and approving this Bond Indenture and the issuance and sale of the Bonds.
- (c) An original executed counterpart of this Bond Indenture, the Base Lease, the Lease Agreement and the other Transaction Documents.
- (d) A request and authorization to the Bond Trustee on behalf of the Issuer, executed by an Issuer Representative, to authenticate the Bonds and deliver said Bonds to the purchasers therein identified upon payment to the Bond Trustee, for the account of the Issuer, of the purchase price thereof. The Bond Trustee shall be entitled to rely conclusively upon such request and authorization as to the names of the purchasers and the amounts of such purchase price.
- (e) An Opinion of Bond Counsel, dated the date of original issuance of the Bonds, to the effect that the Bonds constitute valid and legally binding limited and special obligations of the Issuer.
- (f) Such other certificates, statements, receipts, opinions and documents required by any of the Transaction Documents or as the Bond Trustee shall reasonably require for the delivery of the Bonds.

When the documents specified above have been filed with the Bond Trustee, and when the Bonds shall have been executed and authenticated as required by this Bond Indenture, the Bond Trustee shall deliver the Bonds to or upon the order of the Original Purchaser thereof, but only upon payment to the Bond Trustee of the purchase price of the Bonds. The proceeds of the sale of the Bonds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Bond Trustee, and the Bond Trustee shall deposit and apply such proceeds as provided in **Article IV** hereof.

Section 202. Determination of Interest Rate and Principal Payments. The Bonds shall bear interest at **2.00%** per annum from their date or from the most recent Interest Payment Date to which interest has been paid or duly provided for. Interest on the Bonds shall be payable in arrears on each Interest Payment Date, commencing on the first Interest Payment Date after the date of original issuance of the Bonds. The amount of interest payable with respect to any Bonds on any Interest Payment Date shall be computed on the basis of a **360**-day year of twelve 30-day months.

Principal shall be payable on the Maturity Date or upon earlier redemption as provided in **Article III** hereof.

Section 203. Method and Place of Payment. The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

Payment of the principal of the Bond shall be made upon the presentation and surrender of such Bond at the principal payment office of any Paying Agent named in the Bond; **provided**, that so long as the Company is the sole Bondowner, the Trustee shall make payments of principal on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States; **provided, further**, that upon any payment by internal bank transfer or by wire transfer of principal on such Bond, the Trustee shall record the amount of such principal payment on the registration books for the Bonds maintained by the Trustee on behalf of the Issuer. If the Bond is presented to the Trustee together with such payment, the Trustee may enter the amount of such principal payment on the Table of Cumulative Outstanding Principal Amount on the Bond. Notwithstanding the foregoing, the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount on the Bond at any time, and the Bondowner is not required to present the Bond for action by the Trustee, as bond registrar, with each payment of principal on the Bond. Payment of the interest on the Bond shall be made by the Trustee on each Interest Payment Date to the person appearing on the registration books of the Issuer hereinafter provided for as the Registered Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date by check or draft mailed to such Registered Owner at such owner's address as it appears on such registration books. In the event that the Company is the sole Bondowner, the Trustee is authorized to make interest payments on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States. In addition, at the written request of any Registered Owner of Bonds in the aggregate principal amount of at least **\$500,000**, the principal and interest on this Bond shall be paid by electronic transfer to such Owner upon written notice to the Trustee from such Owner containing the electronic transfer instructions to which such Owner wishes to have such transfer directed and such written notice is given by such Owner to the Trustee not less than the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date. Any such written notice for electronic transfer shall be signed by such Owner and shall include the name of the bank (which shall be in the continental United States), its address, its ABA routing number and the name, number and contact name related to such Owner's account at such bank to which the payment is to be credited.

Section 204. Execution and Authentication. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk, and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon. If any officer whose manual or facsimile signature appears on any Bonds shall cease to hold such office before the authentication and delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

No Bond shall be secured by, or be entitled to any lien, right or benefit under, this Bond Indenture or be valid or obligatory for any purpose, unless there appears on such Bond a certificate of authentication substantially in the form provided for in **Exhibit A** hereto, executed by the Bond Trustee by manual

signature of an authorized officer or signatory of the Bond Trustee, and such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly authenticated and delivered hereunder. At any time and from time to time after the execution and delivery of this Bond Indenture, the Issuer may deliver Bonds executed by the Issuer to the Bond Trustee for authentication and the Bond Trustee shall authenticate and deliver such Bonds as in this Bond Indenture provided and not otherwise.

Section 205. Registration, Transfer and Exchange. The Bond Trustee shall cause to be kept at its principal corporate trust office a register (referred to herein as the “**bond register**”) in which, subject to such reasonable regulations as it may prescribe, the Bond Trustee shall provide for the registration, transfer and exchange of Bonds as herein provided. The Bond Trustee is hereby appointed “**bond registrar**” for the purpose of registering Bonds and transfers of Bonds as herein provided.

Bonds may be transferred or exchanged only upon the bond register maintained by the Bond Trustee as provided in this Section. Upon surrender for transfer or exchange of any Bond at the principal corporate trust office of the Bond Trustee, the Issuer shall execute, and the Bond Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of the same maturity, of any authorized denominations and of a like aggregate principal amount.

Notwithstanding the foregoing, the Bonds may be transferred only (i) to a person who the Bondowner reasonably believes is a “qualified institutional buyer” that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A and only upon prior delivery to the Bond Trustee and the Issuer of an Investment Letter in substantially the form of **Exhibit D** hereto, signed by the transferee, or (ii) pursuant to another exemption from registration under the 1933 Act.

Every Bond presented or surrendered for transfer or exchange shall (if so required by the Bond Trustee, as bond registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Bond Trustee, as bond registrar, duly executed by the Owner thereof or his attorney or legal representative duly authorized in writing.

All Bonds surrendered upon any exchange or transfer provided for in this Bond Indenture shall be promptly canceled by the Bond Trustee and thereafter disposed of as herein provided.

All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Bond Indenture, as the Bonds surrendered upon such transfer or exchange.

No service charge shall be made for any registration, transfer or exchange of Bonds, but the Bond Trustee or Securities Depository may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, and such charge shall be paid before any such new Bond shall be delivered. The fees and charges of the Bond Trustee for making any transfer or exchange and the expense of any bond printing necessary to effect any such transfer or exchange shall be paid by the Company. In the event any Owner fails to provide a correct taxpayer identification number to the Bond Trustee, the Bond Trustee may impose a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code, such amount may be deducted by the Bond Trustee from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Bond Trustee shall not be required (i) to transfer or exchange any Bond during a period beginning at the opening of business **15** days before the day of the first publication or the mailing (if there

is no publication) of a notice of redemption of such Bond and ending at the close of business on the day of such publication or mailing, or (ii) to transfer or exchange any Bond so selected for redemption in whole or in part, during a period beginning at the opening of business on any Regular Record Date for such Bonds and ending at the close of business on the relevant interest payment date therefor.

The Issuer, the Company, the Bond Trustee and any agent of the Issuer, the Company or the Bond Trustee may treat the Person in whose name any Bond is registered as the Owner of such Bond for the purpose of receiving payment of principal of (and premium, if any), and interest on, such Bond and for all other purposes whatsoever, except as otherwise provided in this Bond Indenture, whether or not such Bond is overdue, and, to the extent permitted by law, neither the Issuer, the Company, the Bond Trustee nor any such agent shall be affected by notice to the contrary.

The Person in whose name any Bond shall be registered on the bond register shall be deemed and regarded as the absolute owner thereof for all purposes, except as otherwise provided in this Bond Indenture, and payment of or on account of the principal of and premium, if any, and interest on any such Bond shall be made only to or upon the order of the Owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

The Bond Trustee will keep on file at its principal corporate trust office a list of the names and addresses of the last known Owners of all Bonds and the certificate numbers of such Bonds held by each of such Owners. At reasonable times and under reasonable regulations established by the Bond Trustee, the list may be inspected and copied by the Issuer, the Company, or the Owners of **10%** in principal amount of Bonds Outstanding or the authorized representative thereof, provided that the ownership of such Owner and the authority of any such designated representative shall be evidenced to the satisfaction of the Bond Trustee.

Section 206. Temporary Bonds. Pending the preparation of definitive Bonds, the Issuer may execute, and upon request of the Issuer the Bond Trustee shall authenticate and deliver, temporary Bonds which are printed, typewritten, or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are issued, with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Bonds may determine, as evidenced by their execution of such Bonds. If temporary Bonds are issued, the Issuer will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable for definitive Bonds upon surrender of the temporary Bonds at the principal corporate trust office of the Bond Trustee, without charge to the Owner. Upon surrender for cancellation of any one or more temporary Bonds, the Issuer shall execute and the Bond Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Bonds of authorized denominations. Until so exchanged, temporary Outstanding Bonds shall in all respects be entitled to the security and benefits of this Bond Indenture.

Section 207. Mutilated, Destroyed, Lost and Stolen Bonds. If (i) any mutilated Bond is surrendered to the Bond Trustee, and the Bond Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (ii) there is delivered to the Bond Trustee such security or indemnity as may be required by the Bond Trustee to save the Issuer and the Bond Trustee harmless, then, in the absence of notice to the Bond Trustee that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and upon its request the Bond Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Bond Trustee in its discretion may, instead of issuing a new Bond, pay such Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Bond Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

Every new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bond, shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the security and benefits of this Bond Indenture equally and ratably with all other Outstanding Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds.

Section 208. Cancellation of Bonds. All Bonds surrendered for payment, redemption, transfer, exchange or replacement, if surrendered to the Bond Trustee, shall be promptly canceled by the Bond Trustee, and, if surrendered to any Paying Agent other than the Bond Trustee, shall be delivered to the Bond Trustee and, if not already canceled, shall be promptly canceled by the Bond Trustee. The Issuer or the Company may at any time deliver to the Bond Trustee for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Company may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Bond Trustee. No Bond shall be authenticated in lieu of or in exchange for any Bond canceled as provided in this Section, except as expressly provided by this Bond Indenture. All canceled Bonds held by the Bond Trustee shall be destroyed and disposed of by the Bond Trustee in accordance with applicable record retention requirements. The Bond Trustee shall execute and deliver to the Issuer and the Company a certificate describing the Bonds so canceled.

ARTICLE III

REDEMPTION AND PURCHASE OF BONDS

Section 301. Redemption of Bonds Prior to Maturity. The Bonds are subject to redemption and payment prior to maturity, at the option of the Issuer, which shall be exercised upon the written direction of the Company, in whole or in part, in an amount equal to or greater than the minimum authorized denomination, on any date at a redemption price equal to **100%** of the principal amount redeemed, plus interest accrued to the redemption date.

Section 302. Election to Redeem; Notice to Bond Trustee. The Issuer shall elect to redeem Bonds subject to optional redemption upon receipt of a written direction of the Company. In case of any redemption at the election of the Issuer, the Issuer shall, at least **45** days prior to the redemption date fixed by the Issuer pursuant to the written direction of the Company (unless a shorter notice shall be satisfactory to the Bond Trustee) give written notice to the Bond Trustee directing the Bond Trustee to call Bonds for redemption and give notice of redemption and specifying the redemption date, the principal amount, and maturities of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Bond Indenture pursuant to which such Bonds are to be called for redemption.

The foregoing provisions of this Section shall not apply in the case of any mandatory redemption of Bonds under this Bond Indenture, and the Bond Trustee shall call Bonds for redemption and shall give notice of redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer or the Company and whether or not the Bond Trustee shall hold in the Debt Service Fund moneys available and sufficient to effect the required redemption.

Section 303. Selection of Bonds to be Redeemed; Bonds Redeemed in Part. Bonds may be redeemed only in the principal amount of minimum authorized denominations of the Bonds or any integral multiple thereof.

If less than all Bonds are to be redeemed and paid prior to maturity pursuant to **Section 301** hereof, such Bonds shall be redeemed from the maturity or maturities selected by the Company. If less than all Bonds of any maturity are to be redeemed, the particular Bonds to be redeemed shall be selected by the Bond Trustee from the Bonds of such maturity which have not previously been called for redemption, by such method as the Bond Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions equal to minimum authorized denominations of the principal of Bonds of a denomination larger than such minimum authorized denominations.

Any Bond which is to be redeemed only in part shall be surrendered at the place of payment therefor (with, if the Bond Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Bond Trustee duly executed by, the Owner thereof or his attorney or legal representative duly authorized in writing) and the Issuer shall execute and the Bond Trustee shall authenticate and deliver to the Owner of such Bond, without service charge, a new Bond or Bonds of the same maturity of any authorized denomination or denominations as requested by such Owner in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered. If the Owner of any such Bond shall fail to present such Bond to the Bond Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the unit or units of principal amount in minimum authorized denominations called for redemption (and to that extent only).

In lieu of surrender under the preceding paragraph, payment of the redemption price of a portion of any Bond may be made directly to the Owner thereof without surrender thereof, if there shall have been filed with the Bond Trustee a written agreement of such Owner acceptable to the Bond Trustee in form and substance that payment shall be so made and that such Owner will not sell, transfer or otherwise dispose of such Bond unless prior to delivery thereof such Owner shall present such Bond to the Bond Trustee for notation thereon of the portion of the principal thereof redeemed or shall surrender such Bond in exchange for a new Bond or Bonds for the unredeemed balance of the principal of the surrendered Bond.

The Bond Trustee shall promptly notify the Issuer and the Company in writing of the Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

Section 304. Notice of Redemption. Unless waived by any Owner of Bonds to be redeemed, official notice of any such redemption shall be given by the Bond Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, at least **15** days prior to the redemption date for the Bonds, the Bonds to be redeemed at the address shown on the bond register.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date;

- (b) the redemption price;
- (c) the principal amount of Bonds to be redeemed and, if less than all of a maturity of Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;
- (d) the place where the Bonds to be redeemed are to be surrendered for payment of the redemption price, which place of payment shall be the principal corporate trust office of the Bond Trustee; and
- (e) such notice is conditional upon moneys being on deposit with the Bond Trustee in an amount sufficient to pay the redemption price on the redemption date, otherwise such redemption shall not be effective.

The failure of any Owner of Bonds to receive notice given as provided in this Section, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

Section 305. Deposit of Redemption Price; Bonds Payable on Redemption Date. Prior to any redemption date, the Issuer shall deposit or cause to be deposited with the Bond Trustee or with a Paying Agent, from moneys provided by the Company, an amount of money sufficient to pay the redemption price of all the Bonds which are to be redeemed on that date. Such money shall be held in trust for the benefit of the Persons entitled to such redemption price and shall not be deemed to be part of the Trust Estate.

Notice of redemption having been given as aforesaid, the Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds shall cease to bear interest. Upon surrender of any such Bond for redemption in accordance with said notice, such Bond shall be paid by the Trustee as trustee for the Issuer at the redemption price. Installments of interest with a due date on or prior to the redemption date shall be payable to the Owners of the Bonds registered as such on the relevant Regular Record Dates according to the terms of such Bonds and the provisions of **Section 203**.

If any Bond called for redemption shall not be so paid upon surrender thereof for redemption, or as otherwise provided under **Section 303** in lieu of surrender, the principal (and premium, if any) shall, until paid, bear interest from the redemption date at the rate prescribed therefor in the Bond.

ARTICLE IV

FUNDS AND ACCOUNTS, APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

Section 401. Creation of Funds and Accounts. There are hereby created and ordered to be established in the custody of the Bond Trustee the following special trust funds in the name of the Issuer to be designated as follows:

- (a) “City of Prairie Village, Kansas – Silvercrest at Meadowbrook, LLC Project Fund” (the “Project Fund”).
- (b) “City of Prairie Village, Kansas – Silvercrest at Meadowbrook, LLC Costs of Issuance Fund” (the “Costs of Issuance Fund”).
- (c) “City of Prairie Village, Kansas - Silvercrest at Meadowbrook, LLC Debt Service Fund” (the “Debt Service Fund”).

The Bond Trustee is authorized to establish separate accounts within such funds or otherwise segregate moneys within such funds, on a book-entry basis or in such other manner as the Bond Trustee may deem necessary or convenient, or as the Bond Trustee shall be instructed by the Company.

Section 402. Deposit of Bond Proceeds and Other Moneys. The Issuer, for and on behalf of the Company, shall deposit with the Bond Trustee all of the net proceeds from the Bonds and from funds of the Company into the respective Project Fund or Costs of Issuance Fund as received.

Section 403. Project Fund.

(a) Moneys in the Project Fund shall be paid out from time to time by the Bond Trustee in order to pay or as reimbursement for payments made for Project Costs within three Business Days after receipt in complete and properly executed form satisfactory to the Bond Trustee of a Written Request of the Company, approved by the Original Purchaser, requesting payments be made from the Project Fund and including instructions for making the payments.

(b) Upon receipt of each Written Request of the Company, the Bond Trustee shall pay the obligation set forth in such Written Request out of moneys in the Project Fund. In making such payments and determinations, the Bond Trustee may rely upon such Written Request and accompanying certificates and statements and shall not be required to make any independent investigation in connection therewith. If for any reason the Company should decide prior to the payment of any item not to pay such item, it shall give written notice of such decision to the Bond Trustee, and, if upon receipt of such written notice the Bond Trustee has not released payment for such item, the Bond Trustee shall not make such payment.

(c) The Company shall deliver to the Bond Trustee within 90 days after the completion of the Project a certificate of the Company Representative:

(i) stating that the Project has been fully completed and the date of completion;

(ii) stating that he has made such investigation of such sources of information as are deemed by him to be necessary, including pertinent records of the Company, and is of the opinion that the Project Costs have been fully paid for and no claim or claims exist against the Company or against the Project out of which a lien based on furnishing labor or material exists or might ripen; provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Company intends to contest such claim or claims in accordance with the Lease Agreement, in which event such claim or claims shall be described; provided, further, that it shall be stated that moneys are on deposit in the Project Fund sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims.

(d) If, after the Trustee pays all Written Requests theretofore tendered to the Bond Trustee under **subsection (b)**, any moneys remain in the Project Fund, such moneys shall be (i) transferred to the

Debt Service Fund, which amount shall be used to redeem Bonds on the earliest practical date on which the same may be called for redemption, or (ii) used for any other purpose requested by the Company if the Bond Trustee receives an Opinion of Bond Counsel and the prior written consent of the Original Purchaser approving such use.

Section 404. Costs of Issuance Fund. Moneys on deposit in the Costs of Issuance Fund shall be paid out to pay Costs of Issuance of the Bonds from time to time by the Bond Trustee upon Written Requests of the Company, in substantially the form of **Exhibit B**, in amounts equal to the amount certified for payment in such Written Requests. Any moneys remaining in the Costs of Issuance Fund on the earlier of the payment of all Costs of Issuance or December 1, 2019, shall be transferred to the Project Fund.

Section 405. Debt Service Fund. The Bond Trustee shall deposit and credit to the applicable account in the Debt Service Fund, as and when received, the following:

- (a) All Lease Payments made by the Company pursuant to **Section 4.1** of the Lease Agreement.
- (b) Any amount required to be transferred from the Project Fund or Costs of Issuance Fund to the Debt Service Fund pursuant to **Section 403** or **Section 404** hereof.
- (c) Interest earnings and other income on Permitted Investments required to be deposited in the Debt Service Fund pursuant to **Section 409** hereof.
- (d) All other moneys received by the Bond Trustee under and pursuant to any of the provisions of this Bond Indenture or the Lease Agreement, when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Debt Service Fund.

The moneys in the Debt Service Fund shall be held in trust and, subject to **Section 707** hereof, shall be applied solely in accordance with the provisions of this Bond Indenture to pay the principal of and redemption premium, if any, and interest on the Bonds as the same become due and payable at maturity, upon redemption, by acceleration or otherwise.

The Bond Trustee, upon the written instructions from the Issuer given pursuant to written direction of the Company, shall use excess moneys in the Debt Service Fund to redeem all or part of the Bonds Outstanding and to pay interest to accrue thereon prior to such redemption and redemption premium, if any, on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company, in accordance with the provisions of **Article III** hereof, so long as the Company is not in default with respect to any payments under the Lease Agreement and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption.

After payment in full of the principal of, redemption premium, if any, and interest on the Bonds (or after provision has been made for the payment thereof as provided in this Bond Indenture), and the fees, charges and expenses of the Bond Trustee, any Paying Agents and the Issuer, and any other amounts required to be paid under this Bond Indenture and the Lease Agreement, all amounts remaining in the Debt Service Fund shall be paid to the Company upon the expiration or sooner termination of the Lease Agreement.

Section 406. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal, redemption premium, if any, or interest on the Bonds or the date fixed for

redemption of any Bonds shall be a day other than a Business Day, then payment of principal, redemption premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 407. Nonpresentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Bond Trustee, all liability of the Issuer to the Owner thereof for the payment of such Bond, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Bond Trustee to hold such funds in trust in a separate trust account, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Indenture or on or with respect to said Bond. If any Bond shall not be presented for payment within **four** years following the date when such Bond becomes due, whether by maturity or otherwise, the Bond Trustee shall repay to the Company without liability for interest thereon the funds theretofore held by it for payment of such Bond, and such Bond, shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 408. Moneys to be Held in Trust. All moneys deposited with or paid to the Bond Trustee for the funds and accounts held under this Bond Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Bond Indenture shall be held by the Bond Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Bond Indenture and the Lease Agreement, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien, terms and provisions hereof and shall not be commingled with any other funds of the Issuer or the Company except as provided under **Section 409** hereof for investment purposes. Neither the Bond Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be the result of accounting for the earnings on Permitted Investments purchased at the direction of the Company pursuant to **Section 409** hereof.

Section 409. Investment of Moneys. Moneys held in each of the funds and accounts under this Bond Indenture shall, pursuant to written directions of the Company Representative, be invested and reinvested by the Bond Trustee in accordance with the provisions of this Bond Indenture in Permitted Investments which mature or are subject to redemption by the Owner thereof prior to the date such funds are expected to be needed. In the absence of such written direction, the Bond Trustee shall invest moneys in the funds and accounts in a Permitted Investment described in subparagraph (g) of the definition of Permitted Investments. The Bond Trustee may make any investments permitted by the provisions of this Section through its own bond department or short-term investment department or any affiliate thereof and may pool moneys for investment purposes. Any such Permitted Investments shall be held by or under the control of the Bond Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held. The interest accruing on each fund or account and any profit realized from such Permitted Investments shall be credited to such fund or account, and any loss resulting from such Permitted Investments shall be charged to such fund or account. The Bond Trustee shall sell or present for redemption and reduce to cash a sufficient amount of such Permitted Investments whenever it shall be necessary to provide moneys in any fund or account for the purposes of such fund or account and the Bond Trustee shall not be liable for any loss resulting from such investments.

Section 410. Records and Reports of Bond Trustee. The Bond Trustee agrees to maintain such records with respect to any and all moneys or investments held by the Bond Trustee pursuant to the

provisions of this Bond Indenture as are reasonably requested by the Issuer or the Company. The Bond Trustee shall furnish to the Company, monthly not later than the **10th** Business Day of each month, a report on the status of each of the funds and accounts established under this Article which are held by the Bond Trustee, showing the balance in each such fund or account as of the first day of the preceding month, the total of deposits to and the total of disbursements from each such fund or account, the dates of such deposits and disbursements, and the balance in each such fund or account on the last day of the preceding month. The Bond Trustee shall render an annual accounting for each calendar year ending December 31 to the Issuer, the Company and any Owner requesting the same at its expense, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period, including investment earnings and the balance in any funds or accounts created by this Bond Indenture as of the beginning and close of such accounting period.

ARTICLE V

[RESERVED]

ARTICLE VI

GENERAL COVENANTS AND PROVISIONS

Section 601. Issuer to Issue Bonds and Execute Bond Indenture. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Kansas to execute this Bond Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Bond Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights to the extent applicable and their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

Section 602. Limited Obligations. The Bonds and the interest thereon shall be special, limited obligations of the Issuer payable (except to the extent paid out of Bond proceeds or the income from the temporary investment thereof and under certain circumstances from insurance proceeds and condemnation awards) solely out of the Lease Payments and other payments derived by the Issuer under the Lease Agreement (except for fees and expenses payable to the Issuer, the Issuer's right to indemnification as set forth in the Lease Agreement and as otherwise expressly set forth therein), and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Bond Trustee and in favor of the Owners of the Bonds, as provided in this Bond Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas or any other political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State of Kansas or any other political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and in this Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State of Kansas or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Neither the Issuer nor the State of Kansas shall in any event be liable for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Issuer. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or the State of Kansas or any charge upon its general credit or against its taxing power.

Section 603. Payment of Bonds. The Issuer shall duly and punctually pay or cause to be paid, but solely from the sources specified in this Bond Indenture, the principal of, redemption premium, if any, and interest on the Bonds in accordance with the terms of the Bonds and this Bond Indenture.

Section 604. Performance of Covenants. The Issuer shall (to the extent within its control) faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions which are to be performed by the Issuer contained in this Bond Indenture, in the Bonds and in all proceedings pertaining thereto.

Section 605. Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Bonds, this Bond Indenture and the Lease Agreement, and the transactions relating thereto shall be open to inspection during business hours upon reasonable notice by the Bond Trustee or such accountants or other agencies as the Bond Trustee may from time to time designate. The Bond Trustee covenants and agrees that all books and documents in its possession relating to the Bonds, this Bond Indenture and the Lease Agreement, and the transactions relating thereto, including financial statements of the Company, shall be open to inspection during business hours upon reasonable notice by the Issuer or such accountants or other agencies as the Issuer may from time to time designate.

Section 606. Enforcement of Rights. The Issuer agrees that the Bond Trustee, as assignee, transferee, pledgee, and owner of a security interest under this Bond Indenture in its name or in the name of the Issuer may enforce all rights of the Issuer and the Bond Trustee and all obligations of the Company under and pursuant to the Lease Agreement and any other Transaction Documents for and on behalf of the Owners, whether or not the Issuer is in default hereunder. The Lease Agreement and all other documents, instruments or policies of insurance required by the Bond Trustee shall be delivered to and held by the Bond Trustee.

Section 607. Amendments to the Lease Agreement. The Lease Agreement may be supplemented or amended by Supplemental Lease Agreements executed by the Issuer and the Company as provided in **Article VIII** of the Lease Agreement; provided that subsequent to the issuance of any Bonds and prior to their payment in full (or provision thereof having been made in accordance with the provisions of this Bond Indenture), the Lease Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Bond Trustee and the Bondowner.

ARTICLE VII

DEFAULT AND REMEDIES

Section 701. Events of Default. The term “**Event of Default,**” wherever used in this Bond Indenture, means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of any interest on any Bond when such interest becomes due and payable; or
- (b) default in the payment of the principal of (or premium, if any, on) any Bond when the same becomes due and payable (whether at maturity, upon proceedings for redemption, by acceleration or otherwise); or

- (c) default in the performance, or breach, of any covenant or agreement of the Issuer in this Bond Indenture (other than a covenant or agreement a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of **60** days after there has been given to the Issuer and the Company by the Bond Trustee or to the Issuer, the Company and the Bond Trustee by the Owners of at least **10%** in principal amount of the Bonds Outstanding, a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default cannot be fully remedied within such **60**-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an Event of Default if the Issuer shall immediately upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch; or
- (d) any Event of Default under the Lease Agreement shall occur and is continuing and has not been waived.

With regard to any alleged Event of Default concerning which notice is given to the Company under the provisions of this Section, the Issuer hereby grants the Company full authority for the account of the Issuer to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute an Event of Default, in the name and stead of the Issuer, with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts in order to remedy such Event of Default.

Section 702. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default described in subparagraph (a) or (b) of **Section 701** hereof shall have occurred and be continuing, the Trustee shall, by notice in writing delivered to the Issuer and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable, and the Trustee shall provide for payment of the principal of and interest on the Bonds as provided in **Section 405** hereof.

If an Event of Default described in subparagraph (c) or (d) of **Section 701** hereof shall have occurred and be continuing, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding having been indemnified as provided in **Section 802(e)** hereof shall, by notice in writing delivered to the Issuer and the Company declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

On the date of acceleration of payment pursuant to the provisions of this Section, interest shall cease to accrue on the Bonds Outstanding.

At any time after such a declaration of acceleration has been made, but before any judgment or decree for payment of money due on any Bonds has been obtained by the Bond Trustee as provided in this Article, the Owners of a majority in principal amount of the Bonds Outstanding may, by written notice to the Issuer, the Company and the Bond Trustee, rescind and annul such declaration and its consequences if

- (a) there is deposited with the Bond Trustee a sum sufficient to pay
 - (1) all overdue installments of interest on all Bonds, including interest on Bonds accruing during any period during which the principal of the Bond has been accelerated in accordance with this Bond Indenture,
 - (2) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds,
 - (3) interest upon overdue installments of interest at the rate or rates prescribed therefor in the Bonds, and
 - (4) all sums paid or advanced by the Bond Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel; and
- (b) all Events of Default, other than the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 710** of this Bond Indenture.

No such rescission and annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 703. Exercise of Remedies by the Bond Trustee. Subject to the provisions of **Section 710** hereof, upon the occurrence and continuance of any Event of Default under this Bond Indenture, unless the same is waived as provided in this Bond Indenture, the Bond Trustee shall have the following rights and remedies, in addition to any other rights and remedies provided under this Bond Indenture or by law:

- (a) *Right to Bring Suit, Etc.* The Bond Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of, premium, if any, and interest on the Bonds Outstanding, including interest on overdue principal (and premium, if any) and on overdue installments of interest, and any other sums due under this Bond Indenture, to realize on or to foreclose any of its interests or liens under this Bond Indenture or any other Transaction Document, to enforce and compel the performance of the duties and obligations of the Issuer as set forth in this Bond Indenture and to enforce or preserve any other rights or interests of the Bond Trustee under this Bond Indenture with respect to any of the Trust Estate or otherwise existing at law or in equity.
- (b) *Exercise of Remedies at Direction of Bondowners.* If requested in writing to do so by the Owners of not less than **25%** in principal amount of Bonds Outstanding and if indemnified as provided in **Section 802(e)** of this Bond Indenture, the Bond Trustee shall be obligated to exercise such one or more of the rights and remedies conferred by this Article as the Bond Trustee shall deem most expedient in the interests of the Owners.
- (c) *Appointment of Receiver.* Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and of the Owners under this Bond Indenture, the Bond Trustee shall be entitled, as a matter of right, to the appointment of a

receiver or receivers of the Trust Estate, pending such proceedings, with such powers as the court making such appointment shall confer.

- (d) *Suits to Protect the Trust Estate.* The Bond Trustee shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Bond Indenture and to protect its interests and the interests of the Owners in the Trust Estate, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security under this Bond Indenture or be prejudicial to the interests of the Owners or the Bond Trustee, or to intervene (subject to the approval of a court of competent jurisdiction) on behalf of the Owners in any judicial proceeding to which the Issuer or the Company is a party and which in the judgment of the Bond Trustee has a substantial bearing on the interests of the Owners.
- (e) *Enforcement Without Possession of Bonds.* All rights of action under this Bond Indenture or any of the Bonds may be enforced and prosecuted by the Bond Trustee without the possession of any of the Bonds or the production thereof in any suit or other proceeding relating thereto, and any such suit or proceeding instituted by the Bond Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel, and subject to the provisions of **Section 707** hereof, be for the equal and ratable benefit of the Owners of the Bonds in respect of which such judgment has been recovered.
- (f) *Restoration of Positions.* If the Bond Trustee or any Owner has instituted any proceeding to enforce any right or remedy under this Bond Indenture by suit, foreclosure, the appointment of a receiver, or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Bond Trustee or to such Owner, then and in every case the Issuer, the Bond Trustee, the Company and the Owners shall, subject to any determination in such proceeding, be restored to their former positions and rights under this Bond Indenture, and thereafter all rights and remedies of the Bond Trustee and the Owners shall continue as though no such proceeding had been instituted.

Section 704. Bond Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer or any other obligor upon the Bonds or of such other obligor or their creditors, the Bond Trustee (irrespective of whether the principal of the Bonds shall then be due and payable, as therein expressed or by declaration or otherwise, and irrespective of whether the Bond Trustee shall have made any demand on the Issuer for the payment of overdue principal, premium or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

- (a) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Outstanding Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Bond Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel) and of the Owners allowed in such judicial proceeding, and

- (b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Owner to make such payments to the Bond Trustee, and in the event that the Bond Trustee shall consent to the making of such payments directly to the Owners, to pay to the Bond Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel, and any other amounts due the Bond Trustee under **Section 804**.

Nothing herein contained shall be deemed to authorize the Bond Trustee to authorize or consent to or accept or adopt on behalf of any Owner any plan of reorganization, arrangement, adjustment or composition affecting the Bonds or the rights of any Owner thereof, or to authorize the Bond Trustee to vote in respect of the claim of any Owner in any such proceeding.

Section 705. Limitation on Suits by Bondowners. No Owner of any Bond shall have any right to institute any proceeding, judicial or otherwise, under or with respect to this Bond Indenture, or for the appointment of a receiver or trustee or for any other remedy under this Bond Indenture, unless

- (a) such Owner has previously given written notice to the Bond Trustee of a continuing Event of Default;
- (b) the Owners of not less than **25%** in principal amount of the Bonds Outstanding shall have made written request to the Bond Trustee to institute proceedings in respect of such Event of Default in its own name as Bond Trustee under this Bond Indenture;
- (c) such Owner or Owners have offered to the Bond Trustee indemnity as provided in **Section 802(e)** and **Section 804** of this Bond Indenture against the fees, costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Bond Trustee for **60** days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Bond Trustee during such **60**-day period by the Owners of a majority in principal amount of the Outstanding Bonds;

it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Bond Indenture to affect, disturb or prejudice the lien of this Bond Indenture or the rights of any other Owners of Bonds, or to obtain or to seek to obtain priority or preference over any other Owners or to enforce any right under this Bond Indenture, except in the manner herein provided and for the equal and ratable benefit of all Outstanding Bonds.

Notwithstanding the foregoing or any other provision in this Bond Indenture, however, the Owner of any Bond shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and interest on such Bond on the respective stated maturities expressed in such Bond (or, in the case of redemption, on the redemption date) and nothing contained in this Bond Indenture shall affect or impair the right of any Owner to institute suit for the enforcement of any such payment.

Section 706. Control of Proceedings by Bondowners. The Owners of a majority in principal amount of the Bonds Outstanding shall have the right, during the continuance of an Event of Default,

- (a) to require the Bond Trustee to proceed to enforce this Bond Indenture, either by judicial proceedings for the enforcement of the payment of the Bonds and the foreclosure of this Bond Indenture, or otherwise; and
- (b) to direct the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee under this Bond Indenture, provided that in the case of both (a) above and this subparagraph (b):
 - (1) such direction shall not be in conflict with any rule of law or this Bond Indenture,
 - (2) the Bond Trustee may take any other action deemed proper by the Bond Trustee which is not inconsistent with such direction,
 - (3) the Bond Trustee shall not determine that the action so directed would be unjustly prejudicial to the Owners not taking part in such direction; and
 - (4) the Bond Trustee shall have been indemnified as provided in **Section 802(e)** and **Section 804**.

Section 707. Application of Moneys Collected. Any moneys collected by the Bond Trustee pursuant to this Article (after the deductions for payment of costs and expenses of proceedings resulting in the collection of such moneys) together with any other sums then held by the Bond Trustee as part of the Trust Estate, shall be applied in the following order, at the date or dates fixed by the Bond Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- (a) **First:** To the payment of all undeducted amounts due the Bond Trustee under **Section 804** of this Bond Indenture; and
- (b) **Second:** To the payment of the whole amount then due and unpaid upon the Outstanding Bonds for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Bond Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Bonds) on overdue principal (and premium, if any) and on overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon such Bonds, then to the payment of such principal and interest, without any preference or priority, ratably according to the aggregate amount so due.

Whenever moneys are to be applied by the Bond Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Bond Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such

date interest on the amounts of principal to be paid on such date shall cease to accrue. The Bond Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

Section 708. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Bond Trustee or to the Owners is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 709. Delay or Omission Not Waiver. No delay or omission of the Bond Trustee or of any Owner of any Bond to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Bond Trustee or to the Owners may be exercised from time to time, and as often as may be deemed expedient, by the Bond Trustee or by the Owners, as the case may be.

Section 710. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Bond Trustee as provided in this Article, the Owners of a majority in principal amount of the Bonds Outstanding may, by written notice delivered to the Bond Trustee and the Issuer, on behalf of the Owners of all the Bonds waive any past Event of Default hereunder and its consequences, except for the following types of Events of Default:

- (a) in the payment of the principal of (or premium, if any) or interest on any Bond, or
- (b) in respect of a covenant or provision hereof which under **Article IX** cannot be modified or amended without the consent of the Owner of each Outstanding Bond affected.

Upon any such waiver, such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Bond Indenture; but no such waiver shall extend to or affect any subsequent or other Event of Default or impair any right or remedy consequent thereon.

Section 711. Advances by Bond Trustee. If the Company shall fail to make any payment or perform any of its covenants in the Lease Agreement, the Bond Trustee may, at any time and from time to time, use and apply any moneys held by it under the Bond Indenture, or make advances, to effect payment or performance of any such covenant on behalf of the Company. All moneys so used or advanced by the Bond Trustee, together with interest at the Bond Trustee's announced prime rate, plus 2% per annum, shall be repaid by the Company upon demand and such advances shall be secured under the Bond Indenture prior to the Bonds. For the repayment of all such advances the Bond Trustee shall have the right to use and apply any moneys at any time held by it under the Bond Indenture but no such use of moneys or advance shall relieve the Company from any Event of Default hereunder.

ARTICLE VIII

THE BOND TRUSTEE AND PAYING AGENT

Section 801. Acceptance of Trusts; Certain Duties and Responsibilities. The Bond Trustee accepts and agrees to execute the trusts imposed upon it by this Bond Indenture, but only upon the following terms and conditions:

- (a) Except during the continuance of an Event of Default,
 - (1) the Bond Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Bond Indenture, and no implied covenants or obligations shall be read into this Bond Indenture against the Bond Trustee; and
 - (2) in the absence of bad faith on its part, the Bond Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Bond Trustee and conforming to the requirements of this Bond Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Bond Trustee, the Bond Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Bond Indenture.
- (b) If an Event of Default has occurred and is continuing, the Bond Trustee shall exercise such of the rights and powers vested in it by this Bond Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances.
- (c) No provision of this Bond Indenture shall be construed to relieve the Bond Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, **except that**
 - (1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;
 - (2) the Bond Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Bond Trustee, unless it shall be proved that the Bond Trustee was grossly negligent in ascertaining the pertinent facts;
 - (3) the Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee, under this Bond Indenture; and
 - (4) no provision of this Bond Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

- (d) Whether or not therein expressly so provided, every provision of this Bond Indenture relating to the conduct or affecting the liability of or affording protection to the Bond Trustee shall be subject to the provisions of this Section.

Section 802. Certain Rights of Bond Trustee. Except as otherwise provided in **Section 801** of this Bond Indenture:

- (a) The Bond Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (b) The Bond Trustee shall be entitled to rely upon an Officer's Certificate as to the sufficiency of any request or direction of the Company mentioned herein, the existence or non-existence of any fact or the sufficiency or validity of any instrument, paper or proceeding, or that a resolution in the form therein set forth has been adopted by the governing board of the Company has been duly adopted, and is in full force and effect.
- (c) Whenever in the administration of this Bond Indenture the Bond Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Bond Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate.
- (d) The Bond Trustee may consult with counsel, and the Bond Trustee may conclusively rely on the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Bond Trustee hereunder in good faith and in reliance thereon.
- (e) Notwithstanding any provision of this Bond Indenture to the contrary, the Bond Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Bond Indenture whether at the request or direction of any of the Owners pursuant to this Bond Indenture or otherwise, unless such Owners shall have offered to the Bond Trustee reasonable security or indemnity against the fees, advances, costs, expenses and liabilities, including those arising in connection with any environmental claim (except as may result from the Bond Trustee's own gross negligence or willful misconduct) which might be incurred by it in compliance with such request or direction.
- (f) The Bond Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document, but the Bond Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Bond Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney.
- (g) The Bond Trustee assumes no responsibility for the correctness of the recitals contained in this Bond Indenture and in the Bonds, except the certificate of authentication on the Bonds. The Bond Trustee makes no representations to the value or condition of the Trust Estate or any part thereof, or as to the title thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Bond Indenture or of the Bonds. The

Bond Trustee shall not be accountable for the use or application by the Issuer or the Company of any of the Bonds or the proceeds thereof or of any money paid to or upon the order of the Issuer or the Company under any provision of this Bond Indenture.

- (h) The Bond Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds and may otherwise deal with the Issuer or the Company with the same rights it would have if it were not Bond Trustee.
- (i) All money received by the Bond Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received. Money held by the Bond Trustee in trust hereunder need not be segregated from other funds except to the extent required by law or by this Bond Indenture. The Bond Trustee shall be under no liability for interest on any money received by it hereunder except for accounting for earnings on Permitted Investments purchased at the written direction of the Company.
- (j) The Bond Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Bond Trustee shall not be responsible for any willful misconduct or gross negligence on the part of any agent or attorney appointed with due care by it hereunder.
- (k) The permissive right of the Bond Trustee to do things enumerated in the Bond Indenture shall not be construed as a duty and the Bond Trustee shall not be answerable for other than its gross negligence or willful misconduct.
- (l) The Bond Trustee shall not be required to give any bond or security in respect of the execution or administration of this Bond Indenture.
- (m) Notwithstanding any other provision of this Bond Indenture to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Bond Trustee shall be interpreted to include any action of the Bond Trustee whether it is deemed to be in its capacity as Bond Trustee, bond registrar or Paying Agent.
- (n) The Bond Trustee may, but is not under any obligation, to inform the Owners of environmental hazards that the Bond Trustee has reason to believe exist, and the Bond Trustee has the right to take no further action and, in such event no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof. Further, the Bond Trustee is under absolutely no obligation to investigate in any manner whether or not any such hazard may exist.

Section 803. Notice of Defaults. The Bond Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the Issuer to cause to be made any of the payments to the Bond Trustee required to be made by **Article IV** of this Bond Indenture, unless the Bond Trustee shall have received specific notice in writing of such Event of Default by the Issuer, the Company, or the Owners of at least **10%** in principal amount of all Bonds Outstanding, and in the absence of such notice so delivered, the Bond Trustee may conclusively assume there is no Event of Default except as aforesaid. Within **30** days after the Bond Trustee has actual knowledge of any Event of Default hereunder of which the Bond Trustee is required to take notice or has received notice as provided in this Section, the Bond Trustee shall give written notice of such Event of Default by first class mail to all Owners of Bonds as shown on the bond register maintained by the Bond Trustee, unless such Event of Default shall have been cured or waived; provided, however, that, except in the case of an Event of

Default in the payment of the principal of (or premium, if any) or interest on any Bond, the Bond Trustee shall be protected in withholding such notice if and so long as the Bond Trustee in good faith determines that the withholding of such notice is in the interests of the Owners.

Section 804. Compensation and Reimbursement. The Bond Trustee shall be entitled to payment or reimbursement

- (a) from time to time for reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (b) except as otherwise expressly provided herein, upon its request, for all reasonable expenses, disbursements and advances incurred or made by the Bond Trustee in accordance with any provision of this Bond Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Bond Trustee's negligence or bad faith; and
- (c) to indemnify the Bond Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim or liability or the carrying out of any instructions of the Issuer, the Company or any Bondowner, in connection with the exercise or performance of any of its powers or duties hereunder, except that the Bond Trustee may not require that indemnity be furnished as a condition to effect a redemption or acceleration of Bonds or making payments to Bondholders hereunder.

All such payments and reimbursements shall be made by the Company or the Person providing instructions to the Bond Trustee with interest at the rate of interest per annum equal to the prime rate announced from time to time by the Bond Trustee, plus 2%.

The Bond Trustee shall promptly notify the Company in writing of any claim or action brought against the Bond Trustee in respect of which indemnity may be sought against the Company, setting forth the particulars of such claim or action, and the Company will assume the defense thereof, including the employment of counsel satisfactory to the Bond Trustee and the payment of all expenses. The Bond Trustee may employ separate counsel in any such action and participate in the defense thereof, and the reasonable fees and expenses of such counsel shall not be payable by the Company unless such employment has been specifically authorized by the Company or in the opinion of the Bond Trustee the Company has failed to actively pursue the defense of such claim or action.

Pursuant to the provisions of the Lease Agreement, the Company has agreed to pay to the Bond Trustee all reasonable fees, charges, advances and expenses of the Bond Trustee, and the Bond Trustee agrees to look to the Company for the payment of all reasonable fees, charges, advances and expenses of the Bond Trustee and any Paying Agent as provided in the Lease Agreement. The Bond Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Bond Trustee.

As security for the payment of such compensation, expenses, reimbursements and indemnity under this Section, the Bond Trustee shall be secured under this Bond Indenture by a first lien prior to the Bonds and the payment of interest, principal and premium, if any, thereon, and shall have the right to use and apply any trust moneys held by it under **Articles IV** and **VII** hereof.

Section 805. Corporate Trustee Required; Eligibility. There shall at all times be a Bond Trustee hereunder which shall be a bank or trust company organized and doing business under the laws of the United States of America or of any state thereof, authorized under such laws to exercise corporate trust powers, subject to supervision or examination by federal or state authority, having a principal corporate trust office located in the State of Kansas, and having a combined capital and surplus of at least **\$50,000,000**. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Bond Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Article.

Section 806. Resignation and Removal of Bond Trustee.

- (a) The Bond Trustee may resign at any time by giving written notice thereof to the Issuer, the Company and each Owner of Bonds Outstanding as shown by the bond register required by this Bond Indenture to be kept at the office of the Bond Trustee. If an instrument of acceptance by a successor Bond Trustee shall not have been delivered to the Bond Trustee within **30** days after the giving of such notice of resignation, the resigning Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee.
- (b) The Bond Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Issuer and the Bond Trustee signed by the Owners of a majority in principal amount of the Outstanding Bonds. The Issuer, the Company or any Owner may at any time petition any court of competent jurisdiction for the removal for cause of the Bond Trustee.
- (c) The Bond Trustee may be removed at any time (so long as no default or condition exists that with the lapse of time or giving of notice, or both, would constitute a default, has occurred and is continuing under this Bond Indenture) by an instrument in writing signed by the Company and delivered to the Issuer and the Bond Trustee. The foregoing notwithstanding, the Bond Trustee may not be removed by the Company unless written notice of the delivery of such instrument signed by the Company Representative is mailed to the Owners of all Bonds Outstanding under this Bond Indenture, which notice indicates the Bond Trustee will be removed and replaced by the successor trustee named in such notice, such removal and replacement to become effective not less than **60** days from the date of such notice, unless the Owners of not less than **25%** in aggregate principal amount of such Bonds Outstanding shall object in writing to such removal and replacement.
- (e) If at any time:
 - (1) the Bond Trustee shall cease to be eligible under **Section 805** and shall fail to resign after receipt by the Bond Trustee of a request from the Issuer or any Owner, or
 - (2) the Bond Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Bond Trustee or of its property shall be appointed or any public officer shall take charge or control of the Bond Trustee

or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Issuer may remove the Bond Trustee, or (B) the Company or any Owner may petition any court of competent jurisdiction for the removal of the Bond Trustee and the appointment of a successor Bond Trustee.

- (f) The Bond Trustee shall give notice of each resignation and each removal of the Bond Trustee and each appointment of a successor Bond Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Owners of Bonds as their names and addresses appear in the bond register maintained by the Bond Trustee. Each notice shall include the name of the successor Bond Trustee and the address of its principal corporate trust office.
- (g) No resignation or removal of the Bond Trustee and no appointment of a successor Bond Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Bond Trustee under **Section 807**.

Section 807. Appointment of Successor Bond Trustee. If the Bond Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Bond Trustee for any cause, the Company, with the written consent of the Issuer (which consent shall not be unreasonably withheld) (so long as no default or condition exists that with the lapse of time or giving of notice, or both, would constitute a default hereunder or under the Lease Agreement has occurred and is continuing), or the Owners of a majority in principal amount of Bonds Outstanding (if a default or condition exists that with the lapse of time or giving of notice, or both, would constitute a default hereunder or under the Lease Agreement has occurred and is continuing), by an instrument or concurrent instruments in writing received by the Issuer and the retiring Bond Trustee, shall promptly appoint a successor Bond Trustee. The Issuer shall not be under any duty to accept the appointment of any successor Bond Trustee named by the Company if such successor Bond Trustee is not acceptable to the Issuer. In case all or substantially all of the Trust Estate shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee, by written instrument, may similarly appoint a temporary successor to fill such vacancy until a new Bond Trustee shall be so appointed by the Issuer or the Owners. If, within **30** days after such resignation, removal or incapability or the occurrence of such vacancy, a successor Bond Trustee shall be appointed in the manner herein provided, the successor Bond Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Bond Trustee and supersede the retiring Bond Trustee and any temporary successor Bond Trustee appointed by such receiver or trustee. If no successor Bond Trustee shall have been so appointed and accepted appointment in the manner herein provided, any Owner or the retiring Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee, until a successor shall have been appointed as above provided. The successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as above provided. Every such successor Bond Trustee appointed pursuant to the provisions of this Section shall be a bank with trust powers or trust company in good standing under the law of the jurisdiction in which it was created and by which it exists, meeting the eligibility requirements of this Article.

Section 808. Acceptance of Appointment by Successor. Every successor Bond Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and to the retiring Bond Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Bond Trustee shall become effective and such successor Bond Trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Bond Trustee; but, on request of the Issuer or the successor Bond Trustee, such retiring Bond

Trustee shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Bond Trustee upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Bond Trustee, and shall duly assign, transfer and deliver to such successor Bond Trustee all property and money held by such retiring Bond Trustee hereunder, subject nevertheless to its lien, if any, provided for in **Section 804**, and thereupon, all duties and obligations of the retiring Bond Trustee hereunder shall cease and terminate. Upon request of any such successor Bond Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Bond Trustee all such estates, properties, rights, powers and trusts.

No successor Bond Trustee shall accept its appointment unless at the time of such acceptance such successor Bond Trustee shall be qualified and eligible under this Article.

Section 809. Merger, Consolidation and Succession to Business. Any corporation or association into which the Bond Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Bond Trustee shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bond Trustee, shall be the successor of the Bond Trustee hereunder, provided such corporation or association shall be otherwise qualified and eligible under this Article, and shall be vested with all of the title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Bonds shall have been authenticated, but not delivered, by the Bond Trustee then in office, any successor by merger or consolidation to such authenticating Bond Trustee may adopt such authentication and deliver the Bonds so authenticated with the same effect as if such successor Bond Trustee had itself authenticated such Bonds.

Section 810. Co-Bond Trustees and Separate Bond Trustees. At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any of the Trust Estate may at the time be located, or in the enforcement or the exercise any of the powers, rights or remedies herein granted to the Bond Trustee, or any other action which may be desirable or necessary in connection therewith, the Bond Trustee shall have power to appoint, and, the Issuer shall (upon the written request of the Bond Trustee or of the Owners of at least **25%** in principal amount of the Bonds Outstanding) join with the Bond Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Bond Trustee either to act as co-trustee, jointly with the Bond Trustee, of all or any part of the Trust Estate, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons in the capacity aforesaid, any property, title, right, protection, immunity or power in addition to those provided hereunder to the Bond Trustee deemed necessary or desirable, subject to the other provisions of this Section. If the Issuer does not join in such appointment within **15** days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Bond Trustee alone shall have power to make such appointment.

Should any written instrument from the Issuer be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Issuer.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

- (a) All rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Bond Trustee hereunder, shall be exercised solely, by the Bond Trustee.
- (b) The rights, powers, duties and obligations hereby conferred or imposed upon the Bond Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Bond Trustee or by the Bond Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Bond Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.
- (c) The Bond Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Issuer, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default has occurred and is continuing, the Bond Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the written request of the Bond Trustee, the Issuer shall join with the Bond Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.
- (d) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Bond Trustee, or any other such trustee hereunder.
- (e) Any request, demand, authorization, direction, notice, consent, waiver or other act of Owners delivered to the Bond Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 811. Designation of Paying Agent. The Bond Trustee is hereby designated and agrees to act as principal Paying Agent for and in respect to the Bonds. The Issuer may, upon the written request of the Company and payment of any costs related thereto, cause the necessary arrangements to be made through the Bond Trustee and to be thereafter continued for the designation of alternate Paying Agents, if any, and for the making available of funds hereunder for the payment of the principal of, premium, if any, and interest on the Bonds, or at the principal corporate trust office of said alternate Paying Agents. In the event of a change in the office of Bond Trustee, the predecessor Bond Trustee which has resigned or been removed shall cease to be trustee of any funds provided hereunder and Paying Agent for principal of, premium, if any, and interest on the Bonds, and the successor Bond Trustee shall become such Bond Trustee and Paying Agent unless a separate Paying Agent or Agents are appointed by the Issuer in connection with the appointment of any successor Bond Trustee.

ARTICLE IX

SUPPLEMENTAL BOND INDENTURES

Section 901. Supplemental Bond Indentures without Consent of Bondowners. Without the consent of the Owners of any Bonds, the Issuer and the Bond Trustee may from time to time enter into one or more Supplemental Bond Indentures for any of the following purposes:

- (a) to correct or amplify the description of any property at any time subject to the lien of this Bond Indenture, or better to assure, convey and confirm unto the Bond Trustee any property subject or required to be subjected to the lien of this Bond Indenture, or to subject to the lien of this Bond Indenture additional property; or
- (b) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of the Bonds, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed; or
- (c) to evidence the appointment of a separate trustee or the succession of a new trustee under this Bond Indenture; or
- (d) to add to the covenants of the Issuer or to the rights, powers and remedies of the Bond Trustee for the benefit of the Owners of the Bonds or to surrender any right or power herein conferred upon the Issuer; or
- (e) to cure any ambiguity, to correct or supplement any provision in this Bond Indenture which may be inconsistent with any other provision herein or to make any other change, with respect to matters or questions arising under this Bond Indenture, which shall not be inconsistent with the provisions of this Bond Indenture, provided such action shall not materially adversely affect the interests of the Owners of the Bonds; or
- (f) to modify, eliminate or add to the provisions of this Bond Indenture to such extent as shall be necessary to effect the qualification of this Bond Indenture under the Trust Indenture Act of 1939, as amended, or under any similar federal statute hereafter enacted, or to permit the qualification of the Bonds for sale under the securities laws of the United States or any state of the United States.

Section 902. Supplemental Bond Indentures with Consent of Bondowners. With the consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such Supplemental Bond Indenture, the Issuer and the Bond Trustee may enter into one or more Supplemental Bond Indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Bond Indenture or of modifying in any manner the rights of the Owners of the Bonds under this Bond Indenture; provided, however, that no such Supplemental Bond Indenture shall, without the consent of the Owner of each Outstanding Bond affected thereby,

- (a) change the stated maturity of the principal of, or any installment of interest on, any Bond, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any place of payment where, or the coin or currency in which, any Bond, or the interest thereon is payable, or impair the right to

institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date); or

- (b) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose Owners is required for any such Supplemental Bond Indenture, or the consent of whose Owners is required for any waiver provided for in this Bond Indenture of compliance with certain provisions of this Bond Indenture or certain Event of Defaults hereunder and their consequences; or
- (c) modify the obligation of the Issuer to make payment on or provide funds for the payment of any Bond; or
- (d) modify or alter the provisions of the definition of the term “Outstanding”; or
- (e) modify any of the provisions of this Section or **Section 710**, except to increase any percentage provided thereby or to provide that certain other provisions of this Bond Indenture cannot be modified or waived without the consent of the Owner of each Bond affected thereby; or
- (f) permit the creation of any lien ranking prior to or on a parity with the lien of this Bond Indenture with respect to any of the Trust Estate or terminate the lien of this Bond Indenture on any property at any time subject hereto or deprive the Owner of any Bond of the security afforded by the lien of this Bond Indenture.

The Bond Trustee may in its discretion determine whether or not any Bonds would be affected by any Supplemental Bond Indenture and any such determination shall be conclusive upon the Owners of all Bonds, whether theretofore or thereafter authenticated and delivered hereunder. The Bond Trustee shall not be liable for any such determination made in good faith.

It shall not be necessary for the required percentage of Owners of Bonds under this Section to approve the particular form of any proposed Supplemental Bond Indenture, but it shall be sufficient if such act shall approve the substance thereof.

Section 903. Execution of Supplemental Bond Indentures. In executing, or accepting the additional trusts created by, any Supplemental Bond Indenture permitted by this Article or the modification thereby of the trusts created by this Bond Indenture, the Bond Trustee and the Issuer shall receive, and, subject to **Section 801**, shall be fully protected and may conclusively rely upon, an Opinion of Bond Counsel addressed and delivered to the Bond Trustee and the Issuer stating that the execution of such Supplemental Bond Indenture is authorized or permitted by this Bond Indenture and the Act. The Bond Trustee may, but shall not be obligated to, enter into any such Supplemental Bond Indenture which affects the Bond Trustee’s own rights, duties or immunities under this Bond Indenture or otherwise.

Section 904. Effect of Supplemental Bond Indentures. Upon the execution of any Supplemental Bond Indenture under this Article, this Bond Indenture shall be modified in accordance therewith and such Supplemental Bond Indenture shall form a part of this Bond Indenture for all purposes; and every Owner of Bonds theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905. Reference in Bonds to Supplemental Bond Indentures. Bonds authenticated and delivered after the execution of any Supplemental Bond Indenture pursuant to this Article may, and if required by the Bond Trustee shall, bear a notation in form approved by the Bond Trustee as to any matter

provided for in such Supplemental Bond Indenture. If the Bond Trustee shall so determine, new Bonds so modified as to conform to any such Supplemental Bond Indenture may be executed by the Issuer and authenticated and delivered by the Bond Trustee in exchange for Outstanding Bonds.

Section 906. Company's Consent to Supplemental Bond Indentures. So long as the Company is not in default under the Lease Agreement, a Supplemental Bond Indenture under this Article which affects any rights of the Company will not become effective unless and until the Company consents in writing to the execution and delivery of such Supplemental Bond Indenture.

ARTICLE X

SATISFACTION AND DISCHARGE

Section 1001. Payment, Discharge and Defeasance of Bonds. Bonds will be deemed to be paid and discharged and no longer Outstanding under this Bond Indenture and will cease to be entitled to any lien, benefit or security of this Bond Indenture if the Issuer shall pay or provide for the payment of such Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on such Bonds, as and when the same become due and payable;
- (b) by delivering such Bonds to the Bond Trustee for cancellation; or
- (c) by depositing in trust with the Bond Trustee moneys and Defeasance Obligations acquired with moneys in an amount, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on such Bonds at or before their respective maturity or redemption dates (including the payment of the principal of, premium, if any, and interest payable on such Bonds to the maturity or redemption date thereof); provided that, if any such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption is given in accordance with the requirements of this Bond Indenture or provision satisfactory to the Bond Trustee is made for the giving of such notice; and further provided that no Bonds, or any part thereof shall be deemed to have been paid and discharged within the meaning of this Section if the Bonds bear interest at other than a Fixed Rate unless such Bonds are to be redeemed on or prior to the next date, if any, on which the interest rate payable on such Bonds may change to a different rate.

The foregoing notwithstanding, the liability of the Issuer in respect of such Bonds shall continue, but the Owners thereof shall thereafter be entitled to payment only out of the moneys and Defeasance Obligations deposited with the Bond Trustee as aforesaid.

Moneys and Defeasance Obligations so deposited with the Bond Trustee pursuant to this Section shall not be a part of the Trust Estate but shall constitute a separate trust fund for the benefit of the Persons entitled thereto. Such moneys and Defeasance Obligations shall be applied by the Bond Trustee to the payment (either directly or through any Paying Agent, as the Bond Trustee may determine) to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such moneys and Defeasance Obligations have been deposited with the Bond Trustee.

Section 1002. Satisfaction and Discharge of Bond Indenture. This Bond Indenture and the lien, rights and interests created by this Bond Indenture shall cease, determine and become null and void (except as to any surviving rights of transfer or exchange of Bonds herein provided for) if the following conditions are met:

- (a) the principal of, premium, if any, and interest on all Bonds has been paid or is deemed to be paid and discharged by meeting the conditions of **Section 1001**;
- (b) all other sums payable under this Bond Indenture with respect to the Bonds are paid or provision satisfactory to the Bond Trustee is made for such payment; and
- (c) in the event that moneys and Defeasance Obligations are deposited with the Bond Trustee as provided in Section 1001(c) and the scheduled final payment of the Bonds is in excess of one hundred eighty (180) days after the date of such deposit the Bond Trustee receives a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of such moneys and Defeasance Obligations to pay the Bonds in full on the designated maturity or redemption date.

Thereupon, the Bond Trustee shall execute and deliver to the Issuer a termination statement and such instruments of satisfaction and discharge of this Bond Indenture as may be necessary and shall pay, assign, transfer and deliver to the Issuer, or other Persons entitled thereto, all moneys, securities and other property then held by it under this Bond Indenture as a part of the Trust Estate, other than moneys or Defeasance Obligations held in trust by the Bond Trustee as herein provided for the payment of the principal of, premium, if any, and interest on the Bonds.

Section 1003. Rights Retained After Discharge. Notwithstanding the satisfaction and discharge of this Bond Indenture, the rights of the Bond Trustee under **Section 804** shall survive, and the Bond Trustee shall retain such rights, powers and duties under this Bond Indenture as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer and exchange of Bonds as provided herein. Nevertheless, any moneys held by the Bond Trustee or any Paying Agent for the payment of the principal of, redemption premium, if any, or interest on any Bond remaining unclaimed for four years after the principal of all Bonds has become due and payable, whether at maturity or upon proceedings for redemption or by declaration as provided herein, shall then be paid without liability for interest thereon to the Company, and the Owners of any Bonds not theretofore presented for payment shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Bond Trustee or any Paying Agent or the Issuer with respect to such moneys shall thereupon cease.

ARTICLE XI

NOTICES, CONSENTS AND ACTS OF BONDOWNERS

Section 1101. Notices. Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Bond Indenture to be made, given or furnished to or filed with the following Persons, and the same shall be considered given, furnished or filed, if the same shall be (a) delivered in person, (b) mailed by certified or registered mail, postage prepaid, (c) sent by delivery service for which receipt is acknowledged, (d) sent by Electronic Notice, or (e) sent by first-class mail (provided, however, in the

case of first class mail, delivery shall not be effective until such item is received); or (f) by any other means specifically permitted by any Transaction Document, at the following addresses:

(a) To the Issuer at:

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208
Attention: City Clerk

(b) To the Bond Trustee at:

UMB Bank, N.A.
928 Grand Blvd., 12th Floor
Kansas City, Missouri 64106
Attention: Corporate Trust Department

(c) To the Company at:

Silvercrest at Meadowbrook, LLC
c/o KV Financial Services, LLC
5613 Prairie Grass Dr.
Johnston, Iowa 50131
Attention: Krista Vanderpool

With a copy to:

Mike Carter Law
11506 Nicholas Street, Suite 103
Omaha, Nebraska 68154
Attention: Mike Carter

(d) To the Bondowners:

At the addresses of the Owners as shown on the bond register maintained by the Bond Trustee under this Bond Indenture.

If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Bond Trustee shall constitute a sufficient notice.

Notwithstanding any provision hereof to the contrary, if notice to Owners is given by first class mail, neither the failure to receive such notice, nor any defect in any notice so mailed, to any particular Owner shall affect the sufficiency of such notice with respect to other Owners. Where this Bond Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Owners shall be filed with the Bond Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

The Bond Trustee shall, prior to the execution and delivery of any Supplemental Bond Indenture or consenting to any amendment to the Lease Agreement, cause notice of the proposed execution and

delivery of such Supplemental Bond Indenture or Supplemental Lease Agreement together with a copy of the proposed Supplemental Bond Indenture or Supplemental Lease Agreement to be mailed to any rating agency then maintaining a rating on the Bonds at least **15** days prior to the proposed date of execution and delivery of such Supplemental Bond Indenture or Supplemental Lease Agreement.

Section 1102. Acts of Bondowners. Any notice, request, demand, authorization, direction, consent, waiver or other action provided by this Bond Indenture to be given or taken by Owners may be embodied in and evidenced by one or more substantially concurrent instruments of similar tenor signed by such Owners in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are transmitted to the Bond Trustee in any matter described in **Section 1101** hereof, and, where it is hereby expressly required, to the Issuer or the Company. Proof of execution of any such instrument or of a writing appointing any such agent, or of the ownership of Bonds, other than the assignment or ownership of a Bond, shall be sufficient for any purpose of this Bond Indenture and conclusive in favor of the Issuer and the Bond Trustee, if made in the following manner:

- (a) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. Whenever such execution is by an officer of a corporation or a member of a partnership on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority.
- (b) The fact and date of execution of any such instrument or writing and the authority of any Person executing the same may also be proved in any other manner which the Bond Trustee deems sufficient; and the Bond Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.
- (c) The ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same, shall be proved by the bond register maintained by the Bond Trustee.

In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds registered in the name of the Issuer or the Company shall be disregarded and deemed not to be Outstanding, unless the Company is the Owner of all of the Bonds, in which case such ownership shall not be disregarded.

Any notice, request, demand, authorization, direction, consent, waiver or other action by the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Bond Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Bond.

Section 1103. Form and Contents of Documents Delivered to Bond Trustee. Whenever several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Whenever any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Bond Indenture, they may, but need not, be consolidated and form one instrument.

Wherever in this Bond Indenture, in connection with any application or certificate or report to the Bond Trustee, it is provided that the Issuer shall deliver any document as a condition of the granting of such application, or as evidence of the Issuer's compliance with any term hereof, it is intended that the truth and accuracy, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Issuer to have such application granted or to the sufficiency of such certificate or report.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 1201. Further Assurances. The Issuer shall do, execute, acknowledge and deliver such Supplemental Bond Indentures and such further acts, instruments, financing statements and assurances as the Bond Trustee may reasonably require for accomplishing the purposes of this Bond Indenture.

Section 1202. Immunity of Officers, Employees and Commissioners of Issuer. No recourse shall be had for the payment of the principal of or redemption premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Bond Indenture against any past, present or future officer, commissioner, employee or agent of the Issuer, or of any successor municipal corporation, either directly or through the Issuer or any successor municipal corporation, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, commissioners, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Indenture and the issuance of Bonds.

Section 1203. Limitation on Issuer Obligations. Any other term or provision in this Bond Indenture or in any other Transaction Documents or elsewhere to the contrary notwithstanding:

- (a) Any and all obligations (including without limitation, fees, claims, demands, payments, damages, liabilities, penalties, assessments and the like) of or imposed upon the Issuer or its members, officers, agents, employees, representatives, advisors or assigns, whether under this Bond Indenture or any of the other Transaction Documents or elsewhere and whether arising out of or based upon a claim or claims of tort, contract, misrepresentation, or any other or additional legal theory or theories whatsoever

(collectively the “Obligations”), shall in all events be absolutely limited obligations and liabilities, payable solely out of the following, if any, available at the time the Obligation in question is asserted:

- (1) Bond proceeds and investment earnings therefrom; and
- (2) Payments derived from the Bonds, this Bond Indenture (including the Trust Estate to the extent provided in this Bond Indenture) and the Lease Agreement (except for the fees and expenses of the Issuer and the Issuer’s right to indemnification under the Lease Agreement under certain circumstances and as otherwise expressly set forth therein);

(the above provisions (1) and (2) being collectively referred to as the “exclusive sources of the Obligations”).

- (b) The Obligations shall not be deemed to constitute a debt or liability of the State of Kansas or of any political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the State of Kansas or of any political subdivision thereof, but shall be payable solely from and out of the exclusive sources of the Obligations and shall otherwise impose no liability whatsoever, primary or otherwise, upon the State of Kansas or any political subdivision thereof or any charge upon their general credit or taxing power.
- (c) In no event shall any member, officer, agent, employee, representative or advisor of the Issuer, or any successor or assign of any such person or entity, be liable, personally or otherwise, for any Obligation.
- (d) In no event shall this Bond Indenture be construed as:
 - (1) depriving the Issuer of any right or privilege; or
 - (2) requiring the Issuer or any member, officer, agent, employee, representative or advisor of the Issuer to take or omit to take, or to permit or suffer the taking of, any action by itself or by anyone else; which deprivation or requirement would violate or result in the Issuer’s being in violation of the Act or any other applicable state or federal law.

Section 1204. Benefit of Bond Indenture. This Bond Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Bond Trustee and their respective successors and assigns, subject, however, to the limitations contained herein. With the exception of rights expressly conferred in this Bond Indenture, nothing in this Bond Indenture or in the Bonds, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder, any separate trustee or co-trustee appointed under **Section 810** and the Owners of Outstanding Bonds, any benefit or any legal or equitable right, remedy or claim under this Bond Indenture.

Section 1205. Severability. If any provision in this Bond Indenture or in the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1206. Execution in Counterparts. This Bond Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 1207. Governing Law. This Bond Indenture shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 1208. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

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IN WITNESS WHEREOF, the Issuer and the Bond Trustee have caused this Bond Trust Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, by their duly authorized officers, all as of the day and year first above written.

CITY OF PRAIRIE VILLAGE, KANSAS

(Seal)

By: _____
Name: Eric Mikkelson
Title: Mayor

ATTEST:

Name: Adam Geffert
Title: City Clerk

UMB BANK, N.A., as Bond Trustee

By: _____
Name: _____
Title: _____

**EXHIBIT A
TO BOND TRUST INDENTURE
(FORM OF BONDS)**

**THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED ONLY (1) TO AN
“ACCREDITED INVESTOR” AS DEFINED IN RULE 501 OF REGULATION D OF THE
UNITED STATES SECURITIES AND EXCHANGE COMMISSION (2) AND IN ACCORDANCE
WITH THE TRANSFER RESTRICTIONS SET FORTH IN THE BOND TRUST INDENTURE.**

UNITED STATES OF AMERICA

STATE OF KANSAS

**Registered
No. R-1**

CITY OF PRAIRIE VILLAGE, KANSAS

**TAXABLE INDUSTRIAL REVENUE BOND
(SILVERCREST AT MEADOWBROOK, LLC PROJECT)
SERIES 2019**

Interest Rate
_____ %

Maturity Date
November 1, 2022

Dated Date
November __, 2019

Registered Owner: SILVERCREST AT MEADOWBROOK, LLC

Maximum Principal Amount: THIRTY-FIVE MILLION DOLLARS (\$35,000,000)

The **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation and political subdivision of the State of Kansas (the “Issuer”), for value received, promises to pay, but solely from the sources herein specified to the Registered Owner named above, or registered assigns (the “Registered Owner” or “Owner”), the Cumulative Outstanding Principal Amount. The Registered Owner shall note the principal amount Outstanding hereunder in the Table of Cumulative Outstanding Principal Amount attached hereto, provided, however, that the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount of this Bond, in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Registered Owner hereof, either by check or draft mailed to the Registered Owner at a stated address as it appears on the bond registration books of the Issuer kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States, interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum interest rate stated above in arrears at Maturity on the said Cumulative Outstanding Principal Amount is paid in full. Interest shall be computed on the basis of a year of 360 days consisting of 12 months of 30 days each. Principal on this Bond shall be payable on the maturity date set

forth above, unless such principal shall have been paid as a result of a redemption of the Bonds prior to such maturity date.

As used herein, the term “Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the terms of the hereinafter defined Indenture, as reflected in the bond registration books maintained by the Trustee.

The Trustee shall keep and maintain a record of the amounts deposited into the Project Fund pursuant to the terms of the Indenture as “Principal Amount Deposited into Project Fund” and shall enter the aggregate principal amount of this Bond then Outstanding on its records as the “Cumulative Outstanding Principal Amount” on its records maintained for this Bond. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner hereof, pursuant to the optional redemption provisions of the Indenture, the Trustee shall enter on its records the principal amount paid on the Bond as “Principal Amount Paid Pursuant to Optional Redemption Provisions,” and shall enter the then outstanding principal amount of this Bond as “Cumulative Outstanding Principal Amount” on its records. The Registered Owner may from time to time enter the respective amounts deposited into the Project Fund pursuant to the terms of the Indenture under the column headed “Principal Amount Deposited Into Project Fund” on the attached Table of Cumulative Outstanding Principal Amount (the “Table”) and may enter the aggregate principal amount of this Bond then outstanding under the column headed “Cumulative Outstanding Principal Amount” on the attached Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner hereof pursuant to the optional redemption provisions of the Indenture, the Registered Owner may enter the principal amount paid on this Bond under the column headed “Principal Amount Paid Pursuant to Optional Redemption Provisions” on the Table and may enter the then outstanding principal amount of this Bond under the column headed “Cumulative Outstanding Principal Amount” on the Table. However, the records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on this Bond shall be the official records of the Cumulative Outstanding Principal Amount for all purposes.

Method and Place of Payment. The principal of and interest on this Bond shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of and redemption premium, if any, on this Bond shall be payable by check, electronic transfer or draft to the Registered Owner at the maturity or redemption date upon presentation and surrender of this Bond at the principal corporate trust office of UMB Bank, N.A., in the City of Kansas City, Missouri (the “Bond Trustee”) provided, that so long as the Company is the sole Bondowner, the Paying Agent may make payments of principal on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States.. The interest payable on this Bond on any interest payment date shall be paid by the Bond Trustee to the Registered Owner of this Bond appearing on the bond register maintained by the Bond Trustee at the close of business on the Regular Record Date for such interest, and shall be paid by (1) check or draft of the Bond Trustee mailed to such Registered Owner at his address as it appears on such bond register or at such other address furnished in writing by such Registered Owner to the Bond Trustee, or (2) at the written request addressed to the Bond Trustee by any Registered Owner of Bonds in the aggregate principal amount of at least **\$500,000**, by electronic transfer in immediately available funds, such request to be signed by such Registered Owner, containing the name of the bank (which shall be in the continental United States), its address, its ABA routing number and the account number to which credit shall be made and be filed with the Bond Trustee no later than **10** Business Days before the applicable Regular Record Date preceding such payment date.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Bond Indenture.

Authorization of Bonds. This Bond is one of a duly authorized series of bonds of the Issuer designated “Taxable Industrial Revenue Bonds (Silvercrest At Meadowbrook, LLC Project), Series 2019,” in the maximum aggregate principal amount of \$35,000,000 (the “Bonds”), issued pursuant to the authority of and in full compliance with the Constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 to 12-1749d, inclusive, as amended, and pursuant to proceedings duly had by the Issuer. The Bonds are issued under and are equally and ratably secured and entitled to the protection given by a Bond Trust Indenture dated as of November 1, 2019 (said Bond Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, herein called the “Bond Indenture”), between the Issuer and the Bond Trustee, for the purpose of providing funds to finance commercial facilities to be leased to Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Company”), pursuant to a Lease Agreement dated as of November 1, 2019 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, herein called the “Lease Agreement”), between the Issuer and the Company. Under the Bond Indenture, the Issuer has pledged and assigned certain of its rights under the Lease Agreement, including the right to receive all Lease Payments thereunder, to the Bond Trustee as security for the Bonds. Reference is hereby made to the Bond Indenture for a description of the property pledged and assigned thereunder, and the provisions, among others, with respect to the nature and extent of the security for the Bonds, and the rights, duties and obligations of the Issuer, the Bond Trustee and the Registered Owners of the Bonds, and a description of the terms upon which the Bonds are issued and secured, upon which provision for payment of the Bonds or portions thereof and defeasance of the lien of the Bond Indenture with respect thereto may be made and upon which the Bond Indenture may be deemed satisfied and discharged prior to payment of the Bonds.

Interest Provisions. The amount of interest payable with respect to any Bonds on any Interest Payment Date shall be computed on the basis of a **360**-day year of twelve 30-day months.

Redemption of Bonds Prior to Maturity. The Bonds are subject to redemption and payment prior to maturity, at the option of the Issuer, which shall be exercised upon the written direction of the Company, in whole or in part, on any date at a redemption price equal to **100%** of the principal amount redeemed, plus interest accrued to the redemption date.

Notice of Redemption. Unless waived by any Owner of Bonds to be redeemed, official notice of any such redemption shall be given by the Bond Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, at least **15** days prior to the redemption date for the Bonds. The failure of any Owner of Bonds to receive notice given as provided in this Section, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided herein shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

Transfer and Exchange. This Bond may be transferred or exchanged, as provided in the Bond Indenture, only upon the bond register maintained by the Bond Trustee at the above-mentioned office of the Bond Trustee by the Registered Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Trustee duly executed by the Registered Owner or his duly authorized attorney, and thereupon a new Bond or Bonds of the same maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Bond Indenture, and upon payment of the charges therein prescribed. The Issuer, the Bond Trustee and any Paying Agent may deem and treat the person in whose name this Bond is registered on the bond register maintained by the Bond Trustee as the absolute owner hereof for

the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

Limitation on Rights. The Registered Owner of this Bond shall have no right to enforce the provisions of the Bond Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Bond Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Bond Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Bond Indenture, the principal of all the Bonds issued under the Bond Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. The Bonds or the Bond Indenture may be modified, amended or supplemented only to the extent and in the circumstances permitted by the Bond Indenture.

Limited Obligations. The Bonds and the interest thereon are special, limited obligations of the Issuer payable solely out of Lease Payments derived by the Issuer under the Lease Agreement and are secured by a pledge and assignment of such Lease Payments and other funds as provided in the Bond Indenture. The Bonds shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas or any other political subdivision thereof within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State of Kansas or any other political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and in the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State of Kansas or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Neither the Issuer nor the State of Kansas shall be liable for the payment of the principal of, premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Issuer. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer, the State of Kansas or any charge upon its general credit or its taxing power.

Authentication. This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Indenture until the Certificate of Authentication hereon shall have been executed by the Bond Trustee.

[The remainder of this page intentionally left blank.]

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the **CITY OF PRAIRIE VILLAGE, KANSAS** has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk and its corporate seal to be affixed or imprinted hereon, all as of the Dated Date specified above.

CERTIFICATE OF AUTHENTICATION

CITY OF PRAIRIE VILLAGE, KANSAS

This Bond is one of the Bonds described in the within mentioned Bond Indenture.

By: _____
Mayor

Date of Authentication: _____

UMB BANK, N.A., as Trustee

[SEAL]

By: _____
Authorized Signature

City Clerk

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please Print or Typewrite Name, Address and Social Security
Number or Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney

to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By: _____

Title: _____

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

<u>Date</u>	Principal Amount Deposited Into <u>Project Fund</u>	Principal Amount Paid Pursuant to Redemption <u>Provisions</u>	Cumulative Outstanding Principal <u>Amount</u>	Notation Made <u>By</u>
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**EXHIBIT B
TO BOND TRUST INDENTURE**

Request No: _____

Date: _____

DISBURSEMENT REQUEST

(\$ 404 - COSTS OF ISSUANCE FUND)

To: UMB Bank, N.A.
Attn: Corporate Trust Department
928 Grand Blvd., 12th Floor
Kansas City, Missouri 64106

Re: City of Prairie Village, Kansas, Taxable Industrial Revenue Bonds
(Silvercrest at Meadowbrook, LLC Project), Series 2019

You are hereby requested and directed as Bond Trustee under the Bond Trust Indenture dated as of November 1, 2019 (the "Bond Indenture"), between the City of Prairie Village, Kansas and you, as Bond Trustee, to pay from moneys in the Costs of Issuance Fund, pursuant to **Section 404** of the Bond Indenture, to the following payees the following amounts in payment or reimbursement for the following Costs of Issuance (as defined in the Bond Indenture):

<u>Payee</u>	<u>Amount</u>	<u>Description of Costs of Issuance</u>
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The undersigned Company Representative hereby states and certifies that each item listed above is a proper Costs of Issuance (as defined in the Bond Indenture) that was incurred in connection with the issuance of the above-referenced Bonds, and the amount of this request is justly due and owing and has not been the subject of another requisition which was paid.

SILVERCREST AT MEADOWBROOK, LLC
a Delaware limited liability company,
as Company

By: _____
Name: _____
Title: _____

**EXHIBIT C
TO BOND TRUST INDENTURE**

Request No: _____

Date: _____

DISBURSEMENT REQUEST

(§ 403 - PROJECT FUND)

To: UMB Bank, N.A., as Bond Trustee
Attn: Corporate Trust Department
928 Grand Blvd., 12th Floor
Kansas City, Missouri 64106

Re: City of Prairie Village, Kansas, Taxable Industrial Revenue Bonds
(Silvercrest at Meadowbrook, LLC Project), Series 2019

You are hereby requested and directed as Bond Trustee under the Bond Trust Indenture dated as of November 1, 2019 (the "Bond Indenture"), between the City of Prairie Village, Kansas and you, as Bond Trustee, to pay from moneys in the Project Fund, pursuant to **Section 403** of the Bond Indenture, to the Company to be used by the Company to pay Project Costs.

Payee

Amount Requested

Use of Funds

The undersigned Company Representative hereby states and certifies that each item listed above is being used for the purposes set forth above, and the amount of this request is justly due and owing and has not been the subject of another requisition which was paid.

SILVERCREST AT MEADOWBROOK, LLC
a Delaware limited liability company,
as Company

By: _____

Name: _____

Title: _____

**EXHIBIT D
TO BOND TRUST INDENTURE
(FORM OF INVESTMENT LETTER)**

INVESTMENT LETTER

[Date]

City of Prairie Village, Kansas
Prairie Village, Kansas

UMB Bank, N.A., as Trustee
Kansas City, Missouri

Re: City of Prairie Village, Kansas Taxable Industrial Revenue Bonds (Silvercrest at Meadowbrook, LLC Project), Series 2019

Ladies and Gentlemen:

The undersigned (the “Investor”) hereby represents and warrants to you as follows:

1. The Investor proposes to purchase \$35,000,000 maximum aggregate principal amount of the above-referenced bonds (the “Bonds”) issued pursuant to that certain Bond Trust Indenture dated as of November 1, 2019 (the “Indenture”), between the City of Prairie Village, Kansas (“City”) and UMB BANK, N.A., as Trustee. The Investor understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the “1933 Act”) or the securities laws of any state and will be sold to the Investor in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Investor set forth herein.

2. The Investor has sufficient knowledge and experience in business and financial matters in general, and investments such as the Bonds in particular, to enable the Investor to evaluate the risks involved in an investment in the Bonds.

3. The Investor has had access to, and has examined to the extent the undersigned has deemed necessary, financial statements and other data of Silvercrest at Meadowbrook, LLC (the “Company”), which the undersigned considers sufficient to enable the Investor to form a decision concerning such purchase. Investor has received all information from the Company that Investor has requested, has had all questions answered by appropriate officers of the Company, and, to the knowledge of Investor, has received all information necessary for Investor to evaluate the merits and risks of purchasing the Bonds. Investor is not relying upon any information provided by the Issuer with respect to its decision to invest in the Bonds.

4. The Investor confirms that its investment in the Bonds constitutes an investment that is suitable for and consistent with its investment program and that the Investor is able to bear the economic risk of an investment in the Bonds, including a complete loss of such investment.

5. The Investor is purchasing the Bonds solely for its own account for investment purposes only, and not with a view to, or in connection with, any distribution, resale, pledging, fractionalization, subdivision or other disposition thereof (subject to the understanding that disposition of Investor’s property will remain at all times within its control).

6. The Investor agrees that it will only offer, sell, pledge, transfer or exchange any of the Bonds it purchases (i) in accordance with an available exemption from the registration requirements of Section 5 of the 1933 Act, (ii) in accordance with any applicable state securities laws and (iii) in accordance with the provisions of the Indenture.

7. If the Investor sells any of the Bonds, the Investor or its agent will obtain from any subsequent purchaser the same representations contained in this Investment Letter.

8. The Investor acknowledges and understands that each of you is relying and will continue to rely on the statements made herein. The Investor agrees to notify you immediately of any changes in the information and conclusions herein.

Very truly yours,

SILVERCREST AT MEADOWBROOK, LLC,
as Purchaser

By: _____
Name: _____
Title: _____

Draft: September 24, 2019

\$35,000,000
(Aggregate Maximum Principal Amount)
CITY OF PRAIRIE VILLAGE, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
(SILVERCREST AT MEADOWBROOK, LLC PROJECT)
SERIES 2019

Dated November [__], 2019

BOND PURCHASE AGREEMENT

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Purchaser”) offers to purchase from the City of Prairie Village, Kansas (the “Issuer”), the above-referenced taxable industrial revenue bonds, dated as provided in the Indenture (hereinafter defined), in the maximum aggregate principal amount of \$35,000,000 (the “Bonds”), to be issued by the Issuer under and pursuant to Ordinance No. [____] adopted by the governing body of the Issuer on October 21, 2019 (the “Ordinance”) and a Trust Indenture dated as of November 1, 2019 (the “Indenture”), by and between the Issuer and UMB Bank, N.A., duly organized and existing and authorized to accept and execute trusts of the character herein, with its designated corporate trust office located in Kansas City, Missouri, as Trustee (the “Trustee”).

SECTION 1. REPRESENTATIONS AND AGREEMENTS

By the Issuer's acceptance hereof, the Issuer hereby represents to the Purchaser that:

(a) The Issuer is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. The Issuer is authorized pursuant to the Constitution and laws of the State of Kansas, to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Base Lease Agreement dated as of November 1, 2019 (the “Base Lease”), by and between Silvercrest at Meadowbrook, LLC, a Delaware limited liability company (the “Company”) and the Issuer, the Lease Agreement dated as of November 1, 2019 (the “Lease”), by and between the Issuer and the Company, and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project as defined in the Indenture and may also be used to pay for the costs incurred in connection with the issuance of the Bonds.

(b) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the Issuer or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the

Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Base Lease, the Lease or the Indenture.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BOND

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The interest rate on the Bonds shall be 2.00% per annum.

The maturity date of the Bonds shall be November 1, 2022.

The maximum principal amount of the Bonds is \$35,000,000.

The Bonds shall be sold to the Purchaser by the Issuer on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be deposited in the Project Fund and/or Costs of Issuance Fund, as applicable, as provided in **Section 402** of the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as defined in the Indenture. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds (“Additional Payments”) to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$35,000,000.

As used herein, the term “Closing Date” shall mean the date of this Bond Purchase Agreement or such other date as shall be mutually agreed upon by the Issuer and the Purchaser; the term “Closing Price” shall mean that certain amount specified in writing by the Purchaser and agreed to by the Issuer as the amount required to fund the initial disbursement from the Project Fund and the Costs of Issuance Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance and in the Indenture and the Base Lease and the Lease Agreement authorized thereby and the Bonds shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a single fully registered bond in the maximum aggregate principal denomination of \$35,000,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the Issuer, including any member, officer, official or employee of the Issuer (collectively, the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses whatsoever (but expressly excluding consequential, punitive or similar type damages) to the extent caused by any violation or failure by the Company to comply with any federal or state securities laws in connection with the Bonds, provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Parties’ negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Company or the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The Purchaser's obligations hereunder shall be subject to the due performance by the Issuer of the Issuer's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the Issuer's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Indenture, the Base Lease and the Lease and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The Issuer shall confirm on the Closing Date by a certificate that at and as of the Closing Date the Issuer has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the Issuer or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof. The form and substance of such certificate shall be satisfactory to the Purchaser and the Company; and

(c) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., Bond Counsel to the Issuer, in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the Issuer in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds from Bonds proceeds or otherwise.

SECTION 8. NOTICE

Any notice or other communication to be given to the Issuer under this Agreement may be given by mailing or delivering the same in writing to the Issuer at 7700 Mission Road, Prairie Village, Kansas 66208, Attention: City Clerk; any notice or other communication to be given to the Purchaser under this Agreement may be given by delivering the same in writing to Silvercrest at Meadowbrook, LLC, c/o KV Financial Services, LLC, 5613 Prairie Grass Drive, Johnston, Iowa 50131 Attention: Krista Vanderpool; and any notice or other communication to be given to the Company under this Agreement may be given by delivering the same in writing to Silvercrest at Meadowbrook, LLC, c/o KV Financial Services, LLC, 5613 Prairie Grass Drive, Johnston, Iowa 50131 Attention: Krista Vanderpool.

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Kansas and may be assigned by the Purchaser with the written consent of the Issuer.

SECTION 10. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

[The remainder of this page intentionally left blank.]

Very truly yours,

SILVERCREST AT MEADOWBROOK, LLC,
a Delaware limited liability company,
as Purchaser

By: _____
Name: Christopher R. Held
Title: Authorized Signatory

SILVERCREST AT MEADOWBROOK, LLC,
a Delaware limited liability company,
as Company

By: _____
Name: Christopher R. Held
Title: Authorized Signatory

Accepted and Agreed to as of the date set forth on Page 1.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Mayor

(Seal)

ATTEST:

By: _____
City Clerk

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

Industrial Revenue Bond Informational Statement
(K.S.A. 12-1744a)

APPLICANT:

CITY OF PRAIRIE VILLAGE, KANSAS
City or County issuing I.R.B.s
JOHNSON
County in which City is located

(For State of Kansas use only)	
IRB Statement No. _____-IRB	
Fee: _____	Amt Rec. _____
Rec. Date: _____	Ck # _____

Please answer all questions. If a question is not applicable, please indicate (N/A).

1. Proposed lessee name and address for whom bonds issued:
- Silvercrest at Meadowbrook, LLC
c/o KV Financial Services, LLC
5613 Prairie Grass Dr.
Johnston, Iowa 50131

Guarantor for Bonds, if any: N/A

Paying (Fiscal) Agent: UMB Bank, N.A.
928 Grand Blvd., 12th Floor
Kansas City, Missouri 64106

Underwriter, if any: NA

Attorney(s) who issued opinion:

Bond Counsel: Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Kansas City, MO 64108

Tenant Counsel: Mike Carter Law
11506 Nicholas Street, Suite 103
Omaha, Nebraska 68154

City Attorney: Lathrop & Gage, LLP
Attn: David Waters
10851 Mastin Blvd., Suite 1000
Overland Park, KS 66210

Underwriter's Counsel: N/A

2. Will an exemption of the property be requested? Yes _____ No X

If exemption will be sought:

- a. Provide the legal description of the property. (If legal description is lengthy, attach additional pages.)
- b. Provide the appraised valuation (not assessed) as listed by the county appraiser of property to be acquired, purchased, etc. as of next January 1.

Land: \$ N/A

Improvements: \$ N/A

Equipment and Machinery \$ N/A

3. Estimated TOTAL cost of the property:

Land: \$ _____

Improvements: \$ _____

Furniture, Fixtures and Equipment \$ _____

Other \$ _____

4. If facility financed is an addition or improvement to existing facility already financed by prior IRB issuance, supply following:

Date prior I.R.B.s issued: N/A

If existing facility exempted, period of exemption: N/A

Board of Tax Appeals #: N/A

5. IRB principal amount to be issued: \$35,000,000

6. Please provide the following:

- a. Itemized list of any payments in lieu of taxes.

N/A

- b. The amount of any service fee or charges with detailed description of services to be rendered by city for same.

The City charges an application fee of \$1,000. Additionally, the City will be reimbursed for its actual costs incurred.

- c. Detailed description of ultimate use of bond proceeds (e.g. acquisition of real estate, remodeling of physical plant) with the amount of IRB proceeds to be used for each purpose.

Land: \$ _____

Improvements: \$ _____

Furniture, Fixtures and Equipment \$ _____

Other \$ _____

7. What is the proposed date of issuance of these I.R.B.s? (Must be a least 7 days after receipt of preliminary filing with the Board of Tax Appeals.)

_____, 2019

VERIFICATION

I, Adam Geffert, do solemnly swear or affirm that the information set forth herein is true and correct, to the best of my knowledge and belief. So help me God.

Signature of Applicant

Adam Geffert, City Clerk
Printed Name and Title

State of Kansas)
County of Johnson)

This instrument was acknowledged before me on _____, 2019 by Adam Geffert.

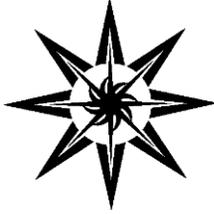
Seal

Signature of Notary Public

My appointment expires: _____

Send this statement along with the filing fee of \$500.00 to:

Board of Tax Appeals
700 SW Harrison, Suite 1022
Topeka, KS 66603



ADMINISTRATION

Council Meeting Date: October 21, 2019

COU2019-47 Consider approval of Resolution #2019-14 Authorizing Project (Public Works Facility)

Consider approval of Bond Sale Resolution #2019-15 (Public Works Facility)

Motions:

Consider approval of a resolution authorizing the City of Prairie Village, Kansas, to design and construct a new Public Works facility infrastructure project and the issuance of general obligation bonds to finance such costs.

Consider approval of a resolution authorizing the City of Prairie Village, Kansas, to issue General Obligation Bonds in an amount not to exceed \$10,000,000 to finance the costs of constructing and equipping the Public Works facility, and certain documents and actions in connection with the issuance of said bonds.

BACKGROUND

The bonds are being issued for the purpose of constructing a new Public Works facility. In late 2017, Clark Enersen provided an existing building condition analysis for the Public Works Facility at 3535 Somerset. Based on the Facility Assessment, a site plan was provided to integrate the functions of the staff buildings, construct a vehicle shop and address other infrastructure improvements as well as include more efficient use of the site and incorporate sustainable energy solutions.

Resolution No. 2019-14 will authorize moving forward with the design and construction of the Public Works facility and the issuance of general obligation bonds to finance such costs.

Resolution No. 2019-15 will authorize proceeding with the public sale of the City's general obligation bonds. Columbia Capital Management, the City's financial advisor, and Gilmore & Bell, the City's bond counsel, will work with staff to prepare all necessary documents and proceedings for the bonds. The City expects to take bids on the bonds on December 2, and the City Council would consider the bids at its meeting that evening.

Kevin Wempe of Gilmore & Bell will attend the meeting on Monday, October 21st to present and discuss the Resolution and accompanying documents.

ATTACHMENTS

- Resolution #2019-14 Authorizing Project (Public Works Facility)
- Bond Sale Resolution #2019-15

PREPARED BY:

Lisa Santa Maria, Finance Director

Date: October 15, 2019

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF PRAIRIE VILLAGE, KANSAS
HELD ON OCTOBER 21, 2019**

The City Council (the "Governing Body") met in regular session at the usual meeting place in the City, at 6:00 p.m., the following members being present and participating, to-wit:

Present: _____

Absent: _____.

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Councilmember _____ presented and moved the adoption of a Resolution entitled:

**A RESOLUTION AUTHORIZING THE DESIGN, CONSTRUCTION, AND
EQUIPPING OF A NEW PUBLIC WORKS BUILDING WITHIN THE CITY AND
THE FINANCING THEREOF.**

Councilmember _____ seconded the motion to adopt the Resolution. Thereupon, the Resolution was read and considered, and, the question being put to a roll call vote, the vote thereon was as follows:

Aye: _____.

Nay: _____.

Abstain: _____.

The Mayor declared the Resolution duly adopted by the Governing Body and the City Clerk designated the same Resolution No. 2019-__.

* * * * *

(Other Proceedings)

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CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Governing Body of the City of Prairie Village, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

City Clerk

RESOLUTION NO. 2019-14

A RESOLUTION AUTHORIZING THE DESIGN, CONSTRUCTION, AND EQUIPPING OF A NEW PUBLIC WORKS BUILDING WITHIN THE CITY AND THE FINANCING THEREOF.

WHEREAS, Article 12, Section 5 of the Constitution of the State of Kansas and Charter Ordinance No. 28 of the City of Prairie Village, Kansas (the “City”), authorize the City Council of the City (the “Governing Body”) to make a variety of improvements as further described in Charter Ordinance No. 28 and to issue its general obligation bonds or other obligations of the City for the same; and

WHEREAS, the Governing Body of the City deems it necessary to construct a new public works building, as more fully described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. Pursuant to Charter Ordinance No. 28, the Governing Body hereby authorizes the design, construction, and equipping of a new public works building to be generally located at 3535 Somerset Drive, and any other necessary and appurtenant improvements (the “Improvements”), in the amount of \$10,000,000, plus costs of issuance and any interest costs for temporary financing.

Section 2. The cost of the Improvements shall not exceed \$10,000,000, exclusive of issuance costs and any interest costs for temporary financing. The Governing Body hereby authorizes the issuance of the City’s general obligation bonds to pay for the Improvements.

Section 3. The City expects to make capital expenditures after the date of this Resolution in connection with the Improvements, and the City intends to reimburse itself for such expenditures with the proceeds of bonds and/or notes in the maximum principal amount of \$10,000,000, exclusive of issuance costs and any interest cost for temporary financing.

Section 4. This Resolution shall take effect immediately.

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ADOPTED by the Governing Body this 21st day of October, 2019

SIGNED by the Mayor this 21st day of October, 2019.

Mayor

ATTEST:

City Clerk

(SEAL)

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF PRAIRIE VILLAGE, KANSAS
HELD ON OCTOBER 21, 2019**

The City Council (the "Governing Body") met in regular session at the usual meeting place in the City, at 6:00 p.m., the following members being present and participating, to-wit:

Absent: _____

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

The matter of providing for the offering for sale of General Obligation Improvement Bonds, Series 2019A, came on for consideration and was discussed.

Councilmember _____ presented and moved the adoption of a Resolution entitled:

A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2019A, OF THE CITY OF PRAIRIE VILLAGE, KANSAS.

Councilmember _____ seconded the motion to adopt the Resolution. Thereupon, the Resolution was read and considered, and, the question being put to a roll call vote, the vote thereon was as follows:

Aye: _____.

Nay: _____.

The Mayor declared the Resolution duly adopted by the Governing Body and the City Clerk designated the same Resolution No. 2019-____.

* * * * *

(Other Proceedings)

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CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the Governing Body of the City of Prairie Village, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

City Clerk

RESOLUTION NO. 2019-15

A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2019A, OF THE CITY OF PRAIRIE VILLAGE, KANSAS.

WHEREAS, the City of Prairie Village, Kansas (the “Issuer”) has authorized construction of a new public works building within the Issuer (the “Improvements”) pursuant to Charter Ordinance No. 28 and Article 12, Section 5 of the Constitution of the State of Kansas; and

WHEREAS, the Issuer desires to issue its general obligation bonds in order to finance the costs of such Improvements; and

WHEREAS, the City Council of the Issuer (the “Governing Body”) has selected the firm of Columbia Capital Management, LLC, Overland Park, Kansas (the “Financial Advisor”), as Financial Advisor for one or more series of general obligation bonds of the Issuer to be issued in order to provide funds to permanently finance the Improvements; and

WHEREAS, the Issuer desires to authorize the Financial Advisor to proceed with the offering for sale of said general obligation bonds and related activities; and

WHEREAS, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

WHEREAS, the Issuer desires to authorize the Financial Advisor and Gilmore & Bell, P.C., Kansas City, Missouri, the Issuer’s bond counsel (“Bond Counsel”), in conjunction with the Finance Director to proceed with the preparation and distribution of a preliminary official statement and notice of bond sale and to authorize the distribution thereof and all other preliminary action necessary to sell said general obligation bonds.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:

Section 1. There is hereby authorized to be offered for sale the Issuer’s General Obligation Improvement Bonds, Series 2019A (the “Bonds”) described in the Notice of Bond Sale, which is to be prepared by Bond Counsel, in conjunction with the Financial Advisor and Finance Director (the “Notice of Bond Sale”). All proposals for the purchase of the Bonds shall be delivered to the Governing Body at its meeting to be held on the sale date referenced in the Notice of Bond Sale, at which meeting the Governing Body shall review such bids and award the sale of the Bonds or reject all proposals.

Section 2. The Mayor and Finance Director, in conjunction with the Financial Advisor and Bond Counsel, are hereby authorized to cause to be prepared a Preliminary Official Statement relating to the Bonds (the “Preliminary Official Statement”), and such officials and other representatives of the Issuer are hereby authorized to use such document in connection with the sale of the Bonds.

Section 3. The Finance Director, in conjunction with the Financial Advisor and Bond Counsel, is hereby authorized and directed to give notice of said bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in a newspaper of general circulation in Johnson County, Kansas, and the *Kansas Register* and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for

the purchase of the Bonds shall be submitted upon the terms and conditions set forth in the Notice of Bond Sale, and awarded or rejected in the manner set forth in the Notice of Bond Sale.

Section 4. For the purpose of enabling the purchaser of the Bonds (the “Purchaser”) to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), the Mayor and City Clerk are hereby authorized: (a) to approve the form of the Preliminary Official Statement and to execute the “Certificate Deeming Preliminary Official Statement Final” in substantially the form attached hereto as *Exhibit A* as approval of the Preliminary Official Statement, such official’s signature thereon being conclusive evidence of such official’s and the Issuer’s approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

Section 5. The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 6. The Mayor, Finance Director, City Clerk and the other officers and representatives of the Issuer, the Financial Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds.

Section 7. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

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ADOPTED by the City Council on October 21, 2019.

(SEAL)

Mayor

ATTEST:

City Clerk

EXHIBIT A

**CERTIFICATE DEEMING
PRELIMINARY OFFICIAL STATEMENT FINAL**

_____, 2019

Re: City of Prairie Village, Kansas, General Obligation Improvement Bonds, Series 2019A

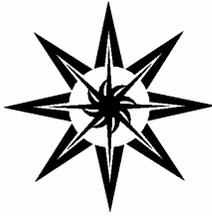
The undersigned are the duly acting Mayor and City Clerk of the City of Prairie Village, Kansas (the "Issuer"), and are authorized to deliver this Certificate to the purchaser (the "Purchaser") of the above-referenced bonds (the "Bonds") on behalf of the Issuer. The Issuer has previously caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the "Preliminary Official Statement") relating to the Bonds.

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "Rule"), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Title: Mayor

By: _____
Title: City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: October 21, 2019

COU2019-48 CONSIDER AGREEMENT WITH McCOWN GORDON CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE NEW PUBLIC WORKS FACILITY

RECOMMENDATION

Move to approve the agreement with McCown Gordon Construction for Construction Management Services for the new Public Works Facility in the amount of \$24,000.

BACKGROUND

Public Works and Clark Enersen Partners recently completed the Conceptual Layout and Cost Estimates for building modifications for the Public Works Facility. The results were presented to the City Council on September 16, 2019 where staff was authorized to move forward with implementing a new building project for the Public Works Facility. On October 7, 2019 City Council approved an agreement with Clark Enersen Partners for Schematic Design for the new building.

On October 16, 2019 an RFP process was completed and McCown Gordon Construction was selected for the new building project. The Selection Committee consisted of Council Members Gallagher and Nelson, along with Melissa Prenger, Cliff Speegle, and Keith Bredehoeft. Five proposals were submitted. After the initial ranking of the proposals two firms were interviewed. McGown Gordon Construction excelled in all aspects but their LEED building experience was exceptional and they should provide great value to our project.

McCown Gordon Construction will serve as a Construction Manager for this project. The Preconstruction Services fee will be \$24,000 and will allow McGowan Gordon to serve as a consultant during the design phase of the project. They will assist our architect, Clark Enersen Partners and the City in the development of the design and cost estimating of the new building. This contract also establishes the Construction Managers fee at 3.5% of the final construction cost. This percentage aligns with industry standards for similar buildings.

As the Preliminary Phase Services part of the project is completed, the contractor, architect, and City will agree upon final construction costs for this project. This cost will be approved by the City Council as Change Order 1 to this agreement and then construction will start.

FUNDING SOURCE

Funding initially will come from City Contingency with Bond Funds eventually being used for all project costs.

ATTACHMENTS

1. Agreement with McCown Gordon Construction

PREPARED BY

Keith Bredehoeft, Public Works Director

October 16, 2019

**CITY OF PRAIRIE VILLAGE, KANSAS CONTRACT BETWEEN
CITY OF PRAIRIE VILLAGE, KANSAS AND CONSTRUCTION MANAGER
McCOWNGORDON CONSTRUCTION LLC**

Prairie Village Public Works Campus

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208

Construction Manager:

McCownGordon Construction LLC
850 Main Street
Kansas City, Missouri 64105

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CITY OF PRAIRIE VILLAGE, KANSAS

**AGREEMENT BETWEEN
CITY OF PRAIRIE VILLAGE, KANSAS
AND CONSTRUCTION MANAGER**

Prairie Village Public Works Campus

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the **City of Prairie Village, Kansas**, (the "City"), and **McCownGordon Construction LLC** (the "Construction Manager").

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, this Agreement, General Conditions, Project Special Provisions, and other Contract Documents, as defined in the General Conditions, for the Work herein described, and has approved and adopted these said Contract Documents and has considered proposals for preconstruction and construction services, furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Construction Manager, in response to the Request for Proposals, has submitted to the City, in the manner and at the time specified, a Proposal in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has evaluated proposals received, and as a result of this process has, in accordance with the law, determined and declared the Construction Manager to be the best offeror for the construction of the public improvements, and has duly awarded to the Construction Manager a contract therefor upon the terms and conditions set forth in this Agreement and for the consideration named in this Agreement.

NOW, THEREFORE, in consideration of the compensation to be paid to the Construction Manager, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Construction Manager for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE I. The Construction Manager will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work as designated, described and required by the Contract Documents, to wit: **Prairie Village Public Works Campus**; all in accordance with the Contract Documents, on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents together with this Agreement form the Contract, and are as fully a part hereof as if repeated verbatim herein; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. The City shall compensate and make payments to the Construction Manager: as follows:

1. For the Preconstruction Phase Services described in Section 2.1 of the General Conditions, the Construction Manager's compensation shall be calculated as follows:

1.1 Lump sum of **TWENTY-FOUR THOUSAND AND NO/100 Dollars (\$24,000.00)** payable upon execution of GMP Change Order No. 1.

Reference **Exhibit C**, attached hereto and incorporated by reference herein, Preconstruction Scope & Fee, for further clarification.

2. For the Construction Manager's performance of the Work as described in Article 2 of the General Conditions, excluding Section 2.1 of the General Conditions which is addressed above, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

2.1 Construction Manager's Fee shall be 3.5% of the total Cost of Work and will be included within the GMP. Construction Manager's Fee shall not be reduced on account of savings returned to the City.

2.2 Construction Manager's Fee of 3.5% shall apply to any increases in the GMP mutually agreed to by the Parties.

3. **Savings**. All savings shall be for the total benefit of the City.

ARTICLE III. The Construction Manager shall commence work upon the date stated in the Notice to Proceed, and will complete all work covered by this Contract within the time set forth in the GMP Change Order No. 1. Time is of the essence. Accordingly, liquidated damages shall be assessed against Construction Manager, as stipulated liquidated damages and not as a penalty, in the amount of \$1,000.00, for each and every calendar day the work remains incomplete over the specified completion time(s) stated above. If the City elects to accept any part of the Work as Substantially Complete in advance of the remainder of the Work, this daily rate shall be equitably adjusted by the City.

ARTICLE IV. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the **State of Kansas**.

ARTICLE V. The following documents are made part of this Agreement by reference:

Exhibit A	The City's Program Requirements
Exhibit B	General Conditions of the Contract
Exhibit C	Construction Manager's Preconstruction and Construction Fee Proposal
Exhibit D	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Partial Payment and Waiver of Liens and Release of Claims
Exhibit E	Form of Bill of Sale
Exhibit F	Form of Bailment Agreement
Exhibit G	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Final Payment and Waiver of Liens and Release of Claims
Exhibit H	Insurance Requirements
Exhibit I	Form of Performance Bond
Exhibit J	Form of Statutory Payment Bond

IN WITNESS WHEREOF, the City has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Construction Manager has executed _____ counterparts of this Agreement in the prescribed form and manner, the day and year first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson
Mayor

ATTEST:

By: _____
Adam Geffert
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
David E. Waters
City Attorney

CONSTRUCTION MANAGER:

MCCOWNGORDON CONSTRUCTION LLC

By: _____

Name: _____

Title: _____

(If the Agreement is not executed by the president of the corporation, limited liability company, or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation, limited liability company, or partnership. If a corporation or limited liability company, Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Agreement.)

*[Add appropriate **Acknowledgment** form here.]*

EXHIBIT A

PROGRAM REQUIREMENTS

The project consists of the demolition of Administration and Crew Building (includes Fleet and Crew shop areas) and the Dirt Barn and construction of new Public Works Facility, Wash Bay, Covered Parking (at Dirt Barn Location) and relocation of parking lots. New Public Works facility to be approximately 18,000 – 21,000 gsf. The new structure will house: offices, conference space, work space, crew space, shop space, garage areas and support space.

Operations Personnel (23 FTE) to be housed on site and operational throughout construction process. Salt Barn and Fuel Island access maintained throughout construction. JCWW has fully functional pump station that needs regular access.

The project will also create a new enclosed wash bay facility, pavement replacement, fencing/security gate installation, and new covered parking areas.

Sustainable design is very important to the City of Prairie Village. To that end, constructing a Platinum level of LEED Certification will be the project goal.

EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

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EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

- 1.1 Definitions.** Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given. Work described in words when so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
- 1.1.1** "Acceptance" means agreement by the City to put the Work into use, but no acceptance by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents, unless such acceptance is specifically described in writing as applying to Work that is not in accordance with this Agreement or the Contract Documents.
- 1.1.2** "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders, and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the services or the Work.
- 1.1.3** "Application for Payment" means a written request for compensation for Work performed submitted per City-approved form.
- 1.1.4** "Approve" shall mean review by the City, which may be given solely for the benefit of the City but no approval by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents.
- 1.1.5** "Certificate of Substantial Completion" means written certification from the Designer which establishes the date of Substantial Completion, responsibilities of the City and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Construction Manager shall finish all items on the list accompanying the Certificate.
- 1.1.6** "Change Order" means a written order issued after the Agreement is executed by which the City, Designer, and the Construction Manager agree to construct additional items of Work, to modify the contract time, or to change the character and scope of Work shown in the Drawings and Specifications. Change Orders must be signed by the City and Construction Manager to be binding.
- 1.1.7** "Construction Contingency" means the sum established by the Construction Manager for use at the Construction Manager's discretion to cover costs which are properly reimbursed as a Cost of Work but are not the basis of a Change Order.
- 1.1.8** "Construction Documents" means documents prepared by the Designer or other design professionals working under the supervision of Designer for construction of the Work, including but not limited to the Plans and Specifications.

- 1.1.9** "Construction Phase" means the phase of the Project commencing upon completion of the Preconstruction Phase, or upon award of the first subcontract related to construction of the Project, whichever occurs first, and ending upon final completion. The parties acknowledge that the design phase and the Construction Phase may overlap.
- 1.1.10** "Consultant" or "Designer" or "Design Consultant" shall mean such persons or firms retained or employed by the City who shall be appropriately licensed and responsible for performance of professional design services in connection with the Project.
- 1.1.11** "Contract Documents" shall consist of the Agreement between the City and Construction Manager (sometimes referred to herein as the "Agreement"), including all addenda issued prior to execution of the Agreement; Design and Construction Documents as such time as they are incorporated into the Agreement; Changes to the Work effected by proper Change Orders including changes to the Work proposed by the City, or changes proposed by the Construction Manager and accepted by the City, if any; Drawings and data which may be furnished by the Construction Manager and approved by the City, if any; additional Drawings which may be furnished by the Designer necessary to make clear the intent of the Contract Documents (and in particular, the Specifications); if any; and any other documents attached to this Agreement.
- 1.1.12** "Cost of Work" means reimbursable costs, as defined in Section 6.1, necessarily incurred by the Construction Manager in the proper performance of the Work.
- 1.1.13** "Defective Work" means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.
- 1.1.14** "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.15** "Final Certificate for Payment" means written certification from the Designer stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the Final Certificate is due and payable.
- 1.1.16** "Guaranteed Maximum Price" or "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in the GMP Change Order and any subsequent Change Orders and shall include the Construction Manager's Fee outlined in Section 5.1 and the Cost of Work as defined in Article 6 and shall be the sum of the estimated cost of the Work, Construction Contingency and the Construction Manager's Fee.
- 1.1.17** "Life Cycle Costs" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance and salvage/resale value.

- 1.1.18 "Normal Weather Conditions" shall mean the average of weather conditions for the month for which delay is claimed over the past five years, based on data from the closest NOAA weather recording facility.
- 1.1.19 "Preconstruction Phase" shall mean the phase during which Construction Manager shall perform Value Engineering and constructability services in working with the Designer and the City. Preliminary scheduling and cost estimate activities shall also take place during this Phase.
- 1.1.20 "Program" shall mean the City's criteria on which the design is based, of which the Project and the Work are a part. The City's Program shall be described on **Exhibit "A"** hereto.
- 1.1.21 "Project" shall mean the overall construction program of the City, which may include work by contractors other than Construction Manager.
- 1.1.22 "Schedule of Values" means a document accurately and in good faith allocating all of the budgeted Cost of the Work and Contingency among the various portions of the Work, using Construction Manager's best efforts to avoid disproportionate allocation of funds to early completing items.
- 1.1.23 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 1.1.24 "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.1.25 "Subcontractor" means an individual, firm, or corporation having a direct contract with the Construction Manager or with another subcontractor for the performance or supply of any part of the Work required by the Contract Documents or the supply of any materials, services, equipment, or installation services required by the Contract Documents.
- 1.1.26 "Substantial Completion" or "Substantially Complete" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use and a temporary certificate of occupancy and any other permits and orders necessary for occupancy have been issued by the proper governmental authority. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.
- 1.1.27 "Underground Facilities" shall mean all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities or utilities which have been installed underground to furnish services or materials including, but not limited to, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

- 1.1.28 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality, and safety. Value Engineering is to be performed during the Preconstruction Phase as a part of the services required to reach a GMP acceptable to all parties.
- 1.1.29 "Warranties" means warranties obtained from the Construction Manager, Subcontractors, and all other sub-subcontractors and vendors pursuant to this Agreement covering the Work performed or materials furnished to the Project or any portion thereof by the Construction Manager.
- 1.1.30 "Work" means the work to be done necessary to complete the construction required of the Construction Manager by the Contract Documents, and includes all construction, labor, materials, tools, equipment, services, and transportation necessary to produce such construction to the City's full satisfaction and in accordance with the Contract Documents to fulfill the Construction Manager's obligations.
- 1.1.31 "Work Directive" is a written direction from the Designer issued under the terms of this Agreement, directing the Construction Manager to perform Work in the manner specified therein. Issuance of a Work Directive is an acknowledgement that the Construction Manager and the City are not in agreement as to whether the Work has been changed, or the appropriate adjustment to the Guaranteed Maximum Price or Contract Time, if any, associated with the Work Directive.

1.2 **Relationship of Parties.** The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Designer in furthering the interests of the City. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Construction Manager's Subcontractors and the City, or (b) between any persons or entities other than the City and the Construction Manager, including but not limited to the Designer and any other consultant retained by the City to prepare or review the Work, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor or supplier. It is understood that the Work shall be carried out and the Work shall be constructed fully in accordance with the Contract Documents.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the Work in accordance with the Contract Documents to the City's full satisfaction. Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Construction Manager. The Construction Manager shall be as fully responsible to the City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Construction Manager is for the acts and omissions of persons directly employed by it. Construction Manager shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. Construction Manager shall act as the City's interest and shall manage and control construction costs so as not to exceed the GMP. If the City and Construction Manager

agree, after consultation with the Designer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case the City will issue a Notice to Proceed with the Construction Phase, and both parties will proceed concurrently.

2.1 Preconstruction Phase Services.

2.1.1 Preliminary Evaluation. The Construction Manager shall provide a preliminary evaluation of the City's Program and Project budget requirements, each in terms of the other.

2.1.2 Consultation. The Construction Manager with the Designer shall jointly schedule and attend regular meetings with the City. The Construction Manager shall consult with the City and Designer regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule. When the Project requirements described in Section 3.1.1 have been identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Designer's review and the City's approval. The Construction Manager shall obtain the Designer's approval of the portion of the preliminary Project schedule relating to the performance of the Designers' services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Designer, and Construction Manager. The preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long lead time procurement, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the City and Designer.

2.1.4 Phased Construction. The Construction Manager shall make recommendations to the City and Designer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 Preliminary Cost Estimates.

2.1.5.1 When the City has sufficiently identified the Project requirements and the Designer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Designer and approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

- 2.1.5.2** When schematic design documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare, for the review of the Designer and approval of the City a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.
- 2.1.5.3** When design development documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Designer and approval by the City. During the preparation of the Construction Documents the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.
- 2.1.5.4** If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Construction Manager shall make appropriate recommendations to the City and Designer.
- 2.1.6** Long Lead Time Items. The Construction Manager shall recommend to the City and Designer a schedule for procurement of long lead time items which will constitute part of the Work as required, to meet the Project schedule. If such long lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead items.
- 2.1.7** Extent of Responsibility. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. Unless a portion of the Work is identified in the Construction Documents as being Design-Build, and that design responsibility for that portion is specifically delegated to Construction Manager and/or its Subcontractor(s), the City acknowledges that the Construction Manager is in no way providing professional services which constitute the practice of architecture or engineering. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Designer and the City in writing.

2.2 Guaranteed Maximum Price Proposal and Contract Time.

- 2.2.1** At a time to be mutually agreed upon by City and Construction Manager, but within thirty (30) days after completion of the Drawings and Specifications, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of Work, Construction Manager's Fee, and Construction Contingency.
- 2.2.2** The estimated Cost of Work shall include the Construction Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2, above and other costs which are properly

reimbursable as Cost of Work but not the basis for a Change Order. The Construction Manager shall notify the City as to the items of Work and cost thereof prior to any and each use of the contingency, and shall maintain a statement of the contingency costs.

- 2.2.3** At the time of the GMP amendment to the Agreement, a Substantial Completion date and Final Completion date shall be agreed upon. Liquidated damages for Construction shall be as set forth in the Agreement

2.3 Basis of GMP.

- 2.3.1** The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

2.3.1.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the contract, which were used in the preparation of the GMP proposal.

2.3.1.2 A list of allowances and a statement of their basis.

2.3.1.3 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.

2.3.1.4 The date of Substantial Completion upon which the proposed GMP is based on and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.3.1.5 Detailed construction schedule.

- 2.3.2** The Construction Manager shall meet with the City and Designer to review the GMP proposal and the written statement of its basis. In the event that the City or Designer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal.

- 2.3.3** Unless the City accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

- 2.3.4** Prior to the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed with the Construction Phase of the Work, the Construction Manager shall not incur any costs to be reimbursed as part of the cost of the Work, except as the City may specifically authorize in writing.

- 2.3.5** Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in the GMP Change Order. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.4 Construction Phase.

2.4.1 General. The Construction Phase shall commence on the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed.

2.4.2 Utility location. Prior to commencement of any Work in the Construction Phase, Construction Manager shall make all reasonable efforts to specifically locate Underground Facilities which may be affected by the Construction Work, including identification of any utilities which the Construction Manager knows or has reason to know may be affected, whether or not information about such utilities is reported through third-party notification services.

2.4.3 Administration. Those portions of the Work the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Designer. The City will then review these bids with the Construction Manager, and Construction Manager shall identify the bids which it proposes to accept and state the reasons for its decisions. The City shall have the right, but not the obligation, to direct the Construction Manager to reject a specific bidder. If the City's action to direct the Construction Manager to reject a specific bidder causes the Cost of the Work to be increased, or causes the Contract Time to be extended, the Construction Manager shall be entitled to an increase in the GMP or Contract Time, or both. All subcontracts and purchase orders for major equipment shall contain a provision assigning the rights of Construction Manager to the City in the event of termination of this Agreement by the City.

2.4.3.1 Unless otherwise agreed to in writing by the City, all Work packages and material/equipment items estimated in the Cost of Work at or above specified amounts will require that the Construction Manager obtain competitive bids in writing as follows:

- a. At or above \$25,000 – at least two (2) competitive bids;
- b. At or above \$50,000 – at least three (3) competitive bids.

2.4.3.2 A list of approved/prequalified bidders will be established between the City and Construction Manager prior to commencement of bidding.

2.4.3.3 With prior consent of the City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase based upon a qualification based selection process administered by Construction Manager. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Such subcontracts would be subject to the same restrictions on allowable costs and the same right of audit as applies to Construction Manager in this Contract.

2.4.3.4 If the GMP has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the City and Designer (a) is recommended to the City by the Construction Manager; (b) is qualified to

perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Construction Manager may request that a change in the Work be issued to adjust the contract time and the GMP by the difference between the bid of the person or entity recommended to the City by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

- 2.4.3.5** The Construction Manager shall schedule and conduct meetings at which the City, Designer, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.
 - 2.4.3.6** Promptly after the City's execution of the GMP Change Order, the Construction Manager shall prepare a schedule in accordance with Section 2.4.4, including the City's occupancy requirements.
 - 2.4.3.7** The Construction Manager shall provide monthly written reports to the City and Designer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Designer.
 - 2.4.3.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the City and Designer at regular intervals.
- 2.4.4** Construction Schedules. The Construction Manager shall, within ten (10) days after execution of GMP Change Order No. 1, shall furnish the City with a detailed Critical Path Method (CPM) schedule as set forth below, giving the dates on which it expects to start and to complete separate portions of the Construction Work. No Construction Work shall begin until said schedule is approved by the City. The City reserves the right to adjust the Construction Manager's schedule to coordinate with any other projects in the same area. Once approved, the Construction Schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension or extensions of time as hereinafter provided. Approval of any schedule by the City shall not constitute an opinion that the schedule is reasonable for the Construction Manager to rely on. The Construction Schedule shall be value-loaded to serve as a Schedule of Values by which to evaluate payment applications from Construction Manager and its subcontractors. The Schedule of Values shall not be front-end loaded so as to disproportionately shift payment for later-performed Work to earlier periods of time.
- 2.4.4.1** General Requirements. A computerized network diagram shall be included in the CPM schedule and shall serve as the 'Master Construction Schedule' for the Project, giving mathematical analysis (printout) of that network, which

verifies and validates logic and planning and defines critical path. The approved schedule shall be kept on site with the superintendent and reviewed with Subcontractors each week. The CPM schedule shall be utilized for planning, organizing, and directing the Work, for reporting progress, and requesting payment for Work completed. The schedule shall be reviewed each week as part of the progress meeting. Abbreviations used in CPM schedules shall be clearly explained in a legend of symbols, either separate or attached. Scheduling software shall be compatible with Microsoft Project 2007.

2.4.4.2 Schedule Requirements.

2.4.4.2.1 The CPM schedule shall clearly show sequential interdependencies, with activity duration and float clearly represented. Sequence(s) of activities with no float shall be clearly identified as critical path(s). The scheduling system shall be capable of baseline comparison analysis. Upon development and approval of the schedule, the Contractor shall 'freeze' the initial schedule as the baseline schedule. As Work progresses, Construction Manager shall provide graphics displaying actual progress bars versus baseline or target bars. Activity durations shall be in calendar days.

2.4.4.2.2 The CPM schedule shall include pre-construction tasks, construction tasks (bid items), Shop Drawing submittal and approval process, material and equipment ordering and delivery, submittal of as-built drawings, clean up and punchlist, inspection coordination activities, utility relocation, final inspection and certificate of completion, and final payment. Submittal activities shall be scheduled to allow sufficient time for materials and equipment to be procured and installed, even if the submittal is unacceptable and resubmittal is required. The CPM schedule shall reflect anticipated delays, such as weather delays.

2.4.4.2.3 Construction Manager shall submit the initial schedule, complete revisions, and periodic reports in three hard copies, one reproducible and two prints or plots, and one copy digitally on CD or DVD. This schedule shall include the completed network program consisting of GANTT chart and mathematical analysis within ten (10) days of the executed Agreement. Allow five (5) days for the City to review. Construction Manager shall submit the schedule of submittal activities extracted from the master schedule within ten (10) days after receipt of Notice to Proceed. During the preparation period, Construction Manager shall review this information with the City.

2.4.4.2.4 Submittals to the City of initial and monthly CPM schedule charts shall include three (3) sets of all reports as outlined below. Plots shall be color, blue-line, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

2.4.4.2.5 The Construction Manager will participate in the City's review and evaluation of submitted network diagrams and mathematical

analysis of diagrams. Resubmit revisions necessary due to review within five (5) days after the review. Construction Manager and major Subcontractors shall review the network CPM schedule before final submittal.

2.4.4.3 Report Formats. Standard set of reports submitted each month including initial submittals shall consist of a GANTT chart of entire Project. Progress bar chart shall include target or baseline comparison bars. Bar positions shall be early start/early finish with float clearly defined. GANTT charts shall include a tabulation of each activity. For each activity on the GANTT charts furnish the following:

2.4.4.3.1 Initial/submittal schedule shall include a list of responsible contractors and suppliers, task description, duration, start date, end date, latest start date, latest end date, total slack or float time in calendar days and current schedule bar in Gantt view.

2.4.4.3.2 Progress schedule updates shall include a list of responsible contractors and suppliers, task description, duration, actual start date, actual finish date, percentage completion, remaining duration in calendar days and current schedule bar in Gantt view.

Graphics outlined above shall comply with the following criteria unless noted otherwise:

2.4.4.3.3 Sheet size of diagram shall be 11 by 17 inches minimum and time scaled in month as the major timescale and weeks as the minor timescale unless approved otherwise.

2.4.4.3.4 On each page include a title block containing at a minimum the following information:

- a. Project Title;
- b. Project Number;
- c. Construction Manager's Business Name;
- d. Date of Submittal and Revision (the date shown must clearly show the current preparation date and separately the revision date of the current schedule - this is a hard date entered and not an auto or status date);
- e. Submit a separate Legend Page of Symbols and Abbreviations as applicable.

2.4.4.3.5 Prepare and submit to the City upon request additional charts, reports, and current copy on disk of Project program.

2.4.5 CPM Schedule Implementation and Monitoring. Monthly CPM schedule charts and reports shall accompany the Construction Manager's pay request for Work completed. Where the Construction Manager is shown to be behind schedule, provide accompanying written summary, cause, and explanation of planned remedial action. CPM schedules shall reflect those instances, modifications or other alterations to the schedule, which have an impact on the final completion or interim target dates within

the schedule. Payments or portions of payments may be withheld by the City Engineer, upon failure to maintain scheduled progress of the Work as shown on the approved CPM schedule. Failure to prepare, submit and maintain a CPM schedule as specified shall be cause for rejection of other schedules submitted and for possible delay of payment. Float time belongs to the Project, not to the Construction Manager or to the City Engineer, and may be utilized by both parties.

2.4.6 Schedule Changes and Updates.

2.4.6.1 At a minimum the Construction Manager shall update and submit the CPM Schedule for review weekly. A weekly update is required unless agreed upon by the City. Monthly submittal of the CPM schedule and approval by the City is required prior to payment for Work completed. Activities added to the CPM schedule shall be submitted by the Construction Manager on schedule charts. It is the City's intent that the Project be managed and operated according to the CPM schedule. Payment requests may be held up until the CPM schedule is brought back into compliance with the Contract Documents.

2.4.6.2 Once the CPM schedule is submitted and approved, the City shall identify any modifications to activity durations, logic, values, or descriptions required to resubmit for approval. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Article 5 Compensation for Construction Phase Services Section 5.5 Change Orders.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 Information and Services.

3.1.1 The City shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The City shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Designer, which shall include costs which are the responsibility of the City.

3.1.3 The City shall endeavor to promote harmony and cooperation among the City, the Construction Manager, and other persons or entities employed by the City for the Project.

3.2 Structural and Environmental Tests, Surveys, and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, Drawings, and tests described in Sections 3.2.1 through 3.2.6 but shall exercise customary precautions relating to the performance of the Work.

3.2.1 Reports, surveys, Drawings, and tests concerning the conditions of the site which are required by law.

- 3.2.2** Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.
- 3.2.3** The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.
- 3.2.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- 3.2.5** The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager and agreed to by the City.
- 3.2.6** As-built drawings of existing facilities, as available.
- 3.3** **City's Designated Representative**. The City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. This representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Designer does not have such authority.
- 3.4** **Designer**. The City shall retain a Designer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The City shall authorize and cause the Designer to provide those additional services described in this Agreement, requested by the Construction Manager which must necessarily be provided by the Designer for the Preconstruction and Construction Phase of the Work. Such services shall be provided in accordance with time schedules agreed to by the City, Designer, and Construction Manager. Upon request of the Construction Manager, the City shall furnish to the Construction Manager a copy of the City's Agreement with the Designer.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

- 4.1** **Payments**. If compensation is based on a multiple of direct personnel expense, direct personnel expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and

customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

4.1.1 Payments shall be made monthly following presentation of Construction Manager's Application for Payment and, where applicable, shall be in proportion to services performed.

4.1.2 Payments are due and payable thirty (30) days from the City's receipt of the Construction Manager's undisputed Application for Payment.

4.2 **City's Right to Withhold Payment.** In the event the City becomes credibly informed that any representations of Construction Manager provided in its monthly pay requests, are wholly or partially inaccurate, the City may withhold payment of disputed sums then or in the future otherwise due to Construction Manager until the inaccuracy and the cause thereof, is corrected to the City's reasonable satisfaction. In the event the City questions some element of a pay request, that fact shall be made known to the Construction Manager immediately. Construction Manager will help effect resolution and transmit an Application for Payment, if necessary. Amounts not questioned by the City shall be paid to Construction Manager in accordance with the contract payment procedures.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

City shall compensate the Construction Manager for Construction Phase Services as follows:

5.1 Compensation.

5.1.1 For the Construction Manager's performance of the Work as described in Article 2 herein, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

5.2 **GMP.** Construction Manager agrees that its compensation for its Work shall not exceed the amount provided in the GMP Change Order, subject to additions and deductions by changes in the Work as provided in the Contract Documents and approved in writing by the City. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by Construction Manager without reimbursement by the City.

5.3 **Savings.** If at the time of final payment to Construction Manager, the sum of the actual cost of the Work and Construction Manager's Fees are less than the GMP, as such GMP may have been adjusted over the course of the Project for approved scope Changes, the difference ("Savings") shall be shared as stated in the Agreement.

5.4 **Liquidated Damages.** The Construction Manager accepts the daily rate of Liquidated Damages set forth in the Agreement, if any.

5.5 **Change Orders.** The City, without invalidating the Contract, may, by Change Order, direct changes in the Work which may result in an addition to or deduction from the GMP and/or changes in the schedule. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the GMP, the value of such change shall be determined as per Section 5.5.3, below.

- 5.5.1** Except for Work done as a result of an emergency endangering life or property, no activity resulting in an increase in the GMP or extension of the Construction Schedule shall be performed unless pursuant to the provisions of a Change Order, or a written Work Directive pursuant to Section 5.5.2 below.
- 5.5.2** Work Directives. From time to time the Designer may also issue written orders to Construction Manager for needed clarifications, modifications or corrections. When the Designer issues such an order, if the Construction Manager believes compliance will impact the time or cost of performing the Work the Construction Manager may request that the Designer issue a Work Directive. Issuance of a Work Directive by the Designer is not an admission that the City, or the Designer, believes that the cost or time to perform Work in question has been changed. Work Directives can also be used where the parties agree that there has been a change, but are not in agreement as to the appropriate adjustment in the Guaranteed Maximum Price or Time, if any. The Construction Manager shall submit its proposed adjustment for the Work described in the Work Directive, with sufficient back-up and detail to permit a full evaluation, within five (5) working days of receipt of the Work Directive, and shall not commence the Work described in the Work Directive until ordered in writing by the Designer to do so. If so stated in the Work Directive, the Construction Manager shall keep records of the cost and time of performing the Work Directive, and the parties shall attempt in good faith to resolve any disagreements over the Work Directive as soon as possible. In any case, the parties reserve their rights to resolve Work Directive disagreements through the Disputes Resolution provisions of this Agreement.
- 5.5.3** The value of any change in the Work which results in an addition/deletion to the GMP shall be determined in one or more of the following ways, at the option of the City:
- 5.5.3.1** By agreed lump sum.
 - 5.5.3.2** By agreed upon unit prices.
 - 5.5.3.3** By actual field cost (time and material) plus Construction Manager's Fee (which includes overhead and profit) stated in the Agreement and shall include a "Not to Exceed" figure.
- 5.5.4** In order to arrive at the value for any change, Construction Manager shall credit the City with its projected cost(s) for any Work which was previously included but which has been excluded by any such change.
- 5.5.5** No change in the Work shall entail additional time unless both parties determine that additional time is required and specifically so provides in the Change Order.
- 5.5.6** Where extra Work is performed under this Section, the term "actual field cost" as referenced in Section 5.5.3, above, of such extra Work is hereby defined to be and shall include:
- 5.5.6.1** The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the extra Work;
 - 5.5.6.2** All materials and supplies;

- 5.5.6.3** Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra Work;
- 5.5.6.4** Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;
- 5.5.6.5** All incidental expenses incurred as a direct result of such extra Work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, Construction Manager must enumerate and justify to the City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting the City's right to challenge any individual costs claimed by Construction Manager, incidental costs shall not include:
 - 5.5.6.5.1** Payroll costs and other compensation of Construction Manager's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Construction Manager whether at the site or in Construction Manager's principal or a branch office for general administration of the Work unless specifically agreed to by the City all of which are to be considered administrative costs covered by the Construction Manager's overhead and profit.
 - 5.5.6.5.2** Expenses of Construction Manager's principal and branch offices other than Construction Manager's office at the site.
 - 5.5.6.5.3** Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work and charges against Construction Manager for delinquent payments.
 - 5.5.6.5.4** Costs due to the negligence of Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - 5.5.6.5.5** Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by the City.
- 5.5.7** Both parties shall agree to the form in which accounts of the Actual Field Cost shall be kept and may also specify in writing, before the Work commences, the method of doing the Work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra Work under this Section. In the event that machinery and heavy construction equipment shall be required for such extra Work, the authorization and basis of payment for the use thereof shall be stipulated in the Change Order at the rates set forth in Section 6.1.4.2 below.

- 5.5.8** No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.
- 5.5.9** Construction Manager shall be responsible for notifying its surety(ies) of any modifications to the GMP or schedule, and said surety(ies) shall not seek discharge as a result of any failure on Construction Manager's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 **Cost of Work Items.** Cost of Work items shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of Work shall include only the items set forth in this Article.

6.1.1 **Labor Costs.**

6.1.1.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

6.1.1.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site City or at the Construction Manager's principal office pursuant to the hourly rate schedule approved by the City as part of the GMP Proposal. Scope of work performed at the Construction Manager's principal office to be pre-approved by the City.

6.1.1.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

6.1.1.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of Work under Sections 6.1.1.1 through 6.1.1.3.

6.1.2 **Subcontract Costs.** Payments made by the Construction Manager to Subcontractor in accordance with the requirements of the subcontracts.

6.1.3 **Costs of Materials and Equipment Incorporated in the Completed Construction.**

6.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.3.2 Cost of the materials described in Section 6.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Construction

Manager; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of Work.

6.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- 6.1.4.1** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- 6.1.4.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Rates and quantities of equipment furnished by Construction Manager or any subcontractor shall be limited to no more than 85% of the prevailing local rental rate, and in no case shall exceed the purchase price of the item rented.
- 6.1.4.3** Cost of removal of debris from site.
- 6.1.4.4** Reproduction costs, postage and express delivery charges, telephones at the site and reasonable petty cash expenses of the site office, to the extent actually used.
- 6.1.4.5** That portion of the reasonable travel and subsistence expense of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to the City's prior approval.

6.1.5 Miscellaneous Costs.

- 6.1.5.1** Premiums for that portion of insurance, deductibles and bonds and deductibles incurred required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amount of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance and Bonds provided by the Construction Manager shall be included in the GMP at the following values: General Liability Insurance Rate = 0.95%, Builder's Risk Rate = 0.35% and Payment and Performance Bond Rate = actual cost as invoiced by bonding company. Construction Manager shall certify in writing to the City that all of the costs were paid to a third party and that no part of the premium was received or retained by Construction Manager.
- 6.1.5.2** Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.
- 6.1.5.3** Data processing costs related to the Work.

- 6.1.5.4 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.
- 6.1.5.5 Legal costs, other than those arising from disputes between the City and the Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the City's written permission, which permission shall not be unreasonably withheld.
- 6.1.6 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.
- 6.1.7 Emergencies and Repairs to Damaged or Nonconforming Work. The Cost of Work shall also include costs which are incurred by the Construction Manager:
 - 6.1.7.1 In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property.
 - 6.1.7.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement of the Construction Manager or the Construction Manager's personnel to supervise adequately the Work of the Subcontractor or suppliers, and only to the extent that the cost of the repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.2 Costs Not To Be Reimbursed.

6.2.1 The Cost of Work shall not include:

- 6.2.1.1 Salaries, expenses, and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office, except as specifically provided for in Section 6.1.1.2 and 6.1.1.3.
- 6.2.1.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- 6.2.1.3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- 6.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.4.2.
- 6.2.1.6 Costs due to negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement.

6.2.1.7 Costs incurred in the performance of Preconstruction Phase Services.

6.2.1.8 Any costs not specifically and expressly described in Section 6.1.

6.2.1.9 Costs which would cause the GMP to be exceeded.

6.3 Discounts, Rebates, and Refunds.

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the City, if before making payment, the Construction Manager included them in an Application for Payment and received payment therefore from the City; otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Construction Manager shall make provisions so they can be secured.

6.3.2 Amounts which accrue to the City shall be credited to the City as a deduction from the Cost of Work.

6.4 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, invoices, vouchers, memoranda, and other data relating to this Project, and the Construction Manager shall preserve these for a period of five (5) years after final payment, or for such longer period as may be required by law, and shall be subject to audit by the City and the Kansas Department of Revenue.

ARTICLE 7 PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES

7.1 Payments.

7.1.1 Based upon Applications for Payment submitted to the Designer by the Construction Manager and certificates for payment issued by the Designer, the City shall make payments on account of the Agreement sum to the Construction Manager as provided below and elsewhere in the Contract Documents. With each Application for Payment, Construction Manager shall submit documentation of its payment of subcontractors and suppliers, and its release of claims and (where applicable) lien rights for itself and its Designer and Subcontractors on the forms attached hereto as **Exhibit D**.

7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by the City and Construction Manager.

7.1.3 Before the first Application for Payment, the Construction Manager shall submit to the Designer and the City a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer and the City may require. This schedule, unless objected to by the Designer or the City, shall be used only as a basis for the Construction Manager's Applications for Payment and does not constitute approval by the Designer or the City of the method or performance by the Construction Manager.

7.1.4 Payment will be made to Construction Manager monthly from funds available on the basis of a duly certified estimate of the value of all labor and materials delivered on the site and accepted by the Designer and the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, ten percent (10%) of the amount of each estimate, (including undisputed portions of Work Directives and un-finalized changes) will be retained until Substantial Completion and acceptance of Work covered by this Agreement, except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums.

7.1.4.1 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to these same payment provisions and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

7.1.5 Each payment made to the Construction Manager shall be on account of the total amount payable to the Construction Manager by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Construction Manager from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Agreement. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the Designer or the City, all calculated in proportion to the GMP.

7.1.6 In general, no allowance will be made in estimates for materials on site, or stored at a facility approved by the City, if site is unable to take delivery, and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices (except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums), the value calculated in proportion to the GMP. If the City should elect to pay for materials or equipment prior to their delivery to the Project site and/or incorporation into the Project, Construction Manager shall deliver to the City prior to payment a fully executed Bill of Sale, attesting to the City's ownership of such materials or equipment, and a Bailment Agreement, attesting to the proper storage and insurance of such materials and equipment until such time as they are delivered to the site, on the forms attached hereto as **Exhibit E** and **Exhibit F**.

7.1.7 The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.

7.1.8 The City shall require at intervals as it shall determine and at any time before final payment is made for the Work specified herein that the Construction Manager furnish the City with documentation of its payment of subcontractors, subconsultants and suppliers, and its release of claims and (where applicable) lien rights and payment by all Subcontractors and vendors who have done Work or labor on, or who have furnished

materials for, this Project that they have been fully paid by the Construction Manager for such Work or labor done or materials furnished by them for which payment has been made to Construction Manager by the City on the form attached hereto as **Exhibit D**. Construction Manager's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve Construction Manager or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on the City's part to verify accuracy.

7.1.9 The Construction Manager shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the Designer and the City for approval. Applications for Payment shall reflect any such credits, and the GMP shall be adjusted as necessary to reflect such credits. Unreturnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site at Construction Manager's expense.

7.1.10 The acceptance by the Construction Manager of final payment shall be and shall operate as a release to the City of all claims and all liability to the Construction Manager other than written claims in stated amounts as may be specifically excepted by the Construction Manager for all things done or furnished in connection with this Agreement and for every act and neglect of the City and others relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Construction Manager or its sureties from any obligations under the Contract Documents, the bonds, or insurance coverage's.

7.2 **Payments Withheld.** The City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to the extent necessary to protect the City from loss on account of:

7.2.1 Incomplete Work or Defective Work not remedied;

7.2.2 A reasonable doubt that the Work can be completed for the balance of the Agreement price then unpaid;

7.2.3 Damage to the City; or

7.2.4 A breach of this Agreement.

7.3 **Substantial Completion.**

7.3.1 When Construction Manager considers the Work, or a portion thereof which the City agrees to accept separately, that Substantially Complete, the Construction Manager shall prepare and submit to the Designer and the City a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

7.3.2 Upon receipt of the Construction Manager's list, the Designer and the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Designer and the City's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work or

designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer and the City. In such case, the Construction Manager shall then submit a request for another inspection by the Designer and the City to determine Substantial Completion.

7.3.3 When the Work or designated portion thereof is Substantially Complete, the Designer will prepare a Certificate of Substantial Completion for signature by the City. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

7.3.4 The Certificate of Substantial Completion shall be submitted to the City and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and Consent of Surety Company to Final Payment, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

7.3.5 Retainage will be released to Construction Manager within thirty (30) days of Substantial Completion, less 150% of the reasonable value of any Work which is incomplete or not performed in compliance with the Contract Documents.

7.4 Final Completion and Final Payment.

7.4.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City with the assistance of the Designer will promptly make such inspection. Upon receipt from the Designer of the Final Certificate for Payment, the City will process the final payment. The Designer's Final Certificate for Payment will constitute a further representation that conditions listed in Section 7.4.2, below, as precedent to the Construction Manager's being entitled to final payment have been fulfilled.

7.4.2 Final payment shall not be due until all of the following have been received by the City:

- (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- (b) receipt by the City of all close-out documents required by the Contract Documents, including but not limited to a Project Completion Certificate, O&M manuals, manufacturer's warranties and final as-built drawings;
- (c) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City;
- (d) a written agreement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

- (e) Consent of Surety Company to Final Payment; and
 - (f) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases of claims and lien rights (where applicable), security interests or encumbrances arising out of the Agreement, to the extent and in such form as is attached to this Agreement as **Exhibit G**. If a Subcontractor refuses to furnish a release or waiver required by the City, the Construction Manager may furnish a bond and shall furnish a letter from its payment bond surety affirming its obligation on such bond notwithstanding refusal of a subcontractor to furnish a waiver or release as a condition precedent to payment of such disputed amount to Construction Manager.
- 7.4.3** If after Substantial Completion of the Work, final completion is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Designer and the City so confirms, the City shall, upon application by the Construction Manager and certification by the Designer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written Consent of Surety Company to Final Payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Designer and the City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the City except those arising from:
- (a) claims, lien rights (where applicable), security interests or encumbrances arising out of the Agreement and unsettled;
 - (b) failure of the Work to comply with the requirements of the Contract Documents; or
 - (c) warranties required by the Contract Documents.
- 7.4.4** Acceptance of final payment by the Construction Manager, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final acceptance for payment.

ARTICLE 8 GENERAL CONDITIONS

- 8.1** **Extent of Contract.** This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.
- 8.2** **Assignment.** The City and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to

partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.3 Appointment of Service Agent. KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any contractor domiciled outside of the State of Kansas must comply with these statutory requirements; (form attached) to be submitted with the GMP Change Order.

8.4 Non-Discrimination, Affirmative Action, and Sexual Harassment.

8.4.1 The Construction Manager agrees that:

8.4.1.1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination Section 5-801 *et seq.* of the Code of the City of Prairie Village, Kansas, and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or age;

8.4.1.2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

8.4.1.3 If the Construction Manager fails to comply with the manner in which the Construction Manager reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

8.4.1.4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, or if the Construction Manager is found guilty of a violation of Section 5-801 *et seq.* of the Code of the City of Prairie Village, Kansas, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

8.4.1.5 The Construction Manager shall include the provisions of Subsections 8.4.1.1 through 8.4.1.4 in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

8.4.2 The Construction Manager further agrees that they shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other Applicable Laws and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

8.5 Insurance.

- 8.5.1 Construction Manager shall provide insurance as set forth on **Exhibit H – INSURANCE REQUIREMENTS**. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City.**
- 8.5.2 Failure by the Construction Manager to furnish the required insurance within the time specified in the Agreement by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Agreement.

8.6 **Bonds and Other Performance Security.** Construction Manager shall provide a Performance Bond, and a Statutory Labor and Materials Payment Bond (forms attached hereto as **Exhibit I** and **Exhibit J**) to be submitted with the GMP Change Order, in the amount of one hundred percent (100%) of the Agreement price to cover the entire scope of Work including planning, Value Engineering, procurement, construction, and completion of the Project, and any other specific performance security that may be indicated in this Agreement. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

8.7 Indemnity.

8.7.1 Definitions. For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:

8.7.1.1 "Construction Manager" means and includes Construction Manager, all of its affiliates and subsidiaries, its Subcontractors and materialmen and their respective servants, agents and employees.

8.7.1.2 "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Work required hereunder.

8.7.2 The Indemnity. For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, Construction Manager hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Construction Manager, its employees, agents, subcontractors, and suppliers.

It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law

including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

8.7.3 General Limitation. Nothing in this Section shall be deemed to impose liability on the Construction Manager to indemnify the City for Loss due to the City's negligence or other actionable fault is the cause of Loss.

8.7.4 Waiver of Statutory Defenses. With respect to the City's rights as set forth herein, the Construction Manager expressly waives all statutory defenses, including, but not limited to, those under workers compensation or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

8.8 Contract Documents/Agreement for Construction.

8.8.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment, and transportation necessary for the workmanlike construction of the Project in accordance with the Contract Documents.

8.8.2 If there is any conflict or discrepancy between the Contract between the City and the Construction Manager and any other of the Contract Documents, the Agreement between the City and Construction Manager shall prevail. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.

8.8.3 The Contract Documents as enumerated herein, or as added through the GMP Change Order, form the Contract for construction. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

8.8.4 All time limits stated in the Contract Documents are of the essence.

8.9 Defects in the Contract Documents. If Construction Manager has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "Defects") appear in the Contract Documents, including, but not limited to, the plans, Specifications and other documents or the Work, Construction Manager shall notify the Designer in writing of such Defects. The Contract Documents shall be appended to all agreements between the Construction Manager and any Subcontractor or any more remote tier Subcontractor, and such Subcontractors and remote tier Subcontractors shall, likewise, notify the Construction Manager in writing of any Defects therein. The Construction Manager will not be permitted to take advantage of any such Defect.

8.10 Copies of the Agreement. Unless otherwise provided in the Contract Documents, the Construction Manager shall be furnished, a maximum of five (5) copies of the Contract Documents, Drawings and Specifications as are reasonably necessary for execution of the Work. Construction Manager shall keep at the Project site and make available to the City and Designer, one copy of all Contract Documents for the Work, in good order and legibly marked

to reflect actual construction. Construction Manager shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such documents, samples, and Shop Drawings, shall be turned over to the City at the completion of the Work if requested by the City. Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Construction Manager. At the City's request, all Contract Documents shall be returned to the City with the exceptions of one record set for Construction Manager. All models and calculations are the property of the City.

8.11 Scope, Nature and Intent of Drawings and Specifications.

- 8.11.1** The Drawings and Specifications are intended to complement, but not necessarily duplicate each other. Together they shall constitute one complete set of the Drawings and Specifications, and any Work exhibited in one but not the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the Designer and/or the City.
- 8.11.2** Should anything be omitted from the Drawings and Specifications which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Drawings and Specifications are silent as to any detail then it shall be the duty of the Construction Manager to secure in written instructions from the Designer and the City before proceeding with the construction affected by such omissions, discrepancies or silence. Construction Manager's failure to bring any such matter to the attention of the Designer and the City shall be at the Construction Manager's peril, and there shall be no compensation for extra work necessitated thereby.
- 8.11.3** It is recognized that the Construction Manager's review is made in the Construction Managers capacity as a contractor and not as a licensed design professional. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, but any nonconformity discovered by or made known to the Construction Manager shall be reported promptly to the Designer and the City. If Construction Manager believes that additional cost or time is involved because of clarifications or instructions issued by the Designer and the City in response to the Construction Manager's notice or requests for information the Construction Manager may request a Change Order. The Construction Manager shall not be liable to the City or Designer for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Construction Manager recognized such error, inconsistency, omissions, or differences and knowingly failed to report it to the Designer and the City.
- 8.11.4** Dimensions and elevations shown on the Drawings shall be accurately followed, even though they may differ from scaled measurements. No Work shown on the Drawings, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Designer and the City. Construction Manager shall be responsible for verification of all locations, dimensions, and elevations in the field (including, but not limited to verification of location of underground facilities and utilities) and shall verify all field dimensions shown on the Contract Documents.

- 8.11.5** All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Construction Manager shall keep the Designer and the City informed, a reasonable time in advance of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the Designer, the City, and Construction Manager. Any Work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Construction Manager's cost and expense.
- 8.11.6** Construction Manager, together with its Subcontractors, shall carefully examine the Drawings and Specifications for any interference with the Work and clearances that may be required. Construction Manager shall be responsible for the proper fitting of materials and equipment without substantial alterations. Construction Manager shall be responsible for eliminating interferences without additional cost to the City. If departures from the Drawings and Specifications, or other Contract Documents, are deemed necessary by Construction Manager, details of such discrepancies and reasons therefore shall be submitted to Designer and the City, with Drawings (if Designer and the City determine that Drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Construction Manager without the prior written approval of the Designer and the City.
- 8.12** **Shop Drawings.** Within thirty (30) days of execution of the GMP Amendment, Construction Manager shall prepare and submit to the City a submittal schedule, identifying the time when all Shop Drawings shall be submitted, which Schedule shall allow sufficient time (minimum ten working days unless otherwise agreed) for review and comment by the City. Construction Manager shall review, and submit, with such promptness as to cause no delay in its own Work or in that of any Subcontractor or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the Specifications, including, but not limited to: (1) drawings of equipment and devices offered by the Construction Manager for approval of the Designer and the City in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed, for consideration by the Designer and the City by the Construction Manager in lieu of the design or arrangement required by the Contract Documents, or any item of extra Work there under; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped by the Construction Manager and identified with the name and number of this Contract; Construction Manager's name and references to applicable Drawings and Specification paragraphs. Each submittal shall indicate the intended use of the item in the Work. Construction Manager's stamp is representation to the Designer and the City, that the Construction Manager accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that they have reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in The City shall timely respond, advising Construction Manager of any comments or concerns it has with the submittals. Neither comments from the City nor the City's failure to comment shall in any way relieve Construction Manager of any responsibility for the design or construction under this Agreement.

8.12.1 The Construction Manager's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Construction Manager (including modifications to other facilities that may be a result of each deviation).

8.12.2 The Designer and the City shall review the Shop Drawings for conformance with the design concept of the Work and information as given in the Contract Documents. The Construction Manager is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Designer's and the City's approval of the Shop Drawings, product data, or samples. The Construction Manager is not relieved from responsibility for errors or omissions in Shop Drawings by the Designer's and the City's review thereof. The Designer and the City shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Construction Manager shall make such revisions as deemed necessary. Prior to and as a condition of final acceptance, the Designer and the City shall be furnished with a total of five (5) copies of each Drawing as finally approved, such number to include any copies of preliminary or revised Drawings which are approved as submitted. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any Drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Construction Manager or its Subcontractors be purchased, until the Drawing or Drawings therefore have been approved as stipulated, except at the Construction Manager's own risk and responsibility.

8.13 **Construction Manager's Responsibilities as to Ambiguities.** If there is any ambiguity in the Designer's Drawings or instruction, Construction Manager shall ask the Designer for clarification. Upon written request of Construction Manager, the Designer shall furnish, with reasonable promptness, additional instructions by means of Drawings, Specifications, or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and, in accordance with Section 8.9, Construction Manager shall do no Work without proper instructions except at its peril. Nothing herein to the contrary shall affect Construction Manager's responsibilities with regard to defects as set forth in Section 8.9.

8.14 **Concealed Conditions.** Construction Manager warrants that it has examined the site and conducted such tests and examinations as it deems necessary. That being the case, should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, there will be no equitable adjustment in the contract sum or time, or both, for any extra Work necessitated thereby unless the condition either:

- (a) varies materially from what was specifically represented to Construction Manager in the Construction Documents; or
- (b) varies materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

In either such, the Construction Manager shall promptly provide notice to the City and the Designer before conditions are disturbed and in no event later than three working days after first observance of the conditions. The Designer will promptly investigate such conditions and, if the Designer determines that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the GMP or Contract Time, or both. If either party disputes the Designer's determination or recommendation, that party may proceed to make a claim.

8.15 Permits, Fees, and Notices.

8.15.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded.

8.15.2 If Construction Manager performs Work contrary to Applicable Laws without such notice to the Designer and the City, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.15.3 Construction Manager shall give all notices required by, and all Work shall be done in accordance with, all Applicable Laws bearing on the conduct of the Work.

8.15.4 Construction Manager shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any Project delay, damages or increases in construction costs due to utility relocation delays shall be at the Construction Manager's risk.

8.15.5 Construction Manager shall give reasonable notice to all owners or occupants of property which is potentially susceptible to damage through the performance of the Work and shall make all necessary arrangements with such owners or occupants relative to the removal and replacement or protection of such property or utilities.

8.16 General Administration of the Contract. The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention.

8.16.1 Unless otherwise stipulated, Construction Manager shall provide and pay for all Work (including labor, transportation, tools, equipment, machinery, plant, and appliances) necessary in producing the results called for by the Contract Documents.

8.16.2 The Construction Manager shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

- 8.16.3** The Construction Manager shall, in addition to the schedule required by Section 2.4.4, give to the Designer full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Construction Manager's plant or equipment or any of its methods of executing the Work, appear to the Designer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of Work, the Designer may order the Construction Manager to increase or improve its facilities or methods, and the Construction Manager shall promptly comply with such orders; but neither compliance with such orders nor failure of the Designer to issue such orders shall relieve the Construction Manager from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Agreement.
- 8.16.4** The approval by the Designer of any plan, schedule, or method of Work proposed by the Construction Manager shall not relieve the Construction Manager of any responsibility therefore, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Construction Manager shall have no claim under this Agreement on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the Designer has no objection to the Construction Manager's use or adoption at the Construction Manager's own risk and responsibility, of the plan or method so proposed by the Construction Manager.
- 8.16.5** Any plan or method of Work suggested by the Designer or the City, to the Construction Manager, but not specified or required, if adopted or followed by the Construction Manager in whole or in part, shall be used at the risk and responsibility of the Construction Manager, and the Designer and the City will assume no responsibility therefore.
- 8.16.6** The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 8.16.7** Construction Manager shall be responsible to the City for acts and omissions of the Construction Manager's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

8.17 Construction Manager's Employees.

- 8.17.1** Construction Manager shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.
- 8.17.2** Construction Manager shall be responsible for compliance with all Applicable Laws including those pertaining to wages, hours and benefits for workers employed to carry out the Work.

- 8.18 Samples.** Construction Manager shall furnish, for approval, samples if directed by the Designer or the Contract Documents. The Work shall be in accordance with approved samples.

8.19 Protection of Work and City Property. Construction Manager shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials, and equipment on the Project site not yet incorporated in the Work, the City's property. Construction Manager shall assume full responsibility for the Work and shall bear any loss and repair any damage at its own cost occasioned by neglect, accident, vandalism, or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City. The Construction Manager shall establish, maintain and enforce all the safety requirements of this Agreement and Applicable Law.

8.20 Protection of Property/Liability. Construction Manager shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Construction Manager, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Construction Manager shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Construction Manager's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work. Underground Facilities and utilities, damaged by the Construction Manager within or outside the right-of-way shall be restored at the Construction Manager's expense and at no cost to the City. The Construction Manager shall make every effort to locate these lines and protect them.

8.21 Tests and Inspections.

8.21.1 Designer and the City shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Construction Manager shall provide proper facilities for such inspection. The Construction Manager shall furnish all reasonable aid and assistance required for any such inspection.

8.21.2 All Work must be inspected, tested or approved and the Construction Manager shall give the Designer and the City timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval, if the inspection, testing or approval is by an authority other than Designer and the City.

8.21.3 Designer and the City reserve the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify Designer and the City before covering any Work. Designer and the City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to Designer and the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, Designer and the City can withhold its consent to covering up Work until such Work is made to conform at Construction Manager's expense.

8.21.4 If any Work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Construction Manager shall, if requested by Designer or the City, uncover such work and at Construction Manager's expense bear the cost of uncovering such Work and redoing same after inspection, testing or approval and redoing such other Work damaged as a result of having to uncover and redo same. The City reserves the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify the City before covering any

Work. The City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, the City can withhold its consent to covering up Work until such Work is made to conform at the Construction Manager's expense.

- 8.21.5** If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Construction Manager shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.
- 8.21.6** The City, the Designer and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the Work, and intimidation or attempted intimidation of any one of them by the Construction Manager or by any of its employees shall be sufficient reason, if the City so desires, to terminate the Agreement.
- 8.21.7** Any inspection, by whosoever conducted, shall not relieve the Construction Manager from any obligation to perform the Work strictly in accordance with the Drawings and Specifications, and any of the Work not so constructed shall be removed and made good by the Construction Manager at its own expense.

8.22 Superintendence and Supervision.

- 8.22.1** Construction Manager shall provide all necessary supervision to the Work using its best skill, care, judgment, and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Designer and the City. The superintendent shall not be changed except with the consent of the Designer and the City unless the superintendent proves to be unsatisfactory to the Construction Manager and/or ceases to be in its employ; provided however, that the Designer and the City retain the right to require that the Construction Manager replace the superintendent at any time, such right not to be arbitrarily exercised.
- 8.22.2** The superintendent shall be fully authorized to act for the Construction Manager and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith. The superintendent shall be available to communicate with the City at all reasonable times, and Construction Manager shall give the City the phone number, pager number, and email address. The superintendent shall speak such languages as are necessary to be able to effectively communicate with all of Construction Manager's employees and subcontractors.
- 8.22.3** Use of Subcontractors on portions of the Work shall not relieve the Construction Manager of its obligation to have a competent superintendent directly employed by the Construction Manager on the Work at all times.

- 8.23 Construction Manager's Office at Site of Work.** During the performance of this Agreement, the Construction Manager shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive Drawings, instruction, or other communications or articles from the Designer, and any such communication given to said superintendent or delivered at the Construction Manager's

office at the site of Work in his/her absence shall be deemed to have been given to the Construction Manager.

8.24 Work Stoppages. Construction Manager further agrees that in the event of any strike, picket, sympathy strike, Work stoppage or other form of labor dispute or picket in connection with the Work of the Construction Manager, other contractors, Subcontractors, the City, or any other person, the Construction Manager will, contingent upon the City providing a picket-free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Agreement to the contrary notwithstanding, in the event the Construction Manager fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Construction Manager after giving two (2) working days written notice to Construction Manager and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.

8.25 Patent Liability Clause.

8.25.1 Construction Manager agrees to defend any claim, action or suit that may be brought against the City, its Governing Body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Agreement or out of the use or disposal by or for the account of the City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City, its Governing Body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.

8.25.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the GMP price. Final payment to the Construction Manager by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

8.26 Independent Contractor. The right of general supervision of the City and/or the Designer shall not make the Construction Manager an agent of the City, and the liability of the Construction Manager for all damages to persons, firms, and corporations arising from the Construction Manager's execution of the Work shall not be lessened because of such general supervision, but as all such persons, firms, and corporations, and the damages, if any, to them or their property, the Construction Manager herein is an independent contractor in respect to the Work.

8.27 Separate Contracts.

8.27.1 The City reserves the right to perform by itself, or let other contracts, in connection with Work. Construction Manager shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by the City or others and shall properly connect and coordinate its Work with the Work of the City or others.

8.27.2 If any part of Construction Manager's Work depends upon the Work of the City or others, Construction Manager shall inspect and promptly report to the City any defects in any such work that render it unsuitable for proper execution or results. Its failure to

so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its Work.

8.28 Relations with Other Contractors.

8.28.1 The Construction Manager shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Construction Manager shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Construction Manager's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Construction Manager and other contractors, or between the Construction Manager and the workers of the City or any other entity, in regard to their work, shall be adjusted and determined by the Designer and the City. If the Work of the Construction Manager is delayed or damaged because of any acts or omissions of any other contractor or contractors, over which the Construction Manager has no control and which is not a result of the Construction Manager's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise the City may, in its discretion, grant an extension of time.

8.28.2 When two or more contracts are being executed at one time in such manner that Work on one contract may interfere with that on another, the Designer and the City shall decide which contractor or Construction Manager shall cease Work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the Work is to proceed.

8.28.3 When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by Designer and the City to the contractor or Construction Manager so desiring to the extent which may be reasonably necessary.

8.28.4 In the event that Construction Manager is performing Work at a site or on a project involving the City and one or more other private or governmental entities, which have their own contractors on site as well, Construction Manager shall advise Designer and the City when it anticipates there may be interference with the Construction Manager's Work or with the Work of any other contractor. Designer and the City shall, to the best of its ability, with input from Construction Manager as to coordination of the Work, seek to schedule Work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Construction Manager experiences a delay or damage to Construction Manager's Work as a result of the presence of other such contractors, the City may, in its discretion, grant an extension of time and/or an adjustment in the GMP as may be appropriate for the circumstances.

8.29 Provision for Emergencies. Whenever, in the opinion of the Designer and the City, the Construction Manager has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the Designer and the City, an emergency shall arise and immediate action shall be

considered necessary in order to protect property interests and to avoid personal injury and/or death, then the Designer and the City, with or without notice to the Construction Manager, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the Designer and the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Construction Manager and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Construction Manager. The performance of such emergency work shall in no way relieve the Construction Manager of responsibility for damages which may occur during or after such precaution has been duly taken.

8.30 Assignment and Subletting of Contract.

- 8.30.1** In case the Construction Manager assigns all, or any part, of the monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Construction Manager shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and that no money shall be paid assignee on behalf of the Construction Manager by the City until such time as the Construction Manager has discharged its obligations to the City under the Agreement. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.
- 8.30.2** Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Construction Manager shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 8.30.3** The Construction Manager shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Construction Manager by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Construction Manager the same power to terminate any subcontract as the City has to terminate the Construction Manager under any provisions of the Contract Documents.
- 8.30.4** Prior to the City's approval of the GMP the Construction Manager shall submit to the City for acceptance a list of the names of all Subcontractors proposed for portions of the Work and shall designate which work each is to perform. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Contract Documents.
- 8.30.5** The Construction Manager shall not make any substitution for any Subcontractor who has been accepted by the City unless the City determines that there is a good cause for doing so. The City's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the GMP or a claim for delay damages.

8.31 Authority and Duty of the Designer. Unless the City acts as its own Designer, the Designer is an independent contractor. It is mutually agreed between the parties to the Agreement that the Designer shall observe and inspect all Work included herein (provided, however, that any such observations and inspections shall not alter the rights, responsibilities and obligations of the parties). Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties of this Agreement that the Designer shall in all cases determine the amount and quantities of the several kinds of Work which are to be paid for under this Agreement; that Designer shall determine all questions relating to the plans and Specifications for the Project; that Designer shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) which Designer may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; that Designer's decisions and findings shall be a condition precedent to the right of the Construction Manager to submit any disputed matter and to any rights of the Construction Manager to receive any money under this Agreement; provided, however, that should the Designer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Agreement, either party may file with the other, within twenty (20) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised as herein provided. It is the intent of the Agreement that there shall be no delay in the execution of the Work, and the decisions or directions of the Designer as rendered shall be promptly carried out.

8.32 Liquidated Damages.

8.32.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence of this Agreement, and that in the event that the Construction Manager shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Agreement, after due allowance for any extension or extensions of time which may be granted under the Agreement, the said Construction Manager shall pay to the City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Construction Manager shall be in default.

8.32.2 In the case of joint responsibility for any delay in the final completion of the Work covered by this Agreement, where two or more separate contracts are in force at the same time and cover Work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such agreements, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the Work as stipulated in the Agreement and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delays as determined by, and in the judgment of, the City.

8.32.3 Construction Manager acknowledges that its failure to achieve Substantial Completion by the date stipulated in GMP Change Order No. 1 shall require the City to incur substantial additional costs and damages which may be difficult to calculate with specificity. Accordingly, the parties agree that they hereby agree to liquidate the City's damage for late completion to the amount stated in the Agreement, for each 24-hour

calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time, or such lesser amount as the City may agree to in the event that the City accepts partial occupancy of the Work.

8.33 Partial Occupancy or Use.

8.33.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of Warranties required by the Contract Documents. When the Construction Manager considers a portion Substantially Complete, and the City desires to accept the use of that portion of the Work, the Construction Manager shall prepare and submit a list to the Designer and the City, per Section 7.3.1. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld, and the rate of liquidated damages for remaining Work shall be set. The stage of the progress of the Work shall be determined by written agreement between the City and Construction Manager or, if no such agreement is reached, through the disputes procedures of this Agreement.

8.33.2 Immediately prior to such partial occupancy or use, the City, Construction Manager, and Designer shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

8.33.3 Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.34 Correction of Work.

8.34.1 Upon Designer and/or the City's request, Construction Manager shall, at Construction Manager's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by Designer and the City as not in accordance with the Contract Documents, whether incorporated or not; and the Construction Manager shall, at Construction Manager's expense, promptly replace and re execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Construction Manager's expense, restore all work of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re execution.

8.34.2 In addition to Construction Manager's obligations under Section 8.64 below, if, within two years after the date of Substantial Completion or other date established for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given Construction Manager a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the two-

year period for correction of Work, if the City fails to notify Construction Manager and give Construction Manager a reasonable opportunity to make the correction(s), the City waives the right to require correction by Construction Manager and to make a claim against Construction Manager for breach of warranty. If Construction Manager fails to correct non-conforming Work within a reasonable time after receipt of notice, the City may correct it and Construction Manager shall be responsible for payment of the City's expenses.

8.34.3 The Construction Manager's obligation to correct Work under this Section of these General Conditions is not the limit of the Construction Manager's liability and shall not constitute a waiver of the City's rights under Section 8.64 nor elsewhere in the Contract nor as otherwise provided by law. Nothing herein shall limit the Construction Manager's liability under any applicable statute of limitations or any longer warranties required by the Contract.

8.34.4 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8.35 Dispute Resolution.

8.35.1 The City and Construction Manager agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Construction Manager shall proceed with the Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

8.35.2 Should the Construction Manager believe that it is entitled to any relief due to errors, omissions or defects in the Design Documents, or as a result of any act or omission of the Designer(s) in connection with the Project, the City shall cooperate with Construction Manager by permitting Construction Manager to pursue legal action against the Designer(s) in the name of the City at Construction Manager's sole risk and expense. The City shall pay to Construction Manager such sums as may be recovered from the Designer(s) on behalf of Construction Manager. Other than this duty of cooperation and remittance, the City shall have no liability or obligation to Construction Manager for any act, omission, negligence or breach of duty by the Designers.

8.36 Delays and Extensions of Time.

8.36.1 If Construction Manager shall be delayed at any time in the progress of the Work by events over which Construction Manager has no control, including the weather conditions which: (a) fall outside the parameters of Normal Weather Conditions; (b) adversely impact the critical path of the Work; and (c) cannot be reasonably avoided or mitigated through ordinary construction planning and operations, and which delay is not a result of Construction Manager's acts or the acts of any of its employees, Subcontractors or suppliers, negligent or otherwise, then the time of Substantial Completion shall be extended and/or adjusted for such reasonable time and the

Designer and the City shall decide. Additionally, if Work on the Critical Path is delayed due to acts or omissions of the City or any separate contractor employed by the City, an equitable adjustment in compensation shall be made to the Agreement as the City may reasonably decide. No charge shall be made by Construction Manager for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Agreement, except as provided in this Section.

8.36.2 No such extension shall be made for delay unless Construction Manager provides written notice to Designer and the City of such delay, the reasons therefore, and the expected length of delay within two (2) working days of the commencement of such delay, to enable the City to take immediate action with respect to the cause of delay, if the City should decide to do so. In the case of a continuing cause of delay, only one claim is necessary.

8.36.3 In executing the Agreement, Construction Manager expressly covenants and agrees that, in undertaking to complete the Work within the time agreed in the GMP Change Order, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, and Normal Weather Conditions or otherwise. Additional time shall not be permitted for weather conditions that do not impact the Critical Path of the Work or for weather conditions impacting less than a full day of work.

8.36.4 The Construction Manager shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Designer or the City, and for such periods of time as the Designer or the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the time for completion of Work so suspended or of Work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the Designer or the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement. In the event that the Work shall be stopped by order of the Designer or the City, through no fault of the Construction Manager, its employees, Subcontractors or suppliers, any expenses which, in the opinion and judgment of the Designer and the City, are caused thereby shall be paid by the City to the Construction Manager.

8.37 Remedies for Default by Construction Manager.

8.37.1 If Construction Manager fails or refuses to comply with any material term of this Agreement, then the City may, upon five days' written notice to Construction Manager and its surety, take such action as the City deems appropriate to either correct the defective Work, terminate this Agreement, or, in the City's sole discretion, permit Construction Manager to demonstrate its ability to successfully complete the Work and continue performance.

8.37.2 If the City should elect to not terminate at the time, but, after notice to Construction Manager's surety, to take other action such as to delete items of Work from Construction Manager's scope of work, or arrange to complete or repair defective or incomplete Work with other forces, Construction Manager and its surety shall be liable to the City for all costs and damages incurred.

8.37.3 In the event that a petition in bankruptcy is either filed by Construction Manager or by creditors of Construction Manager, Construction Manager shall immediately upon written notice from the City provide documented evidence of its ability to continue performance under the terms of this Agreement. If Construction Manager is unable or unwilling to provide such evidence, Construction Manager shall immediately petition the Bankruptcy Court for an order rejecting the Agreement as an executory contract of the Debtor, and lifting the Automatic Stay imposed pursuant to 11 U.S.C. §362(a) to enable the City to terminate this Agreement and proceed to complete the Work.

8.37.4 In the event that the City should elect to terminate this Agreement due to default by Construction Manager, the City may, subject to any prior rights of Construction Manager's surety:

8.37.4.1 take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by Construction Manager;

8.37.4.2 accept assignment of subcontracts with Construction Manager's Subcontractors and suppliers as provided in Article 2, above; and

8.37.4.3 finish the Work by whatever reasonable method the City may deem expedient.

In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.37.5 In the event that the City terminates this Agreement for default by Construction Manager, no further payment shall be made to Construction Manager until the Work is completed and an accounting can be made of all of the City's damages. If any funds remain due and owing to Construction Manager at that time, the City shall remit them to Construction Manager. If, however, the costs and expenses of the City exceed any remaining contract balance, Construction Manager or its surety shall pay the difference to the City within ten days of receipt of invoice.

8.37.6 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.38 Termination of the Agreement for the Convenience of the City.

8.38.1 The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Construction Manager, and without waiving any other right or remedy of the City, to terminate this Agreement in whole or in part by providing written notice of such termination to Construction Manager. Upon receipt of such notice from the City, Construction Manager shall: (a) immediately cease all Work; or (b) meet with the City and, subject to the City's approval, determine what Work shall be required of Construction Manager in order to bring the Work to a reasonable termination in accordance with the request of the City.

8.38.2 If the City shall terminate this Agreement for its convenience, in whole or in part, as herein provided, the City shall: (a) compensate Construction Manager for all purchased materials and actual Cost of Work satisfactorily completed to date of termination, and

Construction Manager's fee, all as a percentage of the GMP equivalent to the percentage of completion of the Scope of Work as of the date of Notice of Termination, and documented unavoidable expenses of termination such as re-stocking charges; (b) take possession of any uninstalled equipment or materials; (c) have the right to assume Construction Manager's rights in any subcontracts or purchase orders; and (d) release and indemnify the City against any liability Construction Manager may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities Construction Manager may have incurred as a result of its obligations under the provisions of this Agreement which occur after the date of termination. The Construction Manager agrees that it shall minimize such potential liabilities by, where practical, informing third parties of the City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

8.38.3 In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.38.4 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.39 **Termination by the Contractor.** The Construction Manager may terminate this Agreement upon not less than seven (7) days' written notice to City because the City or the City's architect has not issued a certificate for payment and has not notified the Construction Manager of the reason for withholding certification within any time periods required hereunder, or because the City has not made payment on an approved certificate for payment within the time stated in the Contract Documents.

8.40 **Waiver of Consequential Damages and Anticipatory Profit.** Construction Manager and City waive claims against each other for consequential damages arising out of or relating to this Agreement or the Work. This mutual waiver includes, but is not necessarily limited to, (1) damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons and (2) damages incurred by Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement. However, nothing contained in this Section 8.39 shall be deemed to preclude the City making a claim for liquidated damages against Construction Manager or an award of liquidated damages against Construction Manager, when applicable, in accordance with the requirements of the Contract Documents.

8.41 **Ownership and Use of Design and Design Documents.** The design and design documents, and all statutory, common law and other rights, including copyright, in the intellectual property of that design are governed by agreements between the City and its design professionals, and Construction Manager shall assert no claim or interest in them.

8.42 Use of Premises.

8.41.1 Construction Manager shall confine its operations to limits indicated by Applicable Laws of the City and directions of Designer or the City and shall not unreasonably encumber the premises and/or site.

8.41.2 Construction Manager shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits that will endanger their safety.

8.41.3 Construction Manager shall comply with Applicable Laws, as well as any specific instructions regarding signs, advertisements, fires, and smoking from Designer and the City.

8.41.4 A laydown area or staging area will be provided at the site and shall be chosen by Designer and the City. Construction Manager shall furnish its own weather protection if required.

8.41.5 No City equipment will be taken out of service or put into service without approval of the City.

8.43 Allowances. Construction Manager agrees that the GMP includes all allowances required by the Contract Documents. Construction Manager agrees that the GMP includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in the GMP shall be allowed.

8.44 Cutting, Patching, and Digging. Construction Manager shall do all cutting, fitting, or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of others shown upon or reasonably implied by the Contract Documents. Construction Manager shall not endanger any property of the City or any other individual or entity, or the Work by cutting, digging, or otherwise and shall not cut or alter the Work of others except with the written consent of the City. Construction Manager shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Contract. Construction Manager shall comply with all Applicable Laws dealing with cutting, patching, and digging and shall obtain all necessary permits.

8.45 Cleaning Up. Construction Manager shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding, and surplus materials, and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to Construction Manager.

8.46 Temporary Facilities.

8.46.1 Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, Construction Manager shall provide and maintain sanitary temporary toilet facilities located where directed by Designer for accommodation of all persons engaged on the Work. Temporary toilets shall be

enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, Construction Manager shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with this Section.

- 8.46.2** Construction Manager shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for the Work. Same shall be located and constructed in an approved manner acceptable to Designer. Upon completion of Work or when requested by Designer, Construction Manager shall remove same from the City's premises and leave the area in a clean and orderly condition.
- 8.46.3** Construction Manager shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of Designer.
- 8.46.4** Unless otherwise specified in the Contract Documents, Construction Manager shall provide, at its cost and expense, temporary power, wiring and lights from the City's provided source as may be required for its operations.
- 8.47** **Sanitary Regulations and Water.** The operations of the Construction Manager shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Construction Manager shall supply safe and sufficient drinking water to all of its employees. The Construction Manager shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Construction Manager's own cost and expense.
- 8.48** **Unfavorable Construction Conditions.** During unfavorable weather, or other unfavorable conditions for construction operations, the Construction Manager shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the Designer, the Construction Manager shall be able to perform the Work in a proper and satisfactory manner. Construction Manager shall notify the City immediately in such events, to give the City the maximum opportunity to authorize extra expenditures for steps that might avoid delay, but the City shall have absolutely no obligation to incur such obligations.
- 8.49** **Safety Precautions and Programs.** The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. This shall include full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith.

8.50 Safety of Persons and Property.

- 8.50.1** The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
- 8.50.1.1** employees on the Work and other persons who may be affected thereby;
 - 8.50.1.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or sub-subcontractors; and
 - 8.50.1.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- 8.50.2** Construction Manager shall comply with any and all instructions from the Designer regarding prevention of accidents, fires, or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other later revisions) "Standard For Safeguarding Building Construction and Demolition Operations".
- 8.50.3** The Construction Manager shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 8.50.4** The Construction Manager shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.
- 8.50.5** The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and Construction Manager will be held responsible for all accidents to persons or property resulting from the acts of Construction Manager or its employees
- 8.50.6** Construction Manager shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damages resulting thereto. Construction Manager shall not be entitled to any additional time on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- 8.50.7** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 8.50.8** The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or part by the Construction Manager, a Subcontractor, a sub- subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the City or Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations of indemnification.
- 8.50.9** The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the City and Designer.
- 8.50.10** The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

8.51 Safety Program.

8.51.1 Construction Manager is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from Construction Manager's operations. As a minimum requirement, Construction Manager shall review and discuss the details of its program with Designer and the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:

- a. Personal protective equipment;
- b. First aid personnel and facilities;
- c. Arrangements for medical attention;
- d. Sanitary facilities;
- e. Fire protection;
- f. Signs, signals and barricades;
- g. Security regulations;
- h. Safety inspections;
- i. Designation of persons responsible for the program;
- j. Reporting forms and procedures;
- k. Material handling and storage;
- l. Lines of communication;
- m. Determination of potential hazards;
- n. Personnel safety meetings and education;
- o. Access to work areas;

- p. Subcontractors involvement in the program;
- q. Inspections and corrective action.

8.51.2 Construction Manager is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City or Designer shall have reviewed and/or accepted such program.

8.52 Handling of Emergencies, Emergency Plan.

8.52.2 In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Construction Manager, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Construction Manager on account of emergency Work shall be determined by mutual agreement of the City and Construction Manager.

8.52.3 Construction Manager shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all Applicable Laws. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed Work, buildings, equipment, and the position of cranes. Construction Manager shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

8.53 Weekends, Holiday, and Night Work.

8.53.2 No Work shall be done between the hours of 6:00 p.m. and 8:00 a.m., or on weekends or the City designated holidays, without the written approval or permission of the City, forty-eight (48) hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.

8.53.3 Night Work may be established by the Construction Manager, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

8.54 Approval of Equals.

8.54.1 Approved equals, where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:

8.54.2.1 Construction Manager shall notify the City in writing if it elects to use an approved equal specifically named in the Contract Documents.

8.54.2.2 If Construction Manager desires to use an "equal" not specifically named in the Contract Documents, it must first inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Construction Manager's making such request.

- 8.54.3** The Construction Manager shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.
- 8.55** **Test of Materials Offered by Construction Manager.** All specified and required tests for approval of material shall be made at the expense of the Construction Manager by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Designer and the City. Approval of materials based on acceptable tests will apply only while such materials as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation or manufacture of such materials will require new tests and approval thereof. Reports of all tests shall be furnished to the Designer and the City in as many certified counterparts as may be required by the Designer or the City.
- 8.56** **Testing of Completed Work.** Before final acceptance, all installed and constructed equipment, devices and other Work which is to be tested under the Contract Documents shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Construction Manager. All tests of such completed Work required under this Agreement shall be made under the direction of the Designer and the City.
- 8.57** **Borrow and Waste Areas.**
- 8.57.1** All borrow materials shall be obtained by the Construction Manager at its own cost and expense. The borrow area and materials shall be approved by the Designer and shall be friable material suitable for compaction.
- 8.57.2** All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Construction Manager. All waste disposal shall be in compliance with Applicable Laws. Unless specifically stated in the Contract Documents, the City makes no representation as to the availability, feasibility, cost or restrictions on locations for borrow or disposal of materials.
- 8.58** **Street Signs and Traffic Aids.** The Construction Manager shall be responsible for all preexisting traffic control devices at the Project site, including installation, maintenance, removal, and storage of such devices. All temporary and permanent traffic control devices supplied by the Construction Manager shall comply with and be installed in accordance with the Manual and Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.
- 8.59** **Federal Lobbying Activities.**
- 8.59.1** 31 USCS Section 1352 (the "Code") requires all subgrantees, contractors, subcontractors, and consultants/designers who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 8.59.2** In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

- 8.59.3** Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the Construction Manager to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.
- 8.60** **Titles, Subheads, and Capitalization.** Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provisions of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such items.
- 8.61** **Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to Applicable Laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, except a provision going to the basic consideration to the City for entering the Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.
- 8.62** **Taxes.** It is the intent of the City to supply Construction Manager with a Project Exemption Certificate for use in purchasing materials and supplies used on the Contract. Construction Manager shall, in preparing its GMP Proposal, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to Construction Manager. Upon completion of the Project, the City will provide the State of Kansas with the Contract completion date and the State will issue a Project Completion Certification (Form DO-77). This will be forwarded to Construction Manager who must sign and return it to the City. All invoices must be retained by Construction Manager for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Construction Manager until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.
- 8.63** **Governing Law.** It is the intent of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be constructed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The Construction Manager agrees to abide by all Applicable Laws and to furnish any certification required by any federal, state, or local government agency in connection with same.
- 8.64** **Venue.** Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.
- 8.65** **Warranty.**
- 8.65.1** The Construction Manager shall provide a two (2) year correction period (unless failure is due to normal wear and tear or misuse by owner); this correction period

shall not limit any warranties (including manufacturer warranties) as required by the Contract Documents or limit the Owner's legal rights or remedies under this Contract or State Law.

8.65.2 Construction Manager shall assign to the City all manufacturers' and vendors' and subcontractors' warranties that may be called for by the Contract Documents.

8.66 **Access to Work.** Construction Manager shall provide the City and Designer access to the Work in preparation and progress wherever located.

8.67 **Professional Services.** The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures. The Construction Manager shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Construction Manager by the Contract Documents, the City and the Designer will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, Specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Designer. The City and the Designer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Designer have specified to the Construction Manager all performance and design criteria that such services must satisfy. The Designer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

8.68 **Environmental Matters.**

8.68.1 **Environmental Definitions.** As used in this Agreement, the terms defined in the General Provisions hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

8.68.1.1 "**Environmental Claim**" means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement (hereinafter defined), against the City, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material (hereinafter defined) or any Environmental Requirement.

8.68.1.2 "**Environmental Law**" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree,

or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks), and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

8.68.1.3 "Environmental Requirement" means any Environmental Law (hereinafter defined), agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

8.68.1.4 "Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, lead-based paint, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; in each of the foregoing cases such that the substance is present at a concentration or quantity above applicable standards pursuant to Environmental Law.

8.68.2 Environmental Compliance. The Construction Manager is responsible to ensure that the design developed and the construction performed by the Construction Manager or by subcontractors or agents of Construction Manager are in accordance with applicable Environmental Laws and Environmental Requirements. The Construction Manager will document compliance with applicable Environmental Laws and Environmental Requirements and provide such documentation to the City. This obligation includes identifying all Environmental Laws and Environmental Requirements and the presence of Hazardous Materials. This includes but is not limited to conducting appropriate inquiries, including environmental assessments and surveys to identify Hazardous Materials that may be encountered or disturbed or encountered as a part of conducting the Work.

8.68.3 Notice to the City/Stop Work.

8.68.3.1 If, despite best efforts to comply with 8.67.2, those efforts will be inadequate to prevent foreseeable bodily injury to persons as a result of the presence of Hazardous Materials or an imminent threat or actual release of Hazardous Material(s) as a part of the Work, the Construction Manager shall upon recognizing the condition immediately stop work in the affected area and report the condition to the City.

8.68.3.2 If (a) the condition was attributable to the presence of Hazardous Material(s) which Construction Manager did not cause to be introduced or rendered dangerous in the course of its design or construction, or (b) the Construction Manager could not have anticipated through reasonable due diligence, then the

City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

8.68.3.3 If the condition meets either criterion of Section 8.67.3.2, and unless otherwise required by the Contract Documents, the City shall furnish in writing to the Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Materials(s) or who are to perform the task of removal or safe containment of same. The Construction Manager will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If the Construction Manager has an objection to a person or entity proposed by the City, the City shall propose another to whom the Construction Manager has no reasonable objection. When the Hazardous Materials(s) has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the Construction Manager. The contract time shall be extended appropriately and the GMP shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.5, herein.

8.68.3.4 If the condition described in the 8.67.3.1 does not meet either criteria described in 8.67.3.2, then Construction Manager shall undertake and pay for all of the steps described in 8.67.3.3, and the City shall have the rights of Construction Manager set forth in 8.67.3.3.

8.68.4 Environmental Indemnity. The Construction Manager will release, indemnify, defend, and hold harmless the City, and its directors, officers, employees, agents and other representatives from and against any and all actions, Environmental Claims, causes of action, costs, demands, damages, expenses, fines, penalties, liabilities, losses, obligations (Losses) arising out of the Construction Manager 's (including their employees, contractors and agents) breach of Sections 8.67.1-3 or arising out of any negligent act or omission of Construction Manager (including their employees, contractors and agents) that causes any threatened or actual release of Hazardous Materials resulting in contamination of or adverse effects on, the environment. If without negligence or non-compliance with Environmental Laws and Environmental Requirements by the part of the Construction Manager, the Construction Manager is held liable for the cost of remediation of a Hazardous Material(s) solely by reason of performing Work and meeting the criteria of section 8.67.3.2, the City shall reimburse the Construction Manager for all cost and expense thereby incurred.

8.68.5 Conflict. If there is a conflict between this provision and other provisions of this Agreement, the provisions herein shall govern.

8.69 Order of Precedence. If any conflict exists between the provisions of these General Conditions and any other provision of this Agreement, the provision setting the highest standard shall govern.

- 8.70 Cash Basis.** The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.
- 8.71 Kansas Open Records Act.** Design-Builder acknowledges that the City is subject to K.S.A 45-215, *et seq*, the Kansas Open Records Act (KORA), and that any duty of confidentiality or disclosure shall be subject to the City's obligations under KORA or any other provision of law.

EXHIBIT C

**CONSTRUCTION MANAGER'S
PRECONSTRUCTION AND CONSTRUCTION FEE PROPOSAL**

EXHIBIT D

**AFFIDAVIT OF PARTIAL PAYMENT AND
CONDITIONAL RELEASE AND WAIVER OF CLAIMS**

To: The City of Prairie Village, Kansas, the owner of the real estate (the "Property") identified below and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed through the last date covered by the accompanying request for payment, except as noted below.

Payment Request Amount: \$ _____

Date of last work covered by payment request: _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the sum stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full, less retainage and other claims documented as required by the Contract (if any), has been made by the undersigned through the period covered by all prior payments (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by the City, except as identified below:

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract. Specifically, the undersigned has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be: held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Partial Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of \$_____, the undersigned irrevocably and unconditionally releases and waives any and all right to claim against the City, except as pertains to unpaid retainage, identified pending change orders and claims, documented as required by the Contract, through the date of last work covered by the payment application stated above. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR:

By: _____
Name: _____
Title: _____

State of _____)
County of _____)

On this ____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

EXHIBIT E
BILL OF SALE

SELLER: _____

In consideration of payments made by the City of Prairie Village, Kansas (the "City"), referenced in the agreement dated _____, 20____, receipt of which is hereby acknowledged, Seller declares and certifies that it now possesses, and does hereby grant, sell, transfer and deliver to the City all right, title and interest in the following goods:

The City shall have all right and title to the goods in itself and successors and assigns forever and Seller, on behalf of itself, its successors and assigns, will warrant and defend the title to said goods and chattels hereby sold unto the City, its successors and assigns, forever, against the lawful claims and demands of all persons. It is expressly understood and agreed that the acceptance of the goods described herein is not a waiver of any right of action that the City may have for breach of warranty or any other cause under the agreement referenced above or at law.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale the ____ day of _____, 20____.

SELLER:

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me this __ day of _____, 20____.

Notary Public in and for said County and State

My commission expires:

EXHIBIT G

**AFFIDAVIT OF FINAL PAYMENT AND
CONDITIONAL WAIVER AND RELEASE OF CLAIMS**

To: The City of Prairie Village, Kansas, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed, except as noted below.

Payment Request Amount: \$ _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned, contingent upon the issuance, final clearance and payment of \$_____, which the undersigned irrevocably and unconditionally releases and waives any and all claims against the City, or any other claims of any kind whatsoever in connection with this Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract.

Dated _____, 20__.

CONTRACTOR:

By: _____
Name: _____
Title: _____

State of _____)
County of _____)

On this ____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

EXHIBIT H

INSURANCE REQUIREMENTS

1. Construction Manager agrees to procure and carry, at its sole cost, until completion of this Agreement and all applicable warranty periods, including the statute of repose for claims, all insurance as set forth below; provided, however:

1.1 All insurance is to be issued by companies authorized to do business in the State of Kansas, and with liability limits acceptable to the City. Insurers shall have AM Best rating of no less than A- or higher, and at least a Class VIII financial rating.

1.2 The City reserves the right to review certified copies of any and all insurance policies to which this Agreement is applicable.

2. Such insurance shall include the following terms and conditions:

2.1 All coverages obtained by Construction Manager, except professional liability if applicable, shall be on an occurrence policy form and not on a claims'-made policy form.

2.2 The cost of defense of claims shall not erode the limits of coverage furnished.

2.3 Advance notice of cancellation. All insurance certificates will state that all coverages are in effect and will not be canceled without thirty (30) days' prior written notice ("endeavor to notify" language is not acceptable), to the City and other required additional insureds, and Construction Manager shall submit to the City, prior to commencing any Work on the Project, an endorsement to the policy confirming that such notice shall be given. All policies of liability insurance shall contain an endorsement stating the insurer's agreement to provide such notice, using a form acceptable to the City. If Allied form IL 70 03 09 11 is used, it shall be supplemented by an endorsement stating that in the event of non-payment of premium, notice shall be given at least ten (10) days in advance of cancellation.

2.4 Advance notice of claims/reduction of policy limits. The Construction Manager, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Construction Manager shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate (or otherwise required by the Contract Documents) if the Construction Manager's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Construction Manager shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

2.5 Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

2.6 Comprehensive Automobile Liability Insurance. Construction Manager shall maintain comprehensive automobile insurance, including contractual liabilities insuring the indemnities set forth in this Agreement covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder, whether on or off the site, and shall have

minimum bodily injury and property damage limits of \$1,000,000.00 combined single limit per occurrence. An MCS-90 endorsement shall be procured when applicable.

2.7 Workers' Compensation and Employer's Liability Insurance. Construction Manager shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000.00 per occurrence/aggregate for all workers on site, \$100,000 each employee/\$500,000 policy limit for Bodily Injury by Disease, \$100,000 per accident for Bodily Injury by Accident, regardless of whether a worker is also an employee of Construction Manager.

2.8 Commercial General Liability Insurance. Construction Manager shall obtain and maintain comprehensive Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operations; (ii) subcontractors and sub-subcontractors; (iii) interruption of the City's business; (iv) independent Contractors; (v) products and completed operations (with completed operations to remain in force for two years following project completion); (vi) explosion, collapse and underground, and (vii) Construction Manager's protective and contractual liability insuring the indemnities set forth in the Agreement, including personal injury, death and property damage.

2.8.1 Each Project shall maintain minimum limits of \$2,000,000.00 per occurrence, \$1,000,000 Personal and Advertising Injury, and \$2,000,000.00 general and completed operations/aggregate.

2.8.2 Each Policy MUST include Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

2.9 Owner's Protective Liability (to be submitted with GMP Change Order No. 1). The Construction Manager shall take out, pay for and deliver to the City, an Owner's Protective Liability insurance policy written on an occurrence basis and naming the City as named insured. The policy shall be maintained during the life of this Agreement. Limits of protection shall be at least **\$1,000,000** Combined Single Limits, Bodily Injury and Property Damage, and shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Project.

2.10 Excess Liability. Construction Manager shall maintain Excess Liability coverage on an umbrella form with minimum limits of \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

2.11 Waiver of Subrogation. All insurance policies supplied (except professional liability and workers' compensation) shall include a waiver of any right of subrogation of the insurers thereunder against the City and all its assigns, subsidiaries, affiliates, employees, insurers and underwriters. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

2.12 Additional Insureds. The City, and any other person or entity required by the Agreement, and all their assigns, subsidiaries and affiliates shall be included as additional insureds

under Construction Manager's furnished insurance (except Workers' Compensation Insurance), for ongoing and completed operations, using a form acceptable to the City. Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING.

3. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Construction Manager's liability with respect to its performance of the Contract.

4. Subcontractors Insurance. Construction Manager shall require all those Subcontractors providing equipment, materials or services directly to Construction Manager in connection with this Agreement to obtain, maintain and keep in force coverages in accordance with the insurance requirements set forth herein during the time they are involved in performance of services or other work hereunder. Construction Manager shall obtain certificates of insurance and additional insured endorsements evidencing such coverage and provide the City with such certificates and endorsements. Construction Manager shall not be excused from its obligations to cause such subcontractors to meet the insurance coverage requirements set forth under this section unless Construction Manager shall have obtained in writing from the City a waiver, which shall be effective only as to such requirements and for such subcontractor specifically identified therein.

5. Patent Liability. Construction Manager shall protect, defend and save the City harmless from any liability, including costs and expenses, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Agreement selected by Construction Manager, and further agrees to pay all loss and expense incurred by the City by reason of any such claims or suits, including attorneys' fees.

6. Professional Liability. If any design or other professional services are included in the Agreement, Construction Manager shall purchase, and maintain for a period of three years after the date of Final Completion, insurance covering claims arising out of the performance or furnishing of Design or Professional Services and for claims arising out of allegations of errors, omissions or negligent acts in connection with the Agreement. The policy shall include, a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

7. Builder's Risk Property Insurance. (submitted with GMP Change Order No. 1)

7.1 Unless otherwise provided in the Contract Documents, Construction Manager shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire 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. The property insurance obtained by Construction Manager shall include the City as a "loss payee" and the Construction Manager, Design Consultants, Subcontractors and sub-subcontractors as additional insureds, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Construction Manager's Application for Payment and approved by the City. All deductibles are the responsibility of the Construction Manager.

7.2 Unless the Contract Documents provide otherwise, Construction Manager shall procure and maintain boiler and machinery insurance that will include the interests of the City, Construction Manager, Design Consultants, Subcontractors and sub-subcontractors.

7.3 Any loss covered under Construction Manager's property insurance shall be adjusted with the City and Construction Manager and made payable to both of them as trustees for the insured's as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with the Disputes Resolution Section of the Agreement.

8. Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Construction Manager or any subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the City.

9. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.**

EXHIBIT I

**CITY OF PRAIRIE VILLAGE, KANSAS
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, of _____, as principal, hereinafter referred to as the "Contractor," and _____, a corporation or other legal business entity organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City," in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the ____ day of _____, 20__, executed a written Agreement with the aforesaid City for furnishing in a good, substantial and workmanlike manner all construction, labor, materials, equipment, tools, transportation, superintendence and other facilities and accessories for **Prairie Village Public Works Campus**, designated, defined and described in the Agreement and in accordance with the Contract Documents to include the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents therefor; a copy of the Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, if said Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Agreement, and the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents thereto attached or by reference made a part thereof, including all warranties contained therein, according to the true intent and meaning in each case, upon written acceptance by the City of the improvement herein described in substantial compliance with the Contract Documents, then this obligation shall be and become null and void.

PROVIDED, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the Work to be performed thereunder or the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents accompanying same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work or to the Specifications, Plans and other Contract Documents.

Whenever Contractor is declared by City to be in default under the Contract Documents, the Surety may promptly remedy the default or shall within fourteen (14) days from the date of notice from the City:

1. Commence completing the Work of the Agreement in accordance with its terms and conditions. However, Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or

2. Commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest and best responsive, responsible bidder, arrange for an Agreement between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract Price, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by City to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate or other seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this on this, the _____ day of _____, 20____.

CONTRACTOR:

SURETY:

 By: _____
 Name: _____
 Title: _____

 By: _____
 Name: _____
 Title: _____

ATTEST:

By: _____
 Name: _____
 Title: _____

(SEAL)

NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

EXHIBIT J

**CITY OF PRAIRIE VILLAGE, KANSAS
STATUTORY LABOR AND MATERIALS PAYMENT BOND**

Prairie Village Public Works Campus

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, of _____, as principal, hereinafter referred to as the "Contractor," and _____, a corporation or other legal business entity organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City," in the penal sum of \$ _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ____ day of _____, 20____, entered into an Agreement with the City of Prairie Village, Kansas, a copy of which is attached hereto and incorporated herein for furnishing all tools, equipment, materials, transportation and supplies, performing all labor, and constructing public improvements described in the Agreement and the Contract Documents, all in accordance with Provisions, Specifications, Plans and other Contract Documents on file in the office of the City Clerk of the City of Prairie Village, Kansas.

NOW, THEREFORE, if the Contractor or the subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials, transportation or labor furnished, or equipment used or consumed in connection with or in or about the construction or making of the improvements described in the above-mentioned Contract Documents, then this obligation shall be void; otherwise, it shall remain in full force and effect, as required by K.S.A. 60-111. This bond shall be construed as a statutory bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement and the Contract Documents to the work to be performed thereunder, or the Provisions, Plans and Specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the Agreement, Contract Documents or to the Plans and Specifications.

PROVIDED, that it is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement as so amended. The term "amendment," wherever used in this bond and whether referring to this bond or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

The said Surety further agrees that any person to whom there is due any sum for labor furnished, transportation, materials, equipment or supplies used or consumed in connection with or in or about the construction of said public improvement, as hereinbefore stated or said person's assigns,

may bring action on this bond for the recovery of said indebtedness within six (6) months from the completion of said public improvement.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate or other seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this on this, the _____ day of _____, 20____.

CONTRACTOR:

SURETY:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

By: _____

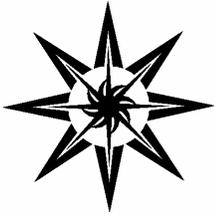
Name: _____

Title: _____

(SEAL)

NOTES:

1. A Statutory Bond is required only in connection with a Contract exceeding one hundred thousand dollars (\$100,000.00) in accordance with K.S.A. 60-1111 as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.



Village Voice Redesign

ISSUE

Staff is requesting City Council direction regarding the redesign and paper selection of the citywide newsletter, the Village Voice.

BACKGROUND

The Village Voice redesign was discussed at the October 7, 2019 Council Meeting. During that discussion, Council asked if the options presented were available in recycled paper and what the cost for each would be. The following information was updated to reflect availability and cost of recycled paper.

City staff has been working with Boelte-Hall on various redesign options for City Council consideration. Those redesign options are:

- Option 1: Traditional style newsletter designed by Boelte-Hall on matte paper
- Option 2: Traditional style newsletter designed by City staff on matte paper
- Option 3: Magazine style newsletter designed by City staff on glossy paper

With Option 1, Boelte-Hall's creative staff would continue to design the newsletter utilizing photos and articles submitted by the City. With Option 2 or Option 3, City staff would be responsible for the design of the newsletter, utilizing Adobe InDesign software. This would allow staff maximum flexibility with the design as well as submission deadlines.

FUNDING

The pricing structure for each option includes 8-page, 12-page, or 16-page newsletters as outlined, based on a quantity of 10,650 newsletters:

Option 1A: Traditional-style newsletter designed by Boelte-Hall - non-recycled paper

8 pages - \$3,515

12 pages - \$4,829

16 pages - \$5,832

(This is also the 2019 pricing.)

Option 1B: Traditional-style newsletter designed by Boelte-Hall - recycled paper

8 pages - \$3,978

12 pages - \$5,516

16 pages - \$6,699

Option 2A: Traditional-style newsletter designed by City staff - non-recycled paper
8 pages - \$3,167
12 pages - \$4,296
16 pages - \$5,094

Option 2B: Traditional-style newsletter designed by City staff - recycled paper
8 pages - \$3,602
12 pages - \$4,973
16 pages - \$5,946

Option 3: Magazine-style newsletter designed by City staff - recycled paper
8 pages - \$3,345
12 pages - \$4,575
16 pages - \$5,449

Should the Council choose to move forward with Option 3: Magazine-style on glossy paper, and the need arose for Boelte-Hall to resume design work, the price would be:

8 pages - \$3,731
12 pages - \$5,108
16 pages - \$6,187

The 2020 budget includes \$30,000 for the Village Voice.

ATTACHMENTS

N/A

PREPARED BY

Ashley Freburg
Public Information Officer
Date: October 15, 2019

MAYOR'S ANNOUNCEMENTS

Monday, October 21, 2019

Environmental Committee Meeting	10/23/2019	5:30 p.m.
Wassmer Park Grand Opening	10/26/2019	2:00 p.m.
City Council Meeting	11/04/2019	6:00 p.m.
Planning Commission Meeting	11/05/2019	7:00 p.m.

=====

The Prairie Village Arts Council is pleased to feature the artwork of Jhulan Mukharji, Jean McGuire and Paula Leffel during the month of November. The artist reception will be held from 6:00 p.m. to 7:00 p.m. on Friday, November 8.

INFORMATIONAL ITEMS
October 21, 2019

1. CFD2 Third Quarter 2019 Report
2. Prairie Village - Mission Hills Third Quarter 2019 Crime Report
3. Arts Council meeting minutes - September 11, 2019
4. Parks and Recreation Committee meeting minutes - September 11, 2019

Activity Report | 3rd Qtr 2019



PROUDLY SERVING



**MISSION • PRAIRIE VILLAGE • ROELAND PARK
FAIRWAY • WESTWOOD • WESTWOOD HILLS
MISSION WOODS • MISSION HILLS**

Service Calls by Type

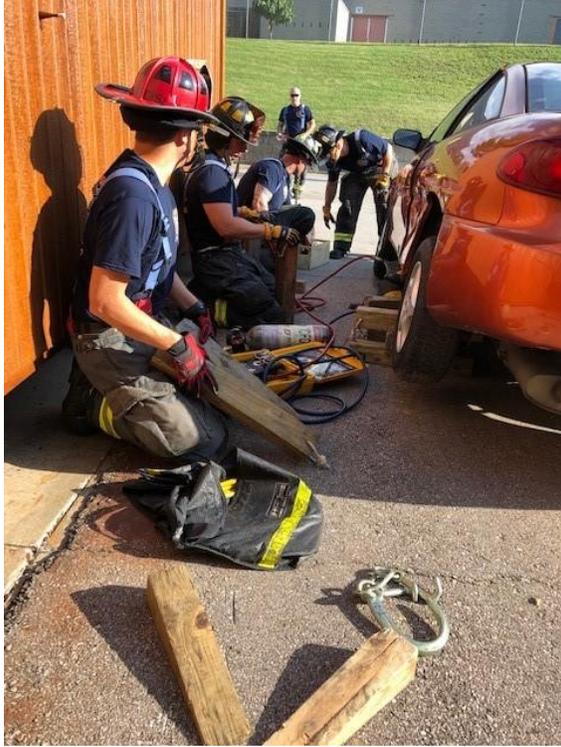
3rd Quarter 2019

Calls for Service	581
Emergency Medical Calls	709
Training Hours	2437
PR/Educational Activities	40



Training

Our members are continually training in order to hone their skills and keep up on the latest techniques and best practices. Pictured here are some of our members taking part in ropes, extrication and trench training .



Community



Our 2nd annual Back to School with a Firefighter event was success. Thanks to the Prairie Village Foundation for all of their hard work organizing this event and raising money to purchase the school supplies and to local businesses and the IAFF Local 1371 for their donations.



Lunch with our friends at Roesland Elementary



Employee Recognition

Service Anniversaries

Congratulations to the following members who recently celebrated service anniversaries with CFD2.

- 20 Years: Lieutenant Doug Flint
- 15 Years: Apparatus Operator Shane Fosburg
- 5 Years: Firefighters Austin Wessling, Allen Pheiffer and Travis Heath

Retirements

Congratulations to three of our members on their recent retirements. We thank them for their many years of exceptional service to CFD2 and the community and wish them the best.

- Firefighter Marcus Knisely: 24 Years
- Apparatus Operator Troy Jones: 23 Years
- Captain Randy Kolman: 23 Years

**PRAIRIE VILLAGE-MISSION HILLS COMBINED
THIRD QUARTER CRIME REPORT - 2019**

CRIME	2015	2016	2017	2018	2019	AVERAGE	2019 +/- AVG
Homicide	0	1	0	0	0	0.20	-0.20
Rape	4	1	2	3	0	2.00	-2.00
Robbery	1	0	4	0	2	1.40	0.60
Assault	56	48	50	55	52	52.20	-0.20
Burglary	38	42	35	38	42	39.00	3.00
Residence	35	38	31	30	33	33.40	-0.40
Business/Miscellaneous	3	4	4	8	9	5.60	3.40
Theft	141	149	145	238	183	171.20	11.80
Auto Theft	26	27	20	25	22	24.00	-2.00
Arson	2	0	1	2	0	1.00	-1.00
Forgery	13	7	19	12	3	10.80	-7.80
Fraud	101	65	34	0	0	40.00	-40.00
Criminal Damage	84	80	54	40	26	56.80	-30.80
Sexual Offenses	7	11	7	12	5	8.40	-3.40
TOTAL	473	431	371	425	335	407.00	-72.00

ACCIDENTS	2015	2016	2017	2018	2019	AVERAGE	2019 +/- AVG
Fatal	0	1	0	1	0	0.40	-0.40
Street - Injury	25	29	39	35	43	34.20	8.80
Street - Property + \$1,000*	207	264	230	211	191	220.60	-29.60
Street - Property - \$1,000*	45	32	45	28	49	39.80	9.20
Private - Injury	1	4	1	3	4	2.60	1.40
Private - Property	53	47	49	44	26	43.80	-17.80
Walk-In - Property	19	16	16	24	8	16.60	-8.60
TOTAL	350	393	380	346	321	358.00	-37.00

MENTAL HEALTH	2015	2016	2017	2018	2019	AVERAGE	2019 +/- AVG
Suicide	2	3	1	3	2	2.20	-0.20
Attempted Suicide	5	9	4	2	7	5.40	1.60
Involuntary Committal	2	8	10	7	17	8.80	8.20
Voluntary Committal	4	18	16	20	22	16.00	6.00
All Other Mental Health	70	97	73	99	63	80.40	-17.40
TOTAL	83	135	104	131	111	112.80	-1.80

TOTAL CALLS	6,653	6,374	6,420	7,554	6,872	6,774.60	97.40
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Prairie Village Arts Council
Wednesday, September 11th, 2019
5:30 P.M.
Prairie Village City Hall – 7700 Mission Road
Multi-Purpose Room

At 5:30 Brooke Morehead, chairperson, **brought the meeting to order**. In attendance were Al Guarino, Betsy Holliday, Daniel Andersen, Julie Hassel, Kathy Clark, Paul Tosh, Sheila Evans, and Shelly Trewolla. Following **approval of the agenda** and on motion by Dan and seconded by Shelly, all items on the **consent agenda** were approved. Brooke presented a letter from the National Arts and Humanities proclaiming October to be the official month of celebration. Both Shelly and Dan stated they had received a similar email, which they had already forwarded to the mayor, Wes and Eric. This was mentioned again under **New Business**.

In her **City Council Report** Brooke stated that because of a change in the 2016 Kansas state statute, newly reelected council members would now take their oath in February, for the next year in January and for the following year in December. She also mentioned an ordinance prohibiting drones from shooting objects in back yards.

The council reviewed the various **Financial Reports** attached to agenda and moved on to **Ongoing Business**. Julie Flanagan and Kathy Clark are working on changes to the **FOTA application**. Regarding gallery storage changes (ordinarily covered under Planning Committee as a Whole – **Storage Move**) Dan will construct two 8 x 5 outside lean-to structures to house the 9 display cabinets. The closets in the multipurpose room will be designated for the arts council's use. Paul Tosh remarked that personal pressures had kept him from **finalizing the R.G. Endres Gallery Logo** and **Second Friday Logo** projects. Dan remarked that another marketing meeting was needed with Al and Julie and Paul and Shelly and Kathy regarding the Second Friday promotion event, which can be rolled out next year. Before the end of tonight's meeting, this group's get-together was scheduled to be held Wednesday the 18th at Al and Julie's house.

Brooke asked Shelly for a report on the **Arts Council Booth at the Jazz Fest**. Shelly replied that in the silent auction, all but two of the pieces had been sold. In addition to that, and including mugs and jewelry, we had taken in \$315.00, although promotion of ourselves and our events was our main purpose for being there.

Sheila changed the discussion to the upcoming **Chamber in Chamber** on Friday September the 20th. Dan is handling the food and is working on providing the bar. Sheila said regarding the promotion of Chamber in Chamber events that at

a minimum, we should have a sign similar to our Friday Art Show sign and a banner in front of city hall. Yard signs were also mentioned.

Then, regarding the **Chamber in Chamber** scheduled for Friday the 19th of November, Sheila admitted that she had scheduled a group of musicians for **Friday the 22nd of November**. She moved that we move the **Friday Art Show** scheduled for Friday the 8th to Friday the 22nd and hold a **split non-ticketed event on the 22nd**. After some discussion, the council agreed to the motion, calling it a “special fall event” and deferring whether or not it would include the \$20 normally charged for a Chamber in Chamber concert.

Dan is working on writing the call for entry in Café for **2020 Exhibit Artists**. Once the call is posted and closed we will need to schedule an **additional planning committee as a whole meeting** to tally the artists we have selected on our own through Café, place them into monthly groups, and designate which month goes to which arts council member. This should be finalized by late November.

At 6:30, Brooke adjourned the meeting.

Planning Committee as a Whole

David Tai showed us his work in progress for the **Student Application for FOTA in our new format**. Many suggestions were made, and there is still much to be done. David would like to have an email confirmation from us which Kathy will provide once she gets David's email from Julie Hassel. Julie also plans to call David prior to his Friday's trip to China with his family. Installation date for FOTA is 1/4/2020, reception date is 1/10/2020, and removal date is 02/08/2020.

Shelly asked if anyone would like to write an article about us for KC Studio. Al Giordino said he would like to do so. There being no further discussion, the group disbursed at 7:55.

PARKS AND RECREATION COMMITTEE

September 11, 2019

6:30 PM

City Hall

MINUTES

The Parks & Recreation Committee met at 6:30 PM in the Council Chambers at City Hall. In attendance: Chair Chad Herring, Vice Chair Courtney McFadden, Dianne Pallanich, Diane Mares, Matthew Geary, Carey Bickford, Jerry Lonergan, Lauren Wolf, Randy Knight, Cher Brownback, Spencer Pellant, and Matt Moeder. Staff: Alley Porter, James Carney, Suzanne McCullough, Jayne Dey.

I. Public Participation

- Tom Pickel asked to speak about the changes made to the 8 lane swimming pool. He observed that the ratio of lap swimmers to walkers is 25 to 1. For many years, 6 lanes were for swimmers and 2 lanes were used by both swimmers and walkers, and he believed it worked that way. There were some concerns about safety and then $\frac{1}{4}$ of lanes are now dedicated to walkers only, which results in times when no one is in those lanes. He proposes instead of dedicating those 2 lanes to walkers, flip it to one lane on the north side or continue to have the two lanes with the swimmers and walkers combined.
- Javid Noorollah stated his son has baseball practice at Porter Park and his little one was walking on the logs and he slipped and fell. He reached out to Public Works to say this was a safety issues because someone else had hurt themselves on the logs as well. Most of the time, you're going to fall on the log, not onto the mulch below. He was also concerned about the need for a fence extender because they do not come out far enough nor is there an overhang at the backstop area so a ball could hit someone on the path.
- Stu Lewis has been a pool member since 1976 and would like to second the first speaker's comments. A lot of people came to the lap pool to swim but were unable to get in. Would like to keep the double wide lane for slower swimmers. He believes Lane 8 is especially good for walkers due to the ladders.
- Karen F said she was unable to swim because half of the pool is dedicated to master's swimmers or walkers. She did try walking in the north lane and thinks that's ideal because it doesn't dip down and has easy access with the ladder.

- Fritz Maffry said the pool was run very well this year and offered kudos to management. Believed people get frustrated when it closes at the end of the year. While there can't be an expectation that students can cover a longer season, there should be a way to extend the season. Thinks there can be some kind of accommodation to just have the lap pool open and let the community enjoy the pool a bit more.
- Randy Kurt stated he has been coming to the pool for many years with kids and grandkids and thinks it's a great facility with managers and lifeguards. When reduced hours come in August, it is disappointing because many of the pools are closed.

II. Consent Agenda

- a. Minutes from July 10, 2019
 - It was moved and seconded to approve the minutes from July 10, 2019. The motion passed unanimously.

III. Reports

- a. Public Works Report
 - Mr. Carney noted the Tree Board is considering a sign at Bennet Park for the tree that had to be removed. The Committee was in general agreement of the sign. He reviewed a list of projects: Weltner replaced nature play logs (dialogue ensued about the nature play areas and the process for inspection), the bathrooms at Porter Park are in and usable, and Wassmer Park is progressing. Mr. Herring brought up that there are concerns about Harmon Park and the deferment of projects, which he know is due to the possibility of other plans, but wants to confirms things are being inspected. Mr. Carney says broken things are taken out but they're looking at ways to add some items that could be easily moved. The open house for the skate park will be on September 13 at 6:30 p.m.
- b. Recreation Report
 - Ms. Porter stated staff was looking at late October or early November for a grand opening of Wassmer Park. She said overall the pool season was successful and wanted to thank management.
- c. Chairperson's Report
 - Mr. Herring informed the Committee that Prairie Park has been renamed to Shaffer Park and there will be a ceremony on September 28 at 9:00 a.m. He welcomed any ideas for the Wassmer Park opening. There were ongoing conversations about a possible civic center which included an

MOU with the YMCA and Library and working towards a survey instrument to explore feasibility. Mr. Herring also let everyone know that the County did not fund the project for Mission Road north of Tomahawk, which staff hoped would be an opportunity to also repurpose Schliffke, but will apply again next year.

IV. Old Business

a. Pool Season Review

- Ms. Pallanich started the dialogue by saying it is frustrating to have the double wide lane sit idle and management hesitates to have the flexibility to utilize those lanes. Ms. McFadden said she enjoyed the walking lane and she's seen as many as 8 walkers in the lanes and has witnessed open swimming lanes. Mr. Herring asked to give management and staff the opportunity to digest the comments they've heard and figure out if there is need for changes and the Committee agreed.

V. New Business

a. "Little Free Library" request for Wassmer Park

- Ms. Porter shared a resident request for a "Little Free Library" to be placed at Wassmer Park. Overall, the Committee liked the concept of these, but there was concern on who would be responsible for "policing" the appropriate books and the need for maintenance. The Committee was in agreement that a public park is probably not the best place for one of these amenities.

b. Meeting Schedule

- The October and November meetings will be moved to 5:30 instead of the usual 6:30 PM. Additionally, the October meeting is being moved to the 16th in observance of Yom Kippur.

VI. Information Items

a. Meeting Schedule

- i. October 9, 2019
- ii. November 13, 2019
- iii. January 8, 2020

VII. Adjourn – Meeting was adjourned at 7:50 PM.