

The public may attend the meeting in person or view it online at <https://www.facebook.com/CityofPrairieVillage>.

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Monday, April 17, 2023  
6:00 PM**

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF THE AGENDA**

**V. INTRODUCTION OF STUDENTS AND SCOUTS**

**VI. PRESENTATIONS**

- Teen Council graduation
- Arbor Day proclamation

**VII. PUBLIC PARTICIPATION**

Participants may speak for up to three minutes. To submit written comment to the Council regarding current agenda items, please email [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com) prior to 3 p.m. on April 17. Comments will be shared with Councilmembers prior to the meeting.

**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. Consider approval of regular City Council meeting minutes - April 3, 2023
2. Consider mattress removal and recycling agreement with Sleepyhead Beds

**IX. COMMITTEE REPORTS**

**Prairie Village Foundation**

- COU2023-27 Consider approval of Prairie Village Foundation donation policies  
Meghan Buum

**X. MAYOR'S REPORT**

**XI. STAFF REPORTS**

- Chief Chick, Consolidated Fire District #2

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2023-18 Consider approval of contract with Kansas Heavy Construction for the 2023 concrete repair program  
Melissa Prenger

COU2023-19 Consider approval of a contract with McConnell & Associates for the 2023 street repair program  
Melissa Prenger

COU2023-20 Consider change order #1 for inclusion of additional drainage repair program improvements into the drainage repair program contract  
Melissa Prenger

COU2023-21 Consider adjustment to property tax rebate program  
Adam Geffert

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

Community Center

- Survey results - Cathy Morrissey
- YMCA partnership - Mark Hulet
- Next steps - Wes Jordan

2023 Budget

- Consider 2024 decision packages
- 2023 estimated revenue and 2024 preliminary general fund revenue assumptions
- Consider 2024 budget requests:
  - COU2023-22 VillageFest
  - COU2023-23 JazzFest
  - COU2023-24 Arts Council
  - COU2023-25 Diversity Committee
  - COU2023-26 Environmental Committee

Jason Hannaman

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

# CITY OF PRAIRIE VILLAGE

## Proclamation

### Arbor Day 2023

**Whereas**, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

**Whereas**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

**Whereas**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

**Whereas**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

**Whereas**, trees, wherever they are planted, are a source of joy and spiritual renewal.

**Now therefore, I**, Eric Mikkelson, Mayor of Prairie Village, Kansas, do hereby proclaim April 28, 2023 as

### Arbor Day

In the City of Prairie Village, and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

**Further**, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

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Mayor Eric Mikkelson

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Adam Geffert, City Clerk



**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
APRIL 3, 2023**

The City Council of Prairie Village, Kansas, met in regular session on Monday, April 3 at 6:00 p.m. Mayor Mikkelson presided.

**ROLL CALL**

Roll was called by the City Clerk with the following Councilmembers in attendance: Chad Herring, Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf (via Zoom), Bonnie Limbird, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden (via Zoom), Ian Graves and Terrence Gallagher (via Zoom). Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Spencer Fane LLP; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Buum, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

Mr. Nelson made a motion to amend the agenda for April 3, 2023, by moving the two committee report items prior to public participation. Mr. Shelton seconded the motion, which passed unanimously.

**INTRODUCTION OF STUDENTS AND SCOUTS**

No students or scouts were present at the meeting.

**PRESENTATIONS**

- SevenDays proclamation - Molly Kerr, board member of the SevenDays Foundation, was present to receive a proclamation recognizing “Seven Days of Kindness” events, beginning April 5, 2023.
- Antisemitism presentation and resolution - Gavriella Geller, Executive Director of the American Jewish Coalition / Jewish Community Relations Board of Kansas City, gave a presentation on rising incidents of antisemitism nationally and in the region, and shared the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism.

Mr. Cole Robinson made a motion to approve Resolution 2023-01, recognizing the growing problem of antisemitism in the United States and calling for the adoption of





the International Holocaust Remembrance Alliance Working Definition of Antisemitism as an important tool to address the problem. Mr. Graves seconded the motion, which passed unanimously.

- Fentanyl presentation - Julinne Kemp, Forensic Scientist Supervisor with the Johnson County Sheriff's Office Criminalistics Laboratory, shared information about the increased prevalence on fentanyl and fentanyl-related overdoses in Johnson County.
- Teen Council members Abigail Swanson and Sneha Thomas gave a presentation on public transportation needs in Prairie Village.

### COMMITTEE REPORTS

- Insurance Committee: Consider 2023-2024 insurance renewals

Mr. Hannaman stated that the Insurance Committee had met on January 12, 2023, to discuss the City's property, casualty, and workers' compensation insurance needs for the upcoming year. The committee discussed changes in City covered property with HUB, the City's insurance broker, and whether any modifications to relevant City processes were needed. City staff provided HUB with details of all buildings, vehicles, equipment, number of employees, and various other factors to determine what coverage was necessary.

Following the review, HUB requested quotes from several carriers. At the March 21, 2023, Insurance Committee meeting, HUB recommended remaining with Traveler's for all coverage, with the exception of cyber liability, which would continue to be provided by Lloyds. The committee discussed the renewal options and recommended approval to Council.

Mr. Hannaman noted that the renewal included an increase of \$27,904 or 6.4%. The proposed policy would be similar to the current plan, with all coverage levels remaining the same. He added that in 2022, HUB moved from a commission model to a flat fee, and that the renewal reflected the same flat fee of \$30,000.

The property and casualty coverage rate would increase by 7% due to increases in the value of property covered and higher rates for automobile coverage. Workers' compensation would increase by \$4,851 or 3.6% due to expected increases in total compensation.

The cyber liability rate would increase from \$25,970 to \$30,581 due to market price increases. The City and HUB worked through an extensive process reviewing and updating internal processes to receive the best prices. The City received two bids, with Lloyds offering the best price and coverage.



**Mr. Dave Robinson made a motion to approve the renewal of the City's insurance coverage needs with Travelers and Lloyds for the coverage year May 2023 to May 2024. Ms. Selders seconded the motion, which passed unanimously.**

- Planning Commission: PC2023-103 - Consider Ordinance 2481 to approve a renewal of a special use permit for the service station at 7720 State Line Road

Ms. Lee said that the original special use permit for the Hy-Vee service station at 7720 State Line Road was issued to Getty, Inc. in 1983 for a period of twenty years. It was transferred to new ownership in 1995 and amended to include a food mart. The permit was renewed in 2003 with no proposed changes to the site or operations. That permit expires in 2023, and the applicant is seeking renewal of the permit for an indefinite period. There are no physical or operational changes planned for the property.

The Planning Commission held a public hearing on March 7. No comments were received beforehand, and no one was present at the meeting to speak about the application. The Planning Commission voted unanimously to recommend approval of the special use permit renewal to the City Council subject to the following conditions:

1. A landscape plan shall be submitted and approved by staff that brings the site further into compliance with the landscape standards. The plan shall include:
  - a. At least 6 but no more than 12 street trees. The species and location shall be determined by the City's landscape architect and Public Works, with the range dependent on location of existing trees, configuration of landscape areas and other site considerations.
  - b. Low-level and ornamental landscape associated with the monument sign and compliant with any applicable sight distance requirements.
2. Staff recommends approval with no expiration date, but the permit is subject to revocation for non-compliance with any ordinance standards, other regulations, or special use permit conditions; or if unforeseen problems or significant changes in conditions in the area make the use and operation no longer consistent with the findings of the commission.
3. The application be subject to all other conditions of the original special use permit, which are listed as:



- a. The existing canopy lighting be retained, and no glare be visible on adjacent streets and properties. If the applicant desired to change the fixtures or light intensity in the future it must be approved first by the Planning Commission as a site plan modification.
- b. Since no changes are proposed to the service station, the site plan illustrating existing development is the approved site plan. Any changes in the signage, rebranding architectural style, or exterior materials of the buildings and structures shall be submitted to the Planning Commission for site plan approval.
- c. That future changes and improvements to the site be handled as a site plan approval rather than an amendment to the special use permit.
- d. That the special use permit “run with the land” and remain valid for a period of twenty years from the date of City Council approval. *(Staff now recommends no expiration, subject to on-going enforcement and/or revocation for non-compliance).*
- e. If the permit is found not to be in compliance with the terms of the approval of the special use permit, it will become null-and-void within 90 days of notification of noncompliance, unless the noncompliance is corrected.
- f. That the applicant be responsible for the mitigation and cleanup of any environmental contamination as determined by the Kansas Department of Health and Environment.

Ms. Lee noted that special use permit applications required the City Council to act in its quasi-judicial role. When acting in this capacity, rather than a legislative capacity, the governing body must set aside personal opinions and, like a judge, apply the law to facts presented in the public record, taking into consideration the following criteria, commonly referred to as the “Golden” factors:

1. The character of the neighborhood.
2. The zoning and uses of property nearby.
3. The suitability of the property for the uses to which it has been restricted under its existing zoning.
4. The extent that a change will detrimentally affect neighboring property.
5. The length of time of any vacancy of the property.
6. The relative gain to public health, safety, and welfare by destruction of value of the applicant’s property as compared to the hardship on other individual landowners.
7. City staff recommendations.
8. Conformance with the comprehensive plan.

An analysis of these factors was provided in the Planning Commission staff report.



According to Section 19.52.040 of the Zoning Regulations, the Governing Body can take the following actions on a special use permit recommendation from the Planning Commission:

1. Adopt the Planning Commission's recommendation by a simple majority of members present.
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the entire Governing Body (9 votes including the Mayor)
3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove by a simple majority. The Planning Commission can then submit the original recommendation or submit a new and amended recommendation. The Governing Body then can adopt or amend the recommendation by a simple majority (7 votes) or take no further action.

Mr. Herring, Ms. Reimer, and Mr. Gallagher shared concern about the lack of an expiration date, noting that the property might not be subject to future changes to regulations, such as landscaping standards. Mr. Geffert noted that several special use permits had no expiration date, including one for the service station at 9440 Mission Road that had been approved by Council in June 2022.

**After further discussion, Mr. Dave Robinson made a motion to approve Ordinance #2481, approving the renewal of a special use permit for the service station at 7720 State Line Road. The motion was seconded by Mr. Cole Robinson. A roll call vote was taken with the following votes cast: "aye": C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Shelton, McFadden, Graves; "nay": Herring, Reimer, Gallagher. The motion passed 9-3.**

### **PUBLIC PARTICIPATION**

- The following residents voiced concerns regarding certain proposals recommended by the Ad Hoc Housing Committee:
  - Marilyn Thomas, 7862 Howe Circle
  - Jan Lane, 4100 W. 63<sup>rd</sup> Street
  - Tom Ward, 22 Coventry Court
  - Leon Patton, no address provided
  - John Cantrell, 8236 Nall Avenue
  - Karen Gibbons, 2904 W. 71<sup>st</sup> Street
  - Chet Hanson, 4620 W. 72<sup>nd</sup> Street
  - Joan Ward, 22 Coventry Court
- Resident Jori Nelson, 4802 W. 69<sup>th</sup> Terrace, shared concerns over the proposed ward boundary changes.



### **CONSENT AGENDA**

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

1. Consider approval of regular City Council meeting minutes - March 20, 2023

**Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher. The motion passed unanimously.**

### **COMMITTEE REPORTS**

- Ms. Reimer said that Teen Council members would be participating in a court learning session later in the week, and that their graduation ceremony would be held at the April 17 Council meeting.

She also stated that representatives from Evergy attended the Environmental Committee meeting on March 25 to discuss programs available to Prairie Village residents to reduce their carbon emissions.

- Ms. Selders reported that she had attended the National League of Cities Conference in Washington, D.C. March 26-28, and that it had been a very rewarding and enjoyable experience. Mr. Cole Robinson and Mayor Mikkelson shared their thoughts on the conference as well.
- Mr. Gallagher said that pool memberships for the 2023 season had gone on sale earlier in the day.
- Mr. Dave Robinson stated that the Prairie Village Foundation had met the previous week to welcome new members, elect officers, and make committee assignments.

### **MAYOR'S REPORT**

- The Mayor stated he had participated in the following events since the prior Council meeting:
  - Preliminary meetings with the YMCA and Johnson County Library based on community center survey results, which would be shared at the April 17 Council meeting.
  - Meetings with residents to discuss housing proposals.
  - A Prairie Hills Homes Association meeting.
  - A meeting with newly elected Johnson County Commission Chair Mike Kelly.
- The Mayor noted the following upcoming events:
  - The Johnson County “State of the County” luncheon on April 4.



- Ribbon-cutting events at Claridge Court, the Big Biscuit, and the Meadowbrook Park playground.
- The Mayor also reported the following:
  - The 2024 budget process was underway.
  - The Shawnee Mission East Academic World Quest team won the regional round of the competition, and would be traveling to Washington, D.C. to compete in the national round.

### **STAFF REPORTS**

- Mr. Jordan said that the April plan of action was included in the meeting packet. He also invited Councilmembers to attend staff budget discussions.

### **OLD BUSINESS**

None

### **NEW BUSINESS**

#### **COU2023-16      Consider additional funding for 2023 property tax rebate program**

Mr. Geffert stated that in 2022, the City Council voted to allocate \$20,000 from the City's general fund to a property tax rebate program designed to alleviate some of the burden of home ownership due to rising property values. In 2022, rebates were issued to 28 households totaling \$14,015.94, with \$5,984.06 remaining unexpended. In order to increase participation in 2023, the City Council voted to raise the income limits of applicants at its December 5, 2022, meeting. The Council also approved the option to allocate additional funds if a significant number of applications were received in 2023.

As of March 29, 2023, 47 households had received refunds totaling \$25,589.41, with an average rebate of \$544.46. Mr. Geffert said that additional funds would be needed to provide rebates to two applications pending approval, as well as any additional applications received prior to the end of the year. He recommended allocating an additional \$5,000.00 to the program for 2023.

Ms. Limbird asked how the program was being funded. Ms. Lee stated that funding was being drawn from the economic development fund.

**Ms. Limbird made a motion to approve an additional \$5,000.00 for the 2023 property tax rebate program. The motion was seconded by Mr. Nelson and passed unanimously.**

#### **COU2023-17      Consider Ordinance #2482 amending City ward boundaries**



Ms. Lee said that changes to ward boundaries had initially been brought before the Council as a staff report in May 2022. City Staff has worked with the Johnson County Election Commissioner on the timing and process for adopting updated ward boundaries, as such changes would require revisions to voting precinct boundaries. Additionally, per state statute, boundary lines of wards can only be changed at a time which “does not interfere with any election procedure”. The Johnson County Election Office stated that it had a strong preference that ward boundaries be revised prior to local office filing deadlines to avoid interference with primary and general elections. She added that staff had not consulted with the Mayor or Council when considering the boundary changes.

Mr. Waters noted that, under Constitutional law, the City’s six wards must be divided nearly as equal in population as possible. Kansas courts have held that the population of each ward should ideally be within five percent (5%) of the average ward population, and that the total variation between the most and least populated wards should not exceed ten percent, except in extraordinary circumstances.

Because of recent growth patterns, populations within wards have shifted such that ward sizes and boundaries in the City need to be adjusted. Based on a population figure of 22,969 persons from the 2020 U.S. Census, the average ward size should be approximately 3,828 people. Current ward sizes, and their deviation from the average, are as follows:

- Ward 1: 4,024 5.1% above the desired average
- Ward 2: 3,436 10.2% below the desired average
- Ward 3: 3,702 3.3% below the desired average
- Ward 4: 3,521 8.0% below the desired average
- Ward 5: 4,376 14.3% above the desired average
- Ward 6: 3,910 2.1% above the desired average

City Staff worked with planning consultants to modify the boundaries, with consideration of the following factors:

- Constitutional requirements for ward sizes.
- Avoid splitting established neighborhoods, as much as possible.
- Keep boundaries simple so that the average citizen can recognize what ward they are in.
- Limit changes to existing ward boundaries as much as possible.

The proposed adjustments would yield the following population distribution:

- Ward 1: 3,610 5.7% below the desired average
- Ward 2: 3,850 2.2% below the desired average
- Ward 3: 3,702 3.3% below the desired average
- Ward 4: 4,018 5.0% above the desired average





**PRAIRIE VILLAGE**  
KANSAS

- Ward 5: 3,879 1.3% above the desired average
- Ward 6: 3,910 2.1% above the desired average

Mr. Waters noted that the last election in which Prairie Village residents participated was November 8, 2022, and therefore, in 2022, any changes to ward boundaries would have needed to be completed and published by October 9, 2022, assuming that doing so would not itself have been deemed an interference with an election procedure.

Further, state statute states that “no election precinct shall be created, divided, abolished or consolidated or the boundaries thereof changed during the period four months prior to each primary election and the succeeding general election or between January 1 of a year the last digit of which is 8 and December 1 of a year the last digit of which is 0, and from and after January 1, 1993, between January 1 of a year the last digit of which is 7 and the time when the legislature has been redistricted in a year the last digit of which is 2”. As a result, between 2017 and 2022, even if the City had adopted updated ward boundaries that would have required a change in precincts, the Johnson County Election Commissioner would have been prohibited by statute from making changes to such underlying election precincts.

Consideration was given to waiting until after the 2023 general election to redraw ward boundaries. However, staff and the Johnson County Election Commissioner expressed concern that doing so would result in residents not actually being represented by the persons for whom they voted. Similarly, residents living within a changed boundary would not have had an opportunity to cast their vote for or against the person that would then represent them. Another concern with establishing new wards closely after general elections is that an elected official could be “removed” from the ward he or she actually represents (that is, the official would be representing his or her “old” ward while now living in a “new” ward).

After discussion, Mr. Graves made a motion to approve Ordinance #2482, an ordinance amending City ward boundaries, amending Sections 6-202, 6-203, 6-204, 6-205, 6-206, and 6-207 of Article 2 (Wards), Chapter VI (Elections) of the Code of the City of Prairie Village. The motion was seconded by Mr. Shelton. A roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, Graves, Gallagher.

Mrs. McFadden was absent for the vote, which passed 11-0.

**COUNCIL COMMITTEE OF THE WHOLE**

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

**EXECUTIVE SESSION**

At 9:05 p.m., Mr. Nelson made the following motion:





**PRAIRIE VILLAGE**  
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I move that the Governing Body recess into Executive Session for 30 minutes for consultation with an attorney which would be deemed privileged in the attorney-client relationship pursuant to KSA 75-4319(b)(2). Present will be the members of the Governing Body, the City Administrator, Deputy City Administrator, Assistant City Administrators, and the City Attorney. The regular meeting will resume at 9:35.

The motion was seconded by Mr. Shelton and passed 11-0.

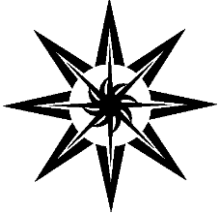
#### **ANNOUNCEMENTS**

Announcements were included in the Council meeting packet.

#### **ADJOURNMENT**

Mayor Mikkelson declared the meeting adjourned at 9:36 p.m.

Adam Geffert  
City Clerk



## ENVIRONMENTAL COMMITTEE

Consent Agenda: April 17, 2023

### Consider mattress removal and recycling agreement with Sleepyhead Beds

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#### RECOMMENDATION

Staff recommends the City Council approve a mattress removal and recycling with Sleepyhead Beds in conjunction with the annual large item pickup.

#### BACKGROUND

In 2022, the Prairie Village Environmental Committee piloted a mattress pickup and recycling program with Sleepyhead Beds. The pickup took place in conjunction with the annual large item pickup with mattresses collected on the Friday before each Saturday pickup date. Thanks to the pilot program, 460 mattresses were diverted from Johnson County Landfill, which is projected to reach capacity by 2043.

Sleepyhead Beds is a non-profit, 501(c)(3) charitable organization founded in 2010 that takes gently-used, donated beds and bedding and distributes them to Kansas City area children and families in need, free of charge. Of the 460 mattresses that were collected in Prairie Village in 2022, 212 were given new homes. The remaining 248 mattresses were not in the condition to be reused, so they were broken down so their components could be recycled by Avenue of Life.

Residents are asked to let the City know if they will be putting out mattresses during the pickup and indicate how many and what condition they're in. This can be done online at [pvkansas.com/pickupmymattress](http://pvkansas.com/pickupmymattress) until three days before the pickup. City staff will then provide a list to Sleepyhead Beds, who will visit each of the City's four pickup areas the Friday before Republic crews will be in the area. The schedule is as follows:

- Week 1 - April 21: all homes west of Roe and north of 79th Street
- Week 2 - April 28: all homes west of Roe and south of 79th Street
- Week 3 - May 5: all homes east of Roe and north of 75th Street
- Week 4 - May 12: all homes east of Roe and south of 75th Street

#### FUNDING

The total cost for the program for Prairie Village in 2022 was \$8,740. During the 2023 budget process, the City Council budgeted \$15,000 to continue the partnership. The cost is \$20 per mattress in 2023.

#### ATTACHMENTS

Sleepyhead Beds Agreement

#### PREPARED BY

Ashley Freburg  
Public Information Officer  
Date: April 11, 2023

## MATTRESS RECYCLING SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the City of Prairie Village, Kansas, a municipal corporation, (hereafter “City”) and SleepyHead Beds, LLC (hereafter “Recycler”), effective this 17<sup>th</sup> day of April 2023.

### RECITALS

WHEREAS the City has expressed its commitment to pilot a mattress recycling service;

WHEREAS, the City desires to enter into an agreement for the temporary provision of professional services for the collection and transportation of mattresses for all households within its City limits;

WHEREAS, Recycler already provides mattress recycling and transportation services to various residents within Prairie Village; and

WHEREAS, Recycler desires to perform such professional services for the City.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City and Recycler agree as follows:

### AGREEMENTS

1. **Services.** Recycler shall operate and manage a pilot program for the collection of mattresses in Prairie Village:

- A. The City shall provide a list of addresses for those residents who have indicated they will have mattresses at the curb for recycling. Recycler will use the list to guide routes and pick up mattresses. Recycler will also pick up mattresses along the route that were not indicated on the City’s list. All mattresses picked up by Recycler pursuant to this Agreement will be charged to the City at the rates set forth below.
- B. Recycler shall transport the collected mattresses to their own facility for re-use or to a processing facility for recycling.
- C. Recycler shall dispose of this material in compliance with Kansas State law and with the intention for which the materials are being collected. Under no circumstance shall recyclable material be discarded in a landfill.
- D. Recycler shall handle all customer service, complaints, and comments regarding the services provided and shall provide a direct phone number and email address to the City for distribution to residents.

2. **Time of Collection.** Recycler shall collect mattresses in coordination with the City’s annual large item pickup. The City shall inform all residents to place mattresses at their curbside or other designated pickup area no later than 7:00 AM on pickup days and mattresses

should be collected by the Recycler at or after the hour of 7:00 AM each day. The Recycler will visit each of the City's four pickup areas the Friday before the City's Solid Waste Provider services the area for the large item pickup. The schedule is as follows:

- Week 1 - April 21: all homes west of Roe and north of 79th Street
- Week 2 - April 28: all homes west of Roe and south of 79th Street
- Week 3 - May 5: all homes east of Roe and north of 75th Street
- Week 4 - May 12: all homes east of Roe and south of 75th Street

3. **Payment.** The City shall pay the Recycler 20 dollars and no cents (\$20.00) for each mattress collected under the terms of this agreement. This payment shall be made to the Recycler within one month of receipt of invoice. Recycler will only bill for those mattresses collected.

4. **Independent Contractor.** Both parties understand that Recycler, its agents, employees and independent contractors are and shall at all times remain as to the City wholly independent contractors. Neither party shall represent that it or its agents, employees, or independent contractors are agents or employees of the other party, nor shall either party make any representations on behalf of the other without the other party's prior written consent.

5. **Term of this Agreement.** The term of this Agreement shall be from April 17, 2023 through June 1, 2023 with the recycling collection beginning April 21, 2023.

6. **Termination.** The City may terminate this Agreement at any time in the event of a material breach by the Recycler not cured within thirty (30) days of receipt of notice by the City. The City and Recycler can terminate this Agreement for any reason upon thirty (30) days written notice to the other party.

7. **Safety and Accidents.** Recycler shall comply with all laws and industry safety standards applicable to the services provided hereunder. Recycler shall perform the work in full compliance with applicable federal, state, and City regulations, and shall assume sole and complete responsibility during the course of completion of the assignment for the safety of Recycler's employees, agents or contractors. If death or serious injury occurs in connection with the performance of this Agreement, Recycler shall immediately notify the City Administrator by phone.

8. **Insurance.** Recycler shall maintain for the duration of this Agreement, and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Kansas and that meet the following requirements:

- a. Workers' Compensation – Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;



b. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

c. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.

9. **Insurance Certificates.** Before Recycler performs any portion of the services agreed upon, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Recycler agrees to maintain the insurance required by this Article for the duration of this agreement.

10. **Waiver of Subrogation.** Insurance coverage (except commercial automobile liability) shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers, and employees.

11. **Non-Assignment.** Recycler shall not assign, transfer or convey this Agreement or its rights, duties or obligations hereunder or any part thereof without the previous written consent of the City. In the event the Recycler attempts to assign, transfer, convey or otherwise alter this Agreement or its rights, duties, or obligations hereunder or any party thereof without the prior written consent of the City, the City may, at its option, terminate this Agreement immediately.

12. **Indemnification and Liability.** Recycler agrees to indemnify and defend the City, its officers, employees, agents, and servants, from and against any and all liability, claims, demands, actions, suits, or losses, including reasonable attorneys' fees and defense costs, arising or resulting from negligent acts, errors, or omissions of the Recycler. IN NO EVENT SHALL CITY BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, THIRD PARTY CLAIMS (OTHER THAN AS SET FORTH IN THE PRECEDING SENTENCE), CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER OR NOT RECYCLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Recycler, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

14. **Governing Law.** This Agreement is entered into and is to be performed in the State of Kansas. City and Recycler agree that the law of the State of Kansas shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

15. **Warranties.** The City makes no warranty express or implied, regarding the recyclable materials which are the subject of this Agreement. Specifically, whether the recyclable materials are fit for any particular purpose. Other than Recycler's obligation to deliver the collected materials to a material processing facility or other appropriate collection site, Recycler assumes no responsibility for the proper disposal or recycling of the collected materials.

16. **Notices.** All notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid, and addressed to the parties as follows:

**City of Prairie Village**

Attention: City Administrator

7700 Mission Rd

Prairie Village, KS 66208

**Sleepyhead Beds**

c/o Gayle Holmes

5604 Troost Avenue

Kansas City, MO 64110

17. **Waiver.** A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

18. **Successors and Assigns.** The City and the Recycler each is hereby bound and the partners, successors, executors, administrators, legal representatives, and assigns of the City and the Recycler are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives, and assigns of such other party in respect of all covenants and obligations of this Agreement.

19. **Amendment.** This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

20. **Entirety.** This Agreement contains the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

21. **Non-Discrimination.** The Recycler agrees that it shall abide by the Prairie Village Non-Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that the Recycler has violated any applicable provision of any local, state, or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate, or suspend this agreement in whole or in part.



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

**SO AGREED**

**The City of Prairie Village, Kansas**

**By:** \_\_\_\_\_  
Eric Mikkelson, Mayor

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

**SleepyHead Beds**

**By:**  \_\_\_\_\_  
Gayle Holmes, Executive Director

**Date:** 4/12/2023

ATTEST:

**By:** \_\_\_\_\_  
Adam Geffert, City Clerk

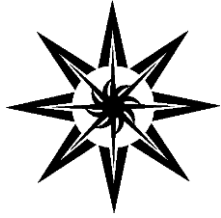
**Date:** \_\_\_\_\_

APPROVED AS TO FORM BY:

**By:** \_\_\_\_\_  
David Waters, City Attorney

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





**PARKS AND RECREATION**

**Parks & Recreation Meeting Date: January 11, 2023**

**Tree Board Meeting: February 1, 2023**

**Prairie Village Foundation Meeting: March 28, 2023**

**City Council Meeting Date: April 17, 2023**

**COU2023-27**

**Consider approval of Prairie Village Foundation Donation Policies**

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**Background**

In 1997, the Prairie Village Foundation established several donation levels for commemoration:

- \$5,000 - A bench at a mutually agreed upon location with a commemorative plaque bearing the name of the donor or honoree.
- \$5,000 - A tree at a mutually agreed upon location, of a mutually agreed upon species, with a commemorative plaque bearing the name of the donor or honoree.
- \$500 - A new tree at a mutually agreed upon location, of a mutually agreed upon species, would be planted with no memorial plaque. *(Cost to plant a tree is currently estimated at \$1,000)*
- \$500 - Commemoration on a brass plaque on the memorial board in the municipal building *(said board has not been updated or displayed in 10+ years)*
- Less than \$500 - Listing in a memorial book to be maintained in the municipal building *(said book has not been updated or displayed in 10+ years)*

In 2019, the Prairie Village Foundation discussed potential changes to the donation levels however the discussion was tabled in favor of other projects. The discussion is currently being revisited. Because of the impact on the city parks and arboretum, the Parks and Recreation Committee and Tree Board were asked to provide input on the process. Following consultation with the appropriate committees, the Prairie Village Foundation reviewed and made recommendations for changes to the donation policies, with final approval by the City Council.

**Donation History**

<b>Year</b>	<b>Memorial Bench</b>	<b>Memorial Tree</b>	<b>\$500 tree</b>
2012	0	0	0
2013	0	0	0
2014	1	0	3
2015	0	0	0
2016	0	0	0
2017	1	0	1
2018	0	0	1
2019	1	1	0
2020	1	0	0
2021	1	0	1
2022	1	0	1
2023	3	0	0
<b>TOTAL</b>	<b>9</b>	<b>1</b>	<b>6</b>

## Parks & Recreation Considerations

- A sentiment has been expressed among previous Foundation/Parks and Recreation members that they don't want to turn city parks into memorial grounds.
- The bench cost, including freight, plaque, and concrete pad, totals \$2,145, leaving \$2,855 in revenue.
- Staff recommends the Parks & Recreation Committee evaluate potential expenditures from the fund annually in January and make recommendations to the Foundation at their annual meeting in March. The funds can accrue as needed if the committee desires to save for a more substantial purchase.
- Staff recommended leaving a fund balance of \$5,000 for maintenance.
- Staff recommended maintaining the \$5,000 donation level to receive commemoration.

*Update 1/11/23: The Parks and Recreation committee affirmed their desire to maintain the \$5,000 donation level for commemoration on benches only, maintain a \$5,000 fund balance, and review potential expenditures annually.*

## Tree Board Considerations

- The cost of trees has exceeded the \$500 donation level, not including staff and maintenance needs. Water, mulch, staking, and replacement (if necessary) has been absorbed in the Public Works budget. The total cost is estimated at \$1,000.
- The Prairie Village arboretum has been well maintained, and space for new tree plantings is limited while maintaining desired open green space.
- Staff recommends removing the \$500 tree donation; donations at any level would continue to be accepted, however, they would not be able to specify use.
- Staff recommended leaving a fund balance of \$1,500 for maintenance.
- Staff recommended maintaining the \$5,000 donation level to receive commemoration.
- Staff recommended the annual Arbor Day honoree continue to be recognized with a tree and plaque at no charge.

*Update 2/1/23: The Tree Board affirmed their desire to remove the \$500 tree donation, maintain the \$5,000 donation level for commemorative trees, maintain a \$1,500 fund balance, and continue with the annual Arbor Day honoree program.*

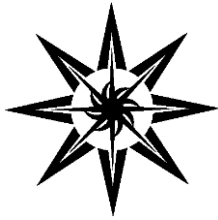
## General Foundation Considerations

- Donation level can be cost prohibitive.
- Maintaining donated items for perpetuity can be challenging - adding additional plaques or items could prove difficult to track and maintain.
- The memorial board and book have not been maintained and do not seem to be enticing incentives to donate.

*Update 3/38/23: The Foundation Board voted to remove the \$500 donation levels. The board voted to require a donation of \$15,000 for plaque commemoration for a tree or bench, with a 10-year expected placement. Plaque commemoration would be available in memory of a deceased person only, with exceptions to be approved by the City Council.*

## PREPARED BY

Meghan Boom  
Assistant City Administrator  
Date: March 28, 2023



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 17, 2023

COU2023-18

### CONSIDER APPROVAL OF A CONTRACT WITH KANSAS HEAVY CONSTRUCTION FOR THE 2023 CONCRETE REPAIR PROGRAM

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#### RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Kansas Heavy Construction for Project CONC2023 2023 Concrete Repair Program for \$595,000.

#### BACKGROUND

On March 22, 2023, the City Clerk opened bids for Project CONC2023, 2023 Concrete Repair Program. Five bids were received:

JM Fahey	\$805,075.00
Phoenix Concrete	\$788,430.12
Superior Bowen	\$640,163.55
PCC	\$617,566.53
Kansas Heavy Construction	\$580,667.55
Engineers Estimate	\$594,694.50

City staff reviewed the bids for consistency with pricing and believes the bids accurately reflect the market at this time. The budget for this project is \$600,000 and the contract award is set at \$595,000 annually. Locations of repairs will be adjusted (increased) to utilize the budget. The remaining \$5,000 will be used for testing. This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Kansas Heavy Construction.

#### FUNDING SOURCE

There is funding in the CIP project CONC2023.

#### ATTACHMENTS

1. Agreement with Kansas Heavy Construction

#### PREPARED BY

Melissa Prenger, City Engineer

April 10, 2023

**CONSTRUCTION AGREEMENT**



**CONC2023  
2023 CONCRETE REPAIR**

**BETWEEN**

**CITY OF PRAIRIE VILLAGE, KS**

**AND**

**KANSAS HEAVY  
CONSTRUCTION**

CONSTRUCTION CONTRACT  
FOR  
CONC2023 2023 CONCRETE REPAIR

BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND  
KANSAS HEAVY CONSTRUCTION LLC

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and KANSAS HEAVY CONSTRUCTION, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2023 CONCRETE REPAIR, (the “Project”) designated, described and required by the Project Manual and Bid Proposal, to wit:

**WITNESSETH:**

**WHEREAS**, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed bid, in the manner and for the time required by law;

**WHEREAS**, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

**WHEREAS**, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construction of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums set forth herein;

**WHEREAS**, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Contract Documents; and

**WHEREAS**, this Agreement, and other Contract Documents on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City’s agents, and in accordance with the laws of the City, the State of Kansas and the United States of America;

**NOW, THEREFORE**, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

**ADVERSE WEATHER** shall have the meaning set forth in Section 9.3 hereof.

**APPLICATION FOR PAYMENT** shall mean a written request for compensation for Work performed on forms approved by the City.

**BID** shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

**BID DOCUMENTS** shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond, and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

**BID PROPOSAL** shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the Work to be performed.

**BIDDER** shall mean any individual: partnership, corporation, association or other entity submitting a bid for the Work.

**BONDS** shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

**CERTIFICATE FOR PAYMENT** shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

**CHANGE ORDER** is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of Work, to adjust the quantities of Work, to modify the Contract Time, or, in lump sum contracts, to change the character and scope of Work shown on the Project Manual.

**CITY** shall mean the City of Prairie Village, Kansas, acting through a duly appointed representative.

**CONTRACT** or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

**CONTRACT PRICE** shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for Total Completion of the Work as per the Contract Documents.

**CONTRACT TIME** shall be the number of calendar days stated in the Contract Documents for the completion of the Work or shall be a specific date as designated in the Construction Agreement.

**CONTRACTOR** shall mean the entity entering into the Contract for the performance of the Work covered by this Contract, together with his/her duly authorized agents or legal representatives.

**DEFECTIVE WORK** shall mean Work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

**FIELD ORDER** shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

**FINAL ACCEPTANCE** shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

**GENERAL CONDITIONS** shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

**INSPECTOR** shall mean the engineering, technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

**NOTICE TO PROCEED** shall mean the written notice by the City to the Contractor fixing the date on which the Contract Time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

**PAY ESTIMATE NO. \_\_\_\_** or **FINAL PAY ESTIMATE** shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

**PLANS** shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

**PROJECT** shall mean the Project identified in the first paragraph hereof.

**PROJECT MANAGER** shall mean the person appointed by the Public Works Director for this Contract.

**PROJECT MANUAL** shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

**PROJECT SEGMENTS** shall have the meaning set forth in Section 7.1 hereof.

**PUBLIC WORKS DIRECTOR** shall mean the duly appointed Director of Public Works for the City of Prairie Village or designee.

**SHOP DRAWINGS** shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

**SPECIFICATIONS** shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

**SPECIAL CONDITIONS** shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

**SUBCONTRACTOR** shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

**SUBSTANTIAL COMPLETION** shall be defined as being less than 100 percent of the Work required that will be completed by a specified date as agreed to in writing by both parties.

**TOTAL COMPLETION** shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

**TOTAL PROJECT WORK** shall have the meaning set forth in Section 7.1 hereof.

**UNIT PRICE WORK** shall mean Work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

**UNUSUALLY SEVERE WEATHER** shall have the meaning set forth in Section 9.4 hereof.

**WORK** shall the mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

**WORK SCHEDULE** shall have the meaning set forth in Section 7.2 hereof.



- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed,” “as required,” “as permitted,” “as allowed,” or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression “it is understood and agreed”, or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words “approved”, “reasonable”, “suitable”, “acceptable”, “properly”, “satisfactorily”, or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

## **2. ENTIRE AGREEMENT:**

The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. 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.

## **3. INTENT AND INTERPRETATION**

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 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. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

#### **4. CONTRACT COST**

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of FIVE HUNDRED, NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$595,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

#### **5. WORK SUPERINTENDENT**

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

## 6. PROJECT MANAGER

6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager 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 Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.

6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications

stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
  - The Contract Price has been reduced by Written Amendment or Change Order,
  - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.

- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

## 7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

## **8. DELAYS AND EXTENSIONS OF TIME**

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein

ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

**9. ADVERSE WEATHER:**

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 “**Adverse Weather**” is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor’s scheduled workday.

9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor’s Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.



- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

## 10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set

forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

## 11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 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 City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be

deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
  - Claims of third parties against the City or the City's property;
  - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
  - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
  - Evidence that the Work will not be completed in the time required for substantial or final completion;
  - Persistent failure to carry out the Work in accordance with the Contract;
  - Damage to the City or a third party to whom the City is, or may be, liable;
  - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

## 12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in

accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

### **13. CLAIMS BY THE CONTRACTOR**

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance

- of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; 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 City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this

Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, 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 or workers, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

#### **14. CHANGES IN THE WORK**

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.
- 15. INSURANCE AND BONDS.**
- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, 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 Contractor shall monitor and 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 Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

General Aggregate:	\$2,000,000
Products / Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -  
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:  
 Policy MUST include the following condition:  
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and
- Carries at least a Class VIII financial rating, **or**
- Is a company mutually agreed upon by the City and Contractor.



- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
  - B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.
- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

## 16. INDEMNITY

- 16.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

**"The Contractor"** means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and **"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 Contract whether arising before or after the completion of the work required hereunder.

- 16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor 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 Contractor, his/her employees, agents, Subcontractors and suppliers.
- 16.3 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.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

## 17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. 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 Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. 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 Project Manual.

## 18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
  - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
  - C. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
  - D. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it

may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
  - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
  - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it 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 federal, state and local laws.

## 19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects 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.
- 19.2 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.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

## 20. RELATIONS WITH OTHER CONTRACTORS:

- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 20.2 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 City shall decide which Contractor shall progress at which time.
- 20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

## **21. RIGHT OF CITY TO TERMINATE**

- 21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

**22. MISCELLANEOUS:**

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor 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 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 City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor 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 Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such

general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings 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 provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume 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. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 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. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.



IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

KANSAS HEAVY CONSTRUCTION LLC  
\_\_\_\_\_  
(typed company name)

By: \_\_\_\_\_  
(signed)

By: \_\_\_\_\_  
(signed)

Eric Mikkelson  
\_\_\_\_\_

\_\_\_\_\_  
(typed name)

Mayor  
\_\_\_\_\_

\_\_\_\_\_  
(typed title)

City of Prairie Village  
\_\_\_\_\_

KANSAS HEAVY CONSTRUCTION LLC  
\_\_\_\_\_  
(typed company name)

7700 Mission Road  
\_\_\_\_\_

19501 STATE AVENUE  
\_\_\_\_\_  
(typed address)

Prairie Village, Kansas 66208  
\_\_\_\_\_

TONGANOXIE, KS 66086  
\_\_\_\_\_  
(typed city, state, zip)

913-845-2121  
\_\_\_\_\_  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

\_\_\_\_\_  
(date of execution)

SEAL

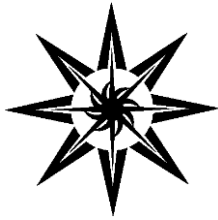
ATTEST:

APPROVED BY:

\_\_\_\_\_  
City Clerk, Adam Geffert

\_\_\_\_\_  
City Attorney, David Waters

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 17, 2023

COU2023-19

### CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL & ASSOCIATES FOR THE 2023 STREET REPAIR PROGRAM

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#### RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell & Associates for Project P5001 2023 Street Repair Program for \$200,000.

#### BACKGROUND

On March 22, 2023, the City Clerk opened bids for Project P5001, 2023 Street Repair Program. Five bids were received:

Harbour Construction	\$311,575.30
McAnany Construction	\$214,930.00
Metro Asphalt	\$212,643.00
Superior Bowen	\$211,630.60
McConnell & Associates	\$175,401.00
Engineer's Estimate	\$143,637.50

This program consists of asphalt street repairs at various locations throughout the City. The program allows us to address areas where settlement or deterioration has occurred, and make repairs to those areas. Engineer's estimate was calculated using past low bidder unit prices. Current prices have increased significantly and are tracking inflation on previous average bidder unit prices.

The budget for this project is \$200,000 and the contract award is set at \$200,000. Locations of repairs will be adjusted (increased) to utilize the budget.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, McConnell & Associates.

#### FUNDING SOURCE

Funding is available in the operation budget for project P5001.

#### ATTACHMENTS

1. Agreement with McConnell & Associates.

#### PREPARED BY

Melissa Prenger, City Engineer

April 10, 2023

**CONSTRUCTION AGREEMENT**



**P5001  
2023 STREET REPAIR**

**BETWEEN**

**CITY OF PRAIRIE VILLAGE, KS**

**AND**

**McCONNELL & ASSOCIATES**

CONSTRUCTION CONTRACT  
FOR  
P5001 | 2023 STREET REPAIR

BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND  
McCONNELL & ASSOCIATES CORP.

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and McConnell & Associates, Corp. hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2023 STREET REPAIR , (the “Project”) designated, described and required by the Project Manual and Bid Proposal, to wit:

**WITNESSETH:**

**WHEREAS**, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed bid, in the manner and for the time required by law;

**WHEREAS**, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

**WHEREAS**, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construction of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums set forth herein;

**WHEREAS**, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment , materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Contract Documents; and

**WHEREAS**, this Agreement, and other Contract Documents on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City’s agents, and in accordance with the laws of the City, the State of Kansas and the United States of America;

**NOW, THEREFORE**, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

**ADVERSE WEATHER** shall have the meaning set forth in Section 9.3 hereof.

**APPLICATION FOR PAYMENT** shall mean a written request for compensation for Work performed on forms approved by the City.

**BID** shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

**BID DOCUMENTS** shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond, and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

**BID PROPOSAL** shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the Work to be performed.

**BIDDER** shall mean any individual: partnership, corporation, association or other entity submitting a bid for the Work.

**BONDS** shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

**CERTIFICATE FOR PAYMENT** shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

**CHANGE ORDER** is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of Work, to adjust the quantities of Work, to modify the Contract Time, or, in lump sum contracts, to change the character and scope of Work shown on the Project Manual.

**CITY** shall mean the City of Prairie Village, Kansas, acting through a duly appointed representative.

**CONTRACT** or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

**CONTRACT PRICE** shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for Total Completion of the Work as per the Contract Documents.

**CONTRACT TIME** shall be the number of calendar days stated in the Contract Documents for the completion of the Work or shall be a specific date as designated in the Construction Agreement.

**CONTRACTOR** shall mean the entity entering into the Contract for the performance of the Work covered by this Contract, together with his/her duly authorized agents or legal representatives.

**DEFECTIVE WORK** shall mean Work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

**FIELD ORDER** shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

**FINAL ACCEPTANCE** shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

**GENERAL CONDITIONS** shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

**INSPECTOR** shall mean the engineering, technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

**NOTICE TO PROCEED** shall mean the written notice by the City to the Contractor fixing the date on which the Contract Time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

**PAY ESTIMATE NO. \_\_\_\_ or FINAL PAY ESTIMATE** shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

**PLANS** shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

**PROJECT** shall mean the Project identified in the first paragraph hereof.

**PROJECT MANAGER** shall mean the person appointed by the Public Works Director for this Contract.

**PROJECT MANUAL** shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

**PROJECT SEGMENTS** shall have the meaning set forth in Section 7.1 hereof.

**PUBLIC WORKS DIRECTOR** shall mean the duly appointed Director of Public Works for the City of Prairie Village or designee.

**SHOP DRAWINGS** shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

**SPECIFICATIONS** shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

**SPECIAL CONDITIONS** shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

**SUBCONTRACTOR** shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

**SUBSTANTIAL COMPLETION** shall be defined as being less than 100 percent of the Work required that will be completed by a specified date as agreed to in writing by both parties.

**TOTAL COMPLETION** shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

**TOTAL PROJECT WORK** shall have the meaning set forth in Section 7.1 hereof.

**UNIT PRICE WORK** shall mean Work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

**UNUSUALLY SEVERE WEATHER** shall have the meaning set forth in Section 9.4 hereof.

**WORK** shall the mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

**WORK SCHEDULE** shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed,” “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression “it is understood and agreed”, or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words “approved”, “reasonable”, “suitable”, “acceptable”, “properly”, “satisfactorily”, or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

## **2. ENTIRE AGREEMENT:**

The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. 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.

## **3. INTENT AND INTERPRETATION**

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified



- act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only

the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.

- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 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. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

#### 4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

#### 5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

## 6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager 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 Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities

specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
  - The Contract Price has been reduced by Written Amendment or Change Order,
  - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

## 7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action.

Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

## **8. DELAYS AND EXTENSIONS OF TIME**

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would

affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

**9. ADVERSE WEATHER:**

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 **“Adverse Weather”** is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor’s scheduled workday.

9.4 **“Unusually Severe Weather”** is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor’s Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.

9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

## 10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.



10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

## 11. PAYMENT PROCEDURE

11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.2 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 City and Contractor.

11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.

11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
  - Claims of third parties against the City or the City's property;
  - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
  - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
  - Evidence that the Work will not be completed in the time required for substantial or final completion;
  - Persistent failure to carry out the Work in accordance with the Contract;
  - Damage to the City or a third party to whom the City is, or may be, liable;
  - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

## **12. COMPLETION AND FINAL PAYMENT**

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the

remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

### **13. CLAIMS BY THE CONTRACTOR**

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give

- such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; 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 City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense,

which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, 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 or workers, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

#### **14. CHANGES IN THE WORK**

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order,

and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

## **15. INSURANCE AND BONDS.**

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, 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 Contractor shall monitor and 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 Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

General Aggregate:	\$2,000,000
Products / Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -  
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:  
 Policy MUST include the following condition:  
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and
- Carries at least a Class VIII financial rating, **or**
- Is a company mutually agreed upon by the City and Contractor.

- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
  - B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.
- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

## 16. INDEMNITY

- 16.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

**"The Contractor"** means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and **"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 Contract whether arising before or after the completion of the work required hereunder.



- 16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor 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 Contractor, his/her employees, agents, Subcontractors and suppliers.
- 16.3 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.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.
- 17. SUCCESSORS AND ASSIGNS**
- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. 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 Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. 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 Project Manual.

## 18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
  - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
  - C. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
  - D. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it

may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
  - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
  - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it 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 federal, state and local laws.

## 19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects 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.
- 19.2 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.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

## 20. RELATIONS WITH OTHER CONTRACTORS:

- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 20.2 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 City shall decide which Contractor shall progress at which time.
- 20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

## **21. RIGHT OF CITY TO TERMINATE**

- 21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

## **22. MISCELLANEOUS:**

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor 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 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 City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor 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 Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages,

- if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings 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 provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume 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. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act

constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 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. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

McCONNELL & ASSOCIATES, CORP.

(company name)

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

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

(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

McCONNELL & ASSOCIATES, CORP.

(typed company name)

7700 Mission Road

1225 IRON STREET

(typed address)

Prairie Village, Kansas 66208

NORTH KANSAS CITY, MO 64116

(typed city, state, zip)

913-385-4647

816-842-6066

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

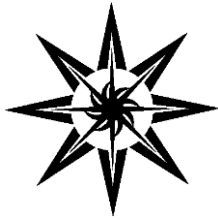
APPROVED BY:

City Clerk, Adam Geffert

City Attorney, David Waters

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)





## PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 17, 2023

COU2023-20

### CONSIDER CHANGE ORDER #1 FOR INCLUSION OF ADDITIONAL DRAINAGE REPAIR PROGRAM IMPROVEMENTS INTO THE DRAINAGE REPAIR PROGRAM CONTRACT

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#### RECOMMENDATION

Move to authorize the Mayor to sign Change Order #1 for storm drainage improvements to be included in the current Drainage Repair Program construction contract.

#### BACKGROUND

On August 23, 2022 the Governing Body approved award of the Storm Drainage Repair Program construction contract to Infrastructure Solutions LLC. The program replaced deteriorated drainage pipe in various locations. Those storm pipe locations were replaced in the fall of 2022 with some landscape restoration remaining for this spring.

This change order adds a pipe replacement location near 63<sup>rd</sup> and Nall Avenue to fix a failed pipe in a drainage easement. The failure is causing a sinkhole near the parking lot and east property line of Nall Avenue Church of the Nazarene.

#### CONTRACT

The Infrastructure Solutions LLC contract was awarded on August 23, 2022. Change Order #1 increases the contract amount by \$43,380.00 to \$349,780.00.

#### FUNDING SOURCE

Change order funding will be transferred from DRAIN23x to DRAIN22x.

Original Contract	\$ 306,400.00
<b>Change Order 1</b>	<b>\$ 43,380.00</b>
<b>TOTAL</b>	<b>\$ 349,780.00</b>

#### ATTACHMENTS

1. CHANGE ORDER NO 1
2. INFRASTRUCTURE SOLUTIONS LLC QUOTE SHEET

#### PREPARED BY

Cliff Speegle, Senior Project Manager

April 10, 2023

CITY OF PRAIRIE VILLAGE  
PUBLIC WORKS DEPARTMENT  
CONSTRUCTION CHANGE ORDER NO. 1



City's Project: DRAIN22X

Date Requested: April 17, 2023

Contract Date: August 23, 2022

Contractor's Name: Infrastructure Solutions LLC

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00		Storm system replacement near 6301 Nall Avenue	1	\$43,380.00	\$43,380.00

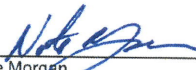
TOTAL

TOTAL   
NET Increase

EXPLANATION OF CHANGE -

This change order adds a pipe replacement location near 63rd and Nall Avenue to fix a failed pipe causing a sinkhole near the parking lot and east property line of Nall Avenue Church of the Nazarene.

	Contract Value	Contract Days
Original Contract	\$306,400.00	
Current Contract including previous Change Orders	\$0.00	
NET This Change Order	\$43,380.00	
New Contract Price	\$349,780.00	

  
Nate Morgan  
Infrastructure Solutions LLC

4/12/2023  
Date

  
Keith Bredehoeft, Director of Public Works  
City of Prairie Village, KS

4/12/2023  
Date

Eric Mikkelson, Mayor  
City of Prairie Village, KS

\_\_\_\_\_  
Date



# Change Order Request No. 01

## Nall & 63<sup>rd</sup> Sink Hole

Submitted To: City of Prairie Village, KS  
Address: 3535 Somerset Dr  
Prairie Village, KS

Date: 4/06/2023

Contact: Cliff Speegle  
Email: cspeegle@pvkansas.com  
Phone: 913-385-4011

Engineer: GBA / PV  
Job Location: 63<sup>rd</sup> & Nall

Date of Plans: 3/08/2023

We respectfully submit this "Pricing" to furnish Labor and Equipment for the completion of the following work:

2021 Strom Drainage Repairs  
Date: 4/06/2023  
Sinkhole Repairs for City of PV

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Total</u>
1.)	Sinkhole at 63 <sup>rd</sup> & Nall	1	LS	\$43,380.00

**PRICE PROPOSAL TOTAL ALL WORK ABOVE ..... \$ 43,380.00**

All items bid are tied unless discussed and agreed upon pre-award by an authorized representative of Infrastructure Solutions, LLC.

### CONDITIONS AND CLARIFICATIONS:

- Pricing includes all additional costs for labor, equipment, and Materials to replace approx. 50' of pipe, repair sinkhole, restoration and repair damage done by contractor during the process.

### EXCLUSIONS:

- No CCTV data provided for storm line
- No specialty tree replacement
- Remainder of church parking lot (\*Photos INCLUDED\*)

Should you have any questions, please let us know.

Submitted by: Nate Morgan  
Nate Morgan  
Project Manager

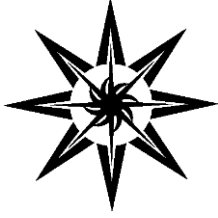
Date: 4/6/2023

**6301 NALL AVE STORM REPAIR QUANTITIES**

**Infrastructure Solutions LLC**

ITEM NO	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUBTOTAL
1	MOBILIZATION	LS	1	\$ 3,175.00	\$ 3,175.00
2	TREE REMOVAL (IF REQUIRED)	EA	1	\$ 4,115.00	\$ 4,115.00
3	REMOVAL OF STRUCTURES	LS	1	\$ 4,300.00	\$ 4,300.00
4	24" HP STORM (EST)	LF	50	\$ 175.00	\$ 8,750.00
5	CONNECT TO EXISTING RCB	LS	1	\$ 1,800.00	\$ 1,800.00
6	PIPE CONNECTION TO CMP	LS	1	\$ 1,200.00	\$ 1,200.00
7	REMOVAL & REPLACEMENT (6' WOOD PRIVACY) FENCE	LF	24	\$ 110.00	\$ 2,640.00
8	ASPHALT PARKING LOT (4") - REPLACED	SY	100	\$ 75.00	\$ 7,500.00
9	AB-3 PARKING LOT BASE (6") - REPLACED	SY	100	\$ 32.50	\$ 3,250.00
10	CONCRETE CURB REPLACEMENT	LF	20	\$ 145.00	\$ 2,900.00
11	TEMPORARY ORANGE FENCE (EST)	LF	40	\$ 15.00	\$ 600.00
12	SOD (EST)	SY	100	\$ 23.00	\$ 2,300.00
13	TREE REPLACEMENT	EA	1	\$ 500.00	\$ 500.00
14	INLET PROTECTION	EA	2	\$ 100.00	\$ 200.00
15	STRAW WATTLE	LF	50	\$ 3.00	\$ 150.00
				<b>TOTAL</b>	<b>\$ 43,380.00</b>

Assumes 20'x50'



## ADMINISTRATION

Council Meeting Date: April 17, 2023

COU2023-21

Consider adjustment to property tax rebate program

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### RECOMMENDATION

Approve an increase of \$100 to the maximum income for each household size for the 2023 property tax rebate program.

### BACKGROUND

In 2022, the City Council voted to allocate \$20,000 from the City's general fund to a property tax rebate program designed to alleviate some of the burden of home ownership due to rising property values. In 2022, rebates were issued to 28 households totaling \$14,015.94, with \$5,984.06 remaining unexpended. To increase participation in 2023, the City Council voted to raise the income limits of applicants at its December 5, 2022, meeting. The Council also approved the option to allocate additional funds if a significant number of applications were received in 2023.

By the end of March, nearly all the allocated funds had been expended. Staff requested an additional \$5,000 in funding for the remainder of the year, which was approved by the City Council at its April 3, 2023, meeting.

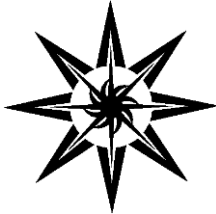
Presently, a two-person household in Ward 3 has applied for the program, and although they meet the maximum property value criteria, their combined income exceeds the limit for a two-person household by \$4.00. Staff reached out to Ward 3 Councilmembers Limbird and Wolf to gather their thoughts on whether an exception could be made for these residents since the overage is so minimal. Both Councilmembers were supportive of providing a refund to the applicants.

Staff discussed various options to present to Council for consideration and determined that adding \$100 to the maximum income for each household size was the most reasonable choice. Doing so could provide other residents that may have been slightly over the income limit the opportunity to apply and would not limit exceptions to a single applicant. The proposed changes are listed below:

<b>Household Size</b>	<b>Current Maximum Total Household Income</b>	<b>Proposed Maximum with \$100 increase</b>
1	\$39,450	\$39,550
2	\$45,050	\$45,150
3	\$50,700	\$50,800
4	\$56,300	\$56,400
5	\$60,825	\$60,925
6	\$65,325	\$65,425
7	\$69,825	\$69,925
8+	\$74,350	\$74,450

**PREPARED BY**

Adam Geffert  
City Clerk  
Date: April 12, 2023



## ADMINISTRATION

Council Meeting Date: April 17, 2023

### DISCUSS A PLAN OF ACTION TO OUTLINE NEXT STEPS IN CONSIDERATION OF A PRAIRIE VILLAGE COMMUNITY CENTER - IN PARTNERSHIP WITH THE YMCA AND RELOCATION OF THE CORINTH LIBRARY BRANCH TO BE IN CLOSER PROXIMITY.

#### DISCUSSION

Wiese Research Group has completed a second research survey in consideration of the construction of a new community center in partnership between the City of Prairie Village and the YMCA of Greater Kansas City. The survey will be presented to the Governing Body on April 17, 2023. The community center would replace the existing YMCA facility and would potentially offer a full range of services. A market assessment was previously completed in December 2019 which revealed strong support of both a community center and the relocation of the Corinth Library to be in close proximity. The second study was commissioned to have a better pulse of community interest and support post COVID-19.

#### MOTION

Move to approve the Next Phase in consideration of a Community Center and Library as outlined by Staff.

#### NEXT PHASE

If the Governing Body continues to consider a community center and library branch, the next immediate steps would be:

- Council would need to consider if the YMCA would be the operational manager of the community center and direct staff to outline a memo of understanding that specifies, but not limited to, financial commitment, partnership expectations, and agreed cost sharing the public engagement and site design process.
- Council would also need to consider a memo of understanding with the library outlining similar specifics.

*Staff will work simultaneously to identify what type of secondary operational and real estate agreements would be needed with the YMCA and Johnson County Library for a community center and co-location of the library should the project move forward.*

- Staff will need draft a Request for Qualifications (RFQ) for an owner's representative who has expertise in this field.

#### FUTURE PHASES

Following the MOU approvals and selection of an owner's representative by Council, a Request for Proposal (RFP) would be drafted and the process would begin to select an architectural firm to develop the public engagement and site design process. This step would be approved by Council at the contract stage. The process would include multiple public input meetings throughout the site design process. It is anticipated to complete the study around the end of 2023.

The public engagement and site design costs were projected to be capped at \$150,000 in 2019 with the City contributing a maximum of \$60,000. It is unknown what those costs would be in 2023 at the time of this discussion. It is anticipated that established partnerships would continue to share in a percentage

of those costs. While this cost was not budgeted, we would likely use unallocated funds in the 2023 budget.

If the Council elected to move forward with a public vote at the conclusion of the project, Staff would recommend a mail-in ballot process to allow for flexibility based on completion of public engagement & site design.

## **PRIOR COUNCIL ACTION**

Before the community center project was placed on hold due to the pandemic, the City Council approved (11-0) the following plan of action at the February 18, 2020 meeting in an 11-0 vote. The Council gave specific direction to staff to move forward in drafting a second MOU with the YMCA and Johnson County Library.

### ***PLAN OF ACTION (2/18/20)***

- Memo of Understanding - A second MOU will be developed between the City, YMCA, and Library in which all parties agree to complete the public engagement and the site design study for the new civic center. Similar to the first MOU, it will include shared funding for the study. The current estimated not to exceed cost of the public engagement and site design process study is \$150,000, which would be a maximum of \$60,000 from the City. Funding is available in the unallocated funds in the 2020 budget.
- Following the MOU approval by Council, a Request for Proposal (RFP) will be drafted and the process will begin to select an architectural firm to develop the public engagement and site design process, which will be approved by Council at the contract stage. The process will include multiple public involvement meetings throughout the site design process. It is anticipated to complete the study around the end of 2020.
- Staff will also work simultaneously to identify what type of secondary operational and real estate agreements would be needed with the YMCA and Library for a civic center and co-location of the Library should the project move forward.
- The City will also need to evaluate and have discussions concerning the viability of a medical/health component and impact on School Parking, etc.
- Staff will likely explore drafting a Request for Qualifications (RFQ) for an owner's representative who has expertise in this field. This would be further discussed with the Council.
- It is anticipated the Design Site Study would be completed by the end of the year and presented to Council.
- If the Council elected to move forward funding the project, a public vote would be required.

Attachments - 2023 Market Sustainability Study/Survey

## **PREPARED BY**

Wes Jordan  
City Administrator  
April 11, 2023





# **Prairie Village Community Center And YMCA Market Sustainability Study**

**Summary Report  
March 2023**





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# 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 which accompany this summary for a more thorough review of the findings.
- For this report, Wiese Research Group (WRG) has relied on its professional research experience in selecting data for presentation and, where deemed appropriate, has forwarded some possible interpretations regarding 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. Rather, the City of Prairie Village and YMCA of Greater Kansas City 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 discussion of selected findings alongside charts and graphics providing a “visual” presentation of the results. This is preceded by a brief description of the study methodology employed for this research.
- It should also be noted that the individual percentages shown in the tabular results as well as those graphically displayed in this report are rounded to the nearest whole number, and therefore will sometimes appear to equal 99% or 101% of the total base sample but in fact do total to 100% when percentages are not rounded.



# Study Methodology



# Study Methodology

## PURPOSE OF THE RESEARCH

- The City of Prairie Village is considering the construction of a new Community Center and YMCA that would replace existing facilities and offer a full range of services. A market assessment completed in December of 2019 revealed strong support for this new facility, but that was prior to the Covid-19 pandemic. It was therefore deemed appropriate to re-measure community interest in and likely utilization of this community center post-Covid. More specifically, the following objectives were accomplished in the current 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).*
  - *Measured the incidence of use during the past 12 months for the existing Prairie Village pool complex and the Paul Henson YMCA.*
  - *Estimated the likelihood to utilize a Prairie Village Community Center and YMCA, first assuming a reasonable cost, and then at specified price points (for various types of memberships). These results were subsequently used to estimate potential membership units and revenue.*
  - *Evaluated impressions of YMCA's involvement as a financial contributor and operating partner for the proposed community center.*
  - *Assessed the relative importance consumers place on specific features and amenities that are currently under consideration for the new facility.*
  - *Measured potential demand for (likelihood to use) specific exercise/activity options the facility could offer.*
  - *Gauged the likelihood to consider using medical-based programs if provided at the center.*
  - *Explored support for funding the proposed Community Center and YMCA through a tax increase, along with the type of tax change one would be most likely to favor.*

## 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, the “population of interest” included essentially all adults residing within the proposed facility’s potential trade area (defined by zip codes).





# Study Methodology

- Sampling for this project was completed in two phases. First, n=401 *phone* surveys were administered using samples drawn from both cell/wireless and listed household (landline) phone numbers across the entire trade area. To ensure that a representative cross-section of the community was interviewed during this phase, geographic and age/gender quotas were established based on population statistics for the survey area. The chart below shows the geographic distribution of the obtained phone sample by zip code, which closely matched the actual household proportions.

GEOGRAPHIC DISTRIBUTION OF THE OBTAINED PHONE SAMPLE BY ZIP CODE*					
Zip Code	Town	Household Count	% Of Total Households	Obtained Phone Sample	% Of Total Obtained Sample
64112	Kansas City, MO	5,458	7%	24	6%
64113	Kansas City, MO	4,726	6%	23	6%
64114	Kansas City, MO	12,043	14%	55	14%
66202	Mission, KS	9,272	11%	43	11%
66204	Overland Park, KS	9,423	11%	43	11%
66205	Mission, KS	6,382	8%	31	8%
66206	Leawood, KS	4,317	5%	20	5%
66207	Overland Park, KS	6,687	8%	32	8%
66208	Prairie Village KS	9,481	11%	54	13%
66212	Overland Park, KS	15,481	19%	76	19%
<b>TOTAL</b>		<b>83,270</b>	<b>100%</b>	<b>401</b>	<b>100%</b>

*\*Excludes the n=1,378 Prairie Village respondents surveyed online.*



# Study Methodology

- A second supplemental sampling phase provided those living within the city limits of Prairie Village an opportunity to complete the survey online. A total of 11,745 postcards with a link to the web-based survey were mailed, yielding n=1,378 valid *online* surveys, which were then used to “boost” the Prairie Village proper phone sample. It is important to note that the online data is used *only* when results for those residing within the Prairie Village city limits are being considered. The combined phone and online surveys for Prairie Village residents were also statistically weighted by age (see Appendix A).

## MARGIN OF ERROR

- 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 Prairie Village proper sample of n=1,459 (phone and online combined), the total phone sample of n=401, as well as selected subsample sizes, 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=1,459	±1.5	±2.1	±2.4	±2.5	±2.6	±2.5	±2.4	±2.1	±1.5
n=401	±2.9	±3.9	±4.5	±4.8	±4.9	±4.8	±4.5	±3.9	±2.9
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 occurs when the obtained result is 50%, with error ranges diminishing on a continuum as the result percentages move closer to one end (e.g., 10%) or the other (e.g., 90%). In addition, when findings for smaller subsamples are considered, results are subject to a greater margin of error. These error ranges should be kept in mind when reviewing the study results.



# Study Methodology

## METHOD OF SAMPLE CONTACT

- As mentioned, telephone was the sample contact methodology for the initial phase, which included the entire survey area (not just Prairie Village). All phone surveys were conducted by trained and experienced interviewers on WRG's staff.
- For the supplemental online phase, the City of Prairie Village invited residents to participate via a postcard which contained a link and PIN# required to access the web-based survey. The postcards were designed, printed and mailed by the City (see Appendix B for postcard). WRG handled the programming, provided the link, and hosted the data collection for this online survey.

## SURVEY INSTRUMENT

- The questionnaire administered to respondents averaged 12-13 minutes on the phone and 11-12 minutes to complete online. A copy of this survey instrument can be found in Appendix C. All results presented in this document include a question number reference should the reader wish to review the exact wording of a specific item on the survey.

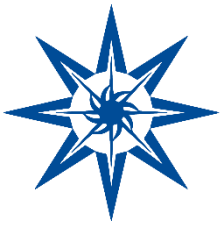
## DATA COLLECTION (SURVEY DATES)

- All phone interviewing and online data collection for this project was completed between February 2 and March 6, 2023. Research results are in one way much like a financial balance sheet prepared for a business 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.
- As previously noted, a nearly identical survey was completed in December 2019 (prior to the pandemic). Result comparisons between these two studies for a few key metrics have also been included in this report.





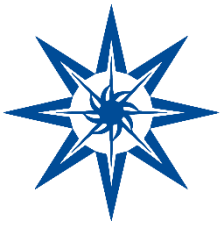
# Sample Characteristics



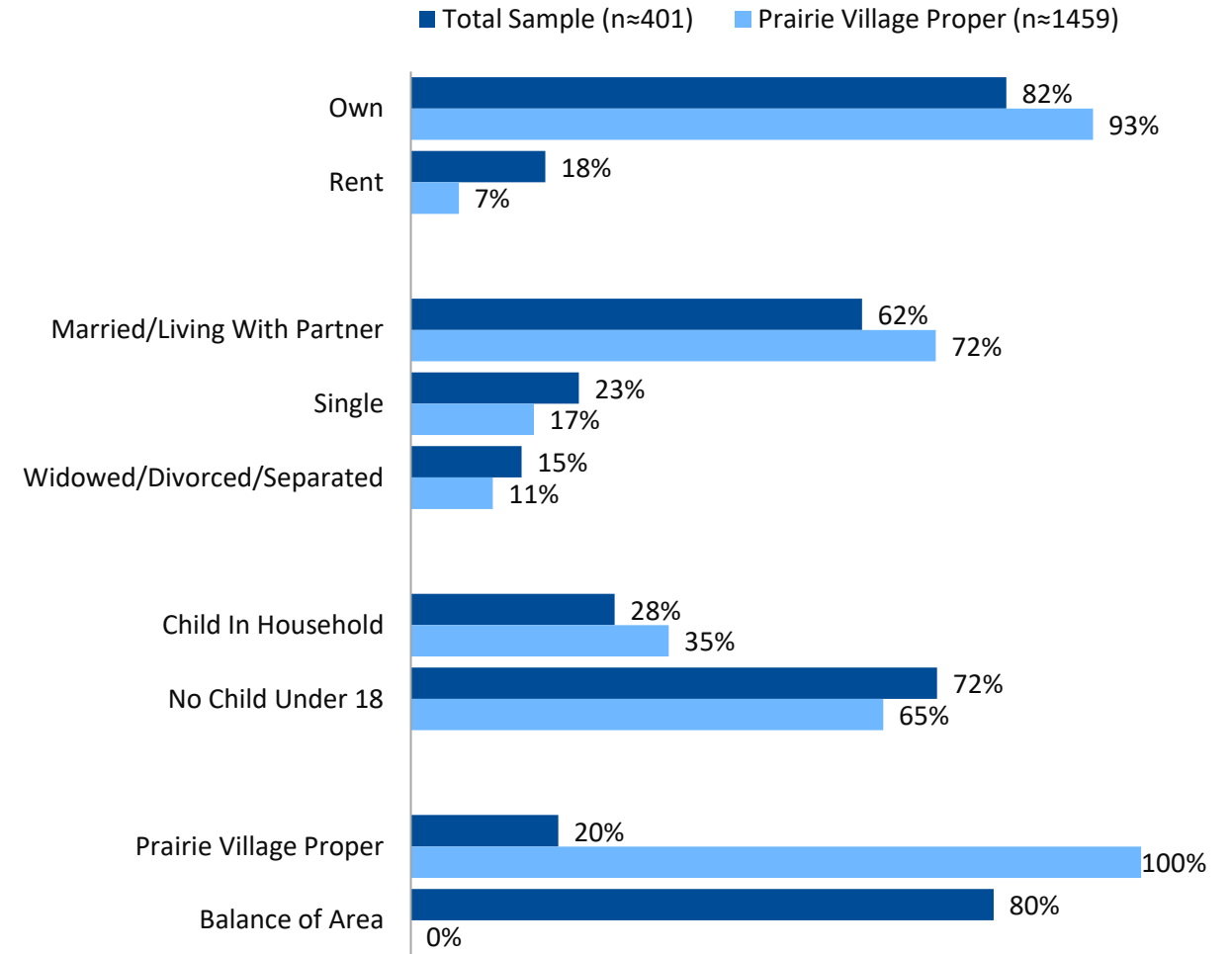
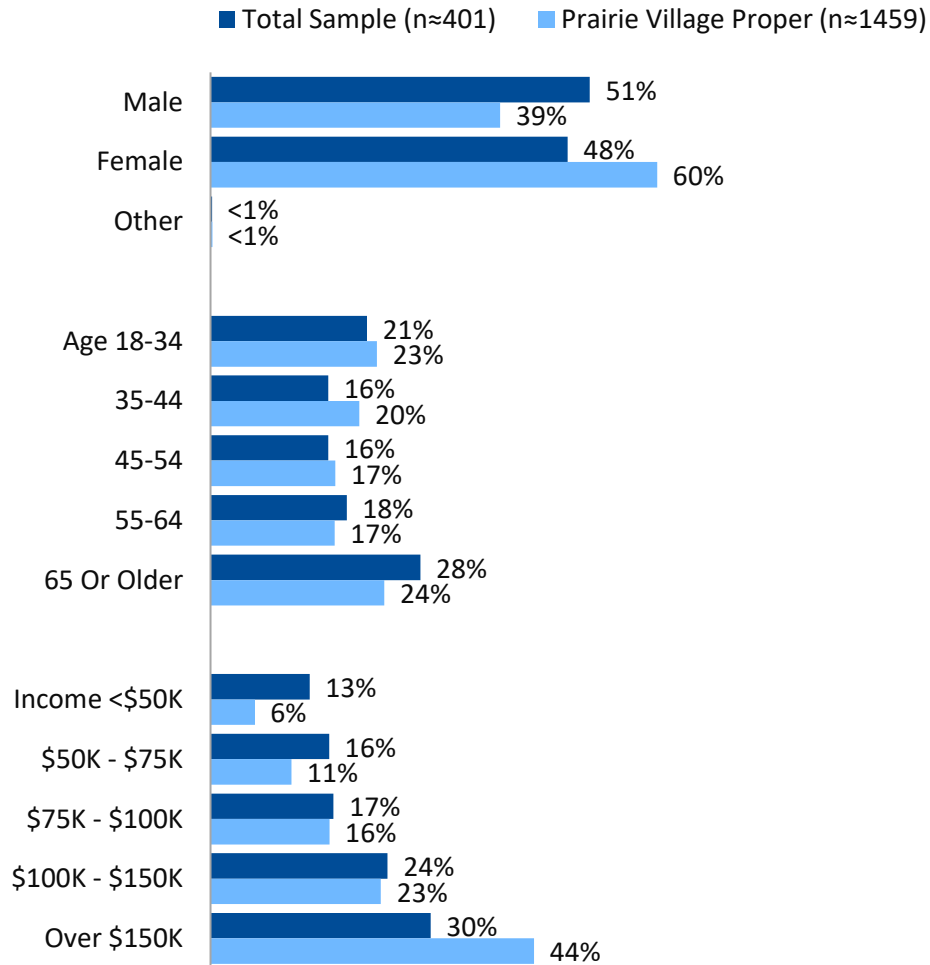
# Sample Characteristics

## 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 depicted on the following page. It should be noted that all percentages are based on those responding to that demographic question, for each of the respective sample segments.
- These characteristics profile the n=401 respondents interviewed by telephone across the entire survey area, referred to here and throughout this report as the “total sample” (excludes the Prairie Village oversample completed online). In addition, the n=1,459 respondents in Prairie Village proper (phone and online surveys combined) are also profiled and shown, after statistical weighting by age.
- Review of these demographic characteristics suggest that Prairie Village proper residents, at least those surveyed in this study, appear to be more affluent when compared to household incomes across the total trade area. As would follow, Prairie Village respondents are also more likely to be homeowners.



# Sample Characteristics

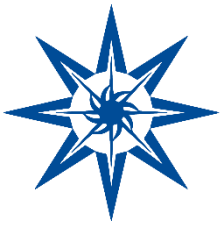


(Reference: SQ2, SQ3, Q1, Q18, Q23-25)





# Study Findings



# Incidence Of Health Club Or Fitness Center Membership By Anyone In Household

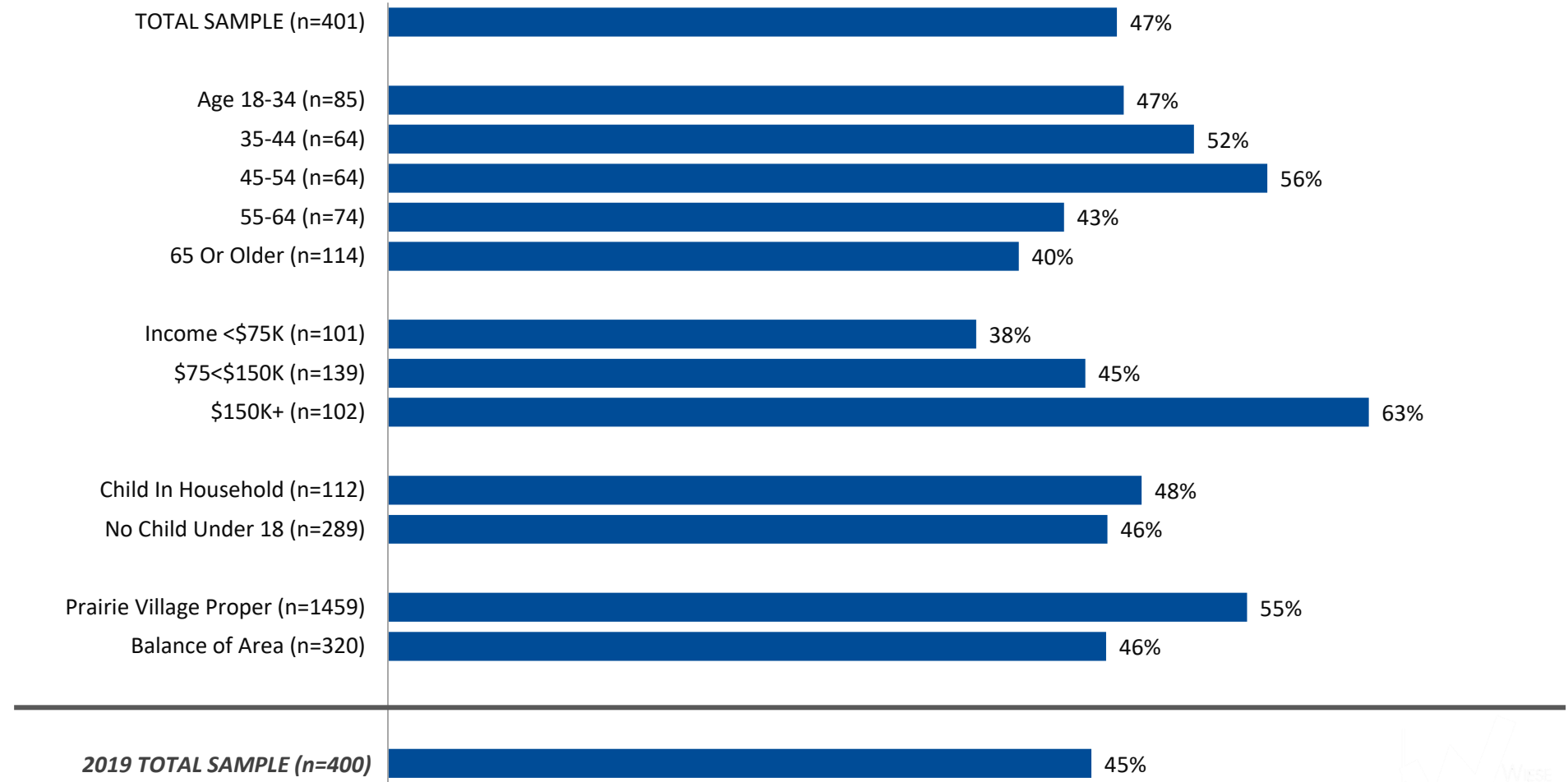
Results here would project that approaching one-half of the households in this area possess at least one membership to a health club or fitness center (as was the case in December of 2019).

These results vary significantly by age group, with health club/fitness center memberships most prevalent in the 45-54 age category.

As one might expect, the incidence of such memberships directly correlates with household income.

Those residing within the city limits of Prairie Village are also more likely than their counterparts to have fitness club memberships.

These trends should be kept in mind when reviewing interest levels for the proposed Prairie Village Community Center and YMCA.



Base: Total sample segment  
(Reference Q2)





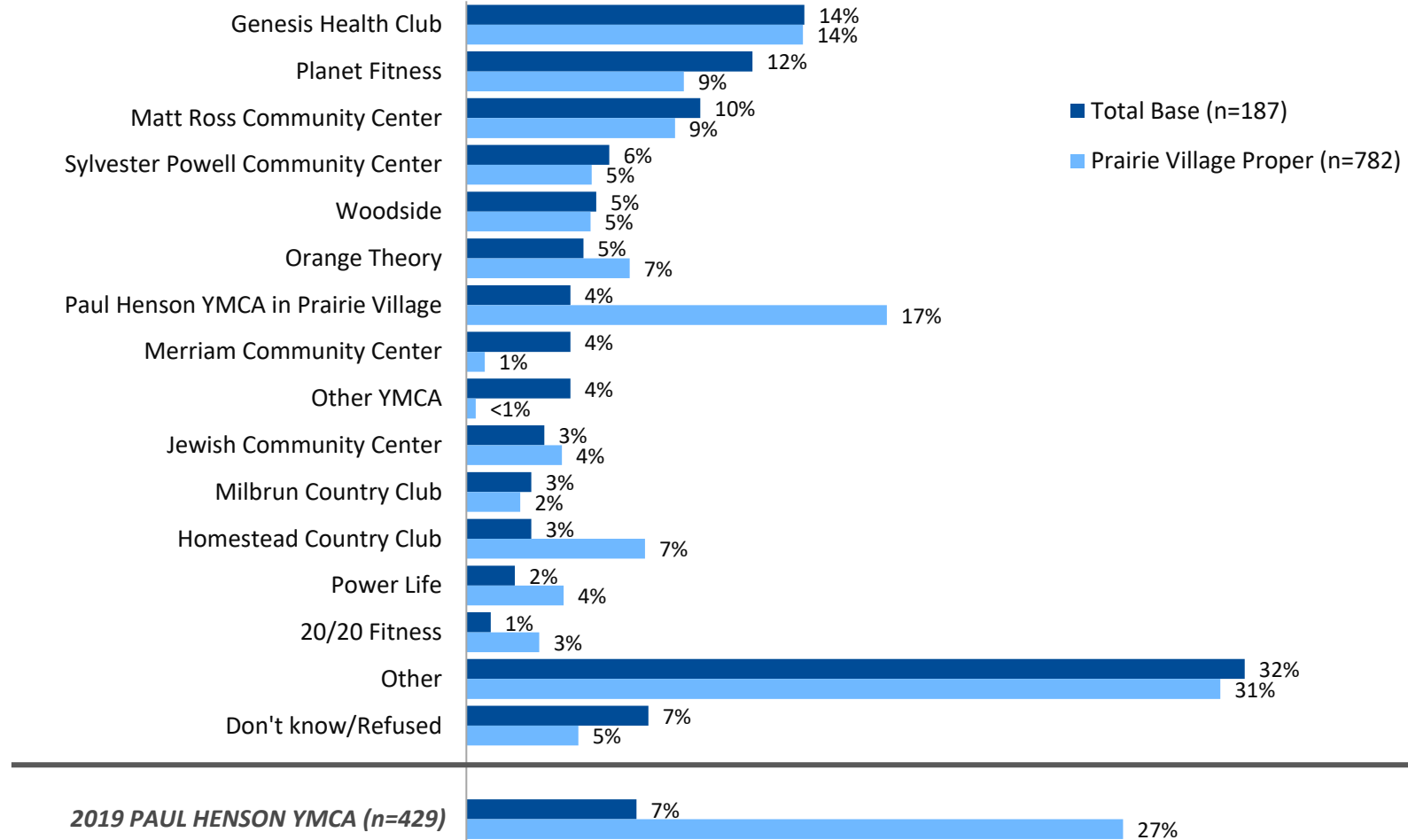
# Health Club/Fitness Center Membership Shares

Genesis Health Club holds the largest share of memberships when the total trade area is considered, followed closely by Planet Fitness and Matt Ross Community Center.

It is evident from these results that the market is rather fragmented, with many facilities competing for share when it comes to gym/fitness center memberships.

While Paul Henson YMCA has the greatest share of current memberships among those residing within the city limits of Prairie Village, its share has declined significantly since December 2019.

Since the proposed new facility will be replacing the Paul Henson YMCA, the extent to which a new Prairie Village Community Center and YMCA might “cannibalize” or take business away from other YMCA locations appears to be minimal.



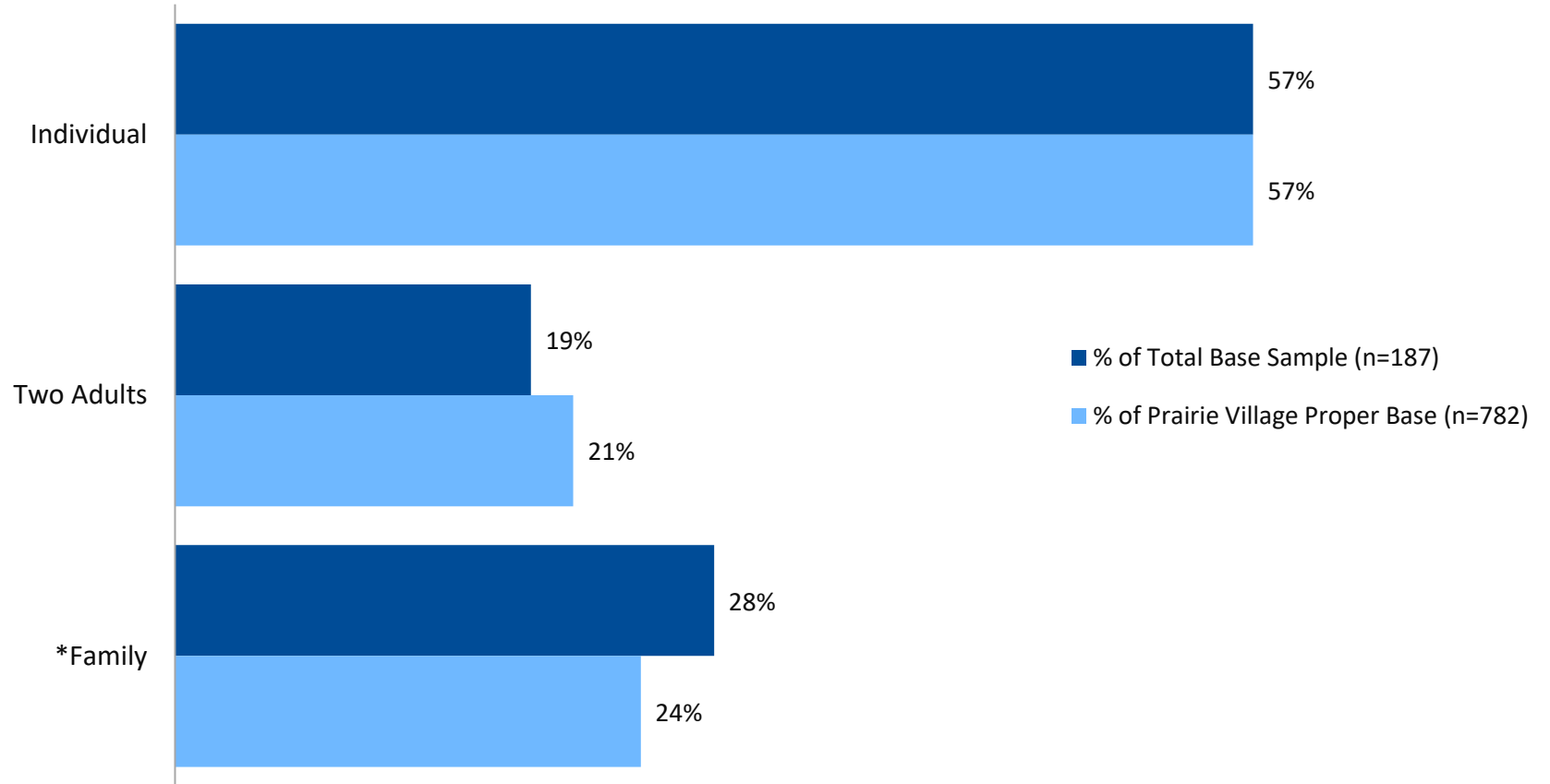
Base: Those with a current health club/fitness center membership (multiple replies accepted)  
(Reference Q3A)



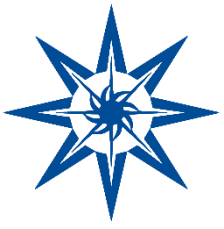
# Type Of Health Club/Fitness Center Memberships Possessed By Household

Over one-half of the households belonging to a health club possess an individual membership, while two adult (no children) memberships are far less common.

While not shown here, expected differences were found in these results by age, marital status, and whether children under 18 are present in the household (i.e., single, younger, and older residents are more likely to have individual memberships, while family memberships are more common among middle-aged residents with children).



\*Includes memberships for single parent plus dependent(s).  
Base: Those with a current health club/fitness center membership  
Multiple (3) replies accepted.  
(Reference: Q3B)

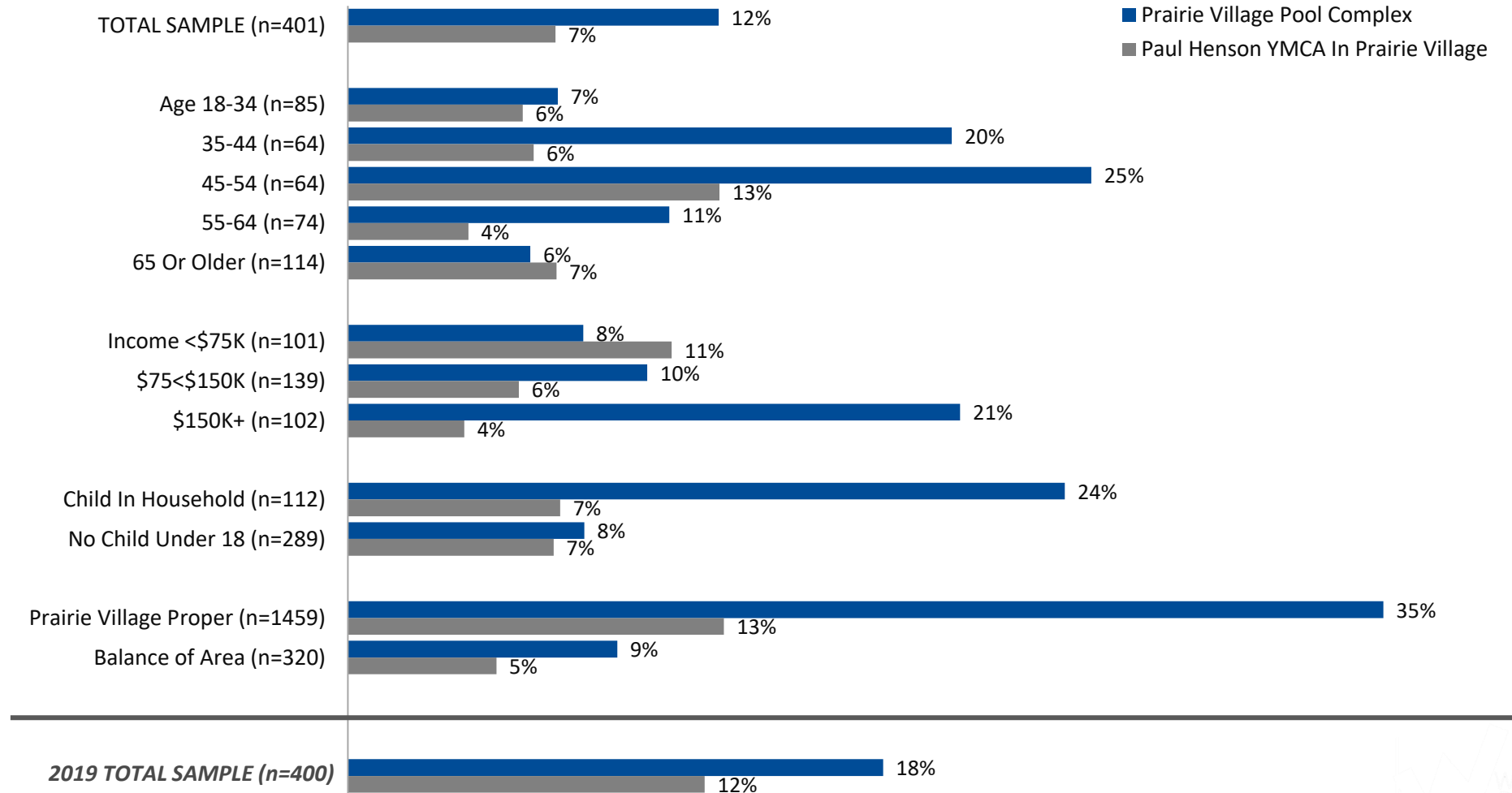


# Use Of Existing Prairie Village Facilities During The Past 12 Months

When the total trade area is considered, relatively small percentages of households have used either the Prairie Village Pool Complex or Paul Henson YMCA in the past 12 months. Use of both facilities appears to have declined since before the pandemic.

Some notable trends were found in these results across demographic categories. Use of the pool complex increases with age up to a point but drops off considerably at age 55 and older. As expected, the pool is also more often used by those with children under 18 at home. Higher income households are also more likely to have used the pool.

Not surprisingly, use of these facilities in the past year was also greater among those who reside in Prairie Village proper versus those in the balance of the area surveyed.



Base: Total sample segment  
(Reference Q4A-C)





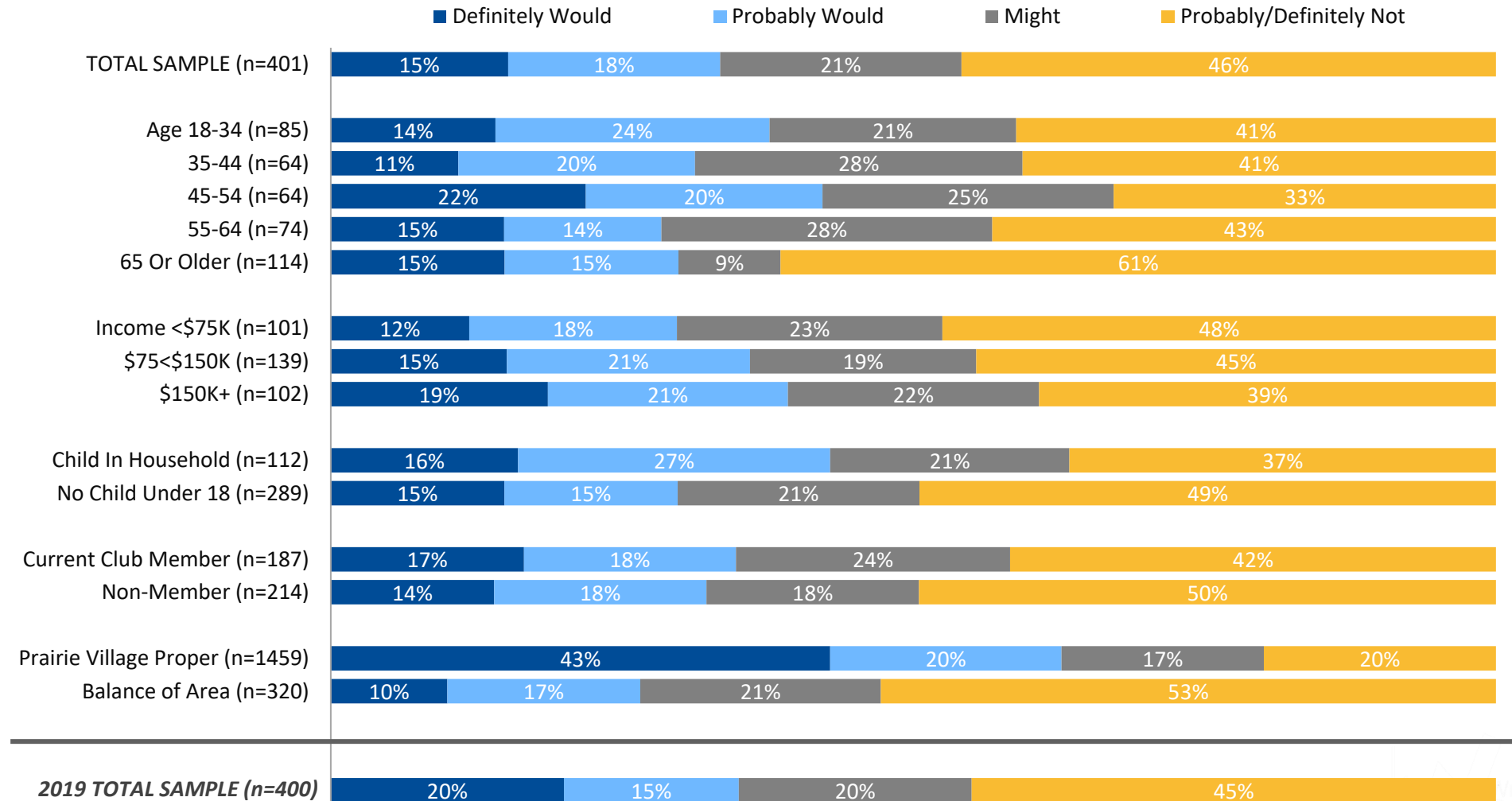
# Likelihood To Use New Prairie Village Community Center and YMCA (Assuming Reasonable Cost)

Based on the description provided, and assuming a reasonable cost, nearly one-third of respondents indicated they would *at least probably use* a new Prairie Village Community Center and YMCA, and this potential interest tracks closely to pre-pandemic levels.

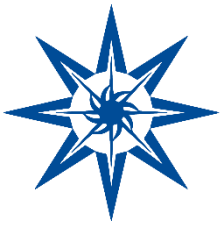
Openness to at least consider the proposed new facility is greatest among young families and those with higher household incomes.

It is encouraging to see that current health club or fitness center membership does not diminish potential interest in using the proposed new facility.

While not nearly as strong as those in Prairie Village proper, potential interest in using the new Community Center and YMCA among those residing in the balance of the trade area exists to a meaningful degree.



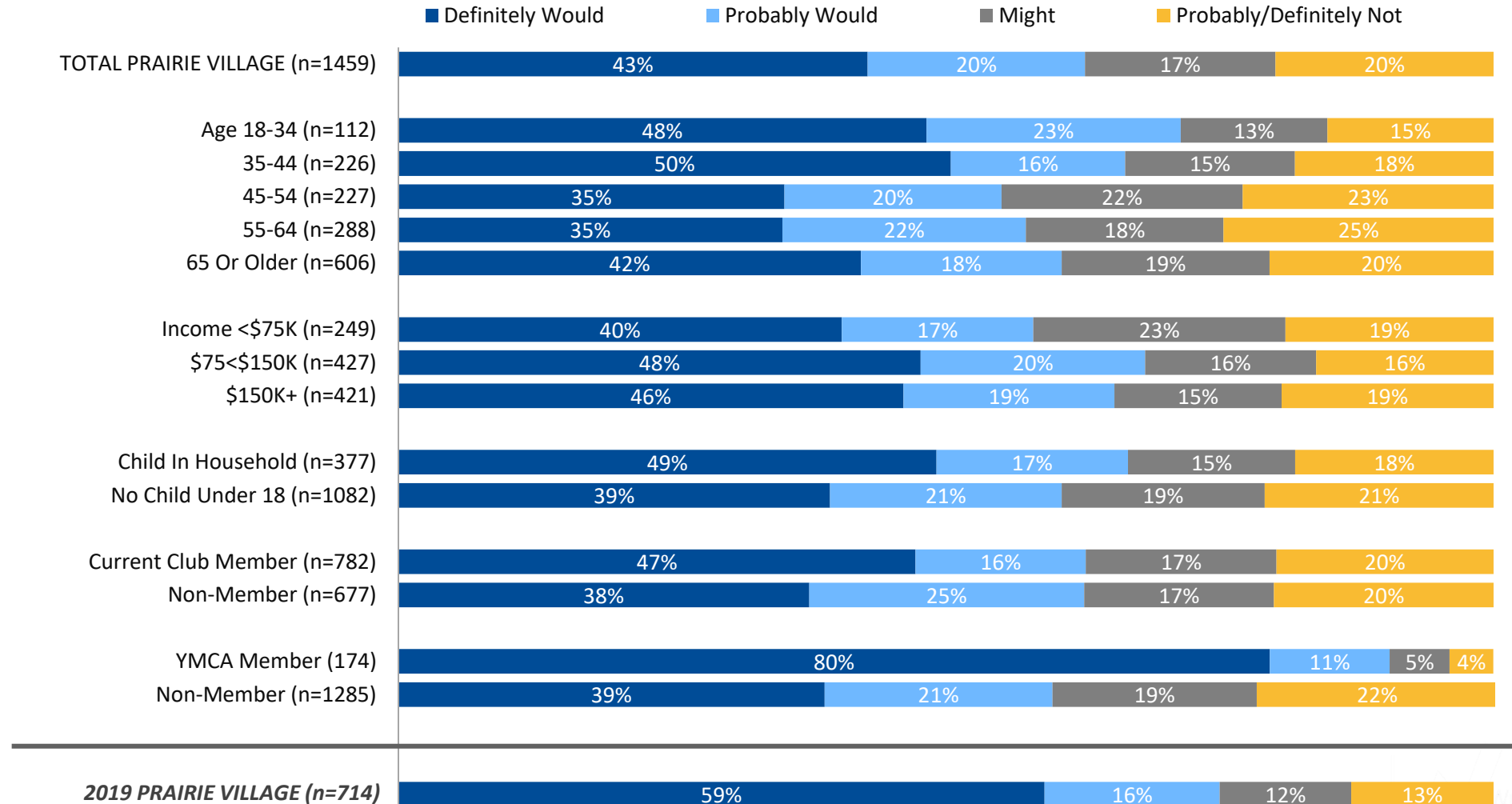
Base: Total sample segment  
(Reference Q6)



# Likelihood To Use New Prairie Village Community Center and YMCA – *Prairie Village Proper Residents Only*

Potential interest in the proposed new Community Center and YMCA among households in Prairie Village proper is quite strong “across the board,” with most residents open to at least considering using this facility, assuming a reasonable cost.

However, results here do show a notable decline in those stating they would “definitely” use this new facility today versus before the pandemic.



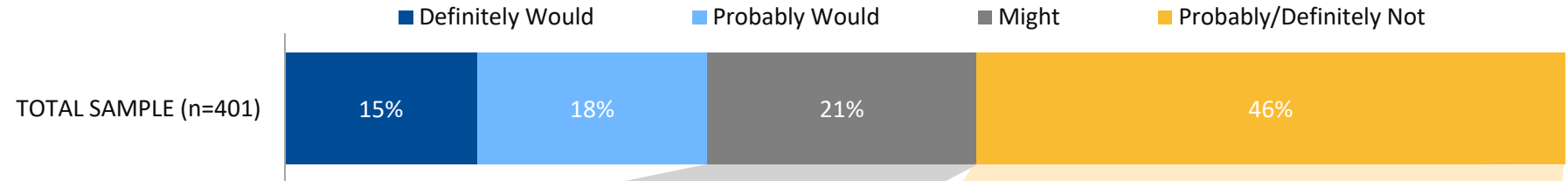
Base: Prairie Village residents only segments (Reference Q6)



# Volunteered Reasons For Might/Not Likely To Use The New Prairie Village Community Center and YMCA

Turning to what one's potential interest might depend on, not surprisingly price or cost-related factors were cited most often, followed by location/distance and the activities or programs offered. By comparison, no other single issue was volunteered especially often as having an impact on one's decision to use this new facility or not.

The most common reason volunteered for *not* being likely to use a new Prairie Village Community Center and YMCA was inconvenient location (too far away) or simply having no need or interest, which in some cases is due to belonging to or using another gym.



What Would Your Likelihood To Use The PV Community Center and YMCA Depend On? <i>VOLUNTEERED RESPONSES</i>	% Of Base Sample (n=83)
Price/Fees/Cost-Related	49%
Actual Distance/Location	27%
Activities/Programs Offered/Amenities	22%
Pool	8%
Convenience (Unspecified)	6%
Time Constraints	5%
Size/Capacity	5%
All Other Replies	20%
Refused/No Reason/Don't Know	4%

Why Are You Not Likely To Use The PV Community Center and YMCA? <i>VOLUNTEERED RESPONSES</i>	% Of Base Sample (n=184)
Inconvenient Location/Too Far	50%
No Need/No Interest	30%
Belong Elsewhere (Use Another Gym)	17%
Age	5%
Cost	4%
No Use For	4%
In Home Gym/Building Facilities	3%
All Other Replies	8%
Refused/No Reason	2%

Multiple (3) replies accepted.  
Base: Total sample segment  
(Reference Q6A-6B)



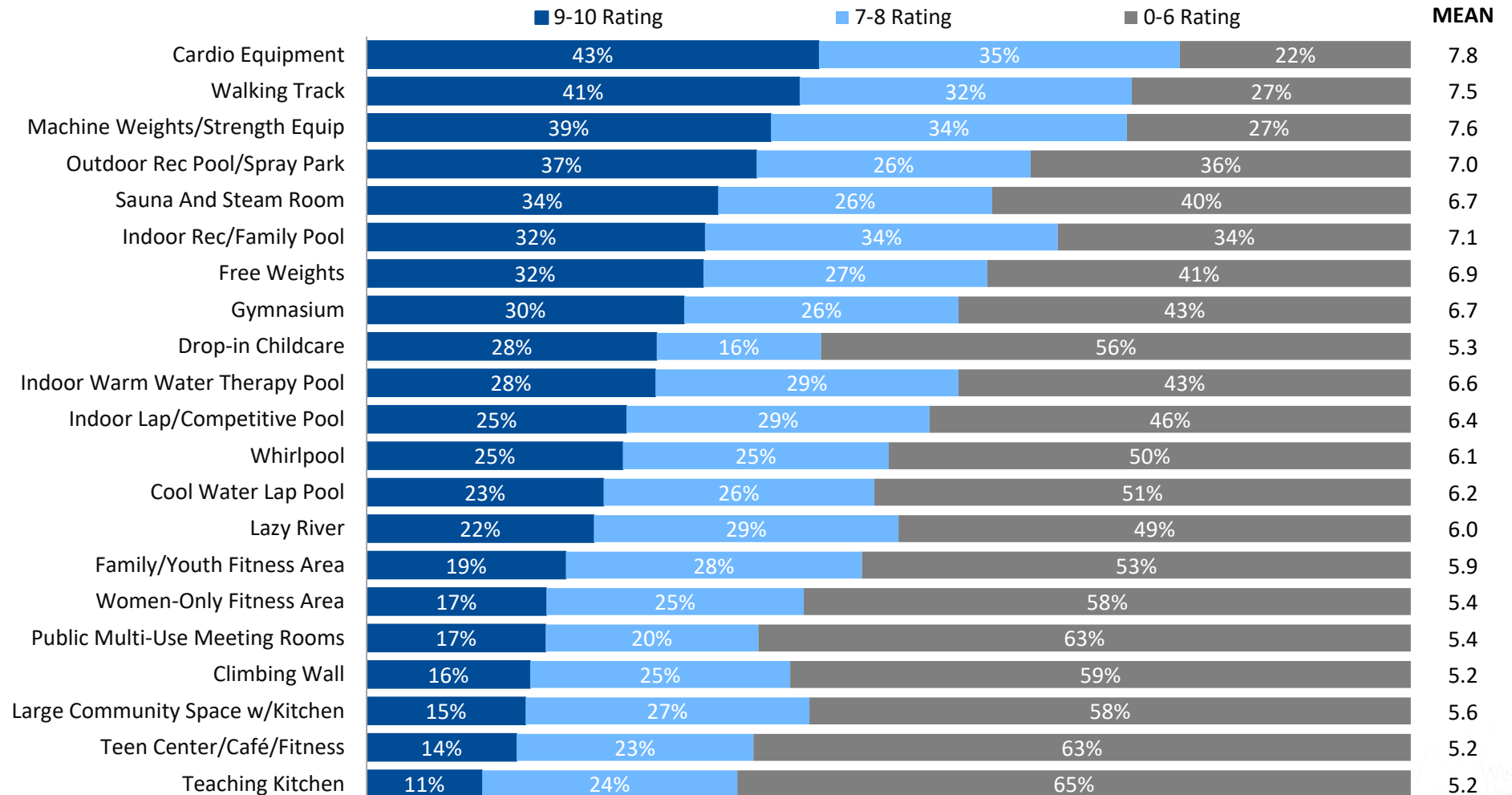
# Importance Of Possible Features/Amenities To Include In Community Center – Among Potential Interest Segment

Relatively speaking, cardio equipment, walking track, and machine weights/strength equipment are the most important features and amenities to include in the new community center, followed by an outdoor and/or indoor recreation pool.

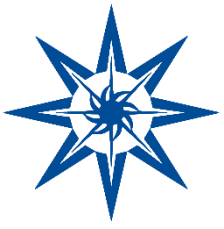
Of the various pool/water options evaluated, it appears that potential patrons place somewhat greater importance on recreation pools (indoor and outdoor) when compared to warm water therapy, lap/competitive, and cool water lap pools, or a lazy river.

As perhaps expected, features such as a teaching kitchen, teen center (with computers, café, etc.), climbing wall, meeting or community rooms, and women-only fitness area are less likely to have widespread appeal and therefore were rated relatively lower in importance.

SCALE: 0 = NOT AT ALL IMPORTANT to 10 = EXTREMELY IMPORTANT



Base: Those who at least might use new facility, able to rate (n≈217). (Reference Q7)

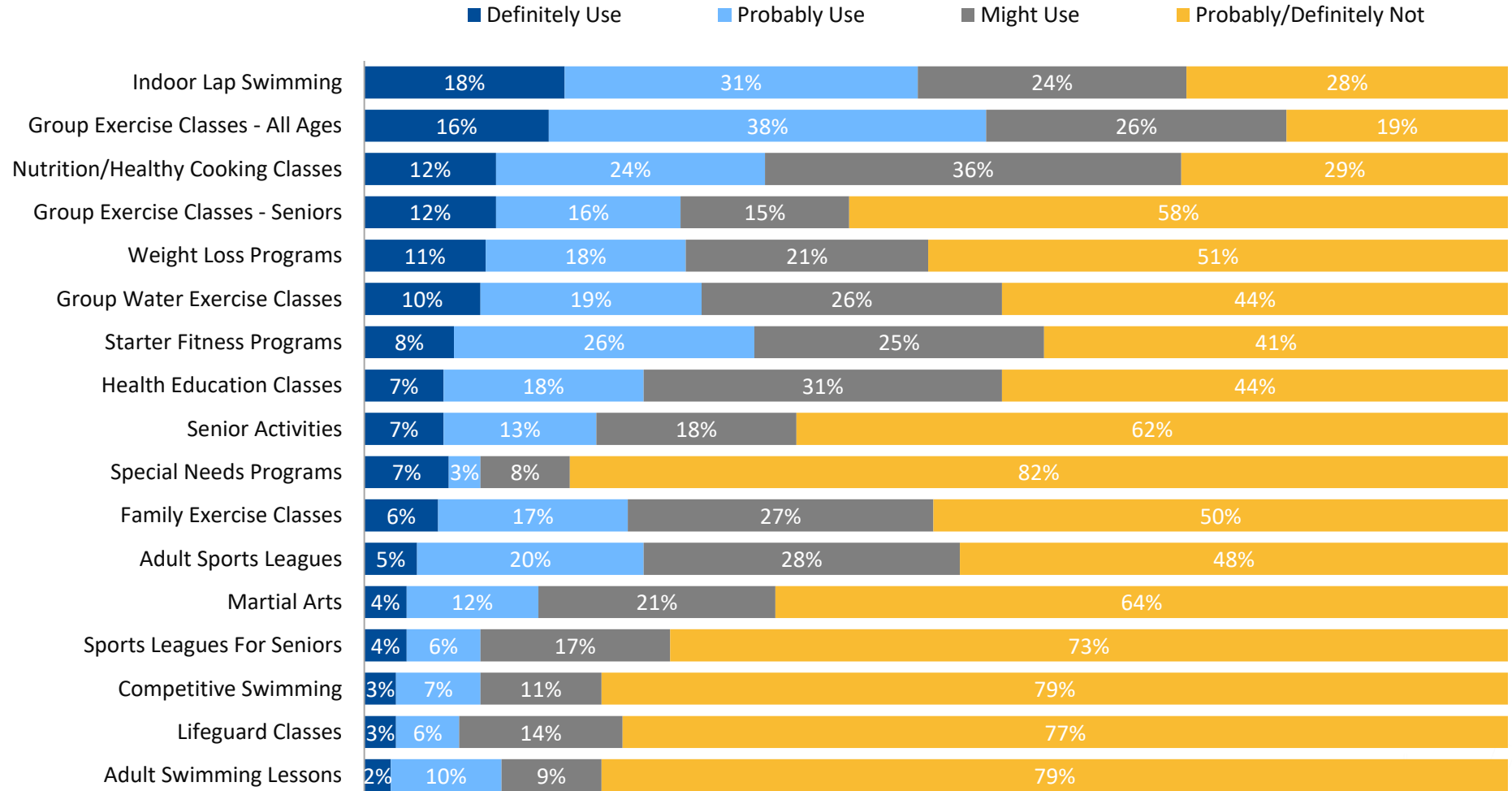


# Likelihood To Use Selected Programs/Services – Among Potential Interest Segment

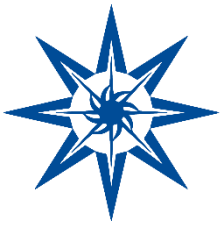
Relatively speaking, likely usage appears to be strongest for indoor lap swimming and group exercise classes for all ages.

Nutrition/healthy cooking classes, group exercise classes for seniors, weight loss programs, group water exercise classes, and starter fitness programs also have rather broad appeal among this potential interest segment.

At the other end of the continuum, and as might be expected, potential interest appears to be far narrower for adult swimming lessons, lifeguard classes, competitive swimming, and sports leagues for seniors. That is not to say the demand for these services is non-existent, but rather use of these programs will likely be more limited, if offered.



Base: Those who at least might use new facility (n=217).  
(Reference Q8)

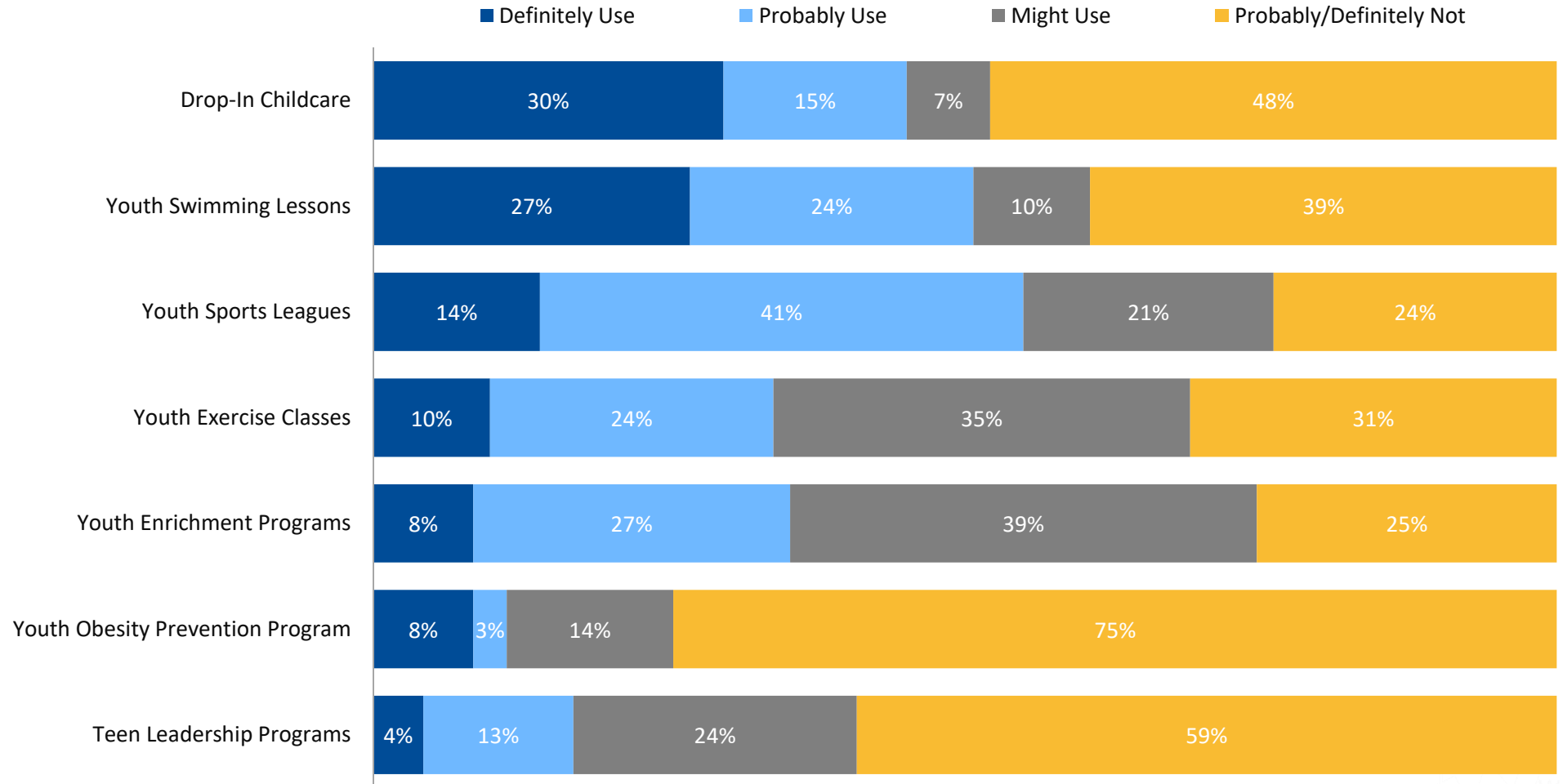


# Likelihood To Use Selected Youth Programs/Services – Among Potential Interest Segment With Children <18

Drop-in childcare (while parents work out), youth swimming lessons, and youth sports leagues have broad appeal among the potential interest segment with children under 18 in the household.

While not quite as strong, potential interest in youth exercise classes and enrichment programs are also notable when those who “might” use these programs are considered.

Drop-in childcare tends to fall at one end of the scale or the other, suggesting that those who need it (i.e., have younger children) would likely use it, if offered.



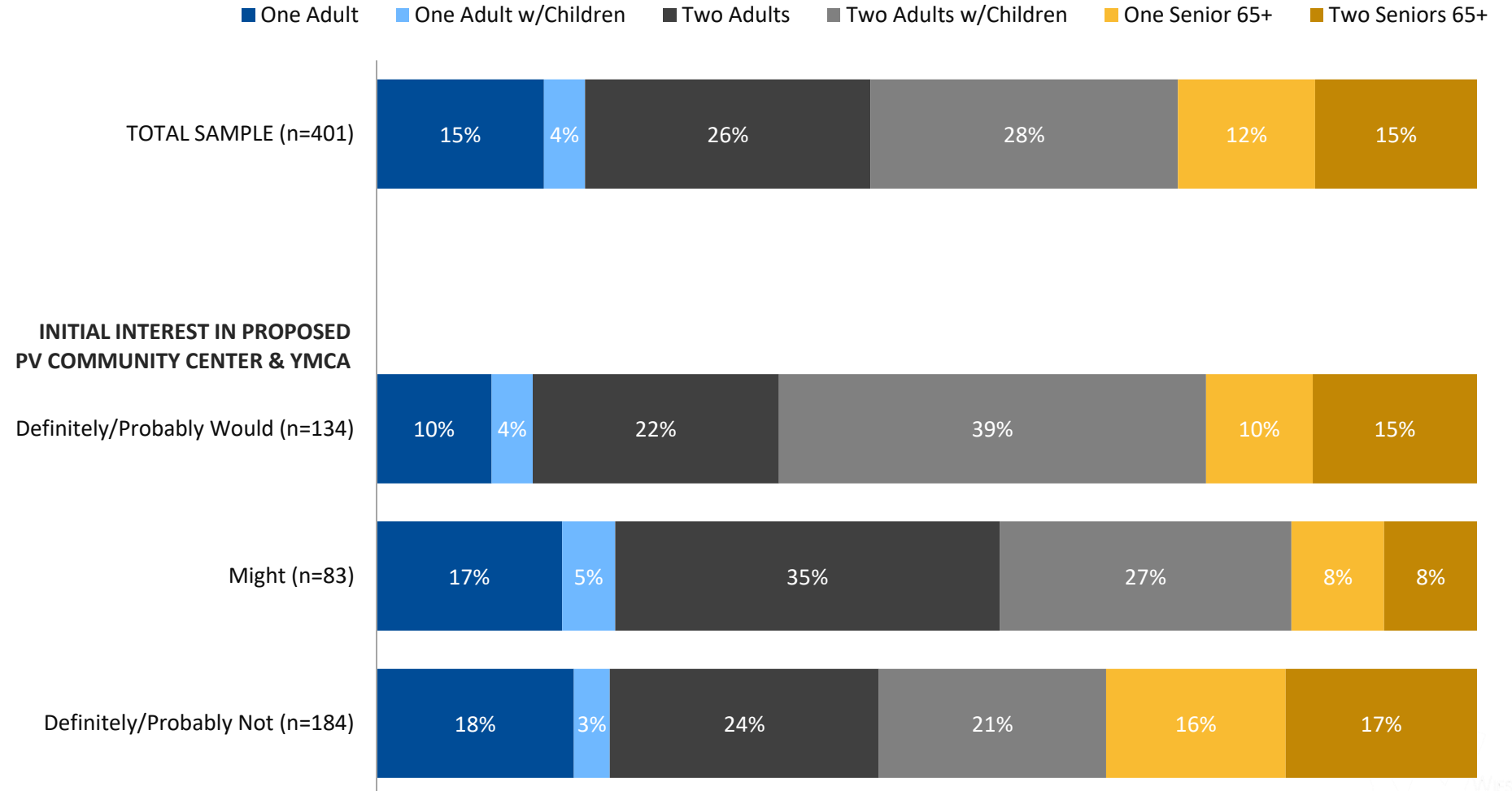
Base: Those with children under 18 in the household who at least might use the new facility (n=71)  
(Reference Q8)



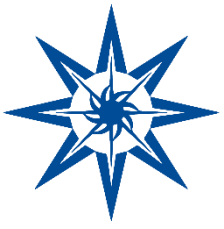
# Type Of Membership That Best Describes Household (Regardless Of Interest)

While earlier results showed that the largest share of gym membership types that already exist in this market are for individuals, potential memberships for the proposed Prairie Village Community Center and YMCA are far more likely to come from households comprised of two adults (with or without children.)

Replies to this question determined the type of membership respondents were asked to consider when measuring price sensitivity, and these results follow.



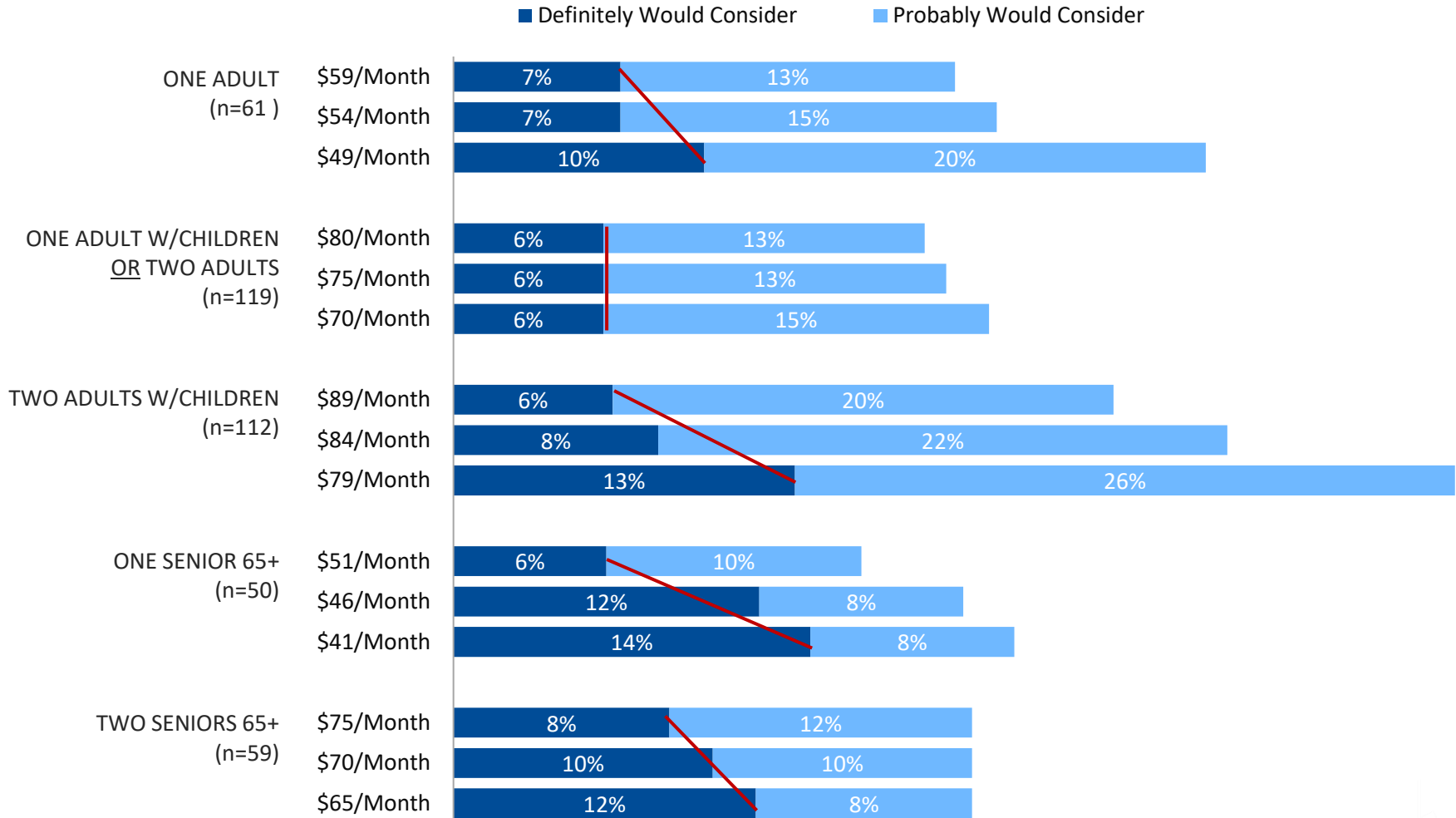
Base: Total sample segment  
(Reference Q9)



# Likelihood To Consider PV Community Center And YMCA At Specified Price Points By Membership Type

Although based on smaller sample sizes, it appears that the greatest price sensitivity exists among those most likely to consider a membership for two adults with children or for one senior 65+, while demand for two adult memberships (or one adult with children) is more price inelastic.

For all membership types, however, perhaps offering an introductory rate at a lower price point might be worth considering to encourage trial and attract a greater share of the market.



Base: Total sample segment  
(Reference Q10)



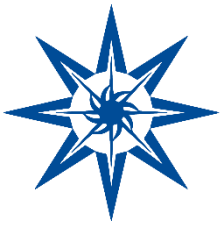


# Households Projected To Join PV Community Center And YMCA By Membership Type At Various Price Points

The projections presented here provide what are intended to be conservative, moderate, and aggressive estimates of potential membership units for the Prairie Village Community Center and YMCA, based on stated intentions (factored down to predict behavior).

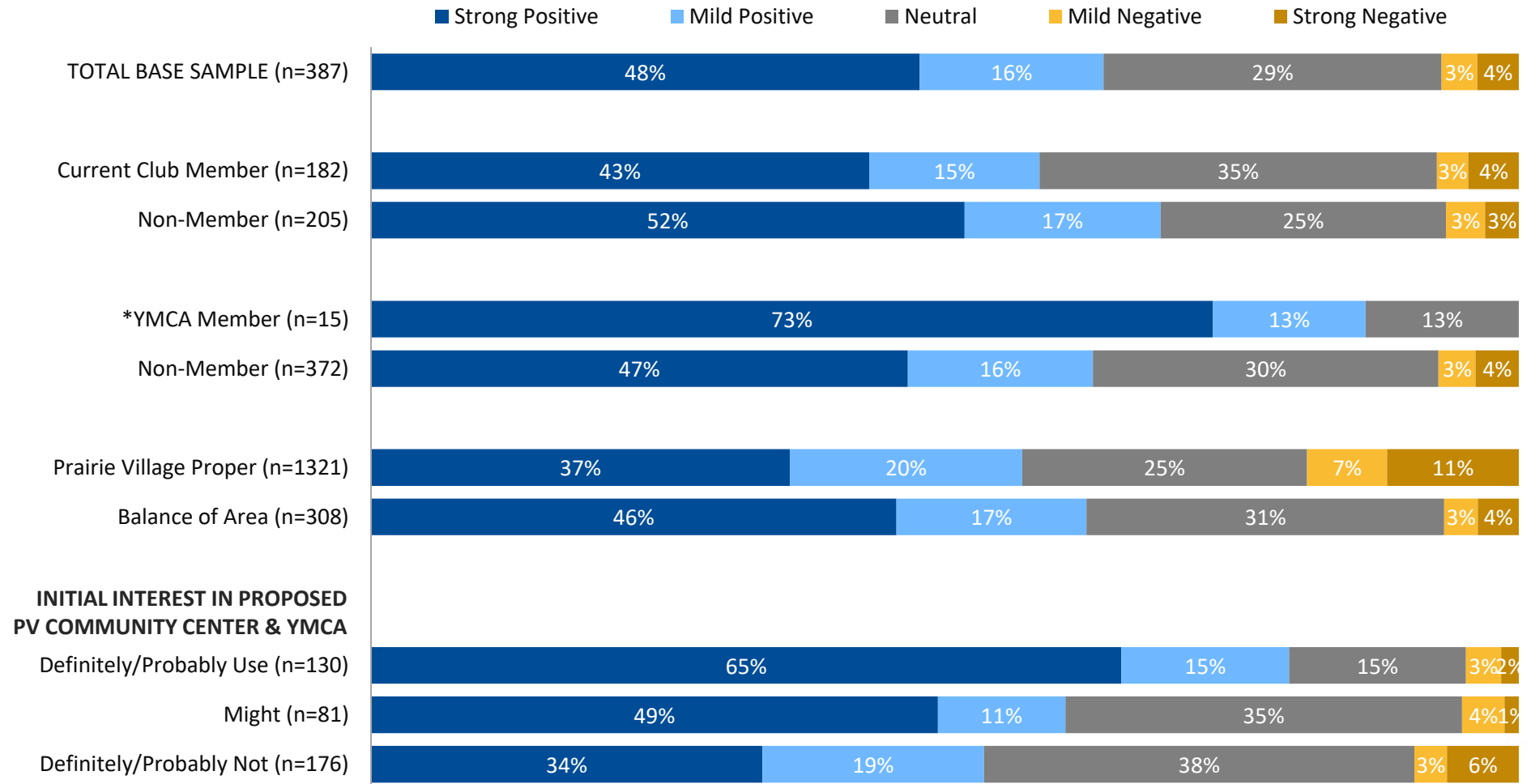
Researchers tend to agree that when measuring potential interest, the “definitely would” responses are the best metric for predicting actual behavior. However, the ability to convert even those intentions into actual enrollment and/or program participation will depend on several factors, and these memberships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

TYPE OF MEMBERSHIP	% Of Total By Type	# Of HH 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	15%	12,491	262 2.1%	262 2.1%	375 3.0%	437 3.5%	450 3.6%	625 5.0%	600 4.8%	625 5.0%	874 7.0%
One Adult With Children	4%	3,331	70 2.1%	70 2.1%	70 2.1%	117 3.5%	117 3.5%	117 3.5%	160 4.8%	160 4.8%	160 4.8%
Two Adults	26%	21,650	390 1.8%	390 1.8%	390 1.8%	671 3.1%	671 3.1%	693 3.2%	931 4.3%	931 4.3%	974 4.5%
Two Adults With Children	28%	23,316	420 1.8%	560 2.4%	909 3.9%	793 3.4%	1003 4.3%	1516 6.5%	1166 5.0%	1446 6.2%	2122 9.1%
One Senior 65+	12%	9,992	180 1.8%	360 3.6%	420 4.2%	290 2.9%	520 5.2%	600 6.0%	400 4.0%	679 6.8%	779 7.8%
Two Seniors 65+	15%	12,491	300 2.4%	375 3.0%	450 3.6%	475 3.8%	562 4.5%	650 5.2%	650 5.2%	749 6.0%	849 6.8%
<b>TOTAL</b>	<b>100%</b>	<b>83,270</b>	<b>1,622 1.9%</b>	<b>2,017 2.4%</b>	<b>2,614 3.1%</b>	<b>2,783 3.3%</b>	<b>3,323 4.0%</b>	<b>4,201 5.0%</b>	<b>3,907 4.7%</b>	<b>4,590 5.5%</b>	<b>5,758 6.9%</b>
<b>Average Monthly Fee (All Types):</b>			<b>\$74.80</b>	<b>\$68.67</b>	<b>\$64.60</b>	<b>\$75.39</b>	<b>\$69.49</b>	<b>\$65.21</b>	<b>\$75.66</b>	<b>\$69.87</b>	<b>\$65.47</b>
<b>Projected Revenue Per Month:</b>			<b>\$121,318</b>	<b>\$138,498</b>	<b>\$168,856</b>	<b>\$209,815</b>	<b>\$230,912</b>	<b>\$273,939</b>	<b>\$295,604</b>	<b>\$320,703</b>	<b>\$376,968</b>



# Influence Of YMCA's Involvement In New Prairie Village Community Center

Results here would indicate that YMCA's involvement as a financial contributor and operating partner for the new Prairie Village Community Center is viewed to be overwhelmingly positive, especially among those most likely to use the proposed facility. While some took a neutral stance, very few residents would view the YMCA partnership to be a negative.



\*CAUTION: Small Sample Size.

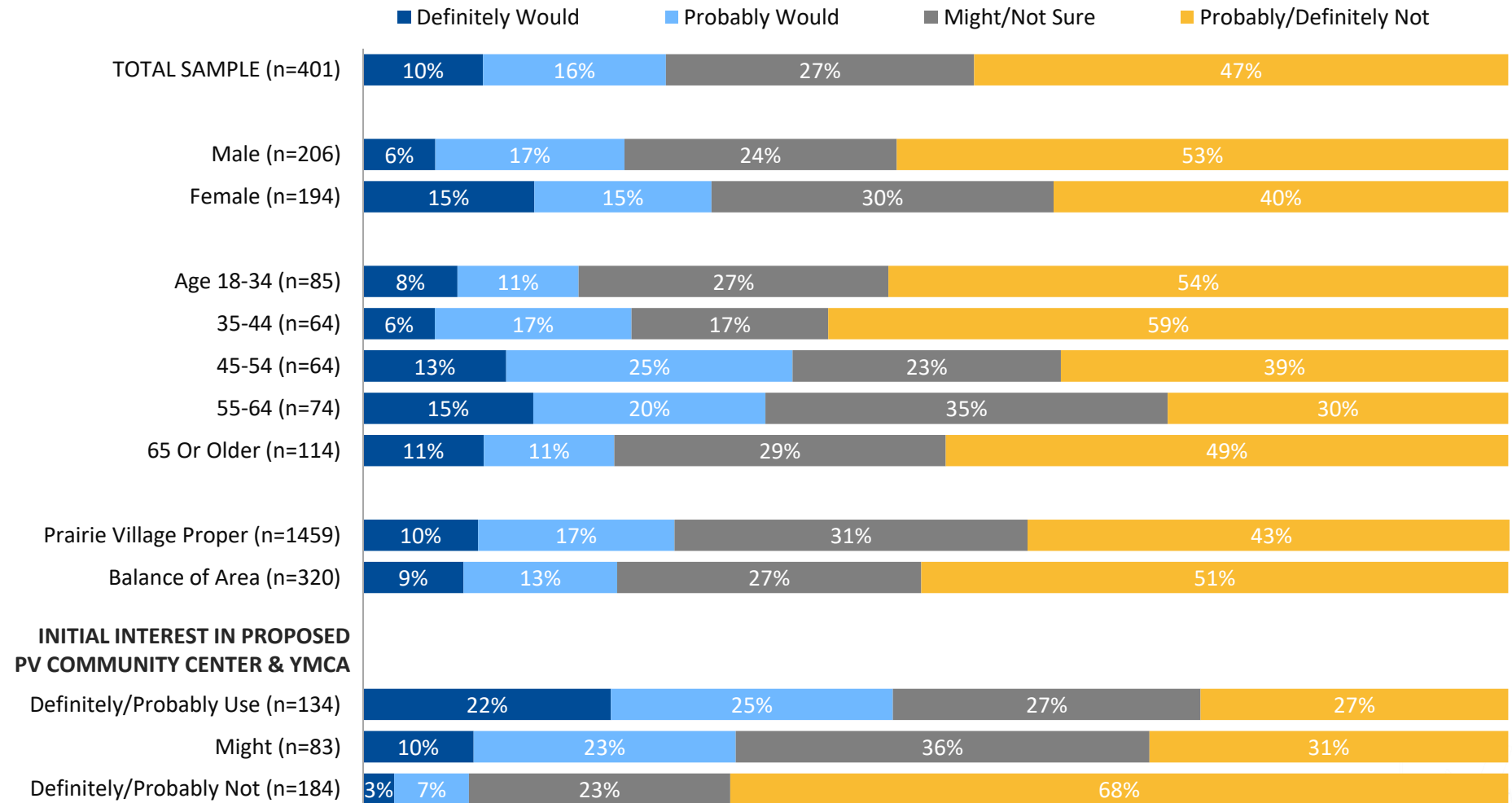
Base: Total sample segment, responding (Reference Q11)



# Likelihood To Use Medical-Based Programs At New Prairie Village Community Center And YMCA

The likelihood to use medical-based programs designed to prevent or help manage chronic diseases or health issues, if offered at the new Community Center, was also explored.

Results here suggest that potential interest in medical-based programs exists to a meaningful degree, particularly among those already predisposed to using the new facility. Females, residents aged 45-64, and those residing in Prairie Village proper are also more likely than their respective counterparts to use these types of programs.



Base: Total sample segment  
(Reference Q11A)

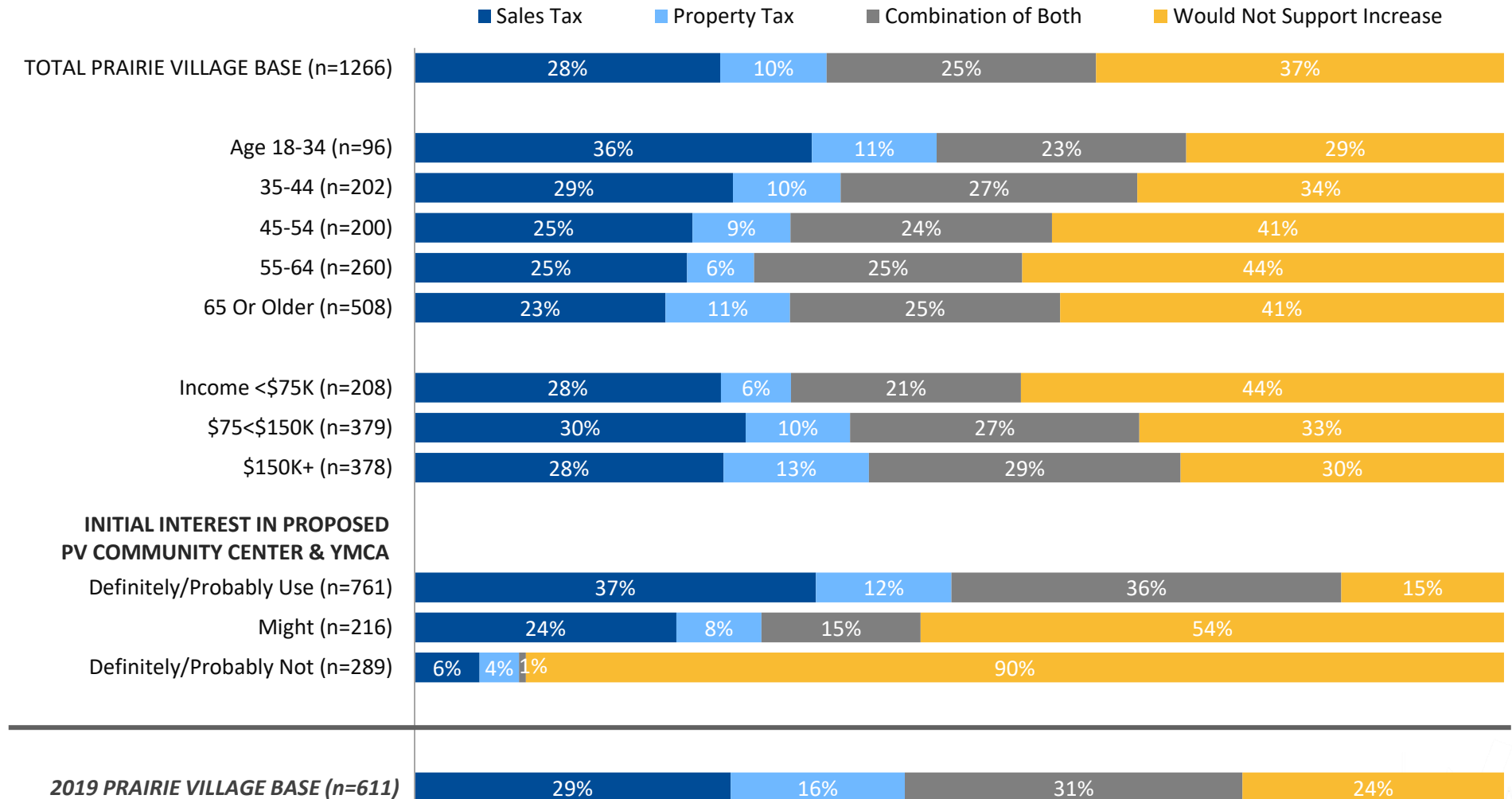


# Type Of Tax Change Most Likely To Support In Order To Construct The Proposed Community Center And YMCA

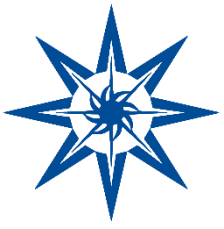
Later in the survey, those living within the city limits of Prairie Village were informed that some type of tax increase would be needed (for a period of up to 30 years) to fund construction of the Prairie Village Community Center and YMCA being proposed. Assuming the amount was reasonable, opinions were mixed as to the type of tax change one would be most likely to support.

For the most part, an increase in the sales tax was preferred over a property tax increase, but a combination of the two was also a popular choice, particularly among those with higher incomes and those more inclined to use the facility.

Results here would project that over one-third (37%) of all Prairie Village residents would not support a tax increase of any type (versus 24% in 2019) and as expected, this opposition comes largely from those who are less inclined to use the Community Center and YMCA.

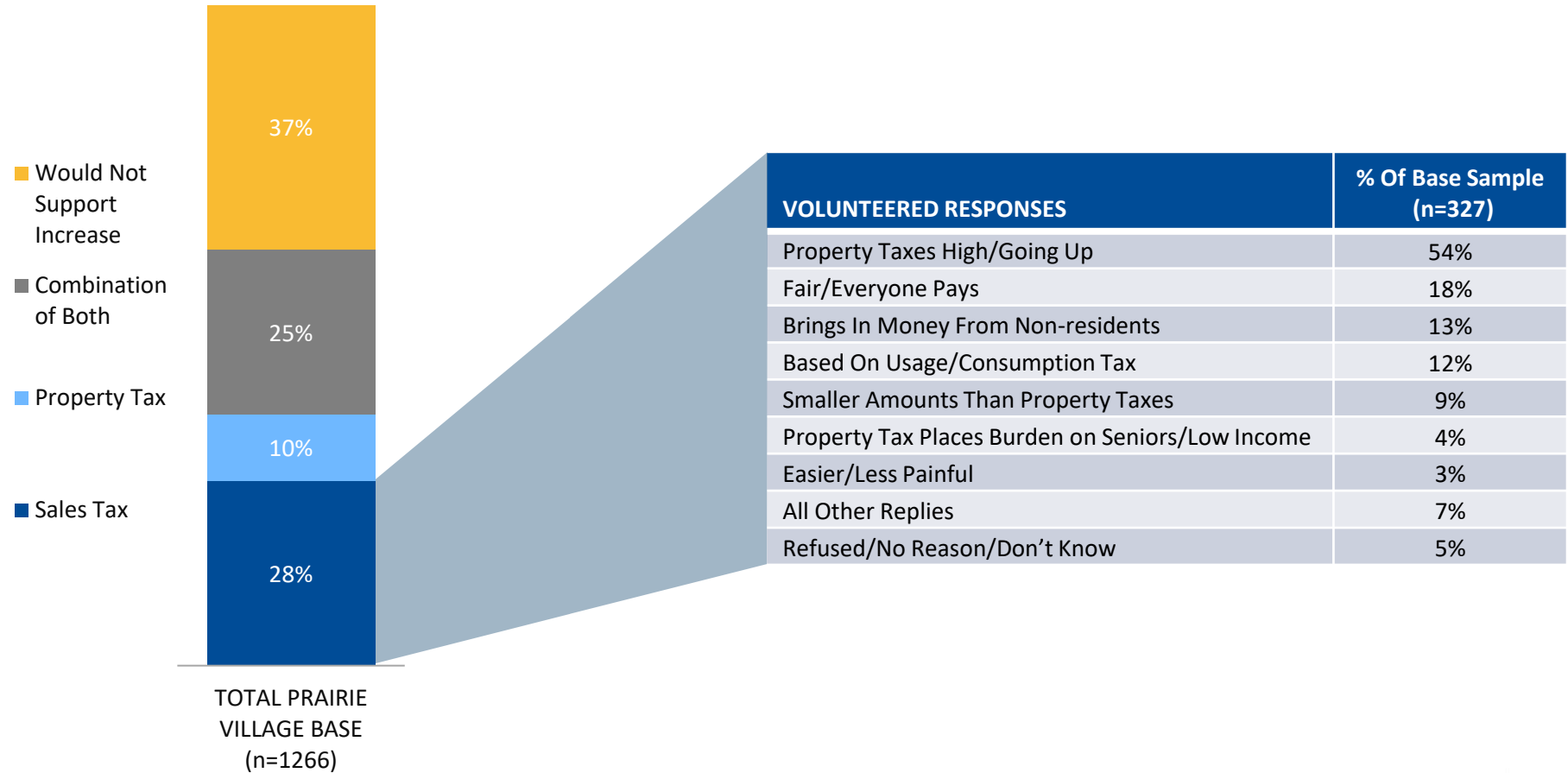


Base: Prairie Village residents only, those responding (Reference Q19)

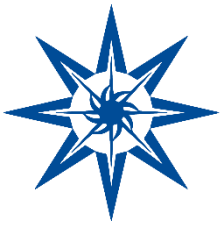


# Reasons For Preferring Sales Tax Funding Option

Reasons for favoring a sales tax increase were often related to perceptions that property taxes are too high or going up already, followed at a distance by perceptions that this option is more equitable (fair/everyone pays, based on usage/consumption tax) and would bring in money from non-residents.

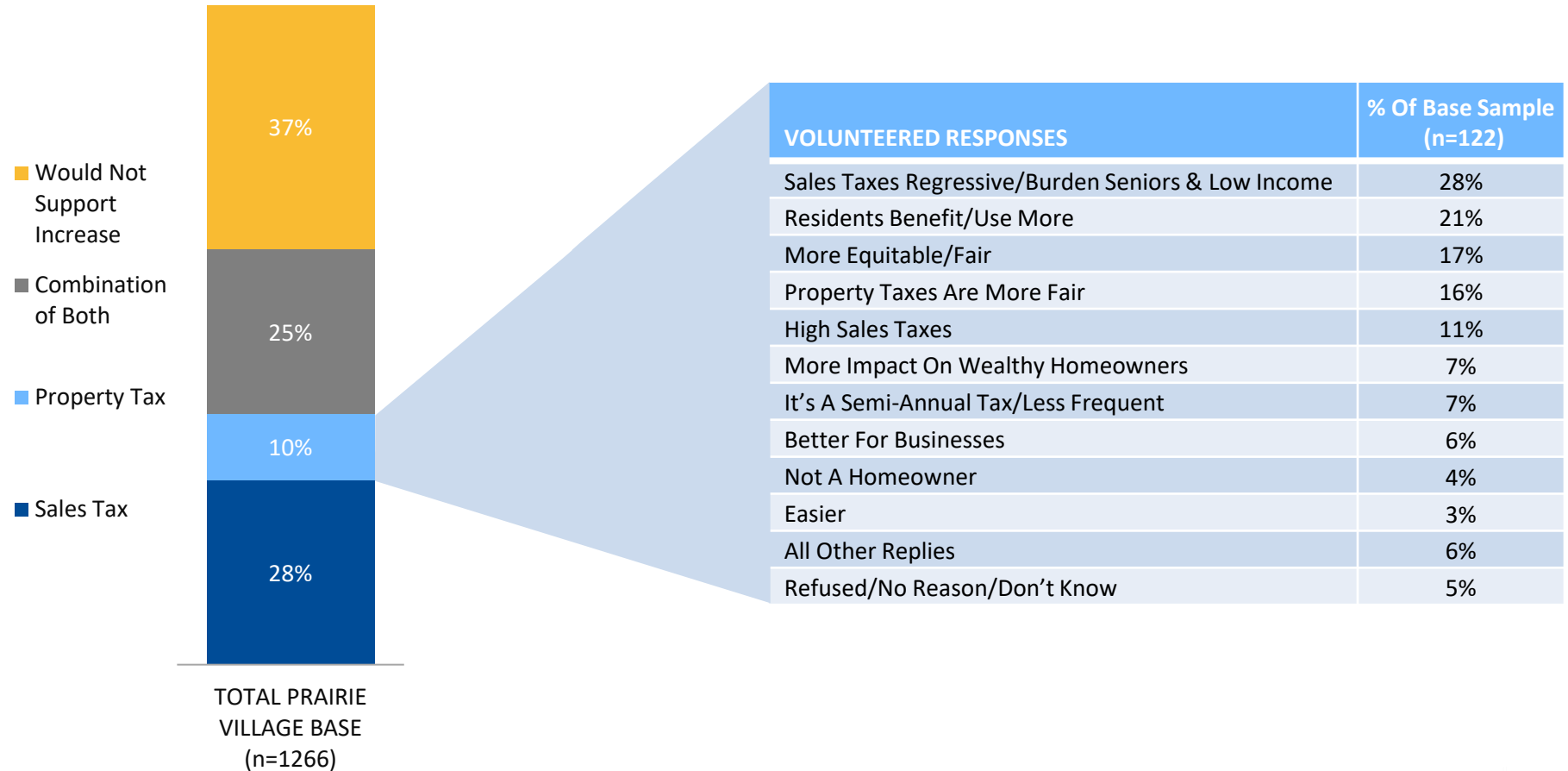


Multiple (3) replies accepted.  
 Base: Prairie Village residents only, who prefer sales tax funding option (Reference Q19A)



# Reasons For Preferring Property Tax Funding Option

Perceptions that the sales taxes are high or a burden for seniors and low-income residents, coupled with the belief that a property tax increase would be more equitable (either in general or because residents will be the ones using the facility) account for the primary reasons why the property tax option was preferred by those selecting this funding source.



Multiple (3) replies accepted.  
 Base: Prairie Village residents only, who prefer property tax funding option (Reference Q19B)



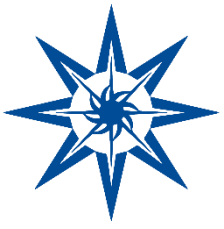
# Reasons For Preferring Combination Of Both Property And Sales Tax Funding Option

Those who prefer to use a combination of property and sales tax increases to fund construction of the new Prairie Village Community Center and YMCA do so primarily because that approach spreads out the tax burden to everyone and is viewed to be more fair.



Multiple (3) replies accepted.

Base: Prairie Village residents only, who prefer combination of both property and sales tax funding option (Reference Q19C)



# Reasons For Not Supporting A Tax Increase Of Any Type

Those who would not support a tax increase of any type volunteered several reasons for taking this stance, with most having to do with taxes being too high or excessive already. While not as prevalent, this lack of support also stems from perceptions by some that such a facility is not really needed.



Multiple (3) replies accepted.

Base: Prairie Village residents only, who do not support a tax increase of any type (Reference Q19D)



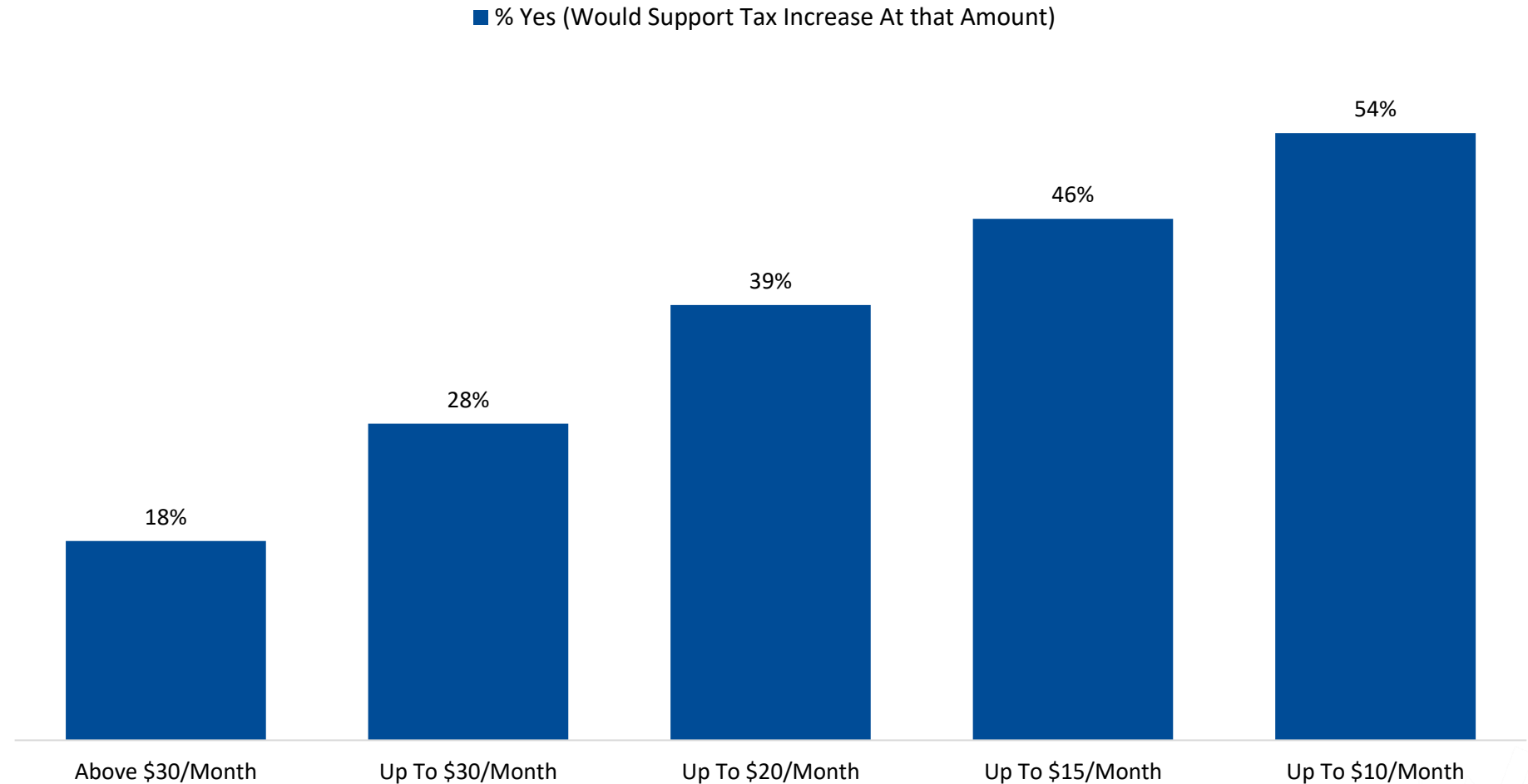


# Willingness To Support Tax Increase To Fund Construction Of PV Community Center And YMCA At Various Amounts

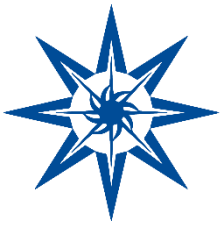
Results here provide some insight into what dollar amount (in increased taxes) Prairie Village residents might find palatable in order to fund the proposed Community Center and YMCA.

While only 18% of Prairie Village residents would be projected to support paying above \$30 per month in increased taxes, four in ten would be willing to pay up to \$20 per month.

As expected, acceptance of a tax increase to fund construction rises as the effective monthly dollar amount one would be required to pay declines.



Base: Prairie Village residents only (n=1459)  
(Reference Q20)

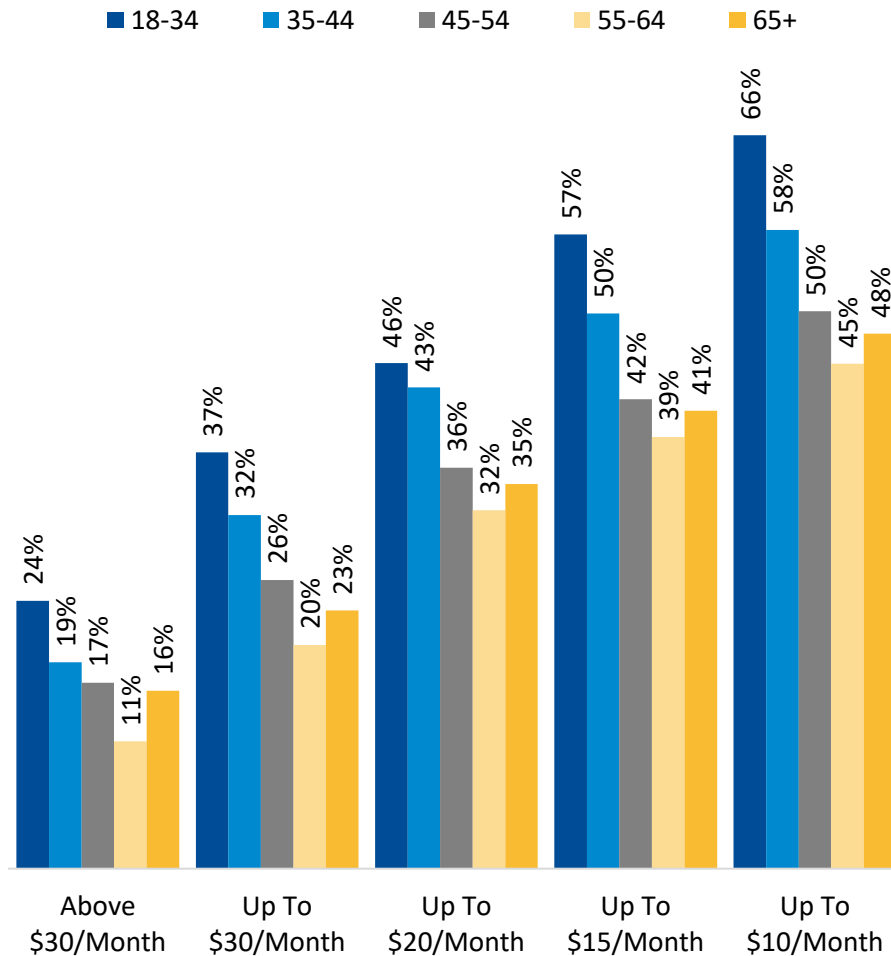


# Willingness To Support Tax Increase To Fund Construction Of PV Community Center And YMCA At Various Amounts

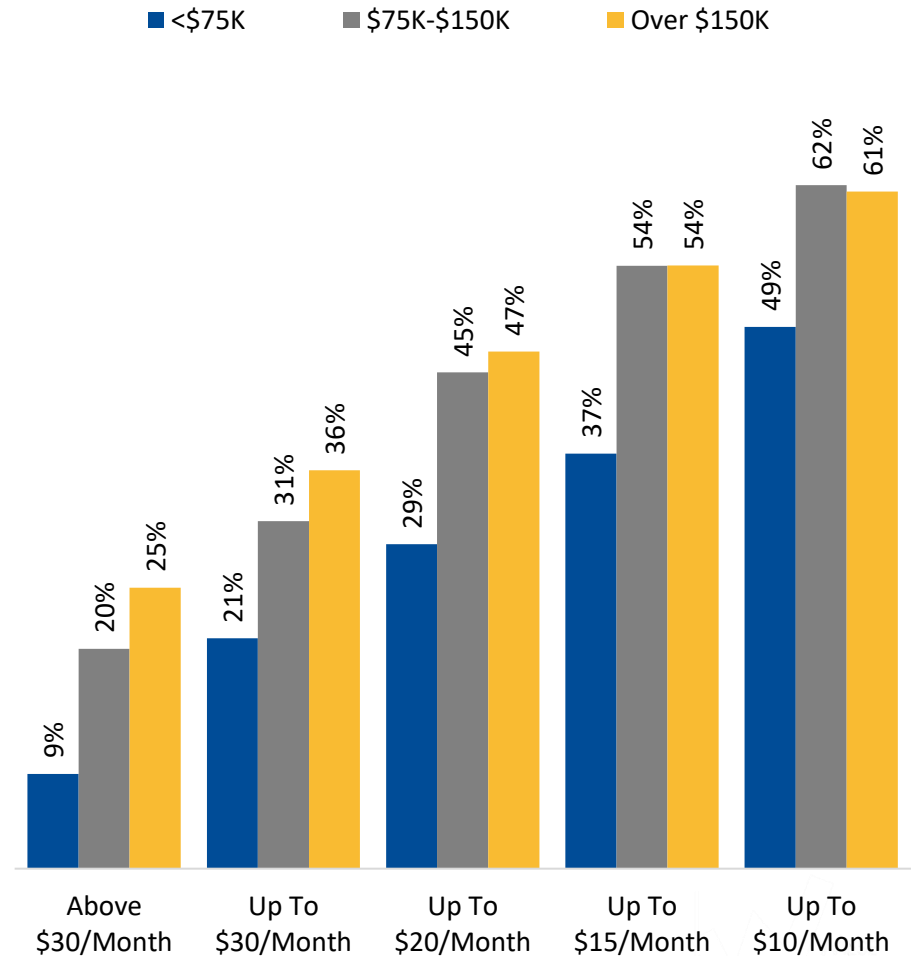
The level of acceptance or willingness to support a tax increase to fund construction of the proposed new facility varies significantly by age group and household income.

Regardless of the dollar amount, younger residents were more likely than their older counterparts to support a tax increase to fund construction. Levels of support were also notably greater among Prairie Village residents with relatively higher household incomes.

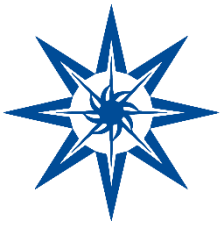
% Yes (Would Support Tax Increase At that Amount) – BY AGE GROUP



% Yes (Would Support Tax Increase At that Amount) – BY INCOME



Base: Prairie Village residents only  
(Reference Q20)

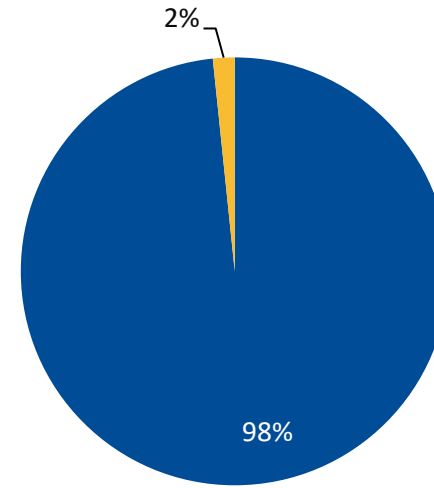


# Current Voter Registration And Likelihood To Vote On Issue If Special Mail-In Ballot Sent To Voters In Prairie Village

Nearly all Prairie Village residents (living within the city limits) surveyed claim to be registered to vote at this time. Further, fully 87% said they would “definitely” vote if they received a mail-in ballot on the issue of funding the new Prairie Village Community Center and YMCA.

CURRENTLY REGISTERED TO VOTE

- Yes
- No

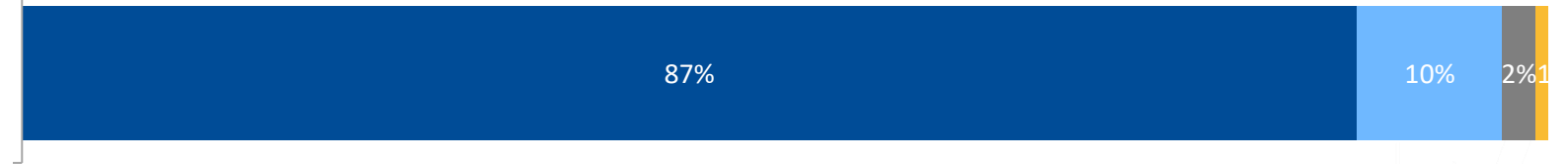


% of Total Base (n=1459)

LIKELIHOOD TO VOTE ON ISSUE IF RECEIVED SPECIAL MAIL-IN BALLOT

- Definitely Vote
- Probably Vote
- Might Vote
- Probably/Definitely Not Vote

TOTAL BASE (n=1459)

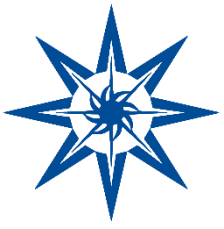


Base: Prairie Village residents only  
(Reference Q21-21A)





## **APPENDIX A: Weighting Procedure**



# Weighting Procedure (Prairie Village Proper Only)

Age Group	% of PV Population Age 25+	Obtained Prairie Village Sample	% of Obtained PV Sample	WEIGHT FACTOR	Weighted Prairie Village Sample	% of Weighted PV Sample
18 to 34*	22.56%	112	7.68%	<b>2.939</b>	329	22.56%
35 to 44	20.14%	226	15.49%	<b>1.300</b>	294	20.14%
45 to 54	16.90%	227	15.56%	<b>1.086</b>	247	16.90%
55 to 64	16.84%	288	19.74%	<b>0.853</b>	246	16.84%
65+	23.57%	606	41.54%	<b>0.567</b>	344	23.57%
<b>TOTAL PRAIRIE VILLAGE PROPER ONLY</b>	<b>100%</b>	<b>1459</b>	<b>100%</b>		<b>1459</b>	<b>100%</b>

\*Obtained respondents aged 18-24 included in the 25-34 cell for weighting purposes.



## **APPENDIX B: Postcard Survey Invite**





# Postcard Sent To All Prairie Village Households



PRAIRIE VILLAGE, KANSAS

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## WE WANT TO HEAR FROM YOU

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The City of Prairie Village, the YMCA of Greater Kansas City, and Johnson County Library are conducting a survey with residents of Prairie Village and want to include your opinions. Your participation and the results of this survey will be used to better understand the needs of our community.

### We'd like to hear from Prairie Village residents!

You have been selected to participate in our study and, by doing so, will help us better serve the needs of our community. One survey may be completed per household by anyone over the age of 18.

Completing this survey is quick and easy. Here's all you need to do:

1. Visit [prairievillagesurvey.com](http://prairievillagesurvey.com)
2. Enter your unique 6-digit PIN (located under your address on this postcard) to access the survey

If you do not have a computer or internet access, staff at any of the 14 Johnson County Library locations can help you. The local branch is located at 8100 Mission Road, Prairie Village.

We are also conducting interviews by phone so if you receive a call about this study, please let the caller know if you already completed the survey online. If you have any questions, contact us at 913-381-6464.

Thank you for sharing your opinions with us.



## **APPENDIX C: Survey Instrument**





# Survey Instrument

City of Prairie Village and YMCA of Greater Kansas City  
(2023-100) Market Sustainability Study – FINAL

Wiese Research Group  
January 31, 2023

## INTRODUCTION:

Good afternoon/evening, my name is \_\_\_ from Wiese Research, conducting a survey for the City of Prairie Village, YMCA, and Johnson County Library, to assess the community's needs post-Covid as they relate to wellness and recreation services. I can assure you; this is not a sales call; we just need your opinions. First...

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 READ BACK 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) (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)  
(OMITTED INSTRUCTION TO ASK IF CANNOT TELL BY VOICE)

- 1 Male
- 2 Female
- 3 (Other)

This call may be recorded for quality control purposes only.

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

- 1 Yes
- 2 No

City of Prairie Village/YMCA of Greater KC (2023-100)

PAGE 2

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 YMCA FULL NAME & 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-B)

- A. The Prairie Village pool complex?
- B. The Paul Henson YMCA in Prairie Village?
- C. (OMITTED)

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

City of Prairie Village/YMCA of Greater KC (2023-100)

PAGE 3

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 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 (KOR-inth) branch.

How likely would YOU OR OTHERS IN YOUR HOUSEHOLD be to use this new Prairie Village Community Center and YMCA, 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 Community Center and YMCA?  
(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 Community Center and YMCA 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 Prairie Village Community Center and YMCA 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-V) (REPEAT SCALE AS NEEDED)

- A Cardio equipment
- B Climbing wall
- C (OMITTED)
- 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



# Survey Instrument

- 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. (OMITTED)

- 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 Prairie Village Community Center and YMCA. 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 or using the proposed Prairie Village Community Center and YMCA, which of the following types of memberships would BEST describe your household? (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+

10. How likely would you be to consider a membership for (INSERT Q9 REPLY) to this new Prairie Village Community Center and 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. (new) Whether you plan to use the new Prairie Village Community Center or not, would you say the YMCA involvement as a financial contributor and operating partner is a (READ RESPONSES)?

- 1 Strong positive
- 2 Mild positive
- 3 Neutral
- 4 Mild negative
- 5 or, Strong negative
- 6 (DO NOT READ) (NO IDEA / REFUSED)

11A. (was Q11) (READ SLOWLY) It's possible that this Prairie Village Community Center and YMCA 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 and 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 (DO NOT READ) (NOT SURE)

Q12-Q17. (OMITTED)



# Survey Instrument

City of Prairie Village/YMCA of Greater KC (2023-100)

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(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 Prairie Village Community Center and YMCA, 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) (CLARIFY AS NEEDED/RECORD SPECIFICS) (ACCEPT BUT DO NOT PROBE FOR MULTIPLE REASONS)

(IF Q19=2, ASK:) 19B. Why do you prefer the PROPERTY TAX funding option?  
(OPEN-ENDED) (CLARIFY AS NEEDED/RECORD SPECIFICS) (ACCEPT BUT DO NOT PROBE FOR MULTIPLE REASONS)

(IF Q19=3, ASK:) 19C. Why do you prefer the COMBINATION OF BOTH PROPERTY AND SALES TAX funding option?  
(OPEN-ENDED) (CLARIFY AS NEEDED/RECORD SPECIFICS) (ACCEPT BUT DO NOT PROBE FOR MULTIPLE REASONS)

(IF Q19=4, ASK:) 19D. Why would you NOT support a tax increase of any type?  
(OPEN-ENDED) (CLARIFY AS NEEDED/RECORD SPECIFICS) (ACCEPT BUT DO NOT PROBE FOR MULTIPLE REASONS)

(IF Q19=4, SKIP TO Q21. OTHERWISE ASK:)  
20. Again, in order to fund the construction of the proposed Prairie Village Community Center and YMCA, 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)

City of Prairie Village/YMCA of Greater KC (2023-100)

PAGE 8

21A. How likely are you to vote on this issue if there was a special mail-in ballot sent to all registered 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.

22. (OMITTED)

23. Do you own or rent your current residence? (OPEN-ENDED)

- 1 Own
- 2 Rent
- 3 (REFUSED)

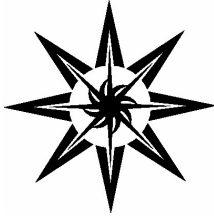
24. What is your current marital status? (READ RESPONSES)

- 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 2022...? (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.  
Thanks so much for your time and opinions – have a great evening/day!



**2023 Estimated Revenue and 2024 Preliminary General Fund Revenue Assumptions**

---

Attached please find the 2024 Preliminary General Fund Revenue Assumptions presentation.

Most revenues have rebounded in the wake of COVID-19, including recreation fees and special alcohol funding, although some (such as fines and fees) have not. Franchise fees appear to be softening as cable television subscriptions dwindle and the state legislature continues to weaken cities' ability to collect franchise fees on streaming and data services. Other bills being discussed at the state level could pose a risk to future collections of property and sales tax as well.

While in the last few years we budgeted conservatively on use tax as it was unknown if online shopping would remain at pandemic-era levels, it now appears that it is here to stay. Inflation has impacted both sales and use tax, resulting in growth. Due to these factors, at this point in time projections look positive for 2024 revenue assumptions.

However, rising costs and inflation also affect City expenditures. The effects of construction cost increases, labor shortages, health care inflation, and vehicle and equipment supply chain challenges will lead to increased expenditures for 2024.

The Preliminary General Fund Revenue Assumptions for the 2024 Budget include:

- A projected 9.3% increase in overall General Fund revenue (\$2.3m) over the 2023 budget, and a 2.6% growth over 2022 actuals, assuming the mill levy is held flat.
- The Johnson County Appraiser's office projects a total assessed value increase of 13.7% for 2023. If the mill levy were held flat, this would result in a projected 12.5% increase in 2024 property tax revenue over the 2023 budget with the mill levy at the 2023 rate of 18.309.

The change from the 2023 budgeted revenues to the 2024 budget is summarized below and will be discussed more in the presentation:

Category	2021 Actual	2022 Actual	2023 Budget	2023 Estimate	2024 Prelim
Property Taxes	8,667,704	9,138,008	9,637,244	9,657,244	10,846,020
Sales Taxes	6,098,163	6,746,703	5,675,000	6,555,000	6,305,000
Use Tax	2,458,591	2,795,524	1,940,000	2,610,000	2,510,000
Franchise Fees	1,871,269	2,034,826	1,871,239	1,987,500	1,795,500
Charges for Services	1,788,547	1,811,122	1,870,708	2,022,969	2,049,147
Other	3,797,399	4,091,620	4,002,164	3,988,043	3,808,785
<b>Total</b>	<b>\$ 24,681,674</b>	<b>\$ 26,617,803</b>	<b>\$ 24,996,355</b>	<b>\$ 26,820,756</b>	<b>\$ 27,314,452</b>

*As a reminder, the 2024 numbers are preliminary. As we continue to monitor revenues, projections may change.*

**ATTACHMENTS: Preliminary General Fund Revenue Assumptions presentation**

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Prepared by:  
Jason Hannaman  
Finance Director  
Date: April 10, 2023

# CITY OF PRAIRIE VILLAGE

## 2023 ESTIMATED REVENUE 2024 REVENUE FORECAST

April 17, 2023



# Significant Budget Considerations

2

- **Post-COVID economic environment and the American Rescue Plan**
  - Many revenue sources have recovered to, or past, pre-COVID levels. There still remain cost and supply challenges that haven't resolved since 2020.
  - Beginning to expend American Rescue Plan funds, starting with the major pool repair project
- **Property Taxes**
  - Represents approximately 40% of total revenues
  - Projections for 2024 budget are based on the 2023 mill levy rate of 18.309, which was a reduction from the prior year's rate of 19.322.
  - Valuation detail for properties in the Meadowbrook TIF area are not yet available, but appear to make up a small but noticeable part of the overall increase in assessed valuation. Reminder- the City does not receive those funds, they go to pay off special obligation bonds.
- **Franchise Fees**
  - Expected decrease due to ongoing trends, particularly in cable and telephone services



# Significant Budget Considerations

3

## ▣ Sales and Use Tax

- Slight decrease is projected due rapid increase in prior years. Although collections have been increasing, using a three-year average to be conservative
- Reliance on “top ten” businesses that make up approximately half of sales tax revenue
- Given state legislative discussions this session of removal of local food taxes, there is risk that this large component of sales tax collections could disappear without warning

## ▣ Motor Vehicle and Gas

- Used 2023 budget numbers (2024 estimates are not available yet)

## ▣ Cost pressures continuing

- Construction cost inflation continues to be elevated, with labor in short supply. We have had to re-scope bids in the last year in order to get more bidders
- Delivery timelines for heavy equipment are long and price increases are high
- Staffing has improved as a result of 2022 salary study implementation





# General Fund Preliminary Revenues

	<b>2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Budget</b>	<b>2023 Estimate</b>	<b>2024 Prelim</b>
Fund Balance 1/1	7,608,083	9,565,634	9,111,698	11,185,244	10,219,557
Property Taxes	8,667,704	9,138,008	9,637,244	9,657,244	10,846,020
Sales Taxes	6,098,163	6,746,703	5,675,000	6,555,000	6,305,000
Use Tax	2,458,591	2,795,524	1,940,000	2,610,000	2,510,000
Motor Vehicle Tax	798,074	790,061	862,039	793,000	803,000
Liquor Tax	140,134	176,393	157,091	175,000	175,000
Franchise Fees	1,871,269	2,034,826	1,871,239	1,987,500	1,795,500
Licenses & Permits	835,741	1,197,762	963,883	1,073,258	945,258
Charges for Services	1,788,547	1,811,122	1,870,708	2,022,969	2,049,147
Fines & Fees	829,111	600,977	758,700	607,900	608,700
Recreational Fees	414,560	479,401	400,350	408,450	408,800
Interest on Investments	17,301	60,866	113,622	200,000	118,192
Miscellaneous	162,477	186,162	146,479	130,435	149,835
Transfer from Stormwater	600,000	600,000	600,000	600,000	600,000
<b>Total Revenue</b>	<b>\$24,681,674</b>	<b>\$26,617,803</b>	<b>\$24,996,355</b>	<b>\$26,820,756</b>	<b>\$27,314,452</b>



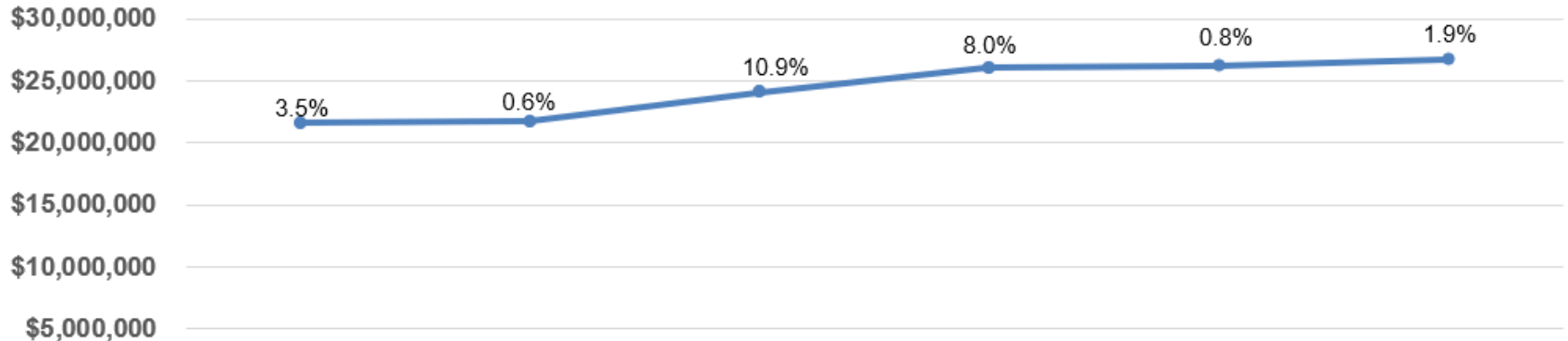
# Estimated Value of One Mill

Estimated Value Of One Mill For 2023 (Mill Rate = 18.309) - NO TIF		
		AVG PV Home
<b>The estimated value of one mill would be:</b>	<b>\$552,760</b>	
<b>1/10 mill</b>	\$55,276	\$4.91
<b>2/10 mill</b>	\$110,552	\$9.82
<b>3/10 mill</b>	\$165,828	\$14.73
<b>4/10 mill</b>	\$221,104	\$19.64
<b>5/10 mill</b>	\$276,380	\$24.55
<b>6/10 mill</b>	\$331,656	\$29.46
<b>7/10 mill</b>	\$386,932	\$34.37
<b>8/10 mill</b>	\$442,208	\$39.28
<b>9/10 mill</b>	\$497,484	\$44.19
<b>1 mill</b>	\$552,760	\$49.10
<b>1.1 mill</b>	\$608,036	\$54.01
<b>1.2 mill</b>	\$663,312	\$58.92
<b>1.3 mill</b>	\$718,589	\$63.83
<b>1.4 mill</b>	\$773,865	\$68.74
<b>1.5 mill</b>	\$829,141	\$73.65
<b>1.6 mill</b>	\$884,417	\$78.56
<b>1.7 mill</b>	\$939,693	\$83.47
<b>1.8 mill</b>	\$994,969	\$88.38
<b>1.9 mill</b>	\$1,050,245	\$93.29
<b>2 mill</b>	\$1,105,521	\$98.20



# General Fund Revenue

### Total General Fund Revenue 2019 - 2024 Projected

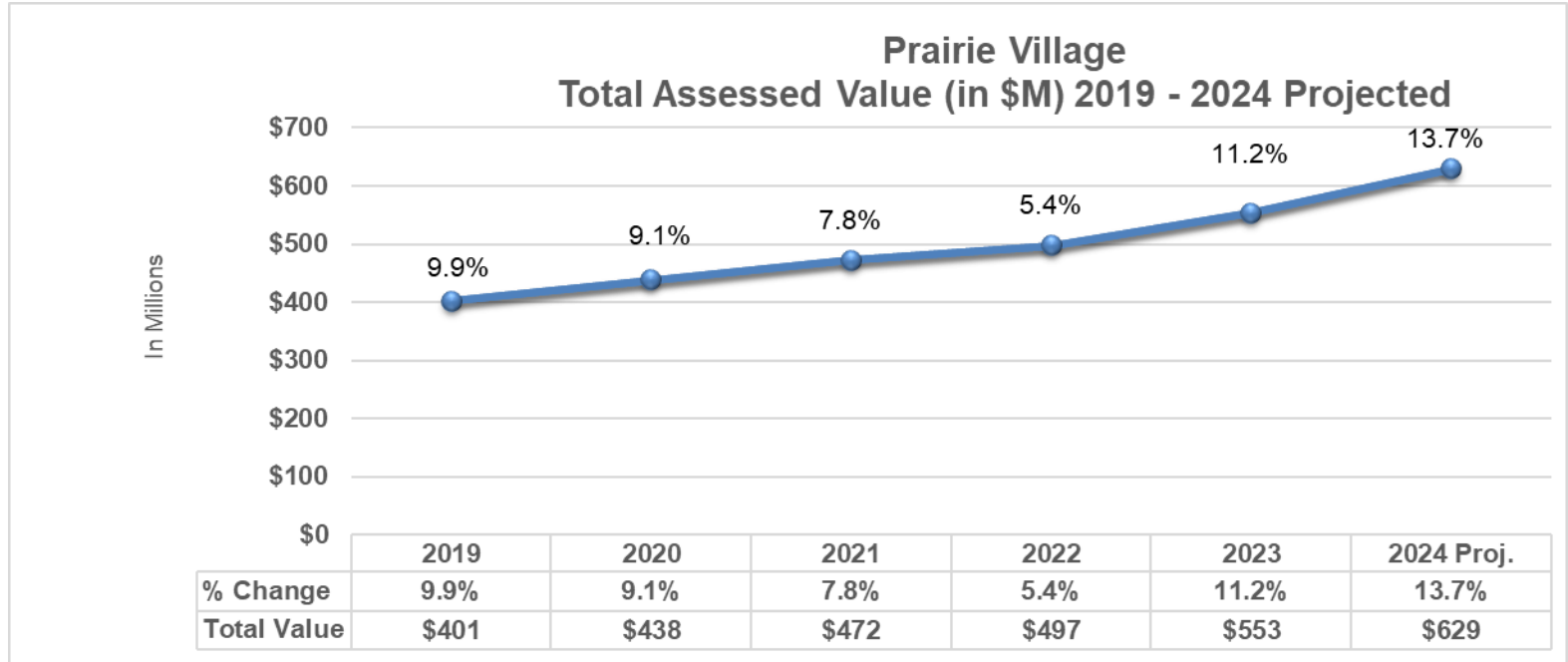


	2019	2020	2021	2022	2023 Estimate	2024 Proj
Total	\$21,585,014	\$21,716,171	\$24,081,897	\$26,017,806	\$26,212,656	\$26,714,452

*\*General Fund Revenues Excluding Transfers*



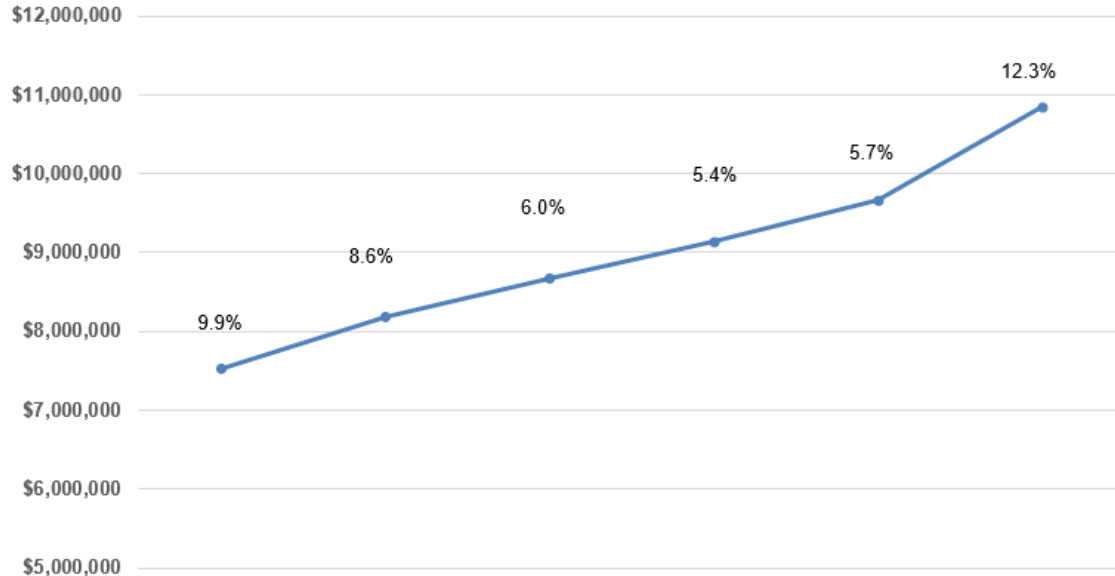
# Assessed Value





# Property Tax

### Property Tax 2019 - 2024 Projected



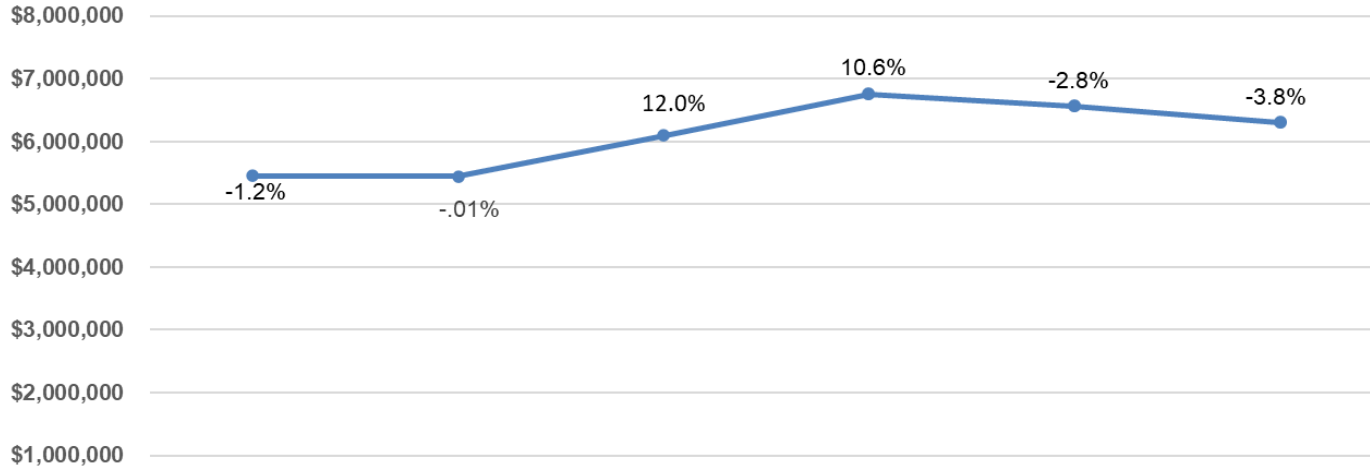
Years	2019	2020	2021	2022	2023 Budget	2024 Proj
	\$7,530,237	\$8,179,161	\$8,667,704	9,138,008	\$9,657,244	\$10,846,020

General Fund Mill Levy Rate    19.471                      19.311                      19.314                      19.322                      18.309                      **18.309**



# Sales Tax

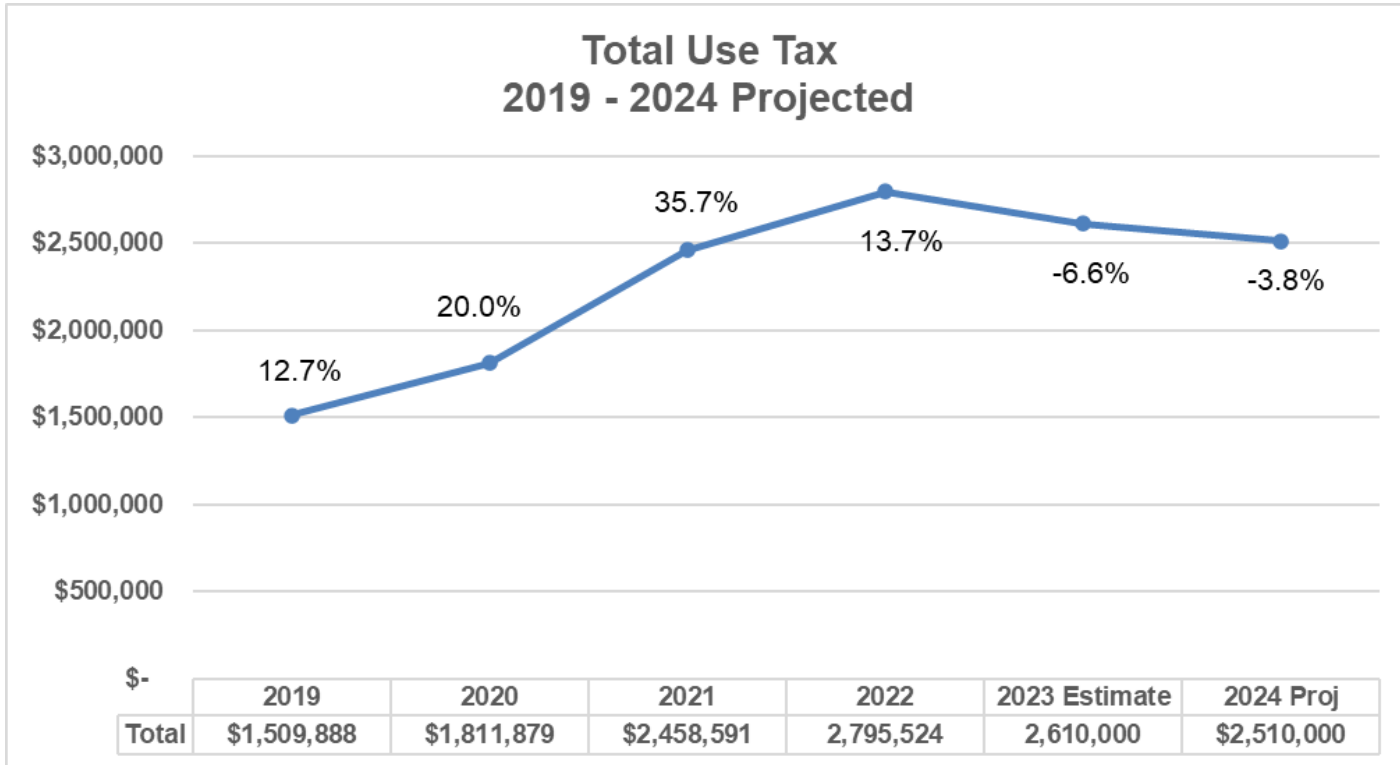
**Total Sales Tax  
2019 - 2024 Projected**



	2019	2020	2021	2022	2023 Estimate	2024 Proj.
Total	\$5,449,864	\$5,446,984	\$6,098,163	6,746,703	6,555,000	6,305,000



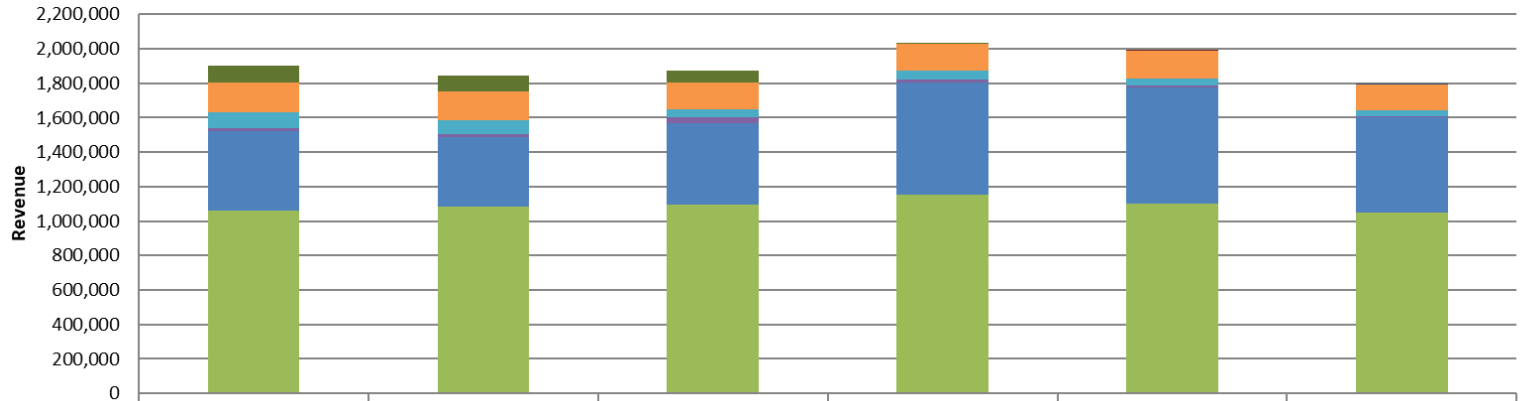
# Use Tax





# Franchise Fees

### Franchise Fee Detail 2019 - 2024 Projected



	2019	2020	2021	2022	2023 Estimate	2024 Projected
Google Fiber	96,527	88,251	67,590	4,399	-	-
Other Franchise Fees	0	0	0	808	99	0
SureWest	1,616	2,057	2,378	1,284	780	500
Spectrum (Time Warner)	172,696	167,352	153,513	158,505	160,000	150,000
AT&T Video	87,084	80,203	47,432	51,335	40,000	35,000
AT&T Telephone	22,646	19,389	33,257	13,921	12,000	10,000
Kansas Gas	458,427	401,025	469,856	655,457	675,000	550,000
Evergy (Fmr KCPL)	1,060,844	1,084,373	1,097,527	1,150,330	1,100,000	1,050,000

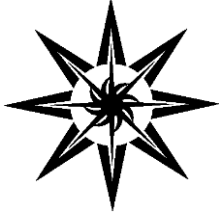




# Next Steps

12

- May 1<sup>st</sup>
  - Council Meeting
    - CIP Discussion and Annual Road Condition Report
- May 9<sup>th</sup>
  - Finance Committee Meeting (4pm to 6pm)
    - First Draft of 2024 Budget and Discussion
- May 18<sup>th</sup>
  - Finance Committee Meeting (4pm to 6pm)
    - Continued Discussion
- June 20<sup>th</sup>
  - Council Meeting Preliminary 2024 Budget to Council for 1<sup>st</sup> time
- July 3<sup>rd</sup> or 17<sup>th</sup>
  - Council Meeting Resolution to Exceed Revenue Neutral Rate (if applicable)
- July 17<sup>th</sup>
  - Permission to Publish the 2023 Budget
    - *Must send notice if exceeding the tax neutral rate to the County Clerk by July 20th (SB 13)*
- August 10<sup>th</sup>
  - County sends notification to taxpayers (*If exceeding Revenue Neutral Rate*)
- September 5<sup>th</sup>
  - Budget Hearing / Adopt 2023 Budget (*If exceeding Revenue Neutral Rate*)



## VILLAGEFEST COMMITTEE

Council Meeting Date: April 17, 2023

COU2023-22

Consider funding for VillageFest in the 2024 budget

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### BACKGROUND

VillageFest features a variety of family attractions, including a patriotic ceremony, live entertainment, bounce houses, mechanical rides, a petting zoo, pony rides, arts, crafts, and more. While the specific details of the event have varied through the years, one thing has remained constant: VillageFest has offered all entertainment and attractions at no cost to the community.

Attendance at VillageFest has continued to grow through the years. We attracted an estimated 4,500 attendees in 2022 following two years of drive-through events due to COVID concerns. The VillageFest committee strives to plan a quality festival while maintaining fiscal prudence.

A detailed budget from 2017 - 2023, with estimates for 2024, is attached. The planning process for the 2023 VillageFest event is currently underway, and not all expenses are final. In 2022 we transitioned funding to the Transient Guest Tax. The existing Foundation balance was spent and dissolved.

The committee respectfully requests a \$37,000 allocation for VillageFest in 2024. This represents a 5.7% increase over 2023. We have seen price increases from several of our vendors and suppliers for 2023. The 2024 expenses are projected to rise from 2023 actual. Our goal is to maintain the current scope of offerings while accommodating similar or increased attendance.

### ATTACHMENTS

VillageFest Budget 2017-2023

### PREPARED BY

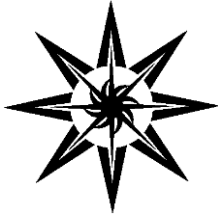
J.D Kinney  
Special Events Coordinator

March 23, 2023

## VillageFest Budget 2017 - 2024

### EXPENSES

Item/Activity	2024 Proposed	2023 In Process	2022 Actual	2019 Actual	2018 Actual	2017 Actual
<b>Entertainment</b>						
Mr. Stinky Feet	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600	\$ 900	\$ 1,600
Janie Next Door			\$ 350	\$ 275	\$ 275	\$ 275
MultiPhonic/Generator/Sound	\$ 2,800	\$ 2,800	\$ 2,800	\$ 1,992	\$ 1,992	\$ 1,992
DJ Services	\$ 900	\$ 900	\$ 800	\$ 800	\$ 800	\$ 800
Anthem Singer	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100
Randy Falcon					\$ 400	\$ 400
<b>Total Entertainment</b>	<b>\$ 5,400</b>	<b>\$ 5,400</b>	<b>\$ 5,650</b>	<b>\$ 4,767</b>	<b>\$ 4,467</b>	<b>\$ 5,167</b>
<b>Family Activities</b>						
Petting Zoo	\$ 1,725	\$ 1,700	\$ 1,670	\$ 1,000	\$ 1,000	\$ 1,000
Clement McCrae Puppets		\$ -	\$ -	\$ 915	\$ 915	\$ 915
Craft Activity/Scraps KC	\$ 800	\$ 700	\$ 650	\$ 686	\$ -	\$ 296
Face Painter - Sister Act	\$ 2,300	\$ 2,300	\$ 2,100	\$ 1,800	\$ 1,800	\$ 1,800
Pony Rides	\$ 1,850	\$ 1,800	\$ 1,670	\$ 1,000	\$ 1,000	\$ 1,000
Inflatables	\$ 4,200	\$ 4,070	\$ 3,140	\$ 2,080	\$ 2,060	\$ 2,060
Petting Zoo Cups & Sanitizer		\$ -	\$ -	\$ 20	\$ -	\$ -
Fun Services	\$ 8,300	\$ 8,150	\$ 6,021	\$ 5,170	\$ 5,895	\$ 3,945
Sister Act Wacky Hair	\$ 950	\$ 920	\$ 840	\$ 720	\$ 720	\$ 720
Sister Act Bubble Guy	\$ 725	\$ 700	\$ 700			
Giggles n Jiggles LLC			\$ -	\$ 650	\$ 650	\$ 650
Pie Contest	\$ 450	\$ 450	\$ 421	\$ 357	\$ 11	\$ 82
History Display	\$ 50	\$ 50	\$ 11	\$ 400	\$ 435	\$ 435
Mr. Bones	\$ 825	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
KC Wolf	\$ 450	\$ 450	\$ 450			
Slip & Slide	\$ 625	\$ 600	\$ 539	\$ 959	\$ 358	\$ 424
Euston's Project			\$ -	\$ -	\$ -	\$ 575
Yard Games		\$ -	\$ -	\$ 209	\$ 499	
Amazing Alex Ballon Twister	\$ 350	\$ 320	\$ 320	\$ 320	\$ 320	
3 and Under Area	\$ 300	\$ 300	\$ 345	\$ 739		
<b>Total Family Activities</b>	<b>\$ 23,900</b>	<b>\$ 23,310</b>	<b>\$ 19,677</b>	<b>\$ 17,825</b>	<b>\$ 15,644</b>	<b>\$ 14,703</b>
<b>Pancake Breakfast</b>						
Chris Cakes	\$ 4,400	\$ 4,200	\$ 3,892	\$ 3,615	\$ 4,032	\$ 3,000
Starbucks	\$ 300	\$ 275	\$ 264	\$ 253	\$ 253	\$ 198
<b>Total Pancake Breakfast</b>	<b>\$ 4,700</b>	<b>\$ 4,475</b>	<b>\$ 4,156</b>	<b>\$ 3,868</b>	<b>\$ 4,285</b>	<b>\$ 3,198</b>
<b>Advertising</b>						
Banners/Printing	\$ 400	\$ 375	\$ 378	\$ 738	\$ 93	\$ 549
<b>Total Advertising Budget</b>	<b>\$ 400</b>	<b>\$ 375</b>	<b>\$ 378</b>	<b>\$ 738</b>	<b>\$ 93</b>	<b>\$ 549</b>
<b>Supplies/Misc. Expenses</b>						
Stage	\$ 1,200	\$ 1,127	\$ 1,027	\$ 1,027	\$ 1,027	\$ 1,027
Balloons and décor			\$ -	\$ 813	\$ 618	\$ 618
Give-aways	\$ 1,500	\$ 1,500	\$ 83	\$ 68	\$ -	\$ -
Community Service Awards	\$ 200	\$ 200	\$ 150	\$ 150	\$ 250	\$ 200
VF Shirts		\$ -	\$ 763	\$ -	\$ -	\$ 618
Tents and Tables			\$ -	\$ -	\$ 183	\$ -
Volunteer Hospitality	\$ 725	\$ 700	\$ 659	\$ 401	\$ 281	\$ 36
PayPal Fees-sponsor payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Supplies</b>	<b>\$ 3,625</b>	<b>\$ 3,527</b>	<b>\$ 2,682</b>	<b>\$ 2,458</b>	<b>\$ 2,358</b>	<b>\$ 2,498</b>
<b>Event Attraction</b>						
		<b>TBD</b>	<b>Planes</b>	<b>None</b>	<b>Planes</b>	<b>None</b>
Vinatge Flyover			\$ 1,000	\$ -	\$ 1,000	\$ -
Huey Helicopter	\$ 500	\$ 500	\$ 500			
Vinatge Military Vehicles	\$ 500	\$ 500				
<b>Total Event Attraction</b>	<b>\$ 1,000</b>	<b>\$ 1,000</b>	<b>\$ 1,500</b>	<b>\$ -</b>	<b>\$ 1,000</b>	<b>\$ -</b>
<b>TOTAL</b>	<b>\$ 39,025</b>	<b>\$ 38,087</b>	<b>\$ 34,043</b>	<b>\$ 29,656</b>	<b>\$ 27,846</b>	<b>\$ 26,115</b>
<b>INCOME</b>						
<b>Funding Source</b>						
City Allocation	\$ 37,000	\$ 35,000	\$ -	\$ 20,000	\$ 18,000	\$ 18,000
Food Vendor Fee		\$ -	\$ 350	\$ 875	\$ -	\$ 700
Foundation Funds		\$ -	\$ 28,002	\$ 9,500	\$ 5,000	\$ 7,000
"Friends of VillageFest"				\$ -	\$ 500	\$ 670
Vendor Fees	\$ 750	\$ 750	\$ 2,500	\$ 400	\$ 275	\$ 350
Pancake Breakfast	\$ 4,200	\$ 4,200	\$ 3,190	\$ 3,965	\$ 4,420	\$ 995
<b>TOTAL:</b>	<b>\$ 41,950</b>	<b>\$ 39,950</b>	<b>\$ 34,042</b>	<b>\$ 34,740</b>	<b>\$ 28,195</b>	<b>\$ 27,715</b>



## JAZZFEST COMMITTEE

City Council Meeting Date: April 17, 2023

COU2023-23

Consider funding for JazzFest in the 2024 budget

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### BACKGROUND

2024 will mark the 13<sup>th</sup> Prairie Village Jazz Festival on the Saturday following Labor Day. The Jazz Fest was canceled in 2020 and 2021 due to public health concerns driven by the COVID pandemic and mostly rained out in 2022. The Jazz Fest Committee is planning for a live, in-person event in Harmon Park on September 9, 2023.

The Prairie Village Jazz Festival has created a favorable reputation throughout the area reflecting positively on the City for its support of quality jazz artists from the area musicians. The committee is committed to the Festival, and has developed a successful and consistent operations plan for the event staying within budget and building reserves to cover the ever present risks of bad weather causing the cancellation of the festival or having attendance severely impacted by weather.

The JazzFest Committee respectfully requests city budget funding in the amount of \$35,000 to supplement a consistent base on which the festival can operate and grow.

### ATTACHMENTS

JazzFest Budget 2022 - 2024

### PREPARED BY

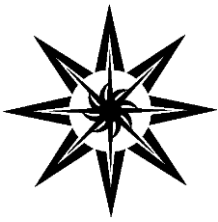
J.D. Kinney  
Special Events Coordinator

March 23, 2023

## JAZZFEST ANALYSIS

### JazzFest Budget Proposal

	<b>2024 Budget</b>	<b>2023 Budget</b>	<b>2022 Actual</b>
<b>INCOME</b>			
Budget allowance from PV	\$ 35,000	\$ 35,000	\$ 35,000
Opening Balance	\$ 20,000	\$ 26,649	\$ 21,673
Sponsorships and donations	\$ 2,500	\$ 2,500	\$ 8,084
<b>Total Income before Event</b>	<b>\$ 57,500</b>	<b>\$ 64,149</b>	<b>\$ 64,757</b>
Admission Fees	\$ 9,500	\$ 9,000	\$ 3,228
Food Truck Fees	\$ 750	\$ 750	\$ 250
Tips	\$ 100	\$ 100	\$ 98
Soda Sales	\$ 575	\$ 550	\$ 209
Adult Beverage Sales	\$ 9,500	\$ 9,500	\$ 2,887
Misc Credit Card sales	\$ -	\$ 400	\$ 319
<b>Total Income Day of Event</b>	<b>\$ 20,425</b>	<b>\$ 20,300</b>	<b>\$ 6,992</b>
<b>Total Income</b>	<b>\$ 77,925</b>	<b>\$ 84,449</b>	<b>\$ 71,749</b>
<b>EXPENSES</b>			
Talent	\$ 15,000	\$ 15,400	\$ 11,050
Stage/Audio Equipment	\$ 20,000	\$ 19,900	\$ 11,196
Tent/Furniture Rental	\$ 2,750	\$ 2,700	\$ 2,641
Advertising/marketing	\$ 3,850	\$ 3,850	\$ 4,607
Banners/Yard Signs	\$ 850	\$ 1,400	\$ 851
Catering & Food	\$ 1,300	\$ 1,300	\$ 1,182
Event Expenses	\$ 10,000	\$ 12,950	\$ 9,970
Merchandise Expenses	\$ 3,900	\$ 3,800	\$ 3,776
<b>Total</b>	<b>\$ 57,650</b>	<b>\$ 61,300</b>	<b>\$ 45,272</b>



COU2023-24

Consider Approval of 2024 Proposed Arts Council Funding

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## BUDGETARY CONSIDERATION

The Arts Council is requesting \$10,000 for the Arts Council budget and a \$10,000 contribution to the Public Arts Fund for 2024.

The City Council approved \$10,000 in funding for the Art Council's 2023 budget. The remainder of the Art Council's funds come from cash reserves and the revenue the Arts Council brings in from entry fees, donations, and art sales each year. Due to cancelled events and a carryover balance from 2020 and 2021, the Arts Council ended 2022 with a balance of \$32,423. Based on this accumulating balance, the Arts Council would like to continue its reduced request for their 2024 operating budget at \$10,000. Beginning in 2023, the funding source was shifted to the Transient Guest Tax fund.

2020 and 2021 brought an opportunity for the Arts Council to review and adjust programming. The Arts Council has shifted to bi-monthly openings in the RG Endres Gallery in City Hall and at the Meadowbrook Clubhouse, and is planning several events throughout 2023 as outlined on the attached calendar. The Arts Council continues to need funds to support their regular programs, which includes the following:

- State of the Arts
- Juried Photography Competition
- The Prairie Village Arts Fair
- Bi-Monthly Art Exhibits
- Art Walk

New in 2023, the City Council approved the establishment of the Public Arts Fund, starting with a beginning balance of \$10,000 from the Transient Guest Tax Fund. The Arts Council plans to transfer its balance of 2022 excess funds to the Public Arts Fund and would like to continue the \$10,000 contribution in 2024. The Arts Council plans to bring forward a recommended Public Arts Fund policy to the City Council after it is reviewed by the Arts Council.

### Attachments:

- 2022 Year-End Financial Report
- 2023 Events Calendar
- 2024 Proposed Budget

### PREPARED BY

Nickie Lee

Deputy City Administrator

Date: April 3, 2023

**PV Arts Council 2022 Budget - December Financial Report**

**Starting Balance as of 12/31/2021 =  
\$30,285**

**Revenues**

<b>Description</b>	<b>2022 Budget</b>	<b>2022 Actual</b>	<b>% Budget Collected</b>	<b>Budget Remaining</b>
Donations	\$ 4,000	\$ 4,342	109%	\$ (342)
City Contribution	14,500	14,500	100%	\$ -
Entry Fees	9,000	7,518	84%	\$ 1,482
Art Sales	3,000	-	0%	\$ 3,000
Merchandising	200	-	0%	\$ 200
Ticket Sales	2,000	-	0%	\$ 2,000
Sponsorships	2,550	-	0%	\$ 2,550
FlipCause Sales	-	-	0%	\$ -
Interest Income	10	9	94%	\$ 1
Miscellaneous	-	18		\$ (18)
<b>Total</b>	<b>\$ 35,260</b>	<b>\$ 26,387</b>	<b>386%</b>	<b>\$ 8,873</b>

**Expenditures**

<b>Description</b>	<b>2022 Budget</b>	<b>2022 Actual</b>	<b>% Budget Spent</b>	<b>Budget Remaining</b>
State of the Arts	\$ 6,700	\$ 6,517	97%	\$ 183
Future of the Arts	2,500	-	0%	\$ 2,500
Grants	60	-	0%	\$ 60
Software	1,400	-	0%	\$ 1,400
Marketing	2,860	4,809	168%	\$ (1,949)
Website	4,140	1,118	27%	\$ 3,022
Jazz Fest Event	500	219	44%	\$ 281
Sales Tax/Artist Portion FC	-	-	0%	\$ -
Monthly Receptions	3,000	1,634	54%	\$ 1,366
Art of Photography Event	3,000	4,613	154%	\$ (1,613)
State of Senior Arts Event	3,500	-	0%	\$ 3,500
Special Olympics Arts Show	100	-	0%	\$ 100
Chamber Music Series	4,000	-	0%	\$ 4,000
Gallery Maintenance	1,000	2,050	205%	\$ (1,050)
Summer Events	500	-	0%	\$ 500
Art Walk	-	719	0%	\$ (719)
Arts Council of Johnson Cour	-	1,400	100%	\$ (1,400)
Training	-	170	100%	\$ (170)
PV Art Fair	2,000	1,000	50%	\$ 1,000
<b>Total</b>	<b>\$ 35,260</b>	<b>\$ 24,249</b>	<b>69%</b>	<b>\$ 11,011</b>

**12/31/2022 =  
\$32,423**

# PRAIRIE VILLAGE ARTS COUNCIL 2023 CALENDAR

## ARTIST EXHIBITS, RECEPTION & MORE!

*All receptions below to be at R.G. Endres Gallery at Prairie Village City Hall.*

**JANUARY 11, 7-8PM**

**GLORIA GALE & SUSAN RICHARDS**

R.G. ENDRES GALLERY | 01/07 - 03/04/2023

**MARCH 8, 7-8PM**

**DONNA YEAGER**

R.G. ENDRES GALLERY | 03/04 - 05/06/2023

MEADOWBROOK CLUBHOUSE | 03/04 - 07/08/2023

**MAY 10, 7-8:30PM**

**ART OF PHOTOGRAPHY JURIED COMPETITION 2023\***

R.G. ENDRES GALLERY | 05/06 - 07/08/2023

**JULY 12, 7-8PM**

**SHANNON TREVETHAN & SHANNON BROUK**

R.G. ENDRES GALLERY | 07/08 - 09/09/2023

MEADOWBROOK CLUBHOUSE | 07/08 - 11/04/2023

**SEPT. 13, 7-8:30PM**

**STATE OF THE ARTS JURIED COMPETITION 2023\***

R.G. ENDRES GALLERY | 09/09 - 11/04/2023

**NOVEMBER 8, 7-8PM**

**DEBRA PAYNE & DONNA PAUL**

R.G. ENDRES GALLERY | 11/04/2023 - JAN. 2024

MEADOWBROOK CLUBHOUSE | 11/04/2023 - MAR. 2024

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● **SUMMER 2023 | PRAIRIE VILLAGE ART WALK**

● **APRIL 2**

**SHOOTING STARS GALA\*\***

NERMAN MUSEUM OF CONTEMPORARY ART, JCCC  
WWW.ARTSJOCO.ORG FOR TIME & MORE INFO

● **JUNE 2-4**

**PRAIRIE VILLAGE ART SHOW\*\***

SHOPS AT THE VILLAGE | WWW.PVARTSHOW.COM

● **JULY 4**

**VILLAGEFEST\*\***

PV MUNICIPAL COMPLEX / HARMON PARK  
WWW.PVKANSAS.COM

● **SEPTEMBER 9**

**PRAIRIE VILLAGE JAZZFEST\*\***

HARMON PARK | WWW.PVKANSAS.COM

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*\*ANNUAL JURIED COMPETITIONS*

*\*\*EVENT BY OTHER, PVAC WILL HAVE A ROLE AS SPONSOR OR PARTICIPANT.*



**PV Arts Council 2024 Budget**

**Estimated Starting Balance as of 12/31/2023 =  
\$8,873**

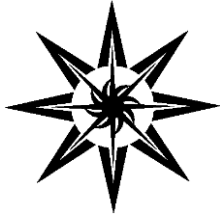
**Revenues**

<b>Description</b>		<b>2024 Budget</b>
Donations	\$	5,000
City Contribution		10,000
Entry Fees		9,000
Interest Income		10
Miscellaneous		-
<b>Total</b>	<b>\$</b>	<b>24,010</b>

**Expenditures**

<b>Description</b>		<b>2024 Budget</b>
State of the Arts	\$	6,700
Marketing		4,800
Website		1,200
Jazz Fest Event		500
Bi-Monthly Receptions		2,000
Art of Photography Event		4,410
Gallery Maintenance		1,000
Art Walk		1,000
Arts Council/Shooting Stars		1,400
PV Art Fair		1,000
<b>Total</b>	<b>\$</b>	<b>24,010</b>

**12/31/2024 =  
\$8,873**



## DIVERSITY COMMITTEE

City Council Meeting Date: April 17, 2023

COU2023-25

Consider approval of the Diversity Committee budget request for 2024

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### BACKGROUND

At their March 21, 2023 meeting, the Diversity Committee approved a motion requesting \$12,500 for the Committee's 2024 budget. This is a decrease of \$4,000 from the 2023 budget.

This requested budget includes funds for the annual MLK celebration, town hall forums, and other miscellaneous projects that support the Diversity Committee's efforts in diversity, equity, and inclusion.

The actuals from 2022, budget for 2023, and estimates for 2024 are attached. Beginning in 2023, we transitioned funding for the Diversity Committee to the Transient Guest Tax.

The planning process for the 2023 Juneteenth event is currently underway, and not all expenses are final. It is anticipated that funding requests for Juneteenth in 2024 will remain at \$15,000.00.

For 2024, the Diversity Committee respectfully requests funding in the amount of \$27,500.00. \$12,500 for the Committee budget and \$15,000 for the Juneteenth Freedom Celebration.

### ATTACHMENTS

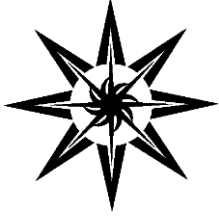
Budget document

### PREPARED BY

Tim Schwartzkopf  
Assistant City Administrator  
April 11, 2023

## Diversity Committee Budget - 2024

	<b>2024</b>	<b>2023</b>	<b>2022 actuals</b>
<b>Approved Budget</b>		<b>\$30,250.00</b>	<b>\$10,000.00</b>
<b>Item/Activity</b>			
MLK Celebration	\$2,000.00	\$1,250.00	\$1,845.96
Quarterly BIPOC Playdates	\$1,400.00	\$1,400.00	\$514.90
Quarterly Town Halls	\$3,600.00	\$3,600.00	\$1,234.03
Juneteenth Celebration	\$15,000.00	\$15,000.00	\$6,056.13
JazzFest	\$500.00	\$1,500.00	\$0.00
PV Art Fair	\$0.00	\$1,500.00	\$0.00
VillageFest	\$0.00	\$1,500.00	\$0.00
"One and Done" Projects	\$2,500.00	\$2,500.00	\$0.00
Miscellaneous	\$2,500.00	\$2,000.00	\$131.29
<b>Total</b>	<b>\$27,500.00</b>	<b>\$30,250.00</b>	<b>\$9,782.31</b>



## ADMINISTRATION

City Council Meeting Date: April 17, 2023

COU2023-26

### Consider Approval of the Environmental Committee 2024 Budget Request

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#### BACKGROUND

The Environmental Committee's primary objective is to increase awareness among Prairie Village residents regarding the importance of preserving and protecting the environment and its natural resources, as well as guiding City practices that impact the environment. The Committee is committed to exemplary environmental stewardship of Prairie Village.

The Committee advises and makes recommendations to the City Council to allow implementation of sustainable management practices. The goal is to provide a healthy and sustainable environment and enhance the quality of life for our residents.

The Committee continues work to shape initiatives to meet the Cities Race to Zero commitment established in 2021, and the recommitment to the Mayor's Monarch Pledge. Driven by the Cities Race to Zero commitment, sustainability consultant Keramida Inc. is developing a greenhouse gas inventory and decarbonization plan for Prairie Village municipal practices. This plan will inform and guide the Environmental Committee in its efforts to address the urgent climate crisis by developing a pathway to become an emissions neutral city by 2050 at the latest. It will also set incremental interim (2030) mitigation targets and resilience goals along the way to facilitate the transition to being a sustainable city. The Mayor's Monarch Pledge compliments this commitment by improving the health of our local ecosystem, protecting pollinators that help 90% of the world's flowering trees and plants—including important food producers—reproduce.

In addition, the Committee is participating in two electronics recycling events in 2023, is providing sustainability support/guidance for City events including VillageFest and JazzFest (as well as participating in these events) and continues to explore new opportunities for collaboration with other committees and organizations at the municipal and county level.

For 2023, the Committee allocated its \$8,000 budget in the following manner:

<b>Budget Item</b>	<b>Estimated Cost</b>
<i>Smart Thermostat Pilot Program</i>	<i>\$2,000</i>
<i>OP Recycling Extravaganza Partnership</i>	<i>\$1,400</i>
<i>EC Info Promotions/Marketing</i>	<i>\$1,000</i>
<i>Subsidize Curbside Composting</i>	<i>\$1,000</i>
<i>NEJC Shredding/E-cycle event</i>	<i>\$700</i>
<i>Committee Tablecloth (banner)</i>	<i>\$500</i>
<i>Supplies for Event Props</i>	<i>\$300</i>
<i>Weighted Adjustable Poster Stand</i>	<i>\$100</i>
<b>Total</b>	<b>\$7,000</b>
<b>Unallocated</b>	<b>\$1,000</b>

The Environmental Committee requests the City Council maintain an \$8,000 committee budget for 2024. The Committee anticipates its 2024 expenditures to closely mirror those of 2023, though there will likely be some updates to both cost and opportunity. After each of the 2023 community recycling events, the Committee will use data and feedback to evaluate the impact and value of continuing these initiatives.

#### **ATTACHMENTS**

None

#### **PREPARED BY**

Piper Reimer

City Council Member/Environmental Committee Chair

Date: April 7, 2023

**MAYOR'S ANNOUNCEMENTS**  
**Monday, April 17, 2023**

City Council work session	04/24/2023	6:00 p.m.
JazzFest Committee	04/25/2023	5:30 p.m.
Environmental Committee	04/26/2023	5:30 p.m.
VillageFest Committee	04/27/2023	5:30 p.m.
City Council	05/01/2023	6:00 p.m.
Board of Zoning Appeals	05/02/2023	6:30 p.m.
Planning Commission	05/02/2023	7:00 p.m.

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**INFORMATIONAL ITEMS**  
**April 17, 2023**

1. Tree Board meeting minutes – March 3, 2023
2. Diversity Committee meeting minutes – March 21, 2023
3. Consolidated Fire District #2 - 1<sup>st</sup> quarter activity report

**TREE BOARD**  
City of Prairie Village  
**Minutes**  
March 3, 2023

Board members present: Ian Graves, Mark Morgan, Kevin Dunn, Kim Biagioli, Karen Hogan, and Pam Gagel

Board members absent: Deborah Brown and Beth Held

Other attendees: Bridget Tolle, Ainsley Pyle and Ava Van Alstyne

Kevin Dunn brought meeting to order at 6:02 p.m. and introduced Ainsley and Ava who were attending as members of the Prairie Village Teen Council.

Review of February 1, 2023 minutes

Under Arbor Day Poster Contest section of minutes, Kevin noted that Mikaela Lewis, a fifth grader at Tomahawk Elementary was this year's winner. Pam motioned approval of minutes, Mark seconded the motion.

Vote on board members to replace Deb Brown and Kellen Jenkins

The board selected Lindsay Voitik and Mark Kaufman from slate of candidates. Kevin said that he would notify Lindsay and Mark K and let them know that the Mayor would have to approve their applications at council meeting next weeks before they would become voting members of the board.

Vote on 2023 Arbor Day nominees

Nominees were Shelly Trewolla, Prairie Elementary Green Team, and former Tree Board ember Frank Riott. Green Team received all votes but one. The Green Team is a group of More than 20 4<sup>th</sup> to 6<sup>th</sup> graders at Prairie who've been involved in several environmental initiatives at their school and in the community according to their nominator Melinda Lewis. Kevin asked if Shelly could also be an honoree for all years of service to the city but Bridget said only one winner is allowed this year.

Notice and enforcement issues concerning Tree Protection Ordinance

On February 6<sup>th</sup>, Bridget made a presentation to the City Council to talk about the ordinance and talked about how many trees had been saved since the ordinance was enacted on June 1, 2021. Council member, Piper Reimer, asked Bridget who at City Hall should residents should contact if they thought a tree was being damaged in violation of the law. An email exchange between Bridget, Public Works Director Keith Bredehoeft, and an unnamed resident was included in the March Tree Board meeting packet to highlight some of the ordinance's enforcement and notice issues. After some discussion about which city departments residents should contact, Bridget said it would be best for residents to either call or email Public Works. Kevin said



the notice issue had come up from residents last summer and that he would write an article for the next edition of the Village Voice to clarify the issue. Ian said it would be best to write the article so that it didn't become a "How To Report Violations" article. Ian agreed to review the article before Kevin submitted it for publication.

#### 2023 Tree Board Committee Assignments

Kevin talked about Committee Assignments that had been included in March meeting packet. He had assigned different board members to different committees but emphasized that board members could serve on any committee they wanted to be on. New board members were included in the committee assignments. Kevin said the Outreach committee could be an important committee as the Tree Board decides which organizations and neighboring municipalities that it wants to reach out to. Mark said it could be interesting to see how many other cities spend on trees.

#### Arbor Day Poster Contest

The poster winner this year did not go on to win the regional or state contest, so there wouldn't be a tree planted in her honor. However, Bridget, would put together a citation for the Mayor to hand the winner in her teacher, April Cremer's classroom, at Tomahawk Elementary. Bridget would reach out to the teacher and the Mayor to help arrange this.

Bridget handed out two copies of Michael Dirr's "Manual of Woody Landscape Plants" to board members. The books were given to the Tree Board by Kim Bomberger from the Kansas Forest Service. Board members asked if there could a library for the Tree Board somewhere in the Public Works office.

#### Agenda for next meeting, April 5, 2023

Board were encouraged to talk to Kevin if they wanted to include a topic for next meeting's agenda.

Meeting adjourned at 7:35 p.m.

**Prairie Village Diversity Committee Agenda**  
**March 21, 2023**  
**4:00 p.m.**  
**Prairie Village City Hall – Council Chambers**

**Call to Order**

**Attendance - David, Tim, Karen, Denis, Courtney, Chi, Hazel, Cole, Ivan**

**Approval of Agenda - Add 2024 agenda, David & Hazel with motion, Unanimous**

**Land Acknowledgment - Chi presented land acknowledgment**

**Opening Remarks/Welcome – Cole Robinson**

**Approval of Meeting Minutes (2/7/23) David & Hazel with motion, Unanimous**

**Election of Committee Vice-Chair - Chi Nguyen - elevate a member of the committee - Cole & Courtney submitted to council ; all approved**

**Presentations - no presentations**

**Public Participation - none**

**Committee Discussion - Karen has interest in moving back to multipurpose room; 10 on committee so its more conducive to conversations; April in MPR then change to chambers if over capacity - Tim to reserve both rooms**

**Anti trans legislation in Topeka- possible advocacy**

**Liaison Updates**

- Citizen Advisory Board – George Williams/Capt. Ivan Washington - hasn't met in a while
- Civil Service Board – George Williams/Capt. Ivan Washington 5 or 6 interviews ; have a pool of talent

**Project/Event Updates**

- City Employee Training update - Tim - employees are going through training 2nd of cultural training; Next LGBTQ training, and then 2 more; plan is to get continual feedback from Committee employee governing body
  - Juneteenth Update – George Williams - planning meeting was last Saturday - moving to by City Hall 4-7pm family fun event

- Village Voice/Social Media Discussion – Committee April 4th, 5th deadline; Melissa is rolling off and need new person to run w/ the role- David, Chi, Hazel

### **Old Business**

- Town Hall Recap - next time move past second room, leave time for more interaction; schedule for more? Environmental town hall/Voting Rights; August dates; moving forward at Meadowbrook is \$700
- Interpretive Panel Update – David Magariel - Parks and Rec would like us to design/cost the panel for review; Lauren (designer) will be \$500 to design the panel; Karen moves to approve \$500/Hazel 2n/unanimous

### **New Business**

- Work Session Follow Up – next steps
- Outreach and Promotion – charter/mission/vision statement - bring examples of charters next month
- Discuss date/topic for new Town Hall event
- Discuss a PV Seen event for Spring/Summer - haven't settled on one in Spring/Summer; leave on April agenda
- Discuss multi-cultural event for 2023 have partnerships with SBLM; or other groups as well; would like to highlight other groups as well; Olathe - meet your neighbor options

### **Looking Ahead 2023**

#### **April**

- April 11, 2023 at 4:00 pm

#### **May**

- May 9, 2023 at 4:00 pm

#### **June**

- June 13, 2023 at 4:00 pm
- Juneteenth Freedom Celebration – June 17, 2023 from 4:00 – 7:00 pm at Harmon Park

### **Information Items or Announcements**

**Budget proposal for 2023 budget with motion Courtney/Karen unanimous \$12500**

**Adjournment - motion to adjourn Karen/Hazel - unanimous - 5:47pm**

# Activity Report | 1st Quarter 2023



## ***PROUDLY SERVING***



***MISSION • PRAIRIE VILLAGE • ROELAND PARK  
FAIRWAY • WESTWOOD • WESTWOOD HILLS  
MISSION WOODS • MISSION HILLS***

In this issue:

- Service Calls Report
- Training
- Did you know?
- Community News and Events
- We're Hiring!!
- Our CFD2 Team
- In Memory of Capt. Bremer



### 1st Quarter 2023

Medical/Assist Calls	839
Fire Calls	551
Total Calls for Service	1390
Training Hours	2809
PR/Educational Activities	22

## CFD2 FIRE TRAINING



Crews learning structural collapse information and discussing techniques with Lieutenant Heath.





Crews complete Jenga training for familiarization and to improve on their precision skills with one of our vehicle extrication tools (jaws of life).



FF Fowler explaining and showing different approaches to handling structural collapse scenarios.



Thru The Lock training provides hands on training for crews to learn different forcible entry techniques for the many types of door locks they can encounter. Thanks FF Dougan, for helping put the class together!

FF Carmichael and FF Feters attended the Oklahoma Smoke Diver's Course, which is not an easy course to get accepted into or complete. Firefighters nationwide must apply, try out and complete physical fitness testing, prior to being accepted into the program. The Oklahoma Smoke Divers course is an intense, six-day, 60 hour program with realistic training in self-survival, firefighter rescue, advanced search and rescue, thermal imaging,





emergency procedures, teamwork, discipline, team leadership, situational awareness and decision making.

"The program condenses and replicates the extreme demands that may be placed on firefighters at any incident. Emphasis is placed on the day-to-day challenges firefighters face at structure fires, multiple-alarm fires and multiple fires within a single shift. These same principles can be applied to the performance of duties at natural disasters, catastrophic events and acts of terrorism. The course is a physically demanding and mentally challenging program. Its design allows each candidate to understand and manage their physical and mental limitations under safe but stressful realistic conditions". - Oklahoma Smoke Divers Association



Firefighter Feters was one of the 14 individuals that finished the course, out of 33 firefighters that started.

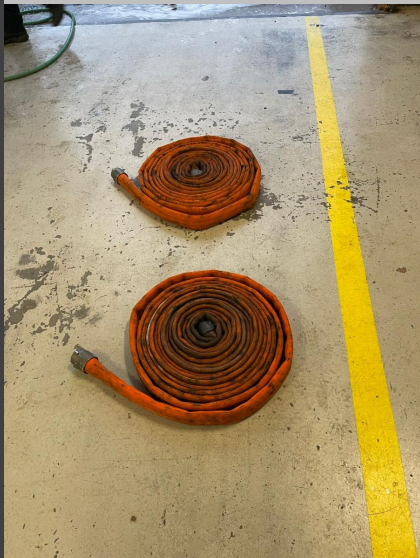
Congratulations FF Feters, we are so proud of you!



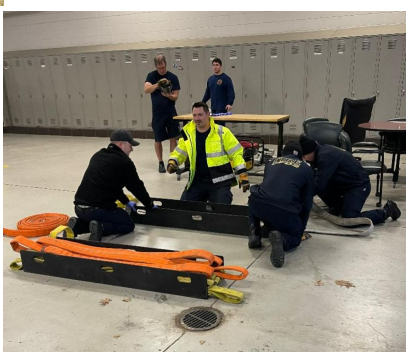


[Click for Training Recap from Chief Morgan](#)

## DID YOU KNOW? AFTER THE FIRE...



From bunker gear to fire hose, when CFD2 members return from a fire, they work hard to clean off soot, dirt and other cancer causing carcinogens off of their equipment.







This is a tedious process, but necessary. Studies continue to show firefighters are at high risk for developing cancer.



Firefighters can be busy for hours after clearing from a fire, cleaning their gear to try to help prevent exposure to harmful carcinogens. This means disassembling gear, airpicks, unrolling hose to clean and rolling them back up, taking tools off the trucks to clean and putting it all back together, once it is all decontaminated. Firefighters may also rinse off on scene to decontaminate their gear before returning to their station. Once they are back at the station, they wash their gear and shower. All of these steps are just a small glimpse of the precautions they must take to try and reduce the risk of residual cancer-causing exposures and contaminants.

## COMMUNITY NEWS and EVENTS

### CALENDAR OF EVENTS

<b>APRIL 8<sup>TH</sup></b>	<b>PUBLIC RELATION EVENTS: THE KESSLER RESIDENCES, CITY OF MISSION BUNNY EGGSTRAVAGANZA AND THE CITY OF WESTWOOD EASTER EGG SCRAMBLE</b>
<b>APRIL 25<sup>TH</sup></b>	<b>CFD2 BOARD MEETING</b>
<b>MAY 13<sup>TH</sup></b>	<b>CFD2 OPEN HOUSE FUNDRAISER AT STATION 22</b>
<b>MAY 16<sup>TH</sup></b>	<b>CFD2 BOARD MEETING</b>
<b>MAY 20<sup>TH</sup></b>	<b>KIDS TO PARKS EVENT WITH CITY OF MISSION</b>
<b>MAY 25<sup>TH</sup></b>	<b>CARRY THE LOAD RUN – BUS TO PARK AT STATION 22</b>
<b>JUNE 20<sup>TH</sup></b>	<b>CFD2 BOARD MEETING</b>





# Pancake Breakfast



## Annual CFD2 OPEN HOUSE at Station 22

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Come see us at our OPEN HOUSE fundraiser on May 13th from 9:00-12:00. All donations received go back into the communities we serve. Help us make it a successful event and come eat some great pancakes!

[3921 W. 63rd Street, Prairie Village, KS 66208.](https://www.cfd2.org/careers/)

### CFD2 IS HIRING!

CFD2 is currently hiring for the Firefighter 1 position. Applications will be accepted until 4:00PM on April 26th. Visit [www.cfd2.org/careers/](https://www.cfd2.org/careers/) for more information.



OUR CFD2 TEAM



## ON THE JOB



Our newest member, FF Hernandez worked a house fire with his crew (21-C) on his first shift as a full-time firefighter.

\*This picture was taken after operations were completed.



C Shift worked a structure fire at Popeyes in January.

\*This picture was taken after operations were completed.

## CFD2 MILESTONE ANNIVERSARIES

Congratulations to the following CFD2 members who reached service milestones in the 1st quarter:

- 15 years: Captain Seth Katzer
- 10 years: Firefighter Rusty Fix
- 10 years: Firefighter Mitch Fowler



## IN MEMORY OF RETIRED CAPTAIN MARK BREMER



Retired Captain, Mark Bremer passed away unexpectedly at his home on February 27th. A celebration of life was held in Shawnee on March 4th where many current and former members of CFD2, Johnson County Med-Act, Junction City FD and many other area departments gathered to remember Mark. Mark worked for CFD2 for 18 years and retired in 2014. In addition to his many contributions during his career at CFD2, Mark was also the former President of Local 1371. Thank you Mark, for your years of service. You will be missed.

www.cfd2.org

STAY CONNECTED



Visit our website

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