

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
August 24, 2023  
7:00 P.M.**

**Call to Order**

**1. Roll Call**

\_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Lewis \_\_\_\_ Beem \_\_\_\_ Lebakken \_\_\_\_ Malloy

**2. Welcome**

**3. Pledge of Allegiance**

**Consent Agenda** *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

**4. Approve Minutes from August 10, 2023 Regular City Council Meeting.**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**Regular Agenda**

**5. Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

**6. Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

**Business Requiring Action**

**7. PUBLIC HEARING FOR RESOLUTION NO. 08-24-23A OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE**

**8. CONSIDER RESOLUTION NO. 08-24-23A OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**9. PUBLIC HEARING FOR THE PROPOSED 2024 BUDGET**

**10. CONSIDER RESOLUTION NO. 08-24-23B AUTHORIZING THE CITY TO EXECUTE AND DELIVER A FIRST AMENDMENT TO MASTER TRUST INDENTURE (PHASE 2)**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**11. CONSIDER A PROFESSIONAL SERVICES AGREEMENT WITH RENAISSANCE INFRASTRUCTURE CONSULTING TO PROVIDE CONSTRUCTION INSPECTION SERVICES FOR THE 2023 CDBG 1<sup>ST</sup> AND MARTIN SANITARY SEWER REHABILITATION PROJECT**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**12. CONSIDER A PIPELINE LICENSE WITH BNSF RAILWAY**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**13. Report by the City Administrator**

- Marketing & Communications Update
- Sheriff's Office Quarterly Update

**14. Report by the Mayor**

**15. Future Meeting Reminders:**

- September 12: Planning Commission – 7:00PM
- September 14: City Council Meeting – 7:00PM
- September 28: City Council Meeting – 7:00PM
- October 10<sup>th</sup>: Planning Commission Meeting – 7:00PM
- October 12<sup>th</sup>: City Council Meeting – 7:00PM
- October 12<sup>th</sup>: CIP Budget Work Session – Following Regularly Scheduled Meeting
- October 26<sup>th</sup>: City Council Meeting – 7:00PM

**16. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**EVENTS**

August 29: Paint Night – Cactus  
August 31: Senior Trip – Sparks Flea Market  
September 4: City Offices Closed for Labor Day  
September 12: Tales for Tots  
September 23: Edgerton Movie Night – Lyle Lyle Crocodile  
October 6-7: Meat Inferno  
October 9: City Offices Closed for Columbus/Indigenous Peoples Day  
October 10: Tales for Tots

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**August 10, 2023**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas August 10, 2023. The meeting convened at 7:00PM with Mayor Roberts presiding.

**1. ROLL CALL**

Clay Longanecker	present
Josh Lewis	present
Josh Beem	absent at roll call, arrived at 7:28PM
Deb Lebakken	present
Bill Malloy	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- City Clerk, Alex Clower
- Assistant City Administrator, Meagan Borth
- Marketing & Communications Manager, Kara Banks
- Public Works Director, Dan Merkh
- Development Services Director, Zachary Moore
- Finance Director, Karen Kindle
- Accountant, Justin Vermillion
- Recreation Coordinator, Brittany Paddock

**2. WELCOME.** Mayor Roberts welcomed all in attendance.

**3. PLEDGE OF ALLEGIANCE.** All present participated in the Pledge of Allegiance.

**Consent Agenda** *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes from July 27, 2023 Regular City Council Meeting.
5. Consider Ordinance No. 2142 Amending Chapter XIV of the Edgerton, Kansas Municipal Code to Incorporate the 2023 Standard Traffic Ordinance, Subject to Existing Local Traffic Provisions in the City Code Which Supplement and/or Modify Certain Sections Thereof
6. Consider Ordinance No. 2143 Amending Chapter XI, Article I, Section 11-101 of the Code of the City of Edgerton, Kansas, Concerning the Uniform Public Offense Code
7. Approve Concurrence to Bid 2023 CDBG – 1st And Martin Sanitary Sewer Rehabilitation Project

Councilmember Lewis moved to approve the Consent Agenda. Councilmember Lebakken seconded the motion. The consent agenda was approved, 4-0.

**Regular Agenda**

8. **Declaration.** There were no declarations made.

9. **Public Comments.** There were no public comments made.

10. **Presentation.** Streetlight Inventory and Study

Mr. Merkh introduced Josh Pudlowski with Olsson to present the study. He stated this will be used as launchpad for priorities for future projects based on the citizen survey as we move forward.

Mr. Pudlowski thanked the Council for having him. He stated this study came about based on the citizen survey and some dissatisfaction with street lighting within the community. He stated the study will provide standards moving forward.

He stated the city has 294 streetlights within city limits. Using a collector app, their staff went out to document each fixture including pictures, type of pole, light type, condition, etc. He stated the Evergy-owned lights are generally within the residential city limits, whereas the lighting at LPKC is city-owned. He stated the lighting in LPKC is very good and meets high standards. He stated the remaining approximately 120 lights belong to Evergy and are leased to the city.

Councilmember Longanecker asked how many lights are out at the intermodal.

Mr. Merkh stated about 174 included inside LPKC, without including those in parking lots.

Ms. Linn stated this number also includes those along 207<sup>th</sup> Street and along Homestead.

Councilmember Longanecker asked if all the ones owned by Edgerton are newer ones.

Mr. Pudlowski stated correct. He stated when creating this draft study they looked at standards from the Illuminating Engineering Society (IES) and the recommended best practices, as well as lighting standards from surrounding local jurisdictions. He stated this document will allow for a quick reference to make sure when items are brought in they can look at plan requirements and standards to make it easier for staff to review.

He stated as they looked at deficiencies within the existing lighting, he stated most were found in the residential area and most are Evergy-owned lights. He stated the Edgerton-owned lighting is newer and was meeting the illumination criteria.

Mr. Merkh stated as we move forward in this process, although Edgerton owned lighting is sufficient now, it would be good to have standards to look at moving forward. He used Homestead Lane as an example that while the current lighting is sufficient, if there were any type of pedestrian conflict, this would then change the category to out of compliance.

Mayor Roberts stated what is the trigger point for low to medium.

Mr. Pudlowski stated if a surplus of people begin using the trail, that could then escalate the need of lighting there; however that is not a problem today. He stated medium range lighting is typically what's seen in shopping centers due to the volume of people. He stated there are some areas not meeting minimum level.

Mr. Merkh referenced the map provided and stated this is due to there being insufficient lighting down co-op road.

Mr. Pudlowski stated they surveyed some local jurisdictions for maintenance costs. He stated currently, per city pole Edgerton is paying \$45 per fixture to maintain and run with a lease rate at about \$233 per pole.

Mr. Merkh stated Everygy values each fixture between \$2,500 - \$3,500 and when staff approached Everygy they had said they are not doing anymore sell outs.

Mr. Pudlowski stated the alternates shown could change moving forward to help with budget costs. He added he is not sure what grounds Everygy has to stop the city from being able to say they want new lighting and ask that Everygy removes their fixtures. He stated staff would also need to look at ideas for maintenance moving forward. Currently it costs about \$18 per fixture to maintain, but those costs could escalate once the City nears 1,000 fixtures.

Mr. Merkh stated these are some of the metrics the City could use moving. He stated there may be enough work between traffic and street lights to have a specific employee to be trained and handle the maintenance of it instead of contracting out.

Councilmember Longanecker asked if all the wooden poles that have lights also have power lines.

Mr. Merkh stated there's probably a good amount that will require some type of change to the structure.

Mr. Pudlowski stated he does not have a number handy, but they did make note of those during the study.

Mayor Roberts stated typically the power poles are in the alleys and street lights are on the poles. He stated there are some that may have power lines with them, but not many. He stated they might run in to more phone lines and cable lines.

Councilmember Lewis asked if there was any way to have Everygy update lights for a lesser cost.

Mr. Pudlowski stated they updated around 2018, so they're fairly new.

Councilmember Longanecker asked if this is something the city currently has a contract on.

Ms. Linn stated there is a lease agreement through franchise, however the agreement currently needs to be updated which is why this seemed like the perfect door to begin conversations

about purchasing, updating, etc. She stated staff would recommend the purchase for the city to have ownership and our own fixtures and poles. She stated even if staff had ownership of fixture, we would still have to contact Evergy to maintain.

Councilmember Lewis asked if the City has created a standard for residential lighting.

Ms. Linn stated yes, council voted on pole, lighting, etc. at a previous meeting.

Mr. Merkh stated it is included in the packet with draft info. He stated residential is safety lighting, whereas a major section of roadway would be continuous lighting.

Ms. Linn pulled up a picture of the approved standard specs going forward.

Mayor Roberts asked what the cost would be to purchase Evergy lights.

Mr. Pudlowski stated roughly \$250,000, including buy-out.

Councilmember Lewis asked if we would then have to put in more lights.

Ms. Linn stated we would likely schedule where and when we could replace specific lights, likely with a road replacement project.

Mayor Roberts stated he would like to know the options from Evergy and what can be negotiated. He stated he is in favor of replacement on street reconstruction projects, not just chip seal or UBAS, so those larger projects could then also include light replacement.

There were no further questions or comments.

#### **Business Requiring Action**

#### **11. CONSIDER ORDINANCE NO. 2144 AMENDING ARTICLE 4 – COMMERCIAL ZONING DISTRICTS - OF THE UNIFIED DEVELOPMENT CODE (UDC) OF THE CITY OF EDGERTON, KANSAS AND CONSIDER ORDINANCE NO. 2145 AMENDING ARTICLE 7 – CONDITIONAL USES – OF THE UDC AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH**

Mr. Moore addressed the Council. He gave a brief overview of the ordinances for approval. He stated both ordinances are regarding updates to the Unified Development Code, the first ordinance for discussion is Ordinance 2145, which will include changes to the chapter for Conditional Uses. He stated this update will not change any standards, or specifications, it will just update the code to reference Conditional Uses in the correct place and make the code more uniform throughout.

With no questions or comments, Mayor Roberts requested motion to approve Ordinance No. 2144, amending article 7 of the UDC, Conditional Uses.

Mr. Moore then gave an overview of the ordinance to amend the UDC to include downtown commercial zoning to include downtown permitted sidewalk sales with specifications. He stated this will bring visual attention to downtown businesses and allow for sidewalk sales throughout the year, with a permit. He stated this permit would be annual and they must identify a sales plan with sketch when submitting the permit.

Councilmember Beem stated how wide is the sidewalk now.

Mr. Moore stated about 7.5 feet, however with updates to The Greenspace, sidewalk design will be 10 feet.

Mayor Roberts asked this would be for a year long commitment and they could put sales out any day they choose with specific items listed and they would be allowed anytime. He confirmed this is only for downtown district though, correct?

Mr. Moore confirmed that sidewalk sales would only be allowed downtown.

Councilmember Malloy asked if they must list every item they plan to sell.

Mr. Moore stated no, they would have to note what types of items they have to sell, but not individual items.

Mayor Roberts questioned the look of sidewalk sales and how some people could be selling things that do not look too appealing. He stated the city took a strong approach against Dollar General and allowing for them to put out their carts with merchandise on them.

Mr. Moore stated there will be language in their permit and during review if staff identifies a problem, stipulations can be added.

Councilmember Lewis asked what the end goal is here.

Mr. Moore stated to attract more attention for the downtown businesses. He stated they would have to tie back to what the uses are in the downtown district.

Ms. Linn stated as long as it's an approved use, this would be a way to help people know the business are there.

Mr. Moore stated there was one instance where staff noticed that the sidewalk sales did not meet code, however staff then went back and thought how it could be nice to have for those businesses.

Ms. Linn stated simply rolling out a cart with items on it is not permitted today. This change would allow the opportunity for the code to allow for temporary sales.

Councilmember Malloy asked if any of these types of permits have been issued before.

Ms. Linn stated not to her knowledge.

Mr. Moore stated they want to increase the opportunity for those types of sales.

Mayor Roberts stated he would like more information on this before council votes, so he would like to table the item for now.

Mayor Roberts then requested motion to table to ordinance 2145 to a future meeting.

Councilmember Lebakken moved to approve the motion, seconded by Councilmember Beem. The motion was approved, 5-0.

## **12. CONSIDER AGREEMENTS WITH HENDERSON BUILDING SOLUTIONS FOR THE GREENSPACE PROJECT TO PROVIDE COMMISSIONING, TAB, AND BUILDING CONTROLS SERVICES DURING THE CONSTRUCTION PHASE**

Mr. Merkh stated in November 2021, the City Council approved an agreement with Henderson Building Solutions (HBS) for owner rep services for The Greenspace project. He stated this agreement included owners rep services only for the pre-construction phase in support of the Phase I Design Services agreement with incite Design Studio. He stated in December 2023, the City Council then approved an agreement with HBS for owners rep services for the construction phase of the project.

He stated as the project includes commissioning for mechanical, plumbing, and electrical systems, staff would recommend entering into an agreement with HBS to provide commissioning, testing, adjusting, and balancing (TAB) as well as building control system and integration for the construction phase of the project. He stated HBS brings significant experience in vertical construction and is crucial to the successful completion of the project, staying within the budget and schedule. He stated included in the packet is the list of services provided within the agreement.

He stated this agreement structures payment for commissioning and TAB services for a lump sum fee of \$48,000. While this amount exceeds the estimate by approximately \$15,000 used to prepare the project budget, there are categories of costs yet to be determined. He stated staff will continue to monitor the project budget and periodically update the Council as costs are set.

He stated building controls services for a lump sum fee of \$148,790, this was originally included in the construction category of the project budget and is within the budgeted amount. He stated this agreement is still pending review, staff would recommend approval of this agreement pending completion of that review.

Ms. Linn stated having a 3<sup>rd</sup> party on behalf of the city is industry standard, this will also allow subject matter experts to provide training for a system that staff is not already familiar with and learn about a new system moving forward.

Councilmember Lewis asked how the estimate was blown up so high.

Ms. Linn stated at the time we asked for estimate, we did not know the scope. Today we know the system, mechanics, etc. to get a better estimate. She stated this particular line item went up, however there is no concern with exceeding the budget.

With no further questions or comments, Mayor Roberts requested motion to approve the agreement upon review completion.

Councilmember Lewis moved to approve the motion, seconded by Councilmember Malloy. The agreement was approved, 5-0.

**13. CONSIDER CHANGE ORDER #1 TO CONTRACT WITH HARBOUR CONSTRUCTION INCORPORATED FOR ASPHALT OVERLAY CONSTRUCTION OF WEST 5<sup>TH</sup> STREET AS PART OF THE 2023 STREET PRESERVATION PROGRAM.**

Mr. Merkh stated in May 2022, Council was presented with the 2022 and 2023 street preservation program, where staff provided several options for that program. He stated in February 2023, Council approved the concurrence to bid for the 2023 street preservation program.

He stated in May 2023, City Council approved the award of bid to Harbour Construction Inc. and in June Council executed a PSA with them for the construction of the asphalt overlay and ultrathin bonded asphalt (UBAS) portion of the 2023 street preservation program for a base bid of \$124,575. He stated the contract included asphalt overlay for West 3<sup>rd</sup> Street from West Edgewood Dr. to West Meriwood and West Meriwood from 1<sup>st</sup> Street to West 3<sup>rd</sup> Street. He stated additionally, the contract scope included UBAS on West 5<sup>th</sup> Street from West Morgan St. to the end of the cul-de-sac.

He stated Harbour Construction is requesting the UBAS portion of their contract be upgraded to an asphalt overlay at no additional cost to the city. He stated city staff believes this is an improvement to the existing contract as asphalt overlay typically last longer than UBAS and can improve the drainage concerns along W. 5<sup>th</sup> Street.

He stated the requested change order is a significant change in scope, therefore staff is requesting council approval. The scope change includes asphalt overlay instead of UBAS for West 5<sup>th</sup> Street from West Morgan Street to the end of the cul-de-sac. He stated the contract amount will be unchanged from the initial base bid of \$124,575.00 after the change order is approved.

He stated construction is anticipated to begin in September 2023 and substantial completion is anticipated by October 15, 2023 depending on weather. This change order does not include final quantities incurred during construction.

He stated it is the recommendation of staff to approve Change Order #1 for revised construction method of West 5<sup>th</sup> Street from West Morgan Street to the end of the cul-de-sac for the 2023 Street Preservation Project to Harbour Construction Incorporated.

Mayor Roberts questioned this will not be traditional mill and overlay.

Mr. Merkh stated no, they will do edge cut and overlay.

Councilmember Lewis asked why they want to change it out.

Mr. Merkh stated that company has said they will already have the equipment and instead of bringing out different equipment for the other type, they can mobilize all at once and have it completed faster and for the same price. He stated it is new asphalt, so should last longer than UBAS.

Mayor Roberts asked if they would do curb replacement too.

Mr. Merkh stated they will typically bring quantities near the end.

Mayor Roberts asked if we know the quantity estimate or if it will change, will the cost change too.

Mr. Merkh stated the company says it is a direct swap, so no cost change. The material of overlay as well as edge mill is equal to the cost of the UBAS they had quoted.

With no further questions or comments, Mayor Roberts requested motion to approve the change order.

Councilmember Lewis moved to approved, seconded by Councilmember Longanecker. The change order was approved, 5-0.

**14. PUBLIC HEARING FOR RESOLUTION NO. 08-10-23A TEMPORARILY WAIVING CITY PROHIBITION AS TO THE SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY FOR MEAT INFERNO EVENT**

Ms. Paddock stated staff is requesting permission for the sale of alcohol for the Meat Inferno event. She stated this year, the Topsy Tavern will be the vendor. She stated the city code prevents the serving of alcohol within 200 feet of public buildings. She stated this will only be on Friday night from 5-10PM.

Mayor Roberts opened the public hearing at 8:18PM

With no questions or comments, Mayor Roberts then closed the Public Hearing at 8:18PM.

**15. CONSIDER RESOLUTION NO. 08-10-23A TEMPORARILY WAIVING CITY PROHIBITION AS TO THE SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY FOR MEAT INFERNO EVENT**

With no questions or comments from council, Mayor Roberts requested motion to approve the resolution.

Councilmember Lewis moved to approve the motion, seconded by Councilmember Beem. The motion was approved, 5-0.

**16. CONSIDER RESOLUTION NO. 08-10-23B AUTHORIZING SPECIAL EVENT PERMIT FOR SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY WITHIN THE CITY OF EDGERTON, KANSAS**

Ms. Paddock stated along with the public hearing and waiver approval, the sale and consumption of alcohol also requires approval of the special event permit.

With no questions or comments, Mayor Roberts requested motion to approve the resolution.

Councilmember Lewis moved to approve, seconded by Councilmember Beem. The motion was approved, 5-0.

**17. Report by the City Administrator**

- Recreation Update

Ms. Paddock stated the groundbreaking ceremony for The Greenspace will be held downtown on Friday evening. There will be tacos, ice cream, a musician, touch a truck and much more. She stated following the community event will be an event for the kids celebrating back to school with a glow foam party.

Ms. Linn asked Ms. Borth to give a brief overview regarding the citizen complaint of a vehicle parking and not moving on 8<sup>th</sup> & Meriwood.

Ms. Borth stated a citizen came to speak about their concerns of parking at 8<sup>th</sup> & Meriwood and the safety concern that could come from that. She stated staff then went and spoke to fire and the city engineer regarding this concern. They were all in agreement that both roads are built to current standards. The Fire District said fire trucks need about 12 feet of clearance, so they can safely enter that roadway if necessary. She stated the parked vehicle is over the standard of 20 feet away from the stop sign. She stated nothing in their opinions would constitute changing guidelines as they stand now.

Councilmember Longanecker stated that was his biggest concern too, making sure emergency personnel could get through if they needed.

Ms. Borth stated as long as the vehicle is parked legally- as it is currently- there is no safety concern.

Ms. Beth Gifford stated the City of Spring Hill will tag cars that do not move for a few days. She stated she has called and talked to the city's code enforcement here and been advised that vehicles on the street fall under the Sheriff's Office purview.

Mr. Hendricks stated the 48 hours is for a traffic hazard or unregistered vehicle and inoperable vehicles can be removed after 30 days. He stated it is easier to know if a vehicle goes unmoved on private property, but the street is harder to prove unless there is record to show.

Ms. Gifford stated she knows the vehicle in question does not move. She stated there may be nothing the City could do, but she felt she needed to bring the concern to the Council's attention.

Mayor Roberts stated his concern has always been about public safety. He stated this is not the first time the City has seen a problem with parked vehicles.

Mr. Trig Morley, Interim Fire Chief for Fire District #1, came up to the podium. He stated any on street parking does pose challenges, but they deal with it. He stated there are hundreds of instances where they have to figure out how to maneuver through the streets.

Mayor Roberts stated he would encourage Ms. Gifford to keep watching and report what she can.

With no further discussion, Ms. Linn invited Ms. Paddock back up to give her report on recreation activities.

Ms. Paddock stated they have offered 62 events and programs so far this year to the community with plans to offer even more next year. She stated attendance numbers continue to rise for each event, including senior lunch.

Council members thanked Brittany for the job she does and commended her for the increase in attendance.

There were no further comments.

Mr. Hendricks stated they needed to correct the tabled ordinance, as the Clerk noticed after approval that the numbers were incorrectly listed. He stated 2145 is the conditional use ordinance, which council wanted to approve and 2144 should have been the tabled item.

Mayor Roberts requested motion to revoke the prior motion to approve Ordinance 2144.

Councilmember Lebakken moved to revoke the prior action on Ordinance 2144, seconded by Councilmember Longanecker. The motion was approved, 5-0.

Mayor Roberts requested motion to table discussion on Ordinance 2144 to a later date.

Councilmember Lewis moved to table Ordinance 2144, seconded by Councilmember Longanecker. The motion was approved, 5-0.

Mayor Roberts requested motion to approve Ordinance 2145.

Councilmember Longanecker moved to approve Ordinance 2145, seconded by Councilmember Beem. The motion was approved, 5-0.

- **2<sup>nd</sup> Quarter Finance Update**

Ms. Kindle reviewed the department funds. She stated all funds are where we would expect them to be and within budget authority and reserve requirements.

**18. Report by the Mayor**

Mayor Roberts stated he had no report to give.

**19. Future Meeting Reminders**

Mayor Roberts reminded council of the future meetings for council and planning commission.

**20. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B(12)) FOR MATTERS RELATED TO SECURITY MEASURES TO INCLUDE CITY ATTORNEY, CITY ADMINISTRATOR AND ASSISTANT CITY ADMINISTRATOR FOR THE PURPOSES OF DISCUSSING SECURITY MEASURES THAT PROTECT PUBLIC AND PRIVATE PROPERTY**

Mayor Roberts stated he would like to recess into executive session pursuant to KSA 75-4319(B)(12) to include City Attorney, City Administrator and Assistant City Administrator for 10 minutes. He stated the open meeting will resume in the council chambers at the conclusion of the executive session.

Mayor Roberts then requested motion to recess into executive session.

Councilmember Lebakken moved to recess into executive session for 10 minutes, seconded by Councilmember Beem.

The meeting recessed into executive session at 8:59PM, 5-0.

Councilmember Beem made motion to return to open session with no action taken, seconded by Councilmember Longanecker.

Open session resumed at 9:09PM, 5-0.

**Adjourn**

Councilmember Beem moved to adjourn, seconded by Councilmember Longanecker. All in favor. The meeting was adjourned at 9:09PM.

Submitted by Alexandria Clower, City Clerk

## City Council Action Item

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**Council Meeting Date:** August 25, 2022

**Department:** Administration

### **AGENDA ITEM: Consider Resolution No. 08-24-23A Of The City Of Edgerton, Kansas To Levy A Property Tax Rate Exceeding The Revenue Neutral Rate**

#### **Background/Description of Item:**

In March 2021, Senate Bill 13 (SB 13) was signed by the Governor and became effective beginning with the 2022 Budget. SB 13 repealed the previous tax lid which focused to the total property tax revenue required for the budget. SB 13 focuses on the mill rate and provides for the calculation of the Revenue Neutral Rate (RNR). The RNR calculation uses last year's property tax revenue and this year's estimated assessed valuation to arrive at the mill rate that would be required to receive the same property tax revenue as last year. SB 13 doesn't provide for any adjustments to the RNR to capture economic growth, issuance of debt or County errors in the assessed valuation numbers. Enclosed with this packet is an infographic from the League of Kansas Municipalities (LKM) illustrating the requirements of SB13.

At the Council Meeting on June 10, 2021, the City's Financial Advisor and City staff presented information about SB 13 and asked for direction from the Council regarding suggested adjustments to the RNR. The resulting policy direction document is attached. Those adjustments are:

- Roll-off of all types of incentives (i.e., property tax abatements)
- New territory/annexations
- Growth in assessed value of non-residential property
- Growth in assessed value of residential property due to inflation based on the CPI-U
- Issuance of General Obligation (GO) debt
- Errors by Johnson County

The property tax revenue amount included in the 2024 General Fund Budget was calculated based on these adjustments. Please find enclosed the calculation of property tax revenue amount, including these adjustments, that was presented during the 2024 Budget Work Session on July 6, 2023.

The City is required to hold an RNR Public Hearing and pass a resolution setting the mill rate to be used for the 2024 Budget. The notice of the public hearing was published in the Gardner News on August 2, 2023, and on the City's website as required by State statute. The RNR public hearing was held earlier this evening. The attached draft Resolution No. 08-24-23A establishes the City's mill rate at 29.671 mills.

**Related Ordinance(s) or Statute(s):** K.S.A. 79-2925

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**Funding Source:** N/A

**Budget Allocated:** N/A

x Karen E. Kindle

**Finance Director Approval:** Karen Kindle, Finance Director

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**RECOMMENDATION: APPROVE RESOLUTION NO. 08-24-23A OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE.**

**Enclosed:** Resolution No. 08-24-23A  
Revenue Neutral Rate (RNR) FAQ's

**Prepared by:** Karen Kindle, Finance Director

Resolution No. 08-24-23A

**A RESOLUTION OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE;**

**WHEREAS**, the Revenue Neutral Rate for the City of Edgerton was calculated as 29.140 mills by the Johnson County Clerk; and

**WHEREAS**, the budget proposed by the Governing Body of the City of Edgerton will require the levy of a property tax rate exceeding the Revenue Neutral Rate; and

**WHEREAS**, the Governing Body held a hearing on August 24, 2023 allowing all interested taxpayers desiring to be heard an opportunity to give oral testimony; and

**WHEREAS**, the Governing Body of the City of Edgerton, having heard testimony, still finds it necessary to exceed the Revenue Neutral Rate.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON:**

The City of Edgerton shall levy a property tax rate exceeding the Revenue Neutral Rate of 29.671 mills.

This resolution shall take effect and be in force immediately upon its adoption and shall remain in effect until future action is taken by the Governing Body.

**ADOPTED** this 24<sup>th</sup> day of August 2023 and **SIGNED** by the Mayor.

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Donald Roberts, Mayor

Attested:

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Alexandria Clower, City Clerk

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Lee W. Hendricks, City Attorney

# Revenue Neutral Rate FAQs

## What is a Revenue Neutral Rate (RNR)?

The tax rate in mills that would generate the same property tax revenue in dollars as levied the previous tax year using the current tax year's total assessed valuation. If the City were to stay revenue neutral every year, they would have to provide this year's services, with this year's prices, on last year's budget.

## Why is the City holding a hearing about the Revenue Neutral Rate?

If the City collects even one more dollar in property tax revenue, it exceeds the Revenue Neutral Rate and is required to hold a hearing by state law.

## Why would the City exceed RNR?

The Edgerton City Council has set a policy to determine when additional property tax revenue would be collected.

1. Roll off of all types of incentives (like property tax abatements)
2. New Territory or Annexations
3. Growth in assessed value of non-residential property
4. Growth in assessed value of residential property due to inflation
5. Issuance of General Obligation Debt
6. Errors by Johnson County

## Proposed FY 2023 Budget

The City Council has expressed intent to reduce the mill levy from 29.674 to 29.671 for the upcoming budget year. This exceeds the RNR of 29.140.

If approved, the City would use the modest increase in revenue to invest in street maintenance and public safety and to help cover increased operating costs caused by inflation.

## 2024 Budget Process



5-Yr Capital  
Improvement  
Project  
List Approved

Outside Agencies  
Request Funding



Budget Work  
Session

Budget Public  
Hearing



Budget Approved



# **City of Edgerton 2024 Budget Work Session July 6, 2023**



## **Packet Items**

**Revised** - General Fund Budget

Utility Funds Budget

**New** - TIF Funds Budget

Other Funds Budget

Vehicles & Equipment



**City of Edgerton  
2024 Budget Work Session  
July 6, 2023**

**Revised  
General Fund Budget**





August 21, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director

Re: 2024 Recommended General Fund Budget

### Updates Since the Budget Work Session on July 6, 2023

At the Budget Work Session on July 6, 2023, staff presented information on three new budget items for City Council consideration. Council provided direction to include the three items in the proposed 2024 Budget. Staff has updated the General Fund schedule to include the following items:

- Property Tax Rebate for Seniors – Added \$65,000.
- Adopt-a-Highway Additional Road Segments – Added \$15,600
  - Sunflower Road (from I-35 to East 6th Street)
  - Homestead Road (from I-35 to 191st Street)
- Additional Cost for Moving Frontier Days to Martin Creek Park in 2024 – Added \$2,000
  - Added \$10,000 to the 2023 Estimate for the Transfer to Capital Projects for adding a permanent split-rail fence along the south side of the park.

With the additions of these items, the ending balance is still within the requirements of the reserve policy.

Council also requested information regarding the amount of property tax generated by residential properties. Based on the assessed value information for the 2024 Budget, \$429,372 or 30%, of the property tax revenue comes from residential properties.

Please find enclosed with this memo the 2024 Recommended General Fund Budget. The General Fund contains the general operations of the City which are funded by a mixture of general-purpose revenues including property taxes, sales and use taxes, user fees and charges and payment in lieu of taxes for abated properties. Also included with this memo are (1) the calculation of the recommended mill rate for the 2024 Budget per Council direction given at the June 10, 2021, Council Meeting; and (2) the list of adjustments to the Revenue Neutral Rate (RNR) in accordance with the policy direction given by Council at the June 10, 2021 Council Meeting.

Throughout the annual budget process, the City Council approved the use of the Consumer Price Index for All Urban Consumers (CPI-U) as reported by the US Bureau of Labor Statistics (BLS). In January 2023 BLS released the CPI-U which was 6.5%. In January 2022 the CPI-U was 7%.

### 2023 Estimate

The 2023 estimated revenues and expenditures reflect staff's evaluation of the activity so far in 2023 compared to the budget approved for 2023. A line item with an estimate of more than 100% means that staff expects the 2023 activity to exceed the budget. A line item with an estimate that is less than 100% means that staff anticipates the 2023 activity to be less than the budget.

### **Property Tax Revenue**

In March 2021, Senate Bill 13 (SB 13) was signed by the Governor and became effective for the 2022 Budget. SB 13 repealed the previous tax lid which focused to the total property tax revenue required for the budget. SB 13 focuses on the mill rate and provides for the calculation of a RNR. This RNR calculation takes last year's property tax revenue divided by this year's estimated assessed valuation to arrive at the mill rate that would be required to receive the same property tax revenue. SB 13 doesn't provide for any adjustments to the RNR to capture economic growth, issuance of debt or County errors in the assessed valuation numbers. At the Council Meeting on June 10, 2021, the City's Financial Advisor and City staff presented information about SB 13 and asked for direction from the Council regarding suggested adjustments to the RNR. The property tax revenue amount included in the 2024 General Fund Budget was calculated based on the Council direction provided.

### **Assessed Value**

The City's Assessed Value is made up of three major components:

- Real Estate
- Personal Property
- State Assessed Utilities/Railroads

The Real Estate and State Assessed portions make up the majority of the assessed value. The Personal Property amount is small and continues to decrease each year due to legislation passed by the Kansas Legislature in 2006.

The assessed value amounts received on June 15, 2023, show an increase in Real Estate values; however the decrease in the State Assessed portion, (\$1.1 million), is greater than the increase in non-residential Real Estate. The result is a decline in total non-residential value. The majority of the decrease is related to Evergy's value that is apportioned to Edgerton.

The Kansas Department of Revenue uses the Income Approach to value utilities. Under this method, several factors can contribute to a decrease in the State Assessed amount. One is the 10-year tax exemption on new infrastructure approved by the State Legislature in 2016. A second factor is the interest rate increases from the Federal Reserve over the last year, which affect amounts used in the value calculations. The final factor is income. Without a rate case in five years, the income generated was not enough to offset portions of the calculation related to the Federal Reserve interest rate increases.

### **Mill Levy Rate**

Since 2009, the City of Edgerton has lowered the mill levy rate over 14 mills. The ability to lower the mill levy rate while maintaining or increasing property tax revenue collection is driven by the growth in the value of one mill.

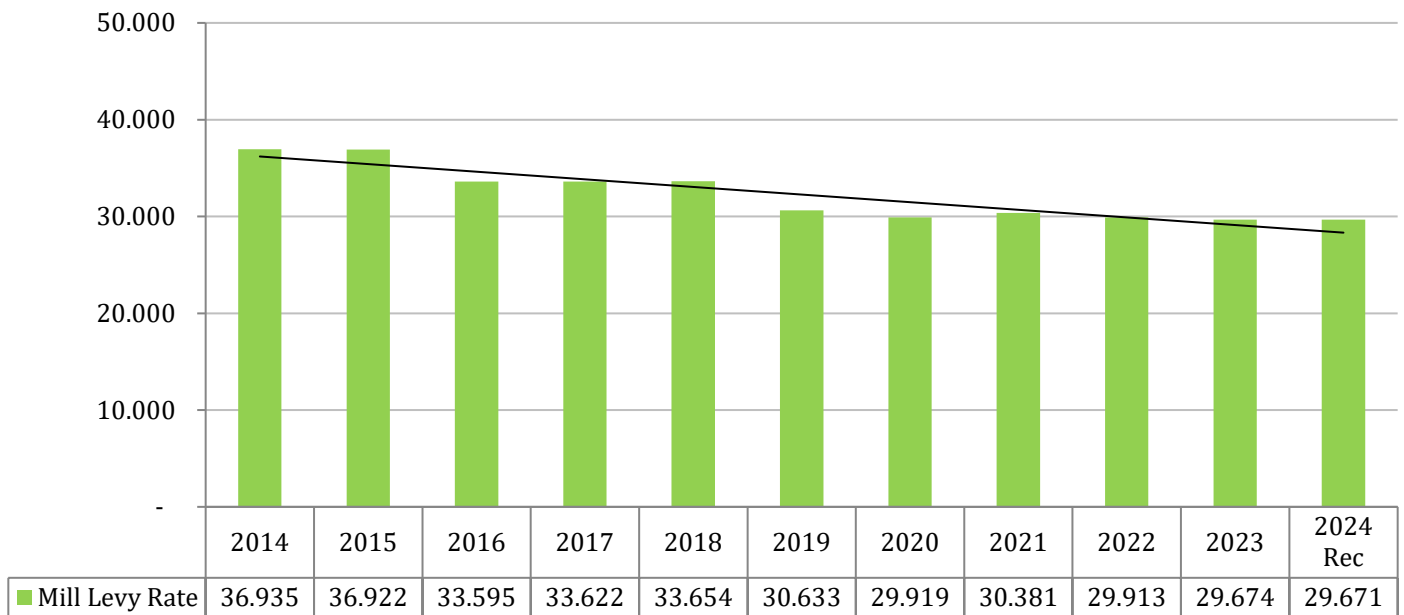
The chart below shows the information regarding the RNR, adjustments for categories approved at the June 10, 2021, Council Meeting and the recommended mill rate for the 2024 Budget. In order to levy the recommended mill rate, the City Council will have to hold a public hearing and pass a resolution. The public hearing is scheduled to occur during the August 24, 2023, Council Meeting. The City must also provide a notice of intent to hold the public hearing to the County Clerk no later than July 20, 2023.

	Revenue Neutral Rate (RNR)	Recommended Adjustments To the RNR	Recommended Mill Rate for the 2023 Budget
<b>Property Tax Revenue</b>	\$1,757,510	\$32,005	\$1,789,515
<b>Estimated Mill Rate</b>	29.140	0.531	<b>29.671</b>

The 2022 mill rate for the 2023 Budget was 29.674. **The recommended 2023 mill rate for the 2024 Budget represents a 0.01% DECREASE in the mill rate.**

The graph below shows a history of the City's mill rate since 2013 (for the 2014 Budget).

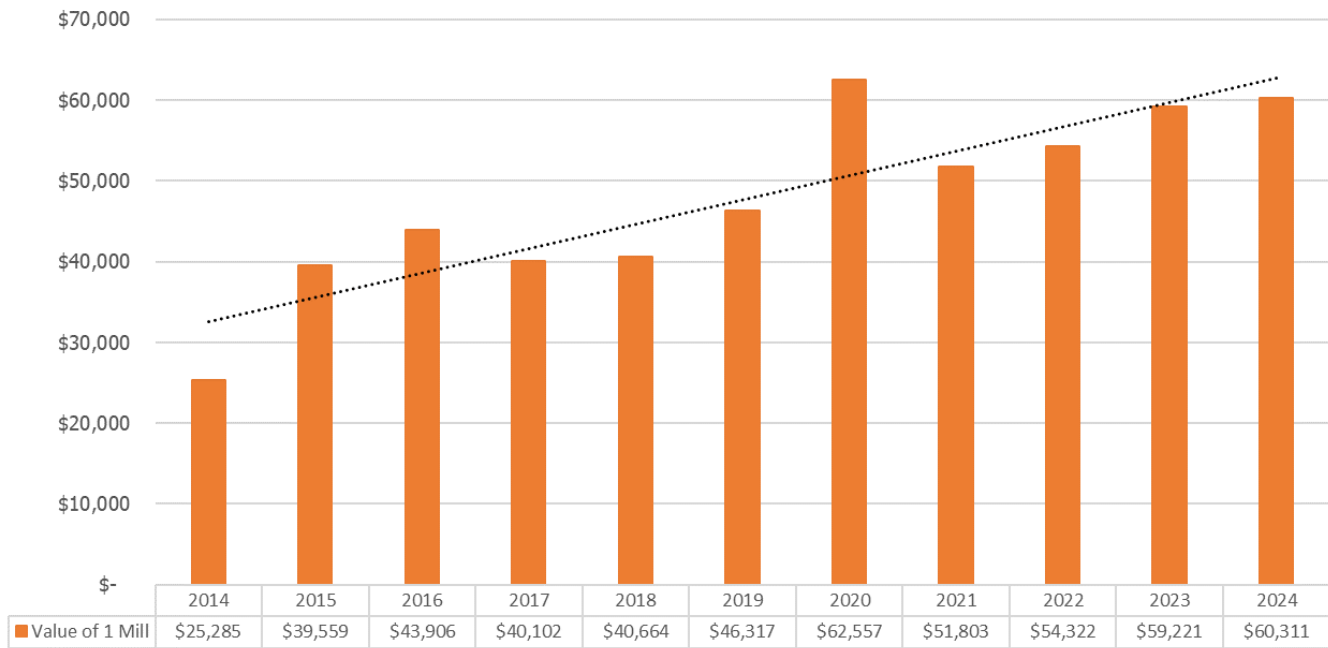
### Mill Levy Rate Budget Years 2014-2024 Recommended



### Value of One Mill

Growth in the value of one mill results from citywide increase in appraised valuation. Since 2009, the value of one mill has grown by \$50,715. The most significant factor in increasing the city's appraised valuation is the new construction at Logistics Park Kansas City and surrounding area. The value of one mill can fluctuate due to the timing of construction and the appraisal process. Improvements under construction on January 1<sup>st</sup> will receive a partial value for that assessment year based on the percentage of completion. If an abatement is processed for the next assessment year, the City's assessed value will decrease, sometimes causing an overall decrease from the prior year. The chart below shows the change in the value of one mill since the 2014 budget process.

## Value of One Mill



## Other Revenue

The chart below provides information about changes from the 2023 Budget to the 2024 Budget in the other sources of revenue for the General Fund.

Revenue Item	Change from 2023 Budget to 2024 Budget
<b>LPKC Pilot</b>	The revenue from payments in lieu of taxes for abated properties at LPKC has decreased to reflect a small decrease in the City's portion of the total mill rate.
<b>City TIF Increment</b>	This number is the amount of City property tax that is deposited into the TIF Funds. It is subtracted from the amount of total property tax to be received since it will be deposited directly into the TIF funds when distributions are received from the County Treasurer. This number is the same as 2023 pending receipt of the TIF budget information from the County Clerk.
<b>Motor Vehicle Tax Recreational Vehicle Tax 16/20M Vehicle Tax</b>	These estimates are provided by the County Treasurer. The estimate provided for the 2023 Budget assumed a 4% growth rate, a continuation of the growth seen as the pandemic ended. However, the increase in financing rates coupled with the low inventory of new vehicles caused a steady decline in the number of vehicles purchased. New vehicles typically have higher values than the old vehicles they replace. The result is a decline in assessed value. A second factor is a decrease in the average county mill rate which is used to calculate motor vehicle taxes. This rate decreased 3% in 2023 and they are estimating an 8% decrease in 2024.
<b>Local Alcoholic Liquor Tax</b>	The estimate is provided by the County Treasurer. This revenue increased significantly in 2021 and again in 2022 due to the opening of the Full Draw. For 2024 the County Treasurer is estimating a small decrease in the amount.
<b>Use Tax</b>	Increase in Local Use Tax based on amount received in 2022 and collection trend in 2023. Based on that trend the 2024 Budget reflects

	a 20.6% increase over the 2023 Budget Increase in County Use Tax reflects a 2% increase over the 2022 actual based on the County's 2024 budget information.
<b>Sales Tax</b>	Increase in Local Sales Tax based on amount received in 2022 and collection trend in 2023. Based on that trend, the 2024 Budget reflects a 13% increase over the 2023 Budget. Increase in County Sales Tax reflects a 3% increase over the 2022 actual based on the County's 2024 budget information.
<b>Franchise Tax</b>	Increased to reflect the trend in the actuals for the last few years.
<b>Licenses &amp; Permits</b>	<p>The bulk of the revenue in this category comes from Building Permits and Plan Review Fees. The 2024 Budget was calculated using the following building permit volumes:</p> <ul style="list-style-type: none"> <li>• 1 million square foot warehouse</li> <li>• 1 quick service restaurant</li> <li>• 1 travel center</li> <li>• 48 single family homes</li> <li>• 2/3 the number of "Other" permits from 2022</li> </ul> <p>Note: contracted inspection and plan review services expenditures will fluctuate based on permits issued so if permits are not issued and revenue not received, there also will not be any related plan review and inspection fees.</p>
<b>Fines &amp; Forfeitures</b>	This revenue remains the same as the 2023 Budget based on the trend in 2023 year-to-date. The number and type of tickets issued can have a significant impact on this revenue source.
<b>Charges for Services</b>	The 2024 Budget remains the same as the 2023 Budget. The contract with Gardner Disposal remains in effect until December 31, 2024. The City charges customers for half of the trash service cost.
<b>Reimbursements/Miscellaneous</b>	The City doesn't typically budget any funds in this category. This category is used to account for reimbursements for things like insurance claims, sale of trash stickers and other small receipts not categorized elsewhere.
<b>Investment Income</b>	This revenue source had been affected by the pandemic. The amount is the same in 2024 as it is difficult to determine how much rates will increase in the coming months.

## Expenditures

The budget amount is an estimate of resources needed to carry out the level of services the Governing Body offers its citizens. The approved budget sets the legal level of budget authority at the fund level, which the City cannot exceed without going through the budget amendment process.

Changes in expenditures between budget years can occur for several reasons: (1) County/State/Federal mandates/change in charges/fees; (2) inflation; (3) change in level of service, including corresponding changes in personnel; (4) more refined budgeting for a program(s) based on actual experience, etc.

Appendix A includes information about the change in each department's budget from year to year.

## Other Sources & Uses

Transfers to/from other funds are listed in this section of the fund schedule. These transactions are more of a one-time occurrence than they are routine.

Transfers from the TIF Funds consist of the annual TIF administrative fee the City is allowed to collect from TIF revenues related to the Homestead Lane Retail TIF District project plans. There are currently two project plans: (1) A1 – On the Go Travel Plaza and (2) B1 – Edgerton Crossing. The 2023 Estimate reflects that the City will receive the balance due the Plan B1 initial TIF fee.

Transfers to Equipment Reserve are typically done each year to systematically save for replacement of the City's vehicles and equipment. Staff has included a \$125,000 transfer to equipment reserve in the 2024 Budget, which is the same as the transfer in the 2023 Budget. The 2023 Estimate includes a one-time additional transfer to the Equipment Reserve Fund for the purchase of a building inspector truck in the amount of \$51,000.

Transfers to capital projects will vary from year to year depending to the projects approved and the funding sources for those projects. The Governing Body reviews projects and discusses priorities and staff available capacity at the CIP work session in October each year. At a meeting following that work session, the Governing Body approves the CIP, setting the budget and timing for projects. After the CIP is approved, the budget for transfers to capital projects is updated to reflect the approved plan. The CIP adopted in October 2022 did not include any funding from the General Fund in 2024. The 2023 Estimate does include additional funding for the 2022 and 2023 Street Preservation Programs approved by Council earlier this year.

## Ending Balance and Reserves

The carryforward balance from 2022 to 2023 was greater than estimated during the 2023 Budget process due to lower expenditures for 2022 than originally forecast as well as some revenue sources exceeding projections. The projected balance at the end of 2023 and 2024 exceeds the required reserves, leaving funding available for projects or other priorities.

## New Budget Considerations

In preparation of the 2024 Annual Budget, Mayor Roberts asked staff to prepare three additional programs/initiatives for consideration. Please see information below for each of these. These items have not been included in the 2024 budget. If City Council would choose to include one or more of these programs/initiatives, staff would include the projected cost in the recommended budget present in August.

### **Property Tax Rebate Program for Seniors**

Several cities in Johnson County have property tax rebate programs for certain populations of their citizens. Mayor Roberts recommended focusing the Edgerton program on seniors, who often lived on fixed-income and are one of the cities most vulnerable population.

Generally, a property tax rebate program is designed to alleviate some of the burden of home ownership for seniors due to rising property values. Qualified senior residents could be reimbursed some portion or all of the City's portion of property taxes, excluding special assessments. This program would focus only on Edgerton's portion of the property tax bill.

Potential eligibility requirements for the program could include age (i.e. - 65 and older); owner-occupied homes; current on payment of their property taxes and special assessments are eligible for the program; certain appraised value, etc. If City Council supports the concept of the program, staff would recommend

including an estimated cost of the program in the 2024 budget. Then staff would bring back the details of the program at a future meeting for City Council to approve for implementation in 2024.

According to the Johnson County Appraiser, in 2023 the average appraised value of a home in the City of Edgerton was \$209,672. Based on this appraised value, that Edgerton resident would pay \$715.51 in Edgerton city taxes. According to the Mid-America Regional Council, 14.5% of Johnson County residents are age 65 and older (per the 2020 U.S. Census). The City of Edgerton has 632 households, which would predict approximately 91 senior households. For budgetary purposes, staff would recommend \$65,000 as the amount to add to the 2024 General Fund budget in Economic Development if City Council would like to consider this program.

### **2024 Frontier Days at Martin Creek Park**

The construction of The Greenspace expected to be well underway by this time next year making the normal location for Frontier Days unavailable. Staff would recommend moving the location of the Frontier Days event to ensure the safety of all involved and attending. City staff evaluated potential locations and identified Martin Creek Park as the best alternate option. This was due to there being adequate room for entertainment, vendors, etc.

Mayor Roberts asked staff to identify challenges or significant costs associated with moving Frontier Days to Martin Creek Park. Staff identified two categories of potential costs: (1) need for shuttle buses from downtown and/or the school similar to 3<sup>rd</sup> of July and (2) additional fencing for the south side of the park.

Frontier Days may need a larger footprint for the festival activities that could significantly limit the parking available at the park. Staff would recommend providing a shuttle similar to 3<sup>rd</sup> of July for the dates of that festival. Based on 2023, that would include Friday night and all day/night Saturday. Estimated cost for that amount of shuttle would be \$2000. Additionally, staff would recommend additional fencing on the south side of Martin Creek Park by the farm property to protect that property from public entry. Staff estimates an additional \$2000 for that fencing.

There may be other additional costs/considerations based on set up of the event, but that will not be known until meeting with Frontier Days Association.

### **Adopt a Highway Additional Locations**

In June 2022, City Council approved agreements with Adopt a Highway to sponsor Highway 56 (Northbound and Southbound) from 8th Street to Sunflower Road for litter removal services.

Mayor Roberts asked staff to get a quote to expand the trash collection program for two areas of high visibility as entryways into our community. Each section is approximately 1.5 miles. These areas include:

- Sunflower Road (from I-35 to East 6th Street)
- Homestead Road (from I-35 to 191st Street)

The cost of this service would be \$350 per monthly cleaning per direction for one side of the roadway. If do both sides of roadway is \$325 per monthly cleaning. Based on these quotes, the budgetary impact would be \$7,800 for one per section (both sides) or \$15,600 per year for both sections (both sides).

## Appendix A – Expenditures Approved Budgets Year-to-Year Detail

### General Government

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"> <li>Funded 1/3 of a new Customer Service Representative position (shared with General Government and Public Works).</li> <li>Removed biennial Citizen Survey.</li> <li>Reduced trash contract cost to reflect current contract.</li> <li>Estimated 15% increase in property/casualty insurance cost.</li> <li>Increase in support for community partners per direction given at the May 26, 2022, meeting: <ul style="list-style-type: none"> <li>Project Grad</li> <li>Robert Cook Memorial Votech Scholarship</li> </ul> </li> <li>Increase in investment advisor fees.</li> </ul>	<ul style="list-style-type: none"> <li>Added biennial Citizen Survey which is done in the even years.</li> <li>Estimated 8% increase in property insurance premiums.</li> <li>Reduced printing costs to reflect actual costs from the past few years.</li> <li>Added funding for Adopt-A-Highway segments approved by Council in 2022 after the 2023 Budget was adopted (Highway 56).</li> <li>Increase in support for Project Grad.</li> <li>Increase in support for utility assistance.</li> <li>Increase support for UCS.</li> <li>Increased cost for City Attorney to reflect rate increase, the first increase since the firm was hired five years ago.</li> </ul>

### Law Enforcement

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"> <li>Reflects a 6.3% increase in the cost of the contract with the Johnson County Sheriff's Office for policing services.</li> <li>Increase in prisoner board fees charged by Johnson County.</li> <li>Increase cost for court support services</li> </ul>	<ul style="list-style-type: none"> <li>Includes a 10% increase in the policing contract with the Johnson County Sheriff's Office.</li> <li>Increase in the prisoner boarding fees from \$75/day to \$85/day.</li> </ul>

### Public Works

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"> <li>Funded internal career progression</li> <li>Funded on-call pay</li> <li>Funded 1/3 of a new Customer Service Representative position (shared with General Government and Public Works).</li> <li>Increased utility and maintenance costs for streetlights and traffic signals</li> <li>Increased costs for contracted professional services</li> <li>Increased costs for supplies (i.e. uniforms, construction, snow/ice control and signs)</li> </ul>	<ul style="list-style-type: none"> <li>Increased electric costs for streetlights and traffic signals for rate increase resulting from a potential Evergy rate case that would be effective in January 2024.</li> <li>Increase in cost for streetlight and traffic signal maintenance as the items in LPKC are approaching ten years old.</li> <li>Increase in cost for City Engineer services.</li> <li>Increase in cost for storm siren maintenance, including the cost to replace one battery each year.</li> <li>Increase in cost for brine used in snow operations in case we have to change vendors.</li> </ul>

## Parks

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>Increased costs to Community Picnic and Fireworks event</li><li>Increase in supplies</li><li>Increase in Frontier Days support per Council direction at the May 26, 2022, meeting.</li></ul>	<ul style="list-style-type: none"><li>Allocation of On-Call pay for Parks employees. In the past, the On-Call pay was all charged to Public Works.</li><li>Added back one Summer Movie Night event.</li><li>Increase in cost for the 3<sup>rd</sup> of July event related to food and insect treatment for the grass area.</li><li>Estimating an 8% increase in property insurance premiums.</li><li>Increase in costs for chemical applications for Bridgewater Lake and grassy areas.</li><li>Increased financial support for Frontier Days.</li></ul>

## Facilities

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>Small decrease in cleaning contract new contract.</li><li>Small decrease in internet cost. Upgrade in 2022 was less than estimated.</li></ul>	<ul style="list-style-type: none"><li>Removed utilities and internet costs for the Yellow House and the Red Barn.</li><li>Increase in cost of the cleaning contract to reflect cost with the current provider.</li></ul>

## Fleet Maintenance

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>Increase in fuel cost due to significant change in current fuel prices.</li><li>Increase in maintenance contract.</li><li>Increase costs in vehicle and equipment maintenance.</li></ul>	<ul style="list-style-type: none"><li>Increase in the cost of parts and materials used to maintain the fleet.</li><li>Moved the cost for the Verizon Network Fleet from Public Works.</li><li>Increase in fuel costs to reflect the actuals from the last couple of years.</li></ul>

## Community Development

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>Funded 1/3 of a new Customer Service Representative position (shared with General Government and Public Works).</li><li>Reallocation of funding to professional services due to vacancy.</li></ul>	<ul style="list-style-type: none"><li>Added the Building Inspector position.</li><li>Reduced professional services for items that the building inspector would handle.</li><li>Increase in the cost for relocating animals to shelters.</li><li></li></ul>

## Economic Development

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>• Small decrease in the BNSF increment.</li><li>• Decrease in the utility sales tax to be transferred to the Public Infrastructure Fund based on the trend in actuals.</li></ul>	<ul style="list-style-type: none"><li>• Small decrease in the BNSF increment.</li><li>• Added the Residential Grant Program.</li><li>• Decreased the Utility Sales Tax transfer to the LPKC Phase 1 Public Infrastructure Fund to reflect the trend in the transfers made the last two years.</li></ul>

## Information Technology

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>• Estimating 10% increase in contracted IT services.</li><li>• Moved cost of cyber insurance from General Government.</li><li>• Increase in cost of IT equipment replacement.</li></ul>	<ul style="list-style-type: none"><li>• Estimating a 20% increase in cyber insurance premiums.</li><li>• Increase in user license fees for some software programs, such as Adobe.</li><li>• Added vulnerability scanning and monitoring monthly service for compliance with Payment Card Industry Data Security Standards (PCI Compliance) per the credit card merchant agreement with Global Payments.</li><li>• Added the Tyler Online Payment Portal Maintenance fee (per transaction fee billed to the City after each quarter).</li></ul>

## Employee Benefits

2022 Budget – 2023 Budget	2023 Budget -2024 Recommended
<ul style="list-style-type: none"><li>• Estimated 10% increase in health insurance premiums.</li><li>• Estimated 3% increase in dental and vision premiums.</li></ul>	<ul style="list-style-type: none"><li>• Estimating a 10% increase in health insurance premiums and a 3% increase in premiums for dental and vision.</li><li>• Increase in KPERS Rate from 9.43% to 10.26%. For the last few years, the rate had stayed around the same amount.</li></ul>

## City of Edgerton General Fund Summary of Audits

	2020 Actual	2021 Actual	2022 Actual
<b>Balance 1/1</b>	\$ 1,698,768	\$ 1,978,603	\$ 2,098,781
<b>Revenues:</b>			
Ad Valorem Tax	2,374,119	2,081,360	2,194,690
City TIF Increment	-	-	(38,133)
LPKC PILOT	-	-	-
Delinquent Tax	8,832	1,460	9,016
Motor Vehicle Tax	46,920	53,313	46,960
Recreational Vehicle Tax	994	916	1,192
16/20M Vehicle Tax	333	598	434
Local Alcoholic Liquor Tax	1,999	8,156	7,728
City 1% Use Tax	204,506	253,200	294,254
County Use Tax	100,653	112,556	154,981
City 1% Sales Tax	479,593	523,941	560,160
County Sales Tax	372,940	366,045	373,853
Franchise Tax	197,313	199,933	226,162
Licenses & Permits	176,022	242,452	160,187
Charges for Services	121,428	115,272	124,824
Fines & Forfeitures	65,753	121,756	92,585
Reimbursements/Miscellaneous	99,058	9,517	36,144
Investment Income	26,858	6,477	12,751
<b>Total Revenue</b>	<b>\$ 4,277,321</b>	<b>\$ 4,096,952</b>	<b>\$ 4,257,788</b>
<b>Expenditures:</b>			
General Government	846,357	882,428	892,585
Law Enforcement	495,491	543,316	535,611
Public Works	529,758	527,357	577,800
Parks	154,336	224,320	311,378
Facilities	115,949	101,251	103,091
Fleet Maintenance	41,868	52,357	49,857
Community Development	314,029	423,422	366,082
Economic Development	444,551	425,747	460,944
Information Technology	90,172	38,203	45,501
Employee Benefits	358,582	410,119	445,056
<b>Total Expenditures</b>	<b>\$ 3,391,093</b>	<b>\$ 3,628,520</b>	<b>\$ 3,787,905</b>
<b>Revenues Over(Under) Expenditures</b>	<b>\$ 886,228</b>	<b>\$ 468,432</b>	<b>\$ 469,883</b>
<b>Other Financing Sources &amp; Uses</b>			
<b>Transfers from Other funds:</b>			
Transfer from Capital Projects Fund	\$ 14,462	\$ 31,521	\$ 84,069
Transfer from TIF Funds-City TIF Fee		\$ -	\$ 50,916
<b>Transfers to Other Funds:</b>			
Transfer to Equipment Reserve Fund-General	(325,000)	(126,775)	(127,000)
Transfer to Capital Projects Fund	(295,855)	(253,000)	(207,843)
<b>Total Other Financing Sources &amp; Uses</b>	<b>\$ (606,393)</b>	<b>\$ (348,254)</b>	<b>\$ (199,858)</b>
<b>Balance 12/31</b>	<b>\$ 1,978,603</b>	<b>\$ 2,098,781</b>	<b>\$ 2,368,806</b>

City of Edgerton  
Calculation of the Adjustment to the RNR  
for the 2024 Budget

Real Property									
		6/15/2023 AV				Change			
Class	Description	Nov 2022	#'s Co Clerk	Pending Exemptions	Adj #'s	Nov 2022-6/15/2023 Adj	Council Policy		
R	Residential Including Apartments	\$ 13,369,740	\$ 14,471,091	\$ -	\$ 14,471,091	\$ 1,101,351	capture revenue incr up to CIP-U		
A	Agricultural Land Use & Improvements	\$ 183,813	\$ 192,265	\$ -	\$ 192,265	\$ 8,452	capture all revenue		
C	Commercial & Industrial	\$ 7,369,138	\$ 8,150,109	\$ -	\$ 8,150,109	\$ 780,971	capture all revenue		
V	Vacant Lots	\$ 4,561,441	\$ 4,786,028	\$ -	\$ 4,786,028	\$ 224,587	capture all revenue		
N	Not for Profit	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
O	All Other Real Property	\$ 1,680	\$ 1,722	\$ -	\$ 1,722	\$ 42	capture all revenue		
U	Utilities	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
ED	Exempt Dam	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EI	Exempt IRB	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EIC	Exempt IRB for Com	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EIR	Exempt IRB for Res	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EIV	Exempt IRB for Vac	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EX	Exempt Ec Dev	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EXC	Exempt Ec Dev for Com	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EXR	Exempt Ec Dev for Res	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
EXV	Exempt Ec Dev for Vac	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
E	All Other Tax Exempt Property	\$ -	\$ -	\$ -	\$ -	\$ -	capture all revenue		
Total Real Property		\$ 25,485,812	\$ 27,601,215	\$ -	\$ 27,601,215	\$ 2,115,403			

City of Edgerton  
Policy Regarding Adjustments to the RNR  
Adopted by Council on 6/10/2021

- Categories of Adjustments to the RNR:
- 1 Roll off of incentives, including abatements
  - 2 New territory/annexations
  - 3 Growth in assessed value for non-residential properties
  - 4 Growth in assessed value of residential property due to inflation based on the CPI-U
  - 5 Issuance of GO debt
  - 6 County errors

Personal Property									
		6/15/2023 AV				Change			
Class	Description	Nov 2022	#'s Co Clerk	Adj	Adj #'s	Nov 2022-6/15/2023 Adj	Council Policy		
	Personal Property	\$ 165,289	\$ 153,286	\$ -	\$ 153,286	\$ (12,003)	capture all revenue		

State Assessed									
		6/15/2023 AV				Change			
Class	Description	Nov 2022	#'s Co Clerk	Adj	Adj #'s	Nov 2022-6/15/2023 Adj	Council Policy		
	State Assessed	\$ 33,741,280	\$ 32,557,263	\$ -	\$ 32,557,263	\$ (1,184,017)	capture all revenue		
Grand Totals		\$ 59,392,381	\$ 60,311,764	\$ -	\$ 60,311,764	\$ 919,383			

Calculation of Adjustment to RNR

Total Allowable Change in Assessed Value Per Council Policy	\$ 1,078,556
Nov 2022 Mill Rate for the 2023 Budget	29.674
Allowable increase in Property Tax Revenue per Council Policy	\$ 32,005
Property Tax Levied 2022 for 2023 Budget	\$ 1,757,510
Total Property Tax Revenue for the 2024 Budget	\$ 1,789,515
Base Mill Rate Needed	29.671
Mill Rate Needed for GO Debt Service	\$ -
Total Mill Rate Needed	29.671
RNR	(29.140)
Adjustment to the RNR	0.531

City of Edgerton  
General Fund **REVISED**

Mill Rate:	29.913	29.674		29.671 calculated
Revenue from 1 Mill:	\$54,323	\$59,222		\$60,312 est.
	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
Balance 1/1	\$ 1,855,359	\$ 1,901,407	\$ 2,368,806	\$ 2,058,293
Revenues:				
Ad Valorem Tax	1,624,996	1,757,393	100%	1,789,515
City TIF Increment	(38,158)	(50,425)	100%	(50,698)
LPKC PILOT	589,332	620,119	100%	610,619
Delinquent Tax	-	-	-	-
Motor Vehicle Tax	52,830	53,576	100%	46,871
Recreational Vehicle Tax	835	823	100%	1,000
16/20M Vehicle Tax	375	488	100%	323
Local Alcoholic Liquor Tax	5,000	9,000	100%	8,500
City 1% Use Tax	200,000	253,000	117%	305,000
County Use Tax	100,000	122,000	127%	155,000
City 1% Sales Tax	485,000	540,000	104%	610,000
County Sales Tax	375,000	380,000	100%	408,000
Franchise Tax	180,000	199,000	113%	235,000
Licenses & Permits	224,000	224,000	100%	414,850
Charges for Services	98,700	85,470	100%	85,470
Fines & Forfeitures	75,000	80,000	100%	80,000
Reimbursements/Miscellaneous	-	-	-	-
Investment Income	15,000	15,000	100%	15,000
Total Revenue	\$ 3,987,910	\$ 4,289,444	103%	\$ 4,714,450
Expenditures:				
General Government	1,050,748	1,138,238	97%	1,223,435
Law Enforcement	556,036	572,719	97%	621,067
Public Works	565,620	721,645	97%	754,458
Parks	315,043	336,947	97%	372,387
Facilities	143,570	142,424	97%	137,914
Fleet Maintenance	52,700	62,250	97%	67,050
Community Development	387,348	494,000	97%	495,394
Economic Development	506,700	494,775	97%	580,900
Information Technology	81,872	89,167	97%	98,029
Employee Benefits	555,093	602,718	97%	630,402
Total Expenditures	\$ 4,214,730	\$ 4,654,883	97%	\$ 4,981,036
Revenues Over(Under) Expenditures	\$ (226,820)	\$ (365,439)		\$ (266,586)
Other Financing Sources & Uses				
Transfers from Other funds:				
Transfer from Capital Projects Fund	\$ -	\$ -	-	\$ -
Transfer from TIF Funds-City TIF Fee	\$ 17,656	\$ 5,343	100%	\$ 1,107
Transfers to Other Funds:				
Transfer to Equipment Reserve Fund-General	(125,000)	(125,000)	141%	(125,000)
Transfer to Capital Projects Fund	(195,000)	-	0%	-
Total Other Financing Sources & Uses	\$ (302,344)	\$ (119,657)		\$ (123,893)
Balance 12/31	\$ 1,326,195	\$ 1,416,311	\$ 2,058,293	\$ 1,667,813

Undesignated Reserve:	\$ 741,330	\$ 796,776
Portion Designated for Self-Insured Losses:	\$ 50,000	\$ 50,000
Reserve Per Policy - 17% of Budgeted Expenditures:	\$ 791,330	\$ 846,776
Unencumbered Cash Over(Under) Requirement:	\$ 1,266,963	\$ 821,037
Undesignated Reserve:	\$ 1,113,721	\$ 1,195,259
Portion Designated for Self-Insured Losses:	\$ 50,000	\$ 50,000
Reserve Per Policy - 25% of Budgeted Expenditures:	\$ 1,163,721	\$ 1,245,259
Unencumbered Cash Over(Under) Requirement:	\$ 894,572	\$ 422,554

Funding Sources: Property tax, sales tax, franchise fees, user fees and charges

Expenditures: General operations of the City

**City of Edgerton  
2024 Budget Work Session  
July 6, 2023**

# **Utility Funds Budget**





June 29, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director  
Dan Merkh, Public Works Director

Re: 2024 Recommended Water Fund Budget

Attached please find the 2024 Recommended Budget for the Water Fund. This fund contains the water utility operation of the City.

Throughout the annual budget process, the City Council approved the use of the Consumer Price Index for All Urban Consumers (CPI-U) as reported by the US Bureau of Labor Statistics (BLS). In January 2023 BLS released the CPI-U which was 6.5%. In January 2022 the CPI-U was 7%.

### 2023 Estimate

The 2023 estimated revenues and expenditures reflect staff's evaluation of the activity so far in 2023 compared to the budget approved for 2023. A line item with an estimate of more than 100% means that staff expects the 2023 activity to exceed the budget. A line item with an estimate that is less than 100% means that staff anticipates the 2023 activity to be less than the budget.

### Revenues

The water utility operations are considered an enterprise, and as such, the funding for operations comes from user charges. The user charges needed to fund the utility operations are calculated based on the operation and maintenance costs required to run the utility, the debt service payments required on outstanding debt and any costs for capital outlay, such as equipment or capital improvements to the system.

#### Charges for Services

- The revenues are from the 2022 Rate Study Report prepared by Raftelis, which is included in this packet for reference. The 2022 Rate Study Report recommends a small increase of \$2.13 per month for the average customer for 2024. Included after the 2022 Rate Study Report is a comparison of neighboring jurisdictions average utility bills as of June 29, 2023.
  - If there is consensus to adopt the recommendation in the 2022 Rate Study Report, staff would bring back the updated fee resolution for Council consideration at a meeting in September.
- This category also includes the tower rent received from AT&T. There is a small increase for this source based on annual increases built into the lease agreement.

### **Fines & Forfeitures**

- The 2024 Budget is a decrease from the 2023 Budget. With the implementation of the Tyler software, the late fees are now allocated proportionally among the General Fund (for trash related late fees), the Water Fund and the Sewer Fund. Previously, all the late fees were deposited in the Water Fund.

### **Investment Income**

- The 2024 Budget is the same as the 2023 Budget.

<b>Expenditures</b>
---------------------

### **Fleet Maintenance**

- The 2024 budget is an increase from the 2023 budget to reflect the cost increases staff has experienced in parts and materials.

### **Information Technology**

- Includes a 20% increase in the cost of cyber insurance.
- There are no items for replacement in 2024.

### **Production**

- The 2024 Budget is the same as the 2023 Budget. Staff believes the current budget can absorb any cost increases associated with the contract renewal with Baldwin City based on current negotiations.

### **Distribution**

- Increased postage costs related to an increase in the number of samples that will be required for implementation of the federally mandated Lead and Copper Rule Revisions (LCRR) from EPA in alignment with the Safe Water Drinking Act.
- Added the cost to replace one fire hydrant.
- The 2023 Budget added funding for a small number of meter replacements. The Neptune meters are approaching eight years old and staff is trying to include the cost in the operating budget vs having to have a capital project.

### **Administrative-Water**

- Added the cost for the rate study. Rate studies will be conducted in even years going forward.
- Increased credit card fees to reflect the increase in fees due to having a provider that is fully integrated with the billing software.
- Increased the cost for the printing of utility bill paper and envelopes to reflect recent quotes received.

### **Employee Benefits**

- Includes a 10% increase in health insurance premiums and a 3% increase in dental and vision insurance premiums based on information from the City's provider, Midwest Public Risk. The City has been fortunate that actual increases the last few years have been less than 10%.

- Includes an increase in the KPERs employer rate. The rate will go from 9.43% to 10.26%. For the last few years, the rate had stayed about the same.

### **Debt Service**

- Includes the State Revolving Loan payments for the AMI meter system. The loan is scheduled to be paid off in 2037.

### **Transfers to Other Funds**

- The recommended budget includes a \$15,000 transfer to the Equipment Reserve Fund-Water.

## **Ending Balance and Reserves**

The projected balance at the end of 2024 meets the level required by Council policy.

## **Future Considerations**

The financial plan presented in the 2022 Rate Study Report is a forecast that relies on assumptions made about expenditures, customer base, debt service requirements, etc. These factors can change, and as more information is obtained, the assumptions will be updated.

Staff is inventorying the water system components to analyze and develop a replacement plan. That plan, along with the Vehicle and Equipment Plan already in place, will provide information about future funding needs that are not currently reflected in the financial plan. Another future consideration that might affect the financial plan is the wholesale water contract renewal with the City of Baldwin City, for which negotiations are in progress.

## City of Edgerton Water Fund

	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ 176,502	\$ 137,901	\$ 183,079	\$ 192,147
<b>Revenues:</b>				
Charges for Services	462,222	487,630	100%	511,187
Fines & Forfeitures	20,000	20,000	40%	8,000
Reimbursements	-	-	-	-
Investment Income	2,500	2,500	100%	2,500
<b>Total Revenue</b>	<b>\$ 484,722</b>	<b>\$ 510,130</b>	<b>98%</b>	<b>\$ 521,687</b>
<b>Expenditures:</b>				
Fleet Maintenance	6,075	6,075	95%	7,475
Information Technology	49,878	51,738	95%	52,309
Production	175,000	175,000	95%	175,000
Distribution	54,505	63,030	94%	67,030
Administrative - Water	143,054	150,151	95%	162,562
Employee Benefits	36,429	37,938	95%	40,184
Debt Service	56,153	14,957	100%	14,957
<b>Total Expenditures</b>	<b>\$ 521,094</b>	<b>\$ 498,889</b>	<b>95%</b>	<b>\$ 519,517</b>
<b>Revenues Over(Under) Expenditures</b>	<b>\$ (36,372)</b>	<b>\$ 11,241</b>		<b>\$ 2,170</b>
<b>Other Financing Sources &amp; Uses:</b>				
<b>Transfers from Other funds:</b>				
Transfer from Water Reserve Fund	-	-	0%	-
Transfer from Capital Projects Fund	-	-	0%	-
<b>Transfers to Other Funds:</b>				
Transfer to Equipment Reserve Fund-Water	(25,000)	(15,000)	100%	(15,000)
Transfer to Capital Projects Fund	-	-		-
<b>Total Other Financing Sources &amp; Uses</b>	<b>\$ (25,000)</b>	<b>\$ (15,000)</b>	<b>100%</b>	<b>\$ (15,000)</b>
<b>Balance 12/31</b>	<b>\$ 115,130</b>	<b>\$ 134,142</b>	<b>\$ 192,147</b>	<b>\$ 179,317</b>
<i>Reserve Per Policy - 17% of Budgeted Expenditures:</i>		\$ 84,811		\$ 88,318
<i>Unencumbered Cash Over(Under) Requirement:</i>		\$ 107,336		\$ 90,999
<i>Reserve Per Policy - 25% of Budgeted Expenditures:</i>		\$ 124,722		\$ 129,879
<i>Unencumbered Cash Over(Under) Requirement:</i>		\$ 67,425		\$ 49,438

**Funding Sources:** Charges to users of the City's water system

**Expenditures:** Water system operation and maintenance



June 29, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director  
Dan Merkh, Public Works Director

Re: 2024 Recommended Sewer Fund Budget

Attached please find the 2024 Recommended Budget for the Sewer Fund.

Throughout the annual budget process, the City Council approved the use of the Consumer Price Index for All Urban Consumers (CPI-U) as reported by the US Bureau of Labor Statistics (BLS). In January 2023 BLS released the CPI-U which was 6.5%. In January 2022 the CPI-U was 7%.

### 2023 Estimate

The 2023 estimated revenues and expenditures reflect staff's evaluation of the activity so far in 2023 compared to the budget approved for 2023. A line item with an estimate of more than 100% means that staff expects the 2023 activity to exceed the budget. A line item with an estimate that is less than 100% means that staff anticipates the 2023 activity to be less than the budget.

Staff has removed the transfer to capital projects from the 2023 Estimate. There are sufficient dollars available from 2022 and prior to fund the 2023 CDBG project.

### Revenues

The sewer utility operations are considered an enterprise, and as such, the funding for operations come from user charges. The user charges needed to fund the utility operations are calculated based on the operation and maintenance costs required to run the utility, the debt service payments required on outstanding debt and any costs for capital outlay such as equipment or capital improvements to the system.

#### Licenses & Permits

- This revenue is generated from businesses that are using holding tanks because they are not yet connected to the City's wastewater system. The City estimates that there will be two businesses at LPKC that will have a holding tank permit in 2024.

#### Charges for Services

- The revenues are from the 2022 Rate Study Report prepared by Raftelis, which is included in this packet for reference.

- The 2024 revenue reflects the termination of the flow from Gardner that occurred in September 2022, pursuant to the agreement with Gardner to the purchase Gardner's interest in the Big Bull Creek Wastewater Treatment Plant infrastructure.
- The 2022 Rate Study Report recommends an increase of \$2.74 per month for the average customer for 2024. Included after the 2022 Rate Study Report is a comparison of neighboring jurisdictions average utility bills as of June 29, 2023.
  - If there is consensus to adopt the recommendation in the 2022 Rate Study Report, staff would bring back the updated fee resolution for Council consideration at a meeting in September.

### **Investment Income**

- The 2024 Budget is the same as the 2023 Budget.

## **Expenditures**

### **Fleet Maintenance**

- The 2024 budget is an increase from the 2023 Budget to reflect the cost increases staff has experienced in parts and materials.

### **Information Technology**

- Includes a 20% increase in the cost of cyber insurance.
- There are no items for replacement in 2024.

### **Treatment Plant**

- Increased electricity costs to reflect a potential Evergy rate case. As part of the merger with Westar, Evergy agreed not to have a rate case for five years. The five years expires at the end of 2023. Evergy has indicated they will file a rate case in 2023 which will include rate increases effective January 1, 2024.
- Increased costs for contracted sludge disposal services from the previous contract price.
- Increased the cost of samples required by the City's permit with KDHE. As with many items, the costs of the tests required have increased.
- The City's insurance agent, Kevin O'Brien estimates that property insurance costs will increase 8% in 2024. A portion of those insurance costs is allocated to the treatment plant.

### **Sewer Line Maintenance**

- The 2024 Budget shows an increase in the cost of parts and materials related to manholes.

### **Lift Stations/Vaults**

- The 2024 Budget increase for this department reflects the trend in actual expenditures for equipment repairs and maintenance for items like lift station pumps, etc.

### **Administrative-Sewer**

- Added the cost for the rate study. Rate studies will be conducted in even years going forward.

- Increased credit card fees to reflect the increase in fees due to having a provider that is fully integrated with the billing software.
- Increased the cost for the printing of utility bill paper and envelopes to reflect recent quotes received.

### **Employee Benefits**

- Includes a 10% increase in health insurance premiums and a 3% increase in dental and vision insurance premiums based on information from the City's provider, Midwest Public Risk.
- Includes an increase in the KPERS employer rate. The rate will go from 9.43% to 10.26%. For the last few years, the rate had stayed about the same.

### **Debt Service**

- Includes the payment for the Series 2016A and 2016B General Obligation Bonds for the conversion of the old treatment plant to a lift station. The project was completed in 2017. The bonds are scheduled to be paid off in 2046 and 2048, respectively.

### **Transfers to Other Funds**

- Staff has removed the transfer to capital projects from the 2024 Budget. There are sufficient dollars available from 2022 and prior to fund the 2024 CDBG project.

## **Ending Balance and Reserves**

The projected balance at the end of 2024 meets the level required by Council policy. Staff will continue to review revenues and expenditures compared to the plan in the 2022 Rate Study report to monitor the effects of the removal of the Gardner flow.

## **Future Considerations**

The financial plan presented in the 2022 Rate Study Report is a forecast that relies on assumptions made about expenditures, customer base, debt service requirements, etc. These factors can change, and as more information is obtained, the assumptions will be updated.

The Wastewater Master Plan process is in the final stage. That plan, along with the Vehicle and Equipment Plan already in place, will provide information about future funding needs that are not currently reflected in the financial plan.

## City of Edgerton Sewer Fund

	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ 338,155	\$ 456,410	\$ 570,361	\$ 654,735
<b>Revenues:</b>				
Licenses & Permits	-	100	-	100
Charges for Services	761,529	704,931	100%	761,265
Fines & Forfeitures	-	-		7,000
Reimbursements	-	-	-	-
Bond Proceeds	-	-	-	-
Investment Income	3,500	3,500	100%	3,500
Total Revenue	\$ 765,029	\$ 708,531	101%	\$ 771,865
<b>Expenditures:</b>				
Fleet Maintenance	6,075	6,075	97%	7,475
Information Technology	49,879	51,738	97%	53,351
Treatment Plant	195,674	193,772	97%	225,055
Sewer Line Maintenance	11,700	11,700	97%	13,200
Lift Stations/Vaults	34,562	35,756	97%	38,456
Administrative - Sewer	224,738	235,028	97%	251,897
Employee Benefits	63,261	65,055	97%	71,876
Debt Service	94,438	194,438	100%	192,438
Total Expenditures	\$ 680,327	\$ 793,562	98%	\$ 853,748
<b>Revenues Over(Under) Expenditures</b>	<b>\$ 84,702</b>	<b>\$ (85,031)</b>		<b>\$ (81,883)</b>
<b>Other Financing Sources &amp; Uses:</b>				
<b>Transfers from Other funds:</b>				
Transfer from Sewer Reserve Fund	-	-	-	-
Transfer from LPKC Phase I Maintenance Fee	-	194,438	-	-
Transfer from Capital Projects Fund	-	-	-	-
<b>Transfers to Other Funds:</b>				
Transfer to Equipment Reserve Fund-Sewer	(25,000)	-	-	-
Transfer to Capital Projects Fund	(125,000)	-	#DIV/0!	-
Total Other Financing Sources & Uses	\$ (150,000)	\$ 194,438	74%	\$ -
<b>Balance 12/31</b>	<b>\$ 272,857</b>	<b>\$ 565,817</b>	<b>\$ 654,735</b>	<b>\$ 572,852</b>

Reserve Per Policy - 17% of Budgeted Expenditures:	\$	134,906	\$	145,137
Unencumbered Cash Over(Under) Requirement:	\$	519,829	\$	427,715
Reserve Per Policy - 25% of Budgeted Expenditures:	\$	198,391	\$	213,437
Unencumbered Cash Over(Under) Requirement:	\$	456,345	\$	359,415

**Funding Sources:** Charges to users of the City's sewer system

**Expenditures:** Sewer system operation and maintenance

# CITY OF **Edgerton**

## **Water and Wastewater Rate Study**

Draft Report / June 2022



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## 1.1 Introduction

### 1.1.1.BACKGROUND OF THE STUDY

The City of Edgerton retained Raftelis in 2022 to update the City's Utility Rate Study (Study). The purpose of the Study was to develop financial plans and rates to promote self-sustainability of the City's separate water and sewer utilities and recommend retail rates for service consistent with the financial plans for the utilities.

### 1.1.2.OBJECTIVES OF THE STUDY

The major objective of the study was to update financial plans for the water and sewer enterprises to ensure financial sufficiency, meet operation and maintenance (O&M) expense, debt service, and continue the financial health of the utilities.

### 1.1.3.CUSTOMER DATA

During the course of this project, the City provided Raftelis with a variety of financial information, including but not limited to, audited and unaudited financial results, customer billing data, and cost and revenue data. Raftelis did not independently assess or test for the accuracy of such data – historic or projected. We have relied on this data in the formulation of our findings and subsequent recommendations, as well as in the preparation of this report.

The forecast of use and accounts includes several changes to the sewer customer base. The City is in the process of exploring the acquisition of the share of the Big Bull Creek Wastewater Treatment facility that is currently owned by the City of Gardner. If that acquisition takes place, Gardner would no longer send wastewater to the City's plant for treatment. Staff estimates flow could cease after the end of September 2022, which is what is reflected in the financial plan in Section 1.3 below. This will represent approximately a 18% decrease in total contributed wastewater in 2022 and 42% in 2023. The City also expects to begin treating wastewater from several new commercial customers who are expected to contribute approximately 12 million gallons per year in 2023; these new customers will account for approximately 17% of total wastewater volume that year.

**Figure 1: 2021 Units of Service**

Utility	Annual Bills	Usage (1,000 Gal)
Water	8,282	29,566
Sewer	7,434	126,677

### 1.1.4.REVENUE REQUIREMENTS

The revenue requirements for the City's water and sewer utility include the O&M expense for each utility as well as debt service. The operating and maintenance expense is escalated by an average of approximately 5% each year across the water and sewer utilities to reflect expected inflationary increases in costs in future years. The forecast also assumes the City will spend 95% of budgeted expenses. The debt service is based on the City's current outstanding debt, including the most recently issued debt used to finance improvements to the City's sewer utility. The financial plans do not currently include any capital improvements for the water utility and limited amounts for the sewer utility, though City Staff indicates such improvements may be necessary in the future.

## 1.2. Water Rate Study Findings

Raftelis updated a five-year water utility financial plan for the study period. This plan determines the financial status of the water utility under recommended rates. Raftelis recommends regularly updating the water financial plan to recognize changes in capital improvements, customer's water usage characteristics, and system growth.

Based on the water utility's current revenue requirements, we are proposing an increase in all water rates of 5% in 2023 through 2027. Current projections suggest that these levels of rate increases are sufficient to cover operating expenses and debt service, as well as provide a small amount of additional funding in future years for equipment at the discretion of the Council. The forecast also includes periodic expenditures from the Equipment Reserve Fund.

The City's reserve policy requires that a reserve of 17-25% of budgeted operating/debt service expenditures be maintained in the Water Fund. This plan will maintain the operating reserve at 25% of annual operating expenses and debt service and reserves additional surpluses to fund major future capital and equipment spending. The City meets or exceeds this target for each year of the study period.

Figures 2 and 3 present the water financial plan in tabular and graphic form.

**Figure 2: Proposed Water Financial Plan**

Water Utility Cash Flow	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
	Actual	Budget	Budget	Forecast	Forecast	Forecast	Forecast
<b>Revenue</b>							
Retail Customer Revenue	\$ 416,714	\$ 428,367	\$ 449,785	\$ 472,275	\$ 495,888	\$ 520,683	\$ 546,717
Other Revenue	66,919	59,300	60,345	60,345	60,345	60,345	60,345
<b>Total: Revenue</b>	<b>\$ 483,633</b>	<b>\$ 487,667</b>	<b>\$ 510,130</b>	<b>\$ 532,620</b>	<b>\$ 556,233</b>	<b>\$ 581,028</b>	<b>\$ 607,062</b>
<b>Proposed Revenue Adjustment</b>			<b>5.00%</b>	<b>5.00%</b>	<b>5.00%</b>	<b>5.00%</b>	<b>5.00%</b>
<b>Revenue Requirement</b>							
Operating Expenses	\$ 387,848	\$ 447,336	\$ 459,735	\$ 482,010	\$ 506,378	\$ 531,987	\$ 558,898
Existing Debt Service	97,346	56,153	14,957	14,955	14,955	14,955	14,958
Budgeted Transfers	27,500	15,000	15,000	25,000	30,000	30,000	30,000
<b>Total: Revenue Requirement</b>	<b>\$ 512,693</b>	<b>\$ 518,489</b>	<b>\$ 489,692</b>	<b>\$ 521,965</b>	<b>\$ 551,334</b>	<b>\$ 576,942</b>	<b>\$ 603,857</b>
<b>Surplus/(Deficit)</b>	<b>\$ (29,060)</b>	<b>\$ (30,822)</b>	<b>\$ 20,438</b>	<b>\$ 10,654</b>	<b>\$ 4,900</b>	<b>\$ 4,086</b>	<b>\$ 33,205</b>
<b>Debt Service Coverage</b>	<b>0.98</b>	<b>0.71</b>	<b>3.36</b>	<b>3.38</b>	<b>3.33</b>	<b>3.27</b>	<b>3.21</b>
<b>Fund Balances (End of Year)</b>							
Operating (25% Budget)	\$ 121,298	\$ 125,872	\$ 118,673	\$ 124,241	\$ 130,333	\$ 136,735	\$ 143,464
Operating (Unencumbered)	47,429	12,033	39,670	44,756	43,563	41,247	67,724
System Development	25,772	25,772	25,772	25,772	25,772	25,772	25,772
Equipment	53,006	56,126	33,626	43,226	59,576	52,826	82,826
<b>Total: Fund Balances</b>	<b>\$ 247,506</b>	<b>\$ 219,804</b>	<b>\$ 217,741</b>	<b>\$ 237,996</b>	<b>\$ 259,245</b>	<b>\$ 256,581</b>	<b>\$ 319,786</b>

Figure 3: Proposed Water Financial Plan Graph

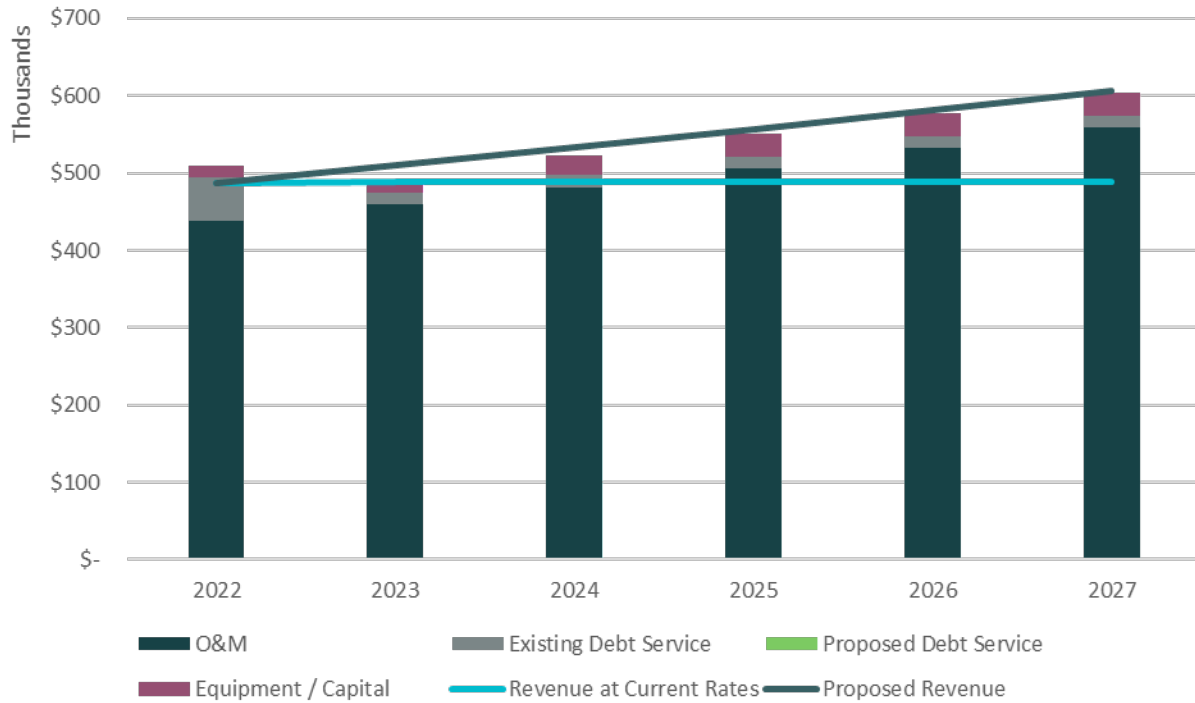


Figure 4 presents a forecast of the proposed inside city water rates.

Figure 4: Proposed Water Rates

Proposed Water Rates	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
	Actual	Current	Forecast	Forecast	Forecast	Forecast	Forecast
<b>Fixed Monthly Charge</b>							
5/8"	\$ 21.15	\$ 21.63	\$ 22.72	\$ 23.86	\$ 25.06	\$ 26.32	\$ 27.64
1"	25.14	25.71	27.00	28.35	29.77	31.26	32.83
1 1/2"	31.77	32.49	34.12	35.83	37.63	39.52	41.50
2"	39.76	40.66	42.70	44.84	47.09	49.45	51.93
3"	58.39	59.71	62.70	65.84	69.14	72.60	76.23
4"	84.97	86.89	91.24	95.81	100.61	105.65	110.94
6"	151.46	154.87	162.62	170.76	179.30	188.27	197.69
8"	231.26	236.47	248.30	260.72	273.76	287.45	301.83
<b>Volume Rate (1,000 Gal.)</b>							
Below 2000	\$ 4.36	\$ 4.46	\$ 4.69	\$ 4.93	\$ 5.18	\$ 5.44	\$ 5.72
2001 -10000	9.79	10.02	10.53	11.06	11.62	12.21	12.83
Above 10001	13.50	13.81	14.51	15.24	16.01	16.82	17.67

### 1.3. Sewer Rate Study Findings

Raftelis updated a five-year sewer utility financial plan for the study period. This plan determines the financial status of the sewer utility under recommended rates. Raftelis recommends regularly updating the sewer financial plan to recognize changes in capital improvements, customer's usage characteristics and system growth, especially as usage from the LPKC continues to evolve.

Based on the revenue requirements for the sewer utility, Raftelis proposes 8% increases in the sewer rates for the City's retail customers in FY 2023 through FY 2027. These rate increases are necessary to provide the ability to pay principal on the utility's most recent debt issuance which will begin in FY 2023.

The financial plan also includes a one-time transfer from Fund 92 of an amount equal to the utility's 2023 debt service to partially make up for the revenue shortfall caused by the cessation of wastewater from the City of Gardner. Without this transfer, the City would deplete its unencumbered operating reserve by 2025 and fall below the minimum reserve balance of 17% of O&M by 2027.

Figures 5 and 6 present the financial plan in tabular and graphical formats. The forecast of revenue at current rates shown as a light blue line in Figure 6 does not include the transfer from Fund 92 in order to demonstrate its importance.

**Figure 5: Proposed Sewer Financial Plan**

Sewer Utility Cash Flow	FY 2021 Actual	FY 2022 Budget	FY 2023 Budget	FY 2024 Forecast	FY 2025 Forecast	FY 2026 Forecast	FY 2027 Forecast
<b>Revenue</b>							
Retail Customer Revenue	\$ 554,878	\$ 570,407	\$ 704,181	\$ 760,515	\$ 821,356	\$ 887,065	\$ 958,030
Wholesale Revenue	224,222	145,759	-	-	-	-	-
Other Revenue	4,275	4,350	4,350	4,350	4,350	4,350	4,350
Transfer from Fund 92	-	-	194,438	-	-	-	-
<b>Total: Revenue</b>	<b>\$ 783,375</b>	<b>\$ 720,516</b>	<b>\$ 902,969</b>	<b>\$ 764,865</b>	<b>\$ 825,706</b>	<b>\$ 891,415</b>	<b>\$ 962,380</b>
<b>Proposed Revenue Adjustment</b>			<b>8.00%</b>	<b>8.00%</b>	<b>8.00%</b>	<b>8.00%</b>	<b>8.00%</b>
<b>Revenue Requirement</b>							
Operating Expenses	\$ 459,518	\$ 597,586	\$ 569,168	\$ 604,308	\$ 636,867	\$ 671,241	\$ 707,536
Existing Debt Service	94,438	94,438	194,438	192,438	195,438	193,338	196,238
Budgeted Transfers	171,640	150,000	50,000	50,000	50,000	50,000	50,000
<b>Total: Revenue Requirement</b>	<b>\$ 725,595</b>	<b>\$ 842,024</b>	<b>\$ 813,605</b>	<b>\$ 846,746</b>	<b>\$ 882,304</b>	<b>\$ 914,578</b>	<b>\$ 953,773</b>
<b>Surplus/(Deficit)</b>	<b>\$ 57,779</b>	<b>\$ (121,508)</b>	<b>\$ 89,363</b>	<b>\$ (81,881)</b>	<b>\$ (56,598)</b>	<b>\$ (23,164)</b>	<b>\$ 8,607</b>
<b>Debt Service Coverage</b>	<b>3.42</b>	<b>1.30</b>	<b>1.71</b>	<b>0.83</b>	<b>0.96</b>	<b>1.13</b>	<b>1.29</b>
<b>Fund Balances (End of Year)</b>							
Operating (25% Budget)	\$ 138,489	\$ 173,006	\$ 190,901	\$ 199,186	\$ 208,076	\$ 216,145	\$ 225,943
Operating (Unencumbered)	439,429	283,404	354,872	264,706	199,218	167,986	166,794
System Development	882,435	882,435	882,435	882,435	882,435	882,435	882,435
Equipment	153,845	177,195	47,695	47,695	21,045	21,045	21,045
WWTP Major Maintenance	103,134	103,134	103,134	103,134	103,134	103,134	103,134
<b>Total: Fund Balances</b>	<b>\$1,717,332</b>	<b>\$1,619,175</b>	<b>\$1,579,038</b>	<b>\$1,497,157</b>	<b>\$1,413,909</b>	<b>\$1,390,746</b>	<b>\$ 1,399,352</b>

Figure 6: Proposed Sewer Financial Plan Graph

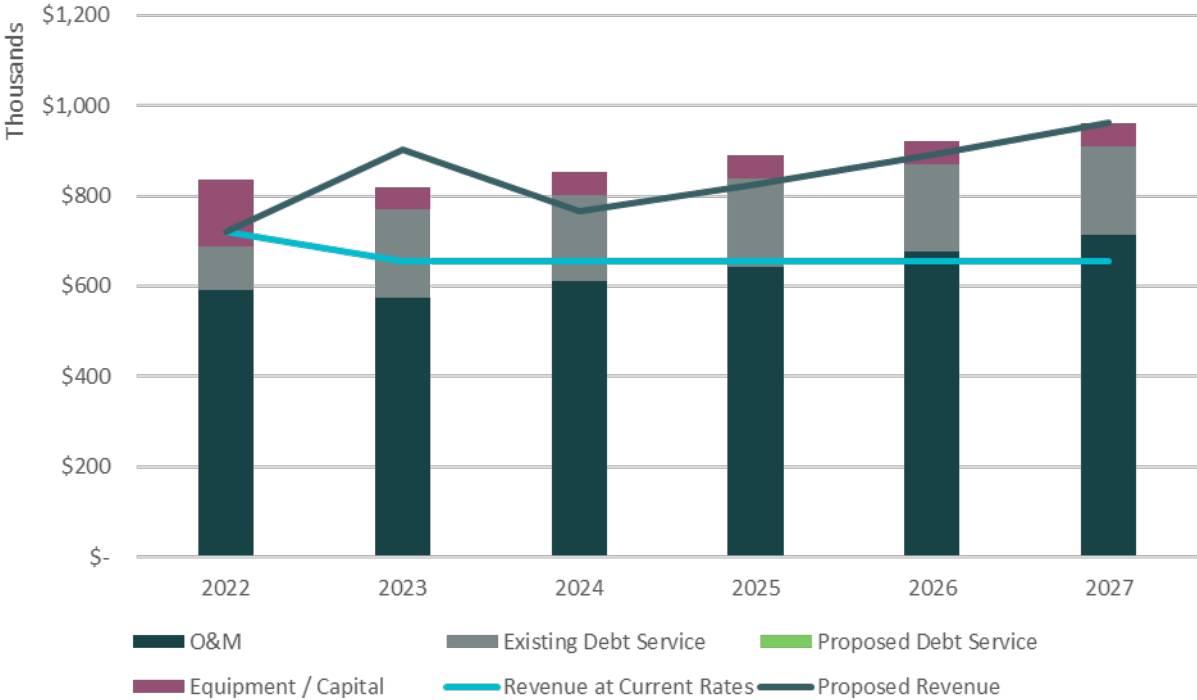


Figure 7 presents a forecast of the proposed sewer rates.

Figure 7: Proposed Sewer Rates

Sewer Rates	FY 2021		FY 2022		FY 2023		FY 2024		FY 2025		FY 2026		FY 2027	
	Actual		Current		Forecast		Forecast		Forecast		Forecast		Forecast	
Fixed Monthly Charge	\$	6.75	\$	7.09	\$	7.66	\$	8.28	\$	8.95	\$	9.67	\$	10.45
Volume Rate (1,000 Gal.)		7.81		8.21		8.87		9.58		10.35		11.18		12.08

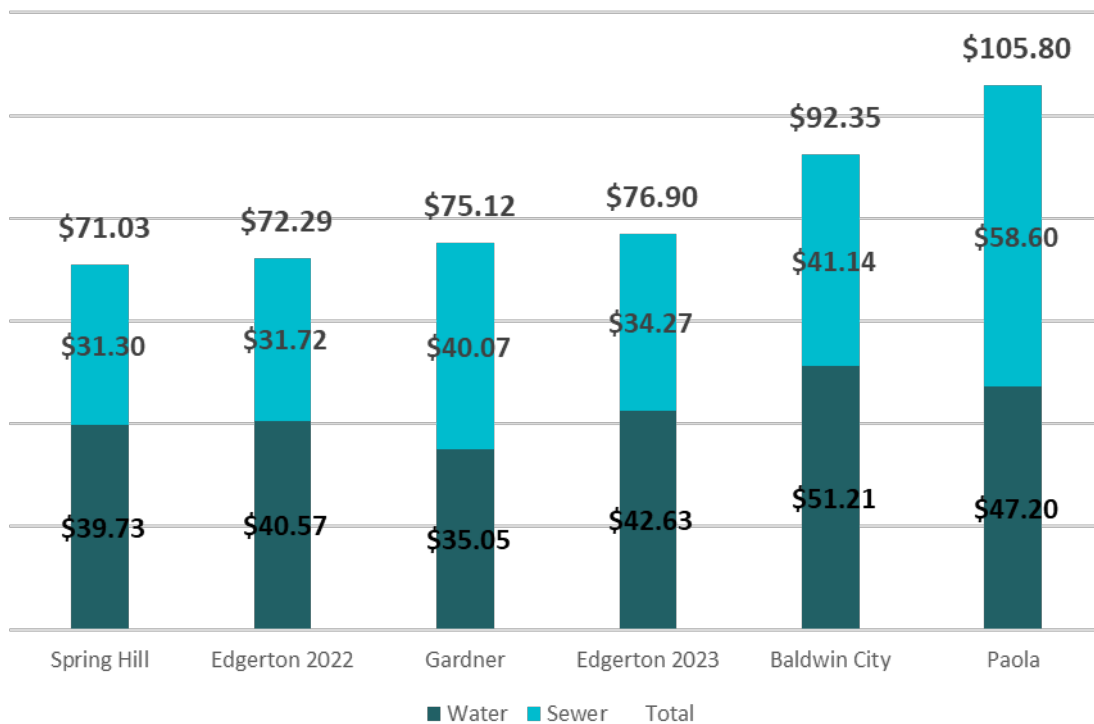
## 1.4. Bill Impacts

Figure 8 presents a typical residential water, sewer, and combined bill for varying levels of water use. Figure 9 compares 2022 and proposed 2023 typical water and sewer bill in the City of Edgerton to bills in neighboring communities in 2022.

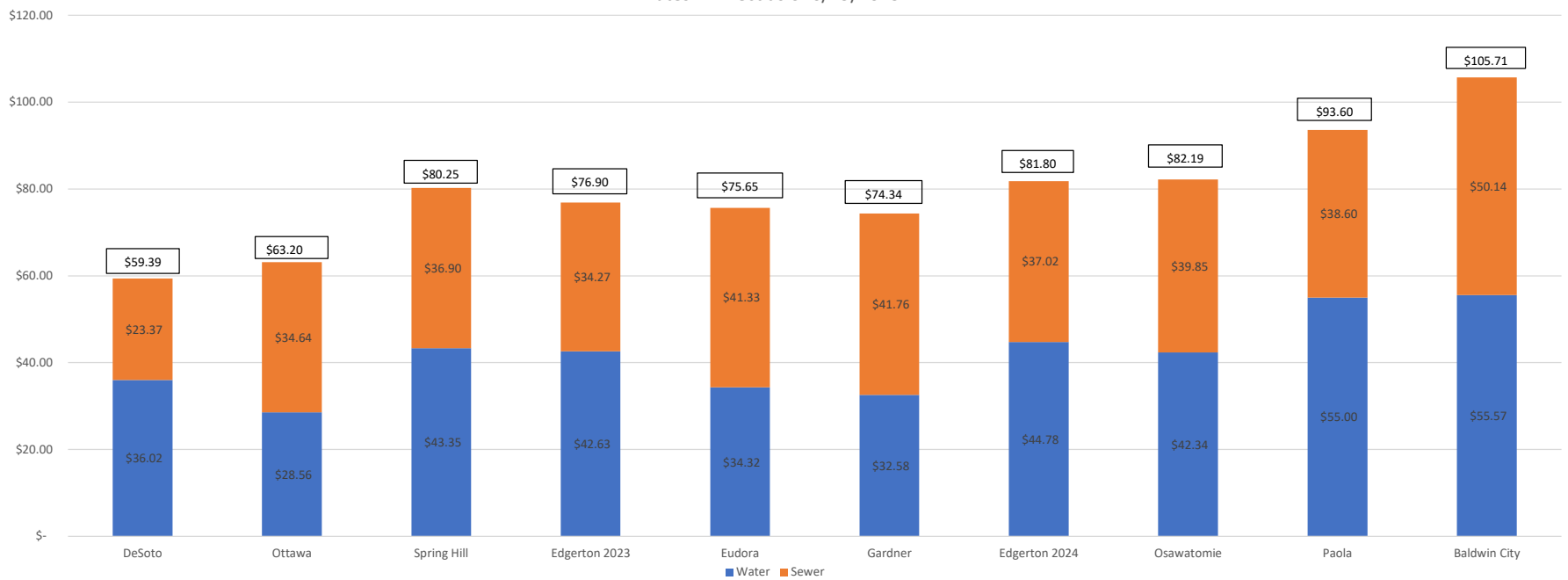
**Figure 8: Bill Impacts**

Bill Impacts	Meter Size	Volume (kgal)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
			Current	Forecast	Forecast	Forecast	Forecast	Forecast
Water Bill								
Small	5/8"	3	\$ 40.57	\$ 42.63	\$ 44.78	\$ 47.04	\$ 49.41	\$ 51.91
Medium	5/8"	8	90.67	95.28	100.08	105.14	110.46	116.06
Large	5/8"	15	179.76	188.89	198.40	208.43	218.98	230.07
Sewer Bill								
Small		3	\$ 31.72	\$ 34.27	\$ 37.02	\$ 40.00	\$ 43.21	\$ 46.69
Medium		8	72.77	78.62	84.92	91.75	99.11	107.09
Large		15	130.24	140.71	151.98	164.20	177.37	191.65
Combined Bill								
Small	5/8"	3	\$ 72.29	\$ 76.90	\$ 81.80	\$ 87.04	\$ 92.62	\$ 98.60
Medium	5/8"	8	163.44	173.90	185.00	196.89	209.57	223.15
Large	5/8"	15	310.00	329.60	350.38	372.63	396.35	421.72

**Figure 9: Monthly Bill Comparison - 3,000 Gallons**



Utility Bill Comparison  
Rates in Effect as of 6/29/2023



**City of Edgerton  
2024 Budget Public Hearing  
August 24, 2023**

**New  
TIF Funds Budget**





August 21, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director

Re: TIF Funds 2024 Recommended Budgets

Attached are the budget schedules for the TIF funds for which the City adopts a budget. The County had not provided the information in time for publication of the packet for the budget work session held on July 6, 2023. The sections below provide additional information about the 2024 Recommended Budget for these funds.

### **TIF – Edgerton Office**

On August 22, 2019, the Governing Body approved Ordinance No. 2020 which established the Edgerton Office TIF covering Project Area A and Project Area B. Both project areas will contain a multi-story office building. To date, redevelopment project plans have not been adopted for either of the two project areas. At this time, all activity related to the Edgerton Office TIF District is accounted for in the TIF-Edgerton Office Fund.

#### **Revenues**

The majority of the revenues in this fund come from the incremental ad valorem property tax for properties included in the Project Areas. Other revenues can include reimbursements for legal fees and financial advisor services.

#### **Expenditures**

Expenditures can include payment for legal and financial services, city administrative fee and eligible expenditures per future Disposition and Development Agreements (DDA) adopted via resolution of the Governing Body.

At this time, the City does not expect to have eligible expenditures in 2024. Funds will accumulate until a project plan is adopted by the Governing Body; however, transfers to capital projects are listed so there is budget authority should a project plan be adopted after budget approval.

### **TIF – Homestead Lane Retail District**

On August 22, 2019, the Governing Body approved Ordinance No. 2021 which established the Homestead Lane Retail District TIF covering two project areas, Project Area A and Project Area B. Activity related to the two project areas is accounted for as follows:

- Project Area A is accounted for in the TIF-Homestead Ln Redev Dist A Fund.
- Project Area B is accounted for in the TIF-Homestead Ln Redev Dist B Fund.

Once a project plan is approved by the Governing Body, a new fund is established to account for the activity related to that specific project plan.

The Governing Body has approved two project plans for the Homestead Lane Retail TIF District:

- On July 9, 2020, the Governing Body approved Ordinance No. 2041 adopting a redevelopment project plan for Project Plan A1, commonly known as the On-the-Go Travel Plaza. The activity related to this project plan is accounted for in the TIF-Proj Plan A1 Homestead Ln Fund.
- On November 18, 2021, the Governing Body approved Ordinance No. 2099 adopting a redevelopment project plan for Project Plan B1, commonly known as Edgerton Crossing. The activity related to this project plan is accounted for in the TIF-Proj Plan B1 Homestead Ln Fund.

### **Revenues**

The majority of the revenues in the funds related to the Homestead Lane Retail TIF District come from the incremental ad valorem property tax for properties included in the Project Areas. Other revenues can include reimbursements for legal fees and financial advisor services.

### **Expenditures**

Expenditures can include payment for legal fees and financial services as well as the City administrative fee and eligible expenditures per the DDA's adopted by the Governing Body.

Current DDA's are:

- My Store III, Inc., adopted by Resolution No. 07-09-20A
- Woodstone Properties, LLC, adopted by Resolution No. 11-18-2021A

Expenditures for 2024 were calculated based on the current DDA's.

**City of Edgerton  
TIF - Edgerton Office**

	<b>2021 Budget</b>	<b>2022 Budget</b>	<b>2023 Budget</b>	<b>2023 Estimate</b>	<b>2024 Recommended</b>
<b>Balance 1/1</b>	\$ -	\$ -	\$ 30	\$ 29	\$ 58
<b>Revenues:</b>					
TIF Revenue	-	31	30	97%	29
Charges for Services	-	-	-	-	-
Reimbursements	-	-	-	-	-
<b>Total Revenue</b>	<b>\$ -</b>	<b>\$ 31</b>	<b>\$ 30</b>	<b>97%</b>	<b>\$ 29</b>
<b>Expenditures:</b>					
Administration	-	-			-
TIF Office Redevelopment	-	31	60	0%	87
<b>Total Expenditures</b>	<b>\$ -</b>	<b>\$ 31</b>	<b>\$ 60</b>	<b>0%</b>	<b>\$ 87</b>
<b>Revenues Over(Under) Expenditures</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (30)</b>		<b>\$ (58)</b>
<b>Other Financing Sources &amp; Uses:</b>					
<b>Transfers from Other Funds:</b>					
Transfer from General Fund	-	-	-	-	-
<b>Transfers to Other Funds:</b>					
None					
<b>Total Other Financing Sources &amp; Uses</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		<b>\$ -</b>
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 58</b>	<b>\$ -</b>

**Funding Sources:** Property tax revenue increment from area designated in TIF district documents

**Expenditures:** City administrative fee, reimbursements to developers per development agreements

**City of Edgerton**  
**TIF - Homestead Ln - Redevelopment District A**

	<b>2021 Budget</b>	<b>2022 Budget</b>	<b>2023 Budget</b>	<b>2023 Estimate</b>	<b>2024 Recommended</b>
<b>Balance 1/1</b>	\$ 1,190	\$ (8,968)	\$ 34,599	\$ 33,142	\$ 79,838
<b>Revenues:</b>					
TIF Revenue	47,610	48,983	47,796	97%	25,664
Charges for Services	-	-	-	-	-
Interest on Investments	-	-	-	-	150
Reimbursements	-	-	-	-	-
Total Revenue	\$ 47,610	\$ 48,983	\$ 47,796	98%	\$ 25,814
<b>Expenditures:</b>					
Administration	-	-	-	-	-
TIF Project Plan A1	-	-	-	-	-
TIF Homestead Ln Redvelopment District A	-	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Revenues Over(Under) Expenditures</b>	<b>\$ 47,610</b>	<b>\$ 48,983</b>	<b>\$ 47,796</b>		<b>\$ 25,814</b>
<b>Other Financing Sources &amp; Uses:</b>					
<b>Transfers to Other Funds:</b>					
Transfer to the General Fund	-	(4,375)	-	0%	-
Transfer to Homestead Proj Plan A1	-	-	-	-	-
Transfer to Capital Projects	-	(35,640)	(82,395)	0%	(105,652)
Total Other Financing Sources & Uses	\$ -	\$ (40,015)	\$ (82,395)		\$ (105,652)
<b>Balance 12/31</b>	<b>\$ 48,800</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 79,838</b>	<b>\$ -</b>

**Funding Sources:** Property tax revenue increment from area designated in TIF district documents

**Expenditures:** City administrative fee, reimbursements to developers per development agreements

**City of Edgerton**  
**TIF - Homestead Ln Project Plan A1 (On-the-Go Travel Center)**

	<b>2021 Budget</b>	<b>2022 Budget</b>	<b>2023 Budget</b>	<b>2023 Estimate</b>	<b>2024 Recommended</b>
<b>Balance 1/1</b>	\$ -	\$ 117	\$ -	\$ 22,889	\$ 22,970
<b>Revenues:</b>					
TIF Revenue	-	62,246	108,655	98%	113,710
Interest on Investments	-	-	-	-	-
Total Revenue	\$ -	\$ 62,246	\$ 108,655	98%	\$ 113,710
<b>Expenditures:</b>					
Administration	-	-	-	-	-
TIF Project Plan A1	-	17,959	54,056	98%	56,571
Total Expenditures	\$ -	\$ 17,959	\$ 54,056	98%	\$ 56,571
<b>Revenues Over(Under) Expenditures</b>	<b>\$ -</b>	<b>\$ 44,287</b>	<b>\$ 54,599</b>		<b>\$ 57,139</b>
<b>Other Financing Sources &amp; Uses:</b>					
<b>Transfers from Other Funds:</b>					
Transfer from Homestead Ln Redev Dist A	-	-	-	-	-
<b>Transfers to Other Funds:</b>					
Transfer to General Fund - Admin Fee	-	(13,281)	(543)	98%	(569)
Transfer to Capital Projects	-	(31,123)	(54,056)	98%	(79,541)
Total Other Financing Sources & Uses	\$ -	\$ (44,404)	\$ (54,599)		\$ (80,109)
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 22,970</b>	<b>\$ -</b>

**Funding Sources:** Property tax revenue increment from area designated in TIF district documents

**Expenditures:** City administrative fee, reimbursements to developers per development agreements

**City of Edgerton**  
**TIF - Homestead Ln - Redevelopment District B**

	2021 Budget	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ -	\$ 33,236	\$ 252	\$ 279	\$ 600
<b>Revenues:</b>					
TIF Revenue	-	41,051	329	97%	664
Charges for Services	-	-	-	-	-
Interest on Investments	-	-	-	-	-
Reimbursements	-	-	-	-	-
Total Revenue	\$ -	\$ 41,051	\$ 329	98%	\$ 664
<b>Expenditures:</b>					
Administration	-	-	-	-	-
TIF Homestead Ln Redevelopment District B	-	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Revenues Over(Under) Expenditures</b>	<b>\$ -</b>	<b>\$ 41,051</b>	<b>\$ 329</b>		<b>\$ 664</b>
<b>Other Financing Sources &amp; Uses:</b>					
<b>Transfers to Other Funds:</b>					
Transfer to Capital Projects	-	(41,176)	(581)	-	(1,264)
Transfer to General Fund - Admin Fee	-	(33,111)	-	#DIV/0!	-
Total Other Financing Sources & Uses	\$ -	\$ (74,287)	\$ (581)		\$ (1,264)
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 600</b>	<b>\$ -</b>

**Funding Sources:** Property tax revenue increment from area designated in TIF district documents

**Expenditures:** City administrative fee, reimbursements to developers per development agreements

**City of Edgerton**  
**TIF - Homestead Ln Project Plan B1 (Edgerton Crossing)**

	<b>2021 Budget</b>	<b>2022 Budget</b>	<b>2023 Budget</b>	<b>2023 Estimate</b>	<b>2024 Recommended</b>
<b>Balance 1/1</b>	\$ -	\$ -	\$ 39,879	\$ 38,768	\$ 36,587
<b>Revenues:</b>					
TIF Revenue	-	-	41,083	100%	53,754
Charges for Services	-	-	-	-	-
Interest on Investments	-	-	-	-	-
Reimbursements	-	-	-	-	-
Total Revenue	\$ -	\$ -	\$ 41,083	-	\$ 53,754
<b>Expenditures:</b>					
Administration	-	-	-	-	-
TIF Project Plan B1	-	-	38,081	-	63,195
Total Expenditures	\$ -	\$ -	\$ 38,081	-	\$ 63,195
<b>Revenues Over(Under) Expenditures</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,002</b>		<b>\$ (9,441)</b>
<b>Other Financing Sources &amp; Uses:</b>					
<b>Transfers from Other Funds:</b>					
<b>Transfers to Other Funds:</b>					
Transfer to General Fund - Admin Fee	-	-	(4,800)	-	(538)
Transfer to Capital Projects	-	-	(38,081)	-	(26,608)
Total Other Financing Sources & Uses	\$ -	\$ -	\$ (42,881)		\$ (27,146)
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 36,587</b>	<b>\$ -</b>

**Funding Sources:** Property tax revenue increment from area designated in TIF district documents

**Expenditures:** City administrative fee, reimbursements to developers per development agreements

**City of Edgerton  
2024 Budget Work Session  
July 6, 2023**

# **Other Funds Budget**





June 29, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director

Re: Other Funds 2024 Recommended Budgets

Attached are the budget schedules for the other funds for which the City adopts a budget. The sections below provide additional information about the 2024 Recommended Budget for these funds.

### Special Highway Fund

The Special Highway Fund is the fund the City is required to establish by state statute to track the revenues and expenditures related to the state gasoline tax.

#### Revenues

The portion of the gas tax that is distributed to cities is distributed on a per capita basis. The League of Kansas Municipalities provides an estimate of the gas tax revenue for the current year and the budget year. The League shows a small decrease in the 2023 estimated revenue and a small decrease from that amount to the 2024 estimated revenue. The City's portion of the state gasoline tax revenue has stayed about the same over the last few years.

#### Expenditures

Expenditures of gas tax revenues are limited to street maintenance by state statute. The City uses the gas tax revenue to fund the Annual Street Preservation Program. The funds are transferred to the Capital Projects Fund and deposited into the Annual Street Preservation Project.

### Special Parks and Recreation Fund

The Special Parks & Recreation Fund is the fund the City is required to establish by state statute to track the revenues and expenditures related to the tax on alcoholic beverages sold by any club, caterer or drinking establishment. A portion of the taxes paid within the City limits are returned to the City and must be allocated 50% to the General Fund and 50% to the Special Parks and Recreation Fund.

#### Revenues

The Kansas State Treasurer provides an estimate of the alcohol tax for the budget year. Staff reviewed that estimate as well as the trend in the actuals, including the two distributions received so far in 2023 to estimate the revenue to be received in 2024. This review resulted in a small decrease in revenue for the 2023 estimate and the 2024 budget year.

### **Expenditures**

Expenditures of the portion of the alcohol tax revenue deposited in the Special Parks & Recreation Fund are limited to park and recreation programs and improvements. Council has not designated any funds from this source for new programs or capital projects, so the balance has continued to accumulate. The 2024 Recommended Budget includes a transfer to the Capital Projects fund should the Council decide later to utilize the balance in this fund.

## **Bond & Interest Fund**

The Bond & Interest Fund contains the transactions related to some of the debt obligations of the City. Currently, this fund contains the transactions related to the Series 2020A General Obligation Bonds, which refunded the 2012A General Obligation Bonds related to the Sunflower Benefit District. Debt obligations related to water operations are paid from the Water Fund. Debt obligations related to the sewer operations are paid from the Sewer Fund. Debt obligations related to LPKC Phases 1 and 2 are paid from their respective Public Infrastructure Funds in accordance with the development agreements and master trust indentures.

### **Revenues**

The Recommended Budget includes the special assessments payable to the City from the properties within the Sunflower Benefit District for 2024. Collections are at 78% so far in 2023; however, there are still two property tax distributions left in 2023 which may contain the remaining assessments. Collections were 130% in 2022 due to collection of delinquent assessments. There is adequate fund balance on hand to cover debt payments in addition to a reserve that is maintained in the Series 2020A Bond Reserve Fund.

### **Expenditures**

The expenditures in the Recommended Budget reflect the amount payable on the Series 2020A General Obligation Bonds related to the Sunflower Benefit District in 2023. Bond payments have been made according to the debt schedule each year. The Series 2020A GO Bonds are scheduled to be paid off in 2030.

## **TIF Funds**

At time of publication of the packet, the City had not yet received the 2024 TIF Budget Information from the County Clerk. Budget information for the TIF Funds will be provided at a future Council meeting.

## City of Edgerton Special Highway Fund

	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ 6,100	\$ 8,463	\$ 7,121	\$ -
<b>Revenues:</b>				
Gasoline Tax	45,880	49,600	98%	48,270
Total Revenue	\$ 45,880	\$ 49,600	98%	\$ 48,270
<b>Expenditures:</b>				
Public Works	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -
<b>Revenues Over(Under) Expenditures</b>	<b>\$ 45,880</b>	<b>\$ 49,600</b>		<b>\$ 48,270</b>
<b>Other Financing Sources &amp; Uses:</b>				
<b>Transfers to Other Funds:</b>				
Transfer to Capital Projects Fund	51,980	58,063	96%	48,270
Total Other Financing Sources & Uses	\$ (51,980)	\$ (58,063)		\$ (48,270)
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Expenditure Detail:</b>				
Annual Street Preservation Program	\$ 51,980	\$ 58,063	96%	\$ 48,270
	\$ 51,980	\$ 58,063	96%	\$ 48,270

**Funding Sources:** State gasoline tax (per gallon)

**Expenditures:** Maintenance of City streets

## City of Edgerton Special Parks & Recreation Fund

	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ 35,531	\$ 47,687	\$ 46,415	\$ 54,915
<b>Revenues:</b>				
Local Alcoholic Liquor Tax	5,000	9,000	94%	8,500
Total Revenue	\$ 5,000	\$ 9,000	94%	\$ 8,500
<b>Expenditures:</b>				
Parks	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -
<b>Revenues Over(Under) Expenditures</b>	<b>\$ 5,000</b>	<b>\$ 9,000</b>		<b>\$ 8,500</b>
<b>Other Financing Sources &amp; Uses:</b>				
<b>Transfers to Other Funds:</b>				
Transfer to Capital Projects Fund	40,531	56,687	0%	63,415
Total Other Financing Sources & Uses	\$ (40,531)	\$ (56,687)		\$ (63,415)
<b>Balance 12/31</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 54,915</b>	<b>\$ -</b>

### Expenditure Detail:

Transfer to CIP	\$ 63,415
	<u>\$ 63,415</u>

**Funding Sources:** Special alcohol tax per K.S.A. 79-41a04 (1/2 of total alcohol tax received by the City)

**Expenditures:** Park & Recreation programs and improvements

## City of Edgerton Bond & Interest Fund

	2022 Budget	2023 Budget	2023 Estimate	2024 Recommended
<b>Balance 1/1</b>	\$ 538,924	\$ 385,225	\$ 457,564	\$ 389,228
<b>Revenues:</b>				
Special Assessments	238,954	238,954	100%	238,954
Investment Income		-		-
Total Revenue	\$ 238,954	\$ 238,954	100%	\$ 238,954
<b>Expenditures:</b>				
Debt Service	301,580	307,290	100%	302,836
Total Expenditures	\$ 301,580	\$ 307,290	100%	\$ 302,836
<b>Revenues Over(Under) Expenditures</b>	<b>\$ (62,626)</b>	<b>\$ (68,336)</b>		<b>\$ (63,882)</b>
<b>Other Financing Sources &amp; Uses:</b>				
Transfers from Other funds:	-	-	-	-
Transfers to Other Funds:	-	-	-	-
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ -
<b>Balance 12/31</b>	<b>\$ 476,298</b>	<b>\$ 316,889</b>	<b>\$ 389,228</b>	<b>\$ 325,346</b>

**Funding Sources:** Special assessments

**Expenditures:** Debt service payments on the City's 2020 outstanding GO bonds

**Notes:** The City's 2020 outstanding GO bonds will be paid off in 2030.

**City of Edgerton  
2024 Budget Work Session  
July 6, 2023**

# **Vehicles & Equipment**





June 29, 2023

To: Mayor and City Council Members

From: Beth Linn, City Administrator  
Karen Kindle, Finance Director  
Dan Merkh, Public Works Director

Re: Vehicles & Equipment 2023-2028

Staff has reviewed and updated the Vehicles & Equipment Plan for 2023-2028. The document is divided into the following sections:

- Recommended Budget – items scheduled for replacement in 2023 and 2024.
- Current Program – items scheduled for replacement in 2025-2028.
- Equipment Recommended for Disposal – items that will be disposed of.

The Vehicle & Equipment Process includes the following steps:

- Review the plan and obtain consensus on funding new requests, if any, at the budget work session.
- Staff updates the plan documents to reflect Governing Body direction given at the work session and brings back the plan for formal approval with the other 2024 Budget documents. This approval sets the budget for the purchase of the equipment items.
- After approval of the plan, purchase of the individual items will be made in 2023/2024 in accordance with the City's Purchasing Policy, including obtaining Governing Body approval if required by the Purchasing Policy.

### **Equipment Condition Rating Scale**

Staff use a rating scale to note the condition of each equipment item. The scale considers the age of the unit, number and extent of repairs and quarterly inspections of the item and historical data related to the unit.

Condition Rating	Rating Title	Rating Description
<b>1</b>	Failed	Unit outside the useful life - catastrophic emergency maintenance & repair needed to safely operate
<b>2</b>	Poor	Unit has traditionally received some urgent maintenance and/or minor emergency maintenance - Typically in the 7 - 9 yrs. of service
<b>3</b>	Fair	Unit has traditionally received only minor maintenance outside the traditional PM's - Typically in the 4 - 6 yrs. of service
<b>4</b>	Good	Unit has only received Standard PM's - Typically in the 1 - 3 yrs. of service.
<b>5</b>	Excellent	Brand New Unit - No PM's to-date

## **Recommended Budget 2023-2024 (Exhibit A)**

Items on this list are recommended for replacement within the current year and the next budget year. There are columns that indicate the budget that was approved last year, the year a piece of equipment will be ordered and the year the payment will be made for the equipment item. For large equipment, it sometimes takes 9-12 months for the equipment to arrive after the order is placed, so having the two columns showing order year and payment year clarifies when the funding is actually needed for cash flow and forecasting purposes.

Items listed for replacement in the Recommended Budget were initially scheduled in compliance with the adopted Vehicle & Equipment Policy. In addition, since the item is now reached its scheduled replacement date, staff has evaluated the item based on actual condition and recommends it for replacement.

The document is broken down into three sections: (1) purchases that will need to come back through Council for approval per the Purchasing Policy; (2) purchases that can be approved by the City Administrator per the Purchasing Policy; and (3) payments required per lease agreements or other similar contracts. A column has been added to indicate which items already have an approved budget amount.

Items in the Recommended Budget were updated as follows:

<b>Item</b>	<b>Changes</b>
<b>Future Storm Sirens</b>	Further discussion with Council regarding the policy of when to add new storm sirens to the network is required to adequately plan for these purchases. Until that policy is developed, staff has removed the future storm sirens that had been on the list as new requests.
<b>Sewer Jetter</b>	The order year was updated to 2022. Staff received approval from the Council to order the Jetter in 2022 and it was received in early 2023.  The cost was decreased from \$92,000 to \$77,840 to reflect the actual amount paid.
<b>Edgerton Rd Tank Butterfly Valves Replacement</b>	The replacement year was updated to 2023 due to lead time in scheduling the work with the vendor.
<b>Hustler Super Z HD 60RD Mower</b>	The cost was increased from \$13,000 to \$13,200 to reflect the actual amount paid.
<b>Ford F150 4WD – New Request</b>	At the Council Meeting on June 22, 2023, Council approved the updated job description for the Building Inspector and staff plans to fill the position in 2023. One of the equipment items needed by the inspector is a truck. Staff has added this purchase to the Recommended Budget with a cost of \$51,000, an order year of 2023 and a payment year of 2023. The purchase will be funded with a transfer from General Fund unencumbered fund balance.

Items from 2024 were moved from the Current Program to the Recommended Budget. Staff reviewed projected replacement costs and timing and made the following updates:

Item	Changes
<b>Concrete Saw</b>	The cost was increased from \$20,000 to \$30,000.
<b>Ford F-350 4WD Flat Bed (#528)</b>	The cost was increased from \$46,000 to \$57,000.
<b>Boss 8' to 10' EXT Snow Plow (#P-528)</b>	The cost was increased from \$8,000 to \$9,500.
<b>Byers Salt Dog 8ft Elect. Spreader (#S-528)</b>	The cost was increased from 7,600 to \$8,400.
<b>Storm Siren W. Braun &amp; 8<sup>th</sup> Street (#EM02)</b>	The replacement year for this siren was changed from 2024 to 2025 to align with the Dwyer Farms development and so it was moved to the Current Program list. The amount was also increased from \$26,000 to \$29,500.

The final item on the Recommended Budget is the payment from the Utility Equipment Reserve Funds to the General Equipment Reserve Fund for the transfer of Truck #454 to Utility operations. Truck (#454) has been assigned to the Utilities Department to replace Truck #836, which is no longer safe to drive and for which the cost of repairs outweighs the value of the truck. Staff estimates the value of #454 at \$15,000 which will be split 50% Water Equipment Reserve Fund and 50% Sewer Equipment Reserve Fund.

### **Current Program (Exhibit B)**

This list contains the items to be replaced in the balance of the five-year program (2025-2028). Staff reviewed the timing and replacement cost for these items and made the following changes from the plan that was approved by Council on September 8, 2022. Items with a replacement year of 2024 were moved into the Recommend Budget. Items with a replacement year of 2028 were moved into the Current Program. Items listed for replacement during the Current Program are based on the adopted Vehicle & Equipment Policy for budget and financial planning. However, as an item gets closer to its scheduled replacement date, staff evaluates the item based on actual condition to consider opportunities for recommended changes. For example, an increase in significant maintenance may move an item forward for recommended replacement, or lower usage or less repairs may lengthen the recommended life of an item.

Item	Changes
<b>Elgin Broom Badger Street Sweeper (#812)</b>	This item was added to the list with a replacement year of 2025 and a replacement cost of \$350,000. The item had been inadvertently left off the list once the lease had been paid off. Pricing for this piece of equipment has been extremely volatile in the last year. This is the latest estimate provided by one of the City's vendors.

	Staff is researching other ways to deliver this service such as renting the equipment, contracting with a third-party provider, etc., and will bring recommendations to a future Council meeting for consideration.
<b>Ford F-150 4WD EcoBoost (#454) (Utility Superintendent)</b>	The replacement cost was increased from \$39,000 to \$51,000. This truck was transferred to Utilities to replace Truck #836, so the allocation has been changed from 100% General to 50% Water and 50% Sewer. The replacement year was updated from 2026 to 2029 and therefore it was removed from the Current Program, which only covers replacements in 2025-2028.
<b>Ford F-150 4WD EcoBoost (#819) (Codes/Animal Control)</b>	The cost was increased from \$39,000 to \$51,000. The replacement year was changed from 2025 to 2026.
<b>Trailer Mounted Generator</b>	The cost was increased from \$30,000 to \$37,000.
<b>Ford F-250 4WD Truck-&gt; F350 (#530)</b>	The cost was increased from \$46,500 to \$57,000.
<b>Boss 8' to 10' EXT Snow Plow (#P530)</b>	The cost was increased from \$8,000 to \$9,500.
<b>Wright Standing Mower (#6EF)</b>	The cost was increased from \$12,850 to \$16,500.
<b>Ford F-350 4WD (Parks) (#312)</b>	The cost was increased from \$45,500 to \$57,000.
<b>Snow Plow (Parks Truck) (#P-312)</b>	The cost was increased from \$8,000 to \$9,500.
<b>Ford F-350 CC (#646)</b>	The cost was increased from \$53,000 to \$57,000.

### **Fund Summary (Exhibit C)**

This schedule shows the estimated revenues and expenditures for 2023-2028 based on the Recommended Budget and the Current Program.

#### **Revenues During 5-Year Plan**

- The Equipment Reserve Fund – General shows an annual funding of \$125,000 occurring in each year of the plan. The funding in 2023 includes an additional transfer from the General Fund unencumbered fund balance for the purchase of the Building Inspector Truck.
- The Equipment Reserve Fund – Water shows transfers from the Water Fund occurring in each year of the plan. They begin at \$15,000 in 2023 and increase to \$25,000 in 2024 then increase again to \$30,000 in years 2025-2028.
- The Equipment Reserve Fund –There are not any transfers from the Sewer Fund planned in years 2023-2028.

#### **Ending Fund Balances During the 5-Year Plan**

- Equipment Reserve Fund – General

- The balance at the end of the 5-year plan is positive, which will be used towards equipment replacement in years past the current 5-year plan.
- Equipment Reserve Fund – Water
  - The balance at the end of the 5-year plan is positive, which will be used towards equipment replacement in years past the current 5-year plan. In addition, Utility staff are inventorying the system components which will result in more information about future equipment replacement needs.
- Equipment Reserve Fund – Sewer
  - The balance at the end of the 5-year plan is positive, which will be used towards equipment replacement in years past the current 5-year plan. In addition, Utility staff are inventorying the system components which will result in more information about future equipment replacement needs.

### **Unfunded Equipment**

Staff is not currently recommending any items on the unfunded list be funded.

### **Equipment Recommended for Disposal (Exhibit D)**

Items on this list are no longer needed for City operations. When the budget is approved by Council, items on this list will be approved for disposal. Going forward, approval for disposal of items being replaced will be requested with the purchase approval of the new piece of equipment.

Attachment: Vehicle & Equipment Policy Adopted on June 9, 2022

City of Edgerton  
Vehicle Equipment Replacement  
Recommended Budget 2023-2024

Line #	Budgeted in 2023- 2027 Plan	Equipment Description	Item Number	Dept.	Equip Type	Purch Year	Model Year	Current Mileage/ Hours	Usage Frequency	General Condition	Approved Budget	Projected Replace Cost	Order Year	Payment Year	Alloc % Fund 13 General	Alloc % Fund 27 Water	Alloc % Fund 37 Sewer
Purchase Approval - Council																	
1	Yes	Compact Track/Wheel Loader	New	PW	Equipment	New	New	New	New	New	\$ 85,000	\$ 85,000	2023	2023	100%	0%	0%
2	Yes	Hydraulic Hammer Attachment	New	PW	Equipment	New	New	New	New	New	\$ 17,000	\$ 17,000	2023	2023	100%	0%	0%
3	Yes	Case 1840 Uni-Loader	235	UT	Equipment	?	1995	1416	Daily	2	\$ 30,000	\$ 30,000	2023	2023	0%	50%	50%
4	Yes	Sewer Equipment Sewer Jet (trailer)	543	UT	Equipment	2009	2009	105	Daily	2	\$ 92,000	\$ 77,840	2022	2023	0%	0%	100%
5		Ford F-150 4WD	New	CD	Vehicle	New	New	NA	Daily	New Req	\$ -	\$ 51,000	2023	2023	100%	0%	0%
6		Concrete Saw	New	PW	Equipment	New	New	New	New	New Req	\$ 20,000	\$ 30,000	2024	2024	100%	0%	0%
7		Baldwin Booster Pump Replacement	NA	UT	Water Syst			NA	Daily	2	\$ 15,400	\$ 15,400	2024	2024	0%	100%	0%
8		Ford F-350 4WD - Flat Bed	528	PW	Vehicle	2014	2014	45,361	Daily	2	\$ 46,500	\$ 57,000	2024	2024	100%	0%	0%
9		Boss 8' to 10' EXT Snow Plow STB19200	P-528	PW	Snow & Ice	2017	2017	NA	Seasonally	2	\$ 8,000	\$ 9,500	2024	2024	100%	0%	0%
10		Buyers Salt Dogg - 8ft Elect. Spreader	S-528	PW	Snow & Ice	2017	2017	NA	Seasonally	2	\$ 7,600	\$ 8,400	2024	2024	100%	0%	0%
Purchase Approval - City Administrator																	
11	Yes	Edgerton Rd Tank Butterfly Valves Replacem	NA	UT	Water Syst	1982	1982	NA	Daily	2	\$ 10,230	\$ 10,230	2023	2023	0%	100%	0%
12	Yes	Hustler Super Z HD 60RD - HTE934935	115	PW	Equipment	2017	2017	338	Seasonally	2	\$ 13,000	\$ 13,200	2023	2023	100%	0%	0%
13	Yes	Hustler Super Z HD 72RD - HTE934976	534	PW	Equipment	2017	2017	438	Seasonally	2	\$ 13,500	\$ 13,500	2023	2023	100%	0%	0%
Contract Payments																	
None.																	
Other																	
14		Transfer payment from the Utility Funds for Truck #454 that is now assigned to the Utilities Department.									\$ 15,000		2023	2023	0%	50%	50%

Changed since 2023 Budget Process

City of Edgerton  
Vehicle Equipment Replacement Current Program (2025-2028)

Item #	Equipment Description	Item Number	Dept.	Equip Type	Purch Year	Model Year	Current Mileage/ Hours	Usage Frequency	General Condition	Projected Replace Cost	Updated Est. Replacement Year	Alloc % Fund 13 General	Alloc % Fund 27 Water	Alloc % Fund 37 Sewer
1	Trailer Mounted Generator	New	PW	Equipment	New	New	New	New	New Req	\$ 37,000	2025	34%	33%	33%
2	Ford F-250 4WD Truck ->F350 plow	530	PW	Vehicle	2014	2014	61,390	Daily	3	\$ 57,000	2025	100%	0%	0%
2a	Boss 8' to 10' EXT Snow Plow STB19200	P-530	PW	Snow & Ice	2017	2017	NA	Seasonally	3	\$ 9,500	2025	100%	0%	0%
3	60 Inch Bad Boy Outlaw Zero Turn Mower (B	OO6	UT	Equipment	2015	2015	159	Seasonally	3	\$ 13,000	2025	0%	0%	100%
4	Starlight Utility Trailer	541	UT	Equipment		1987	NA	Daily	2	\$ 7,500	2025	0%	50%	50%
5	Wright Stander 61" Zero Turn Mower	6EF	PW	Equipment	2018	2018	734	Seasonally	3	\$ 16,500	2025	100%	0%	0%
6	Elgin Broom Badger Street Sweeper	812	PW	Equipment	2016	2016	1,156	Monthly	2	\$ 350,000	2025	100%	0%	0%
7	Storm Siren - W. Braun & W 8th St - General	EM02	PW	Storm Siren	1999	1999	NA	Occasionally	3	\$ 29,500	2025	100%	0%	0%
8	Ford F-150 4WD EcoBoost (Charlie)	819	CD	Vehicle	2015	2015	43,024	Daily	4	\$ 51,000	2026	100%	0%	0%
9	Ford F-350 4WD (Parks)	312	PK	Vehicle	2017	2017	29,488	Daily	4	\$ 57,000	2027	100%	0%	0%
9a	Snow Plow (Parks Truck)	P312	PK	Snow & Ice	2017	2017	NA	Seasonally	4	\$ 9,500	2027	100%	0%	0%
10	Neptune Water Meters (1/4 of all meters)	NA	UT	Meter	2016	2016	NA	Daily	4	\$ 36,750	2027	0%	100%	0%
11	Neptune Water Meters (1/4 of all meters)	NA	UT	Meter	2016	2016	NA	Daily	4	\$ 36,750	2028	0%	100%	0%
12	Ford F-350 CC - w/ Spreader	646	PW	Vehicle	2019	2019	12,116.0	Daily	5	\$ 57,000	2028	100%	0%	0%
12a	Future Line - Rancher Flat Bed	FB-646	PW	Vehicle	2019	2019	NA	Daily	5	\$ 9,000	2028	100%	0%	0%
12b	Meyers 9.0 LP Commercial	P-646	PW	Snow & Ice	2019	2019	NA	Daily	5	\$ 7,200	2028	100%	0%	0%
13	Ford F-350 CC	647	UT	Vehicle	2019	2019	20,631.0	Daily	5	\$ 53,000	2028	0%	50%	50%
13a	Palfinger - PCB 20 Utility Bed	UB-647	UT	Vehicle	2019	2019	NA	Daily	5	\$ 17,250	2028	0%	50%	50%
13b	Palfinger - PSC 3218 Service Crane	SC-647	UT	Equipment	2019	2019	NA	Daily	5	\$ 30,000	2028	0%	50%	50%

**City of Edgerton  
Vehicle & Equipment Replacement  
Fund Summary 2022-2028**

**Fund 130 - General Equipment Reserve Fund**

	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>
<b>Beginning Balance, Jan 1</b>	\$ 278,352	\$ 343,719	\$ 340,019	\$ 360,119	\$ 10,039	\$ 84,039	\$ 142,539
<b>Transfers in or Other Revenues</b>	127,000	176,000	125,000	125,000	125,000	125,000	125,000
<b>Vehicle/Equipment Purchases</b>	(61,633)	(179,700)	(104,900)	(475,080)	(51,000)	(66,500)	(73,200)
<b>Ending Balance, 12/31</b>	<u>\$ 343,719</u>	<u>\$ 340,019</u>	<u>\$ 360,119</u>	<u>\$ 10,039</u>	<u>\$ 84,039</u>	<u>\$ 142,539</u>	<u>\$ 194,339</u>

**Fund 270 - Water Equipment Reserve Fund**

	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>
<b>Beginning Balance, Jan 1</b>	\$ 53,006	\$ 68,006	\$ 50,276	\$ 59,876	\$ 73,916	\$ 103,916	\$ 97,166
<b>Transfers in or Other Revenues</b>	15,000	15,000	25,000	30,000	30,000	30,000	30,000
<b>Vehicle/Equipment Purchases</b>	-	(32,730)	(15,400)	(15,960)	-	(36,750)	(86,875)
<b>Ending Balance, 12/31</b>	<u>\$ 68,006</u>	<u>\$ 50,276</u>	<u>\$ 59,876</u>	<u>\$ 73,916</u>	<u>\$ 103,916</u>	<u>\$ 97,166</u>	<u>\$ 40,291</u>

**Fund 370 - Sewer Equipment Reserve Fund**

	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>
<b>Beginning Balance, Jan 1</b>	\$ 153,845	\$ 178,845	\$ 78,505	\$ 78,505	\$ 49,545	\$ 49,545	\$ 49,545
<b>Transfers in or Other Revenues</b>	25,000	-	-	-	-	-	-
<b>Vehicle/Equipment Purchases</b>	-	(100,340)	-	(28,960)	-	-	(50,125)
<b>Ending Balance, 12/31</b>	<u>\$ 178,845</u>	<u>\$ 78,505</u>	<u>\$ 78,505</u>	<u>\$ 49,545</u>	<u>\$ 49,545</u>	<u>\$ 49,545</u>	<u>\$ (580)</u>

**City of Edgerton  
Equipment Recommended for Disposal**

**Exhibit D**

Items for Recommended for Disposal												
Item #	Equipment Description	VIN/Serial #	Item Number	Dept.	Equip Type	Current Mileage/ Hours	Purch Year	Intended Method of Disposition	Alloc % Fund 13 General	Alloc % Fund 27 Water	Alloc % Fund 37 Sewer	Comments
1	Simplicity 32 walk behind mower (Codes)	2014429254	254	PW/PK	Equipment	215	2010	Online Auct	100%			Mower will not be replaced.
2	2017 Hustler Super Z 60	17073115	115	PK	Equipment			Online Auct	100%			New unit has been received. Approval for disposal still needed.
3	2017 Hustler Super Z 72	17090534	534	PK	Equipment			Online Auct	100%			New unit has been received. Approval for disposal still needed.

**City of Edgerton**  
**Vehicle and Equipment Replacement Policy**

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**1. Policy Objective**

The objective of the Vehicle and Equipment Replacement Policy is to provide effective guidelines for administering and accounting for the City's vehicle and equipment replacement so that the City's fleet is ready to serve daily operations as well as emergency operations at any time; to act as a framework for decisions related to long-range vehicle and equipment replacement; and to act as a budgeting guide for the Governing Body and staff.

**2. Vehicle and Equipment Replacement Schedule**

Annually, as part of the budget process, the City Administrator and the Department Heads shall update the inventory schedule of all City vehicles and equipment. The schedule should include detailed information about the equipment, its condition, estimated replacement year, estimated replacement cost and how the vehicle or equipment should be allocated among general City operations, water operations and sewer operations. The schedule shall be the basis of budget discussions and decisions regarding vehicle and equipment replacement. The schedule shall be presented to the Governing Body along with other budget information and approved when the budget is adopted each year.

**3. Replacement Considerations**

The Schedule of Estimated Useful Lives in Appendix A should be used as a guide for replacing vehicles and equipment. In addition to the estimated useful life, the items listed below should also be considered when determining if a vehicle or piece of equipment should be replaced.

- Maintenance and repair costs
- Performance
- Resale value
- Dependability
- Major mechanical failures
- Technological changes
- Fuel consumption
- Physical appearance
- Safety issues
- Obsolescence
- Type of usage

**4. Purchasing and Acquisition**

Purchases of vehicles and equipment shall be made in accordance with the City's Purchasing Policy, City Code and other applicable ordinances, resolutions and state law.

**5. Financing**

As part of the annual budget process, the City Administrator shall submit to the Governing Body a recommendation for the financing of all proposed vehicles and equipment that are planned for that budget year.

The following financing methods may be considered by the City Administrator for all vehicles and equipment.

- A. Pay as You Go Financing (PAYG): Utilizes current year revenues or reserves. This is the preferred method of financing vehicles and equipment.

**City of Edgerton**  
**Vehicle and Equipment Replacement Policy**

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- B. General Obligation Bonds: General obligation bonds will not be issued for vehicles or equipment where the acquisition cost is less than \$250,000. The City will structure the general obligation bond debt for vehicles and equipment to mature over 10 – 15 years or the useful life of the vehicle or equipment, whichever is less with at least 60% of the debt service amortization in the first 10 years of the issue.
- C. Lease and Lease Purchase: Lease obligations and other long-term agreements may be used as a flexible, financial alternative for acquiring vehicles and equipment. The City will plan issuance of lease obligations and other long-term financing agreements according to the following guidelines.
  - a. The City Administrator, or designee, will determine and document the justification for each proposed lease transaction. The justification should include an explanation for not recommending PAYG financing or general obligation debt financing. An analysis of various financing strategies should be performed to allow for the lowest possible cost to the City.
  - b. Each transaction will include lease payments and a cash flow statement over the life of the transaction.
  - c. The scheduled maturity shall not exceed the anticipated useful life of the item, and in no case shall exceed 20 years.

**6. Maintenance and Repair**

The City staff will be responsible for all maintenance necessary for the continued operation for the City's vehicles and equipment. The City staff shall be responsible for determining what specific types of maintenance will be done in-house and what types will be sent to a mechanic. In making this determination, the following factors should be considered:

- A. Cost of in-house maintenance
- B. Time needed to completed maintenance task
- C. Knowledge of Department with specific maintenance task
- D. Experience of Department with specific maintenance task
- E. Ability to attain necessary parts in a timely manner.

If maintenance is determined to be sent to a mechanic, staff shall be responsible for complying with the City's Purchasing Policy. City staff shall maintain documentation of all maintenance and repairs for vehicles and equipment.

**7. Disposition of Vehicles and Equipment**

When it is determined that a vehicle or equipment should be replaced, the City should dispose of the replaced item using the method that will produce the greatest amount of value for the City. The acceptable disposal methods are listed below. The City Council will approve assets for disposal and the disposal method at the time of purchase of the replacement item. Vehicles and equipment will not be sold to employees of the City.

- A. Trade-in – the vehicle or equipment is traded in on the new vehicle or equipment and the price of the new vehicle or equipment is reduced.
- B. Sold at Auction - The City should use a reputable auction service, including on-line auction services. The City should receive a detailed accounting of the sale price for each item sold.
- C. Scrap – The vehicle or equipment is sold for scrap metal or it is kept on hand for parts.
- D. Destroyed – The vehicle or equipment was destroyed.

Money received from the sale of vehicles and equipment shall be deposited into the Equipment Reserve Funds for general City operations, water operations and sewer operations. The sale proceeds should be allocated among the three funds according to the allocation percentages for each item as listed on the Vehicle and Equipment Replacement Schedule

**City of Edgerton**  
**Vehicle and Equipment Replacement Policy**

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**8. Insurance**

The City shall maintain at least the minimum state required insurance coverage on all vehicles and equipment. When new vehicles or equipment are purchased, the City Clerk shall notify the City's insurance agent to add the vehicle or equipment to the City's policy. When vehicles or equipment are sold/traded in/scrapped/destroyed, City staff shall notify the City Clerk who will notify the City's insurance agent that the items should be removed from the City's policy.

**9. Responsibility for Enforcement**

The City Administrator has overall responsibility for enforcement of this policy.

**10. Effective Date**

This policy shall take effect and be in force from and after its passage and approval.

**City of Edgerton**  
**Vehicle and Equipment Replacement Policy**

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**Appendix A**  
**Estimated Useful Life of Vehicles and Equipment**

<b>Vehicle Classification</b>	<b>Useful Life -Years</b>	<b>Units of Usage</b>
Class 2 - Light Duty Truck	10	100,000 Miles
Class 3 - 1/2 Ton Truck	10	100,000 Miles
Class 4 - 3/4 Ton Truck	10	100,000 Miles
Class 5 - 1 Ton Truck	10	75,000 Miles
Class 6 - 1 1/2 - 1 3/4 Ton Truck	10	75,000 Miles
Class 7 - Single Axle	10	75,000 Miles
Class 8 - Tandem Axle	10	75,000 Miles
Aerial Lift/Bucket Truck	10	50,000 Miles
Class 6 - Street Sweeper	7	50000 / 2000 hrs.
Utility Trailer / Equipment Trailer	15	N/A

<b>Equipment Classification</b>	<b>Useful Life -Years</b>	<b>Units of Usage</b>
Mower	n/a	1000 hrs.
Excavator/Backhoe	10	1500 hrs.
Compact Loader	7	1500 - 2000 hrs.
Wheel Loader	10	2500 hrs.
Tractor	10	2500 hrs.
Sewer Jetter	15	2500 hrs.
Road Grader	15	1500 - 2000 hrs.
Roller	10	1000 hrs.
Crack Seal Machine	10	1000 hrs.
UTV	10	2000 hrs.
Storm Siren	25	N/A
Radio	10	N/A
Water Meter	10	N/A

Note: This schedule is a guide for replacing vehicles and equipment. In addition to the estimated useful life noted in the charts above, staff will consider other factors listed in Section 3 above including maintenance and repair costs; performance; resale value; dependability; major mechanical failures; technological changes; fuel consumption; physical appearance; safety issues; obsolescence; type of usage; etc.

## **CITY OF EDGERTON, KANSAS**

### **COUNCIL AGENDA ITEM**

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**Council Meeting Date:** August 24, 2023

**Agenda Item:** Resolution Approving a First Amendment to Master Trust Indenture (Phase Two)

**Subject:** Logistics Park Home Rule Revenue Bonds, Series 2019

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The City issued its home rule revenue bonds in 2019 to finance the costs of Logistics Park Phase Two projects. The bonds were purchased by Edgerton Land Holding Company, LLC. The bonds are being repaid from revenues collected by the City pursuant to the Phase Two Development Agreement with ELHC. These revenues are collected by the City and remitted to UMB Bank as bond trustee and disbursed in accordance with the Master Trust Indenture for Phase 2.

While administering the funds, an error was discovered in the Master Indenture. The parties intended that excess revenues remaining each month be used to pay down the revenue bonds. However, because the bonds are a bullet maturity, excess revenues are not being used to pay down bonds. The parties desire to amend the definition of Required Principal so that the revenue bonds will be paid down from excess funds on a semi-annual basis.

The Resolution authorizes the City to enter into the First Amendment to Master Trust Indenture (Phase Two) to amend the definition of Required Principal.

## **RESOLUTION NO. 08-24-23B**

### **A RESOLUTION AUTHORIZING THE CITY TO EXECUTE AND DELIVER A FIRST AMENDMENT TO MASTER TRUST INDENTURE (PHASE 2)**

**WHEREAS**, the City of Edgerton, Kansas (the “City”) has previously entered into a Master Trust Indenture dated as of July 1, 2019 (the “Original Indenture”) with UMB Bank, N.A. (as successor to Commerce Bank), as trustee (the “Trustee”), for the purpose of administering revenues collected by the City pursuant to the Logistics Park Phase Two Development Agreement dated January 25, 2018 (the “Development Agreement”), between the City and Edgerton Land Holding Company, LLC, a Kansas limited liability company (“ELHC”); and

**WHEREAS**, the City has previously issued its Home Rule Revenue Bonds (Logistics Park Infrastructure Phase Two Projects), Series 2019A, in the aggregate principal amount not to exceed \$11,000,000 (the “Bonds”), pursuant to the Original Indenture for the purpose of providing funds to pay the costs of acquiring and completing certain public infrastructure improvements described in the Development Agreement; and

**WHEREAS**, all of the Bonds were purchased by ELHC; and

**WHEREAS**, the City and the Trustee, with the consent of ELHC, desire to amend the Original Indenture by entering into a First Amendment to Master Trust Indenture dated as of September 1, 2023 (the “First Amendment”), between the City and the Trustee, to alter a definition in the Original Indenture; and

**WHEREAS**, ELHC desires to consent to the First Amendment;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:**

**Section 1. First Amendment to Master Indenture.** The City approves the form of the First Amendment which is attached hereto as **Exhibit A**.

**Section 2. Execution of First Amendment.** The Mayor of the City is hereby authorized to enter into the First Amendment, in substantially the form attached to this Resolution but with such minor changes as may be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the First Amendment.

**Section 3. Further Authority.** The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with

respect to the First Amendment.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the City Council.

**ADOPTED** this 24<sup>th</sup> day of August, 2023.

**CITY OF EDGERTON, KANSAS**

(Seal)

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

Approved as to form:

\_\_\_\_\_  
Scott W. Anderson, Bond Counsel

**EXHIBIT A**  
**FORM OF FIRST AMENDMENT**

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**FIRST AMENDMENT TO  
MASTER TRUST INDENTURE  
(PHASE TWO)**

**Dated as of August 1, 2023**

**Between**

**CITY OF EDGERTON, KANSAS**

**And**

**UMB BANK, N.A.,  
as Trustee**

**\$100,000,000 (Maximum Aggregate Principal Amount)  
CITY OF EDGERTON, KANSAS  
HOME RULE REVENUE BONDS  
(LOGISTICS PARK INFRASTRUCTURE PHASE 2 PROJECTS)**

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## **FIRST AMENDMENT TO MASTER TRUST INDENTURE (PHASE TWO)**

This **FIRST AMENDMENT TO MASTER TRUST INDENTURE (PHASE TWO)**, dated as of August 1, 2023 (the “**First Amendment**”), is entered into between the **CITY OF EDGERTON, KANSAS** (the “**City**”), a Kansas municipal corporation, and **UMB BANK, N.A.** (as successor to **COMMERCE BANK**), a trust and banking corporation organized and existing under the laws of the State of Missouri and qualified under the laws of the State of Missouri to accept and administer the trusts hereby created and having a corporate trust office in Kansas City, Missouri, as corporate trustee (the “**Trustee**”).

### **RECITALS**

1. The City and the Trustee are parties to that certain Master Trust Indenture (Phase Two) dated as of July 1, 2019 (the “**Original Indenture**”).
2. The City and the Trustee desire to amend the Original Indenture to alter a definition in the Original Indenture.
3. **Section 1002** of the Original Indenture permits the City and the Trustee to enter into Supplemental Indentures to amend the Original Indenture with the consent of the Owners of not less than a majority in principal amount of Bonds and Notes then Outstanding affected by such Supplemental Indenture.
4. Edgerton Land Holding Company, LLC (“**ELHC**”), as the Owner of 100% of the Outstanding Bonds, desires to consent to this First Amendment. No Notes are currently Outstanding.
5. This First Amendment constitutes a Supplemental Indenture under the Original Indenture.

**NOW, THEREFORE**, the City covenants and agrees with the Trustee as follows:

### **ARTICLE I**

#### **DEFINITIONS**

**Section 101. Definitions.** Words and terms which are not otherwise defined herein shall have the same meanings ascribed to them in the Original Indenture.

## ARTICLE II

### AMENDMENT TO ORIGINAL INDENTURE

**Section 201. Amendment to Definitions.** The definition of “Required Principal” in **Section 101** of the Original Indenture is amended by deleting said definition and replacing it with the following:

“**Required Principal**” means, as of any date of calculation, with respect to a Series of Bonds, the amount Outstanding of such Series of Bonds.

## ARTICLE III

### MISCELLANEOUS PROVISIONS

**Section 301. Provisions of Original Indenture Not Otherwise Modified.** Except as expressly modified or amended hereby, the Original Indenture shall remain in full force and effect. To the extent of any conflict between the terms of the Original Indenture and this First Amendment, the terms of this First Amendment shall control.

**Section 302. Consent of Bondholders.** Pursuant to **Section 1002** of the Original Indenture, ELHC, as the Owner of 100% of the Outstanding Bonds, consents to this First Amendment by executing the consent attached hereto.

**Section 303. Execution in Counterparts.** This First Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 304. Governing Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of Kansas.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the City and the Trustee have caused this First Amendment to Master Trust Indenture to be duly executed by their duly authorized representatives, as of the day and year first above written.

**CITY OF EDGERTON, KANSAS**

[SEAL]

By: \_\_\_\_\_  
Donald Roberts  
Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower  
City Clerk

**UMB BANK, N.A., as Trustee**

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

Vice President

ATTEST:

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

Assistant Secretary

**CONSENT OF EDGERTON LAND HOLDING COMPANY, LLC TO  
FIRST AMENDMENT TO MASTER TRUST INDENTURE (PHASE 2)**

Edgerton Land Holding Company, LLC, a Kansas limited liability company, as the Owner of 100% of the Outstanding Bonds issued pursuant to the Master Trust Indenture dated as of July 1, 2019 (the “Original Indenture”), between the City of Edgerton, Kansas (the “City”) and UMB Bank, N.A., as trustee (the “Trustee”), pursuant to **Section 1002** of the Original Indenture, consents to the execution and delivery of the First Amendment to Master Trust Indenture dated as of August 1, 2023, between the City and the Trustee, by the City and the Trustee.

All capitalized terms used herein but not defined shall have the meaning given to such terms in the Original Indenture.

**EDGERTON LAND HOLDING COMPANY, LLC**  
a Kansas limited liability company

By: NorthPoint Development, LLC  
a Missouri limited liability company  
Its: Manager

By \_\_\_\_\_  
Nathaniel Hagedorn, Manager

## City Council Action Item

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**Council Meeting Date:** August 24, 2023

**Department:** Public Works

### **Agenda Item: Consider a Professional Services Agreement with Renaissance Infrastructure Consulting to Provide Construction Inspection Services For The 2023 CDBG 1<sup>st</sup> and Martin Sanitary Sewer Rehabilitation Project**

#### **Background/Description of Item:**

Similar to other large infrastructure projects constructed by the City of Edgerton, a critical component to the success of the 2023 CDBG 1<sup>st</sup> and Martin Sanitary Sewer Rehabilitation Project is partnering with a firm to perform the construction inspection services. Renaissance Infrastructure Consulting (RIC) has submitted bids and gone through previous interview processes with City staff, including providing services for construction inspection of 200<sup>th</sup> and Homestead Intersection Project and the 2021 CDBG Sanitary Sewer Rehabilitation Project. RIC performed the construction inspection services for multiple projects in the past few years with a high level of satisfaction and attention to detail.

Renaissance Infrastructure Consulting (RIC) is a valued partner with the City of Edgerton and ElevateEdgerton! having worked with the City on multiple occasions. RIC has extensive knowledge of how Edgerton conducts projects. They also have a team with over 30 years' experience.

City Staff recommends utilizing RIC for Construction Inspection services of the construction associated with the 2023 CDBG 1<sup>st</sup> and Martin Sanitary Sewer Rehabilitation Project. Selection of RIC will expedite the start date for the project. City Staff and RIC will utilize the same agreement for services as previously agreed upon for the aforementioned projects. The Agreement provides a scope of work to include such services as performing inspections, notification of the City of any significant issues/changes to the plans, providing detailed reports of construction activity, reviewing testing reports and pay estimates, etc. The Agreement also includes an hourly rate schedule applicable for the term of the Agreement. The Agreement is structured similar to the Agreement for City Engineer services where the City is only billed for actual hours of work performed. As with prior projects, RIC provided an estimate for the project (\$51,810.33), staff will work with RIC to best prioritize the use of their services to limit the project budget.

Due to the reduction in CDBG funding, an updated project budget will be brought before Council after bid opening at a future council meeting.

The Agreement is the City's standard agreement approved by City Attorney.

**Related Ordinance(s) or Statute(s): N/A**

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**Funding Source:** CDBG Grant Funds - \$200,000  
Sewer Funds - \$128,500

**Budget Allocated:** \$328,500

**Finance Director Approval:**

x Karen E. Kindle  
Karen Kindle, Finance Director

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**Agenda Item: Approve a Professional Services Agreement with Renaissance Infrastructure Consulting to Provide Construction Inspection Services For The 2023 CDBG 1<sup>st</sup> and Martin Sanitary Sewer Rehabilitation Project**

**Enclosed:** Professional Services Agreement with Renaissance Infrastructure Consulting for Inspection Services

**Prepared by:** Dan Merkh, Public Works Director

**PROFESSIONAL  
SERVICES  
AGREEMENT  
CONSULTANT-CLIENT**

**THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement")** is made and entered into as of the \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_, party of the first part, (the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (the CLIENT).

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Professional Services for the following improvement/services (hereinafter referred to as the "Project"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

## SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 "Additional Services" means any Services requested by the CLIENT which are not covered by **Exhibit 1** of this Agreement.
- 1.2 "Agreement" means this contract and includes change orders issued in writing.
- 1.3 "CLIENT" or "Client" means the City of Edgerton.
- 1.4 "CONSULTANT" or "Consultant" means the company identified on page 1 and any additional parties they might employ (upon the approval of CLIENT) to perform pursuant to this contract.
- 1.5 "Contract Documents" means those documents so identified in the Agreement for this Project.. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 "Engineering Documents" or "Architectural Documents" or "Survey Documents" means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.
- 1.7 "Consulting Services" or "Engineering Services" or "Architectural Services" or "Survey Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 "Services" is a description of the required work as shown in **Exhibit 1**.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.
- 2.2 GENERAL DUTIES AND RESPONSIBILITIES
  - 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement, as specifically provided in **Exhibit 2**.
- 2.2.5. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.6. **Endorsement:** When applicable, the CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.7. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a reasonable time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.8. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for five (5) years from the date of final payment.

## **SECTION 3 – CLIENT RESPONSIBILITIES**

### **3.1 GENERAL DUTIES AND RESPONSIBILITIES**

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. CONSULTANT'S review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that CONSULTANT is able to fully understand the project requirements.

- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

## SECTION 4 – PAYMENT

### 4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 3 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one (1) percent per month.
- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 3. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Reimbursable Expenses:** Reimbursable expenses shall be charged following approval by CLIENT. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT.
- 4.1.4. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 3**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and (1) percent per month.
- 4.1.5. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 3. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

- 4.1.6. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## SECTION 5 – MUTUAL PROVISIONS

### 5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT, but only upon giving notice to CLIENT of the alleged breach and providing CLIENT thirty (30) days to cure such alleged breach.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

### 5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as

otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

### 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT is hereby granted a License to Use instruments of service with use limited to use on this project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

### 5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents.

5.4.2. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused by: (i) CONSULTANT'S breach of this Agreement; (ii) incurred as a result of the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

### 5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

### 5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

### 5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

### 5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### 5.9 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT

shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.10 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.11 SEVERABILITY CLAUSE

5.11.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.12 FIELD REPRESENTATION

5.12.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.13 HAZARDOUS MATERIALS

5.13.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.14 AFFIRMATIVE ACTION

5.14.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.15 SPECIAL PROVISIONS

5.15.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 4**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONSULTANT:**

**CLIENT:**

\_\_\_\_\_  
**(Firm Name)**

**City of Edgerton,  
Kansas**

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

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

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

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

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

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

END OF CONSULTANT-CLIENT AGREEMENT

**EXHIBIT 1**  
**SCOPE OF SERVICES**

## **EXHIBIT 2**

### **CITY OF EDGERTON, KS INSURANCE REQUIREMENTS FOR DESIGN & CONSULTING SERVICES - 2020**

Consultant shall procure and maintain at its sole cost and expense, the following insurance coverage for the duration of the project and for a period of at least two (2) years (five years for professional liability insurance) following termination of this agreement, with minimum acceptable limits as follows:

**(1) COMMERCIAL GENERAL LIABILITY**

\$1,000,000 Per Occurrence

\$2,000,000 Aggregate

Coverage shall be written on ISO occurrence form CG 0001 or equivalent. Endorsements or policy provisions that limit contractual liability are not acceptable. It shall also name City, its officers, officials, employees, and agents as additional insureds on a primary basis, not contributing with any insurance maintained by the additional insured, using ISO additional insured endorsement CG 2010, or its equivalent, copies of which are required to be attached to the certificate of insurance.

**(2) WORKERS COMPENSATION - STATUTORY & EMPLOYERS LIABILITY**

\$100,000 Each Accident

\$500,000 Policy Limit - Disease

\$100,000 Each Employee – Disease

Coverage shall apply to all workers and employees related to the work, including sole proprietors, partners, members of an LLC, and officers of a corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage. Firms domiciled outside the state of Kansas must have "other states" coverage in effect.

**(3) PROFESSIONAL LIABILITY / ERRORS & OMISSIONS**

\$1,000,000 Per Claim

\$2,000,000 Aggregate

This coverage, shall apply to actual or alleged negligent wrongful acts, errors or omissions resulting in claim(s) for damages related to the work involving the operations of Consultant, and/or its sub-Consultant(s) if any are utilized in the completion of the work. If such policy is "claims-made" form, the retroactive date must be shown and must be before the date of the Agreement or the beginning of work set forth in the Agreement. This insurance must be maintained and evidence of insurance must be provided for at least Five (5) years after termination of this Agreement. If coverage is canceled or non-renewed and not replaced with another "claims-made" policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting period" (tail) coverage for a minimum period representing at least Five (5) years after termination of this agreement.

**CITY OF EDGERTON, KS**  
**INSURANCE REQUIREMENTS FOR DESIGN & CONSULTING SERVICES – 2020, CONT'D**

**(4) WAIVER OF SUBROGATION**

Consultant, and in addition, its insurers, through policy endorsement, and to the fullest extent permitted by law, waives all rights against City, its officers, officials, employees, and agents for recovery of damages to the extent that these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per the requirements stated above.

**(5) CERTIFICATE OF INSURANCE**

Prior to commencing the work, Consultant shall furnish an acceptable certificate(s) of insurance, identifying insurers that write Consultant's coverages, with minimum Best's Guide Rating of A- and Class VIII or better, and authorized to do business in the state of Kansas. Certificate will evidence the required coverage and endorsements stated above. Should any of the above described policies be cancelled or non-renewed, the City shall first be provided 30 days prior written notice, except 10 days for non-payment of premium. This cancellation provision shall be indicated on the certificate of insurance. City also reserves the right to obtain copies of Consultant's policies to validate coverage in effect if certificates are ambiguous. Annually, Consultant agrees to provide a new/replacement formal certificate of insurance five (5) days prior to the expiration date. If any portion of the work is to be subcontracted, Consultant shall require that the subcontracted Consultant(s) shall comply with the same indemnification agreement terms and be required to provide and maintain all insurance coverages and provisions as stated above, with a formal certificate of insurance acceptable to City evidencing same. Self-Insured retentions must be declared to and approved by City. If consultant is self-insured for any of the above coverages, such self-insurance must be approved by City, which may require written guarantees for payment of self insured

losses and related investigation, administration, and defense costs. And it must provide claims handling procedures acceptable to the City. Acceptance of any certificate that does not comply with the above requirements shall not operate as a waiver of Consultant's obligations hereunder. And the fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by City shall not be limited by the amount of the required insurance coverage. Consultant shall notify City in writing as soon as possible after any occurrence that could potentially lead to any lawsuit and/or after it receives notice or knowledge of any demand, claim, cause of action, lawsuit, or action arising out of the work performed under this contract.

**EXHIBIT 3**  
**COST AND SCHEDULE**

**EXHIBIT 4**  
**SPECIAL PROVISIONS**

## City Council Action Item

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**Council Meeting Date:** August 24, 2023

**Department:** CIP

### **Agenda Item: Consider a Pipeline License with BNSF Railway**

**Background/Description of Item:**

In 2023, the City of Edgerton will bid the construction of a new sanitary sewer main across the BNSF Railway (BNSF). The City is required to enter into an agreement with BNSF for the construction and future maintenance of the new pipeline.

Enclosed with this item is a draft agreement from BNSF. Below is a summary of the important recitals from the Agreement.

- Exact fees for the Agreement are yet to be determined. The contract fees are \$5,824.00. The required insurance amounts are greater than the City's existing coverages, an estimate is currently being prepared for the additional coverage.
- Currently the Agreement provides 12 months for construction from the effective date of the Agreement.
- City will include requirements in the bid documents and contract with the successful Contractor to meet ALL requirements outlined in the Agreement, such as insurance, notification for flagger, etc.
- Agreement does allow BNSF to change the grade or alignment of tracks or add additional tracks/facilities in the future. BNSF reserves the right to maintain their infrastructure and should the location of the sewer line interfere, the City is responsible for relocation.

City Attorney and City Staff have reviewed the Agreement. While not yet finalized, both would recommend the City Council consider approval of the form of the Agreement subject to final approval by the City Attorney and authorize the Mayor to execute the Agreement.

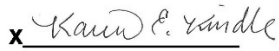
**Related Ordinance(s) or Statue(s):**

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**Funding Source:** RHID

**Budget Allocated:** \$3,083,600

**Finance Director Approval:**

x 

Karen Kindle, Finance Director

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**Recommendation: Approve Pipeline License with BNSF Railway subject to Approval by City Attorney and Authorize the Mayor to Execute the Agreement**

**Enclosed:**

Draft Pipeline License

**Prepared by:**

Dan Merkh, Public Works Director



Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive – MOB-2  
Fort Worth, Texas 76131  
tel +1 817-352-1011

August 8, 2023

City of Edgerton, Kansas  
Attention: Mr. Dan Merkh  
404 E. Nelson Street  
Edgerton, Kansas 66021

23W-17762

Dear Mr. Merkh:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please execute and **return to me via email** for completion on part of BNSF Railway Company ("BNSF"). Submit applicable fees through [BNSF.railpermitting.com](https://BNSF.railpermitting.com) and reference your tracking number.

***Contract fees in the amount of \$5,824.00***

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. Email your certificate of insurance to [BNSF@certfocus.com](mailto:BNSF@certfocus.com) and reference your tracking number in the subject line.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

**In lieu of providing a separate policy for Railroad Protective Liability Insurance**, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1899.00 with your check.

**PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.**

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website [www.BNSFcontractor.com](http://www.BNSFcontractor.com) prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

**The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.**

Sincerely,

*Annette Jenkins*

Annette Jenkins  
Sr. Manager Permits  
Attachment

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective \_\_\_\_\_, 2023 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF EDGERTON, KANSAS**, a Kansas corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline[s], Eighteen (18) inches in diameter inside a Twenty-Six (26) inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Edgerton, County of Johnson, State of Kansas, Line Segment 7100, Mile Post 40.95 as shown on the attached Drawing No. 87972, dated June 15, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry Sanitary Sewage, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Five Thousand Eight Hundred Twenty-Four and No/100 Dollars (\$5,824.00) as compensation for the use of the Premises.
7. Costs and Expenses.
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensors, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensors within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. Reserved Rights of Use. Licensors excepts and reserves the right, to be exercised by Licensors and any other parties who may obtain written permission or authority from Licensors:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensors in its sole discretion deems appropriate, provided Licensors uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensors desires the use of its rail corridor in such a manner as would, in Licensors's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensors to such effect, make such changes in the Pipeline as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensors in its sole discretion, to the Pipeline promptly upon Licensors's request.

### **LICENSEE'S OPERATIONS**

11. Construction and Maintenance of the Pipeline.

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensors's representative, the Scheduling Agent or its designee. Licensee shall notify Licensors's Roadmaster Bradford Gallatin at telephone (630) 341-7250 or [bradford.gallatin@bnsf.com](mailto:bradford.gallatin@bnsf.com), at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensors of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensors's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensors concerning the existence and approximate location of Licensors' underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensors' Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensors will provide Licensee with the information Licensors has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensors' standard procedures. Licensors does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensors prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensors' reasonable opinion that granular material is present, Licensors may select a new location for Licensee's use, or may require Licensee to furnish for Licensors' review and approval, in Licensors' sole discretion, a remedial plan to deal with the granular material. Once Licensors has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensors.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensors' property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

### **13. Liability and Indemnification.**

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensors and Licensors' affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
- 14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1899.00.

- ☐ Licensee may **elect** to participate in Licensor's Blanket Policy;
- ☐ Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all

Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensors shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

### **16. Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensors applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

### **17. Environmental.**

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensors property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter

promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

## **DISCLAIMER OF WARRANTIES**

### 18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

## **LIENS AND TAXES**

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

#### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.

- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensors or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensors may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensors for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensors has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensors, provide a bill of sale in a form acceptable to Licensors conveying the Pipeline and the other Improvements to Licensors for no additional consideration.

## **MISCELLANEOUS**

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensors and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensors, which consent may not be unreasonably withheld or delayed by Licensors. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensors in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSORS, SUCH CONSENT TO BE IN LICENSORS'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive – MOB-2  
Fort Worth, Texas 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Edgerton, Kansas  
404 E. Nelson Street  
Edgerton, Kansas 66021

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive – MOB-2  
Fort Worth, Texas 76131

By: \_\_\_\_\_  
Patricia Villegas  
Title Vice President Permits \_\_\_\_\_

**LICENSEE:**

**CITY OF EDGERTON, KANSAS**, a KANSAS corporation

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

EXHIBIT "A"

SCALE: 1 IN = 100 FT  
KANSAS DIV.  
EMPORIA SUBDIV.  
L.S. 7100 MP: 40.95  
DATE: 6/15/2023

SECTION: 18  
TOWNSHIP & RANGE:  
15S 22E  
MERIDIAN: 6PM



● NEW MANHOLE

DESCRIPTION OF PIPELINE  
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	18"	26"	LENGTH ON R/W:	260'	156'
CONTENTS:	SANITARY SEWER		WORKING PRESSURE:	0 PSI	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		13.5'
SPECIFICATIONS / GRADE:	C900 DR 18	SCH 10	BURY: NATURAL GROUND		7.5'
WALL THICKNESS:	1.08"	0.375"	BURY: ROADWAY DITCHES		7.5'
COATING:	-	-	CATHODIC PROTECTION		YES

VENTS: NUMBER \_\_\_\_ SIZE \_\_\_\_ HEIGHT OF VENT ABOVE GROUND \_\_\_\_

NOTE: CASING TO BE JACKED OR DRY BORED ONLY  
CARRIER TO BE INSTALLED BY TRENCH

NEAR EDGERTON  
COUNTY OF JOHNSON

STATE OF KS

KFH

# Marketing/Communications Update

August 2023

http://

EdgertonKS.org

12K

32,682

Total number of users visiting  
between March 6-August 7

Pages viewed between  
March 6-August 7

The July 3rd Event had the most interest, followed by City Council agendas and packets, and job openings.

17

News Posts  
since Mar. 6

11.7%

Site traffic from social  
media referrals



## Social Media: Facebook & Twitter



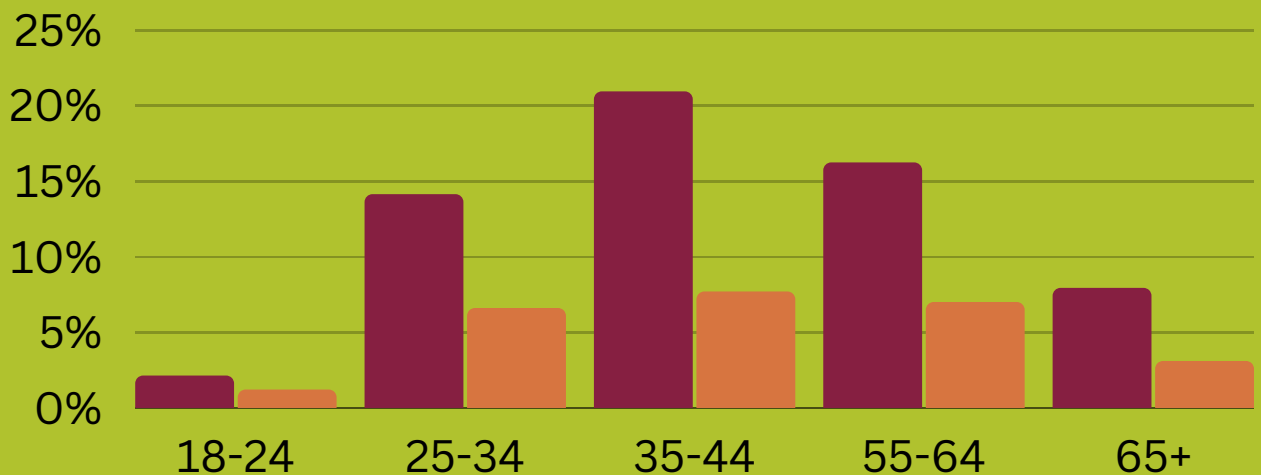
Total # of Facebook followers

1,469



People reached since Mar. 5

32.3K



209



Total # of Twitter followers



285

Twitter impressions  
in last 28 days