

**MANAGEMENT AND FINANCE POLICY COMMITTEE (M&F)  
MEETING**

**TUESDAY, July 23, 2019  
2:30 PM, Ponderosa, Aurora Municipal Center**

Council Member Gruber, Chair  
Council Member Lawson, Vice Chair  
Council Member Richardson  
Deputy City Manager Michelle Wolfe  
Finance Director Terri Velasquez

The Management and Finance Committee oversees the following Council goal and objectives:

**PROVIDE A WELL-MANAGED AND FINANCIALLY STRONG CITY**

- Ensure the delivery of high quality services to residents in an efficient and cost effective manner.
- Maintain superior financial reporting, financial controls, appropriate reserves, budgeting financial management, and transparency, and invest in capital and infrastructure to support efficient and effective long-term provision of services.
- Maintain a high financial credit (bond) rating, maintain debt policies and debt practices that allow the assessment of appropriate debt levels, and periodically review debt and debt service to minimize costs.
- Provide appropriate stewardship of natural resources to ensure long-term sustainability for the city.

**1. APPROVAL OF MAY 28, 2019 DRAFT MINUTES AND JUNE 25, 2019 INFORMAL MINUTES**

**2. CONSENT ITEMS**

- **Sales Tax Chart**

Presenter: Greg Hays, Budget Officer

**3. 2018 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) (Information Only)**

Presenter: Nancy Wishmeyer, Finance (15 minutes)

**4. CIGARETTE TAX REMOVE SALES TAX EXEMPTION**

Presenter: Trevor Vaughn (10 minutes)

**5. AURORA MUNICIPAL CENTER REFINANCING**

Presenter: Mike Shannon, Debt and Treasury Manager (15 minutes)

**6. IT UPDATE (Information Only)**

Presenter: Aleta Jeffress, Information Technology (15 minutes)

**7. 2019 CITY FACILITIES (Information Only)**

Presenter: Lynne Center, Public Works Deputy Director Operations (10 minutes)

**8. INTERNAL AUDIT Q1 PROGRESS REPORT (Information Only)**

Presenter: Wayne Sommer, General Management (15 minutes)

**9. MISCELLANEOUS MATTERS FOR CONSIDERATION**

- Next meeting is on August 27 at 2:30 pm. Please note location change to **Aurora Room**

*Total projected meeting time: 80 minutes*

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## MANAGEMENT AND FINANCE POLICY COMMITTEE

May 28, 2019

Members Present: Council Member David Gruber – Chair, Council Member Angela Lawson – Vice Chair, and Council Member Charlie Richardson - Member

Others Present: Council Member Nicole Johnston, M. Wolfe, T. Velasquez, G. Hays, S. Ruger, T. Vaughn, D. Lathers, A. Morales., R. Allen, T. Joyce, H. Hernandez, A. Fitch, K. Mason, M. Lanterbach, and T. Hoyle

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### MINUTES

April 23, 2019 minutes were approved.

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### CONSENT ITEMS

#### Sales Tax Chart

March of 2019 was 5.8 percent higher than March of 2018.

#### Capital Plan

G. Hays gave a brief update on capital projects.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow-up needed.

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### CAMPAIGN FINANCE

#### Summary of Issue and Discussion

Council Member Nicole Johnston proposed certain changes to the City's ordinance related to campaign financing. Specifically, she would like to amend the reporting requirements for campaign finance activity to add additional reports as follows: All candidate, issue, political, and exploratory committees must file reports on the **90th** day, on the **60th** day, **30th** day, **14th** day, and the Friday before, and 30 days after the municipal election. In addition, she proposed language that will make the reporting requirements for Independent Expenditure Committees clearer. Adoption of this item will not change the reporting requirements for campaign committees other than to add additional required reports. There are no changes to contribution limits. She stated that part of her motive for sponsoring the ordinance is the belief that special interest groups will donate more to local races this year because of passed legislation and it gives more local control on various issues.

Council Member Gruber asked what year would this take place. Council Member Johnson replied it would be for this year.

Council Member Lawson asked if the proposed new campaign finance reporting was similar to the State of Colorado's requirements. She mentioned that as state elections get closer, candidates report biweekly. Council Member Johnston stated Aurora's reports would be less frequent than

the state. It's mainly every 30-days, and when it becomes closer, a report is due two weeks before the election. This year with a lot of the legislation that passed there's significant local control on various issues. It's anticipated there will be more money and more donors. As such there may be more activity in this election in the interest of the public and having more transparency on what's being donated. This proposal gives Aurora the opportunity to narrow the gap in reporting between the 89 days and the 22 days currently prescribed by the Municipal Code. All the information will be there when the ballots go out.

Council Member Gruber asked if there could be a situation where someone becomes a candidate after the first report is due 90 days before the election and wouldn't have to submit their first report until the 60th day before the election. S. Ruger said yes, that can happen now with the existing law. August 27 is the date when petitions are due in and that's what establishes a person as a candidate. Once they come in and register at my office they can start collecting funds for their campaign, so it's a step that is required. This proposal will require us to track and gather additional campaign finance reports in the process.

Council Member Gruber stated he recognizes the two separate processes, one for petitioning to be on the ballot and one for campaign finance reporting, but he's not yet convinced based on verbiage that they are integrated. S. Ruger replied that they are not. If someone decides to run after 85 days and they haven't collected any money or campaigned then we won't do anything until they actually start collecting funds on the campaign finance reporting side.

Council Member Johnston stated that strengthens the reason even more to add additional reporting dates as it would capture sooner those candidate's campaign finance activities.

Council Member Richardson asked about the report of contributions in the aggregate received. If contributions are more than a \$1000.00 in the aggregate received, does it mean that you have to report on the 59<sup>th</sup> day? D. Lathers replied it doesn't change the dates of required reporting, but it does change the amount that has to be reported. We had concerns particularly with contributions in-kind as small multiple sequential donations don't get reported if contributions come in from one company. Council Member Richardson asked is that's per donor? S. Ruger replied yes, noting that it is not written clearly in the current draft, and as such, language denoting per contributor should be added.

Council Member Richardson said he views this ordinance as anti-incumbent and felt that the timing of its execution was not a coincidence. He stated that he believes there is a political agenda to this initiative, but he will vote to move it forward.

Council Member Richardson stated that when he took an initial run at updating campaign finance he got bogged down in this whole area because of the enforcement provision. He asked S. Ruger do you have a concern on enforcement.

S. Ruger said enforcement is a big deal. Whenever people have to report to my office, it's my job to make it happen. Certainly, a lot of things can happen through all of this, if we don't know about it, I'm not sure how we can track it and enforce it.

Council Member Richardson said, if there's assertive violation of this what is the City Clerk's office going to do? Arrest somebody, are you going to cite them into municipal court? I'm serious here, what are you going to do?

D. Lathers said that is something that Council Member Johnston and Mr. Ruger talked about. Currently we would refer the matters to the Secretary of the State. The Secretary of the State has a provision within their rules (Colorado Court Regulations) they would always refer those back to us for dealing with them. The way the Secretary of the State deals with it, they have a panel of administrative law judges they send these to. There's a process setup and those judges have authority depending upon the nature of the violation, fines are \$40 or \$50 a day up to \$1,000 a day. There's a different level of violations. We have not been organized in the past, we believe that we have a comprehensive code. These infirmities came forward little bit in the last election. We had allegations that a candidate was not obeying the residency requirements. How do we enforce that? The City has begun looking at that. We've called the Secretary of the State to see if we can get a list of those law judges. Council Member Johnston did tell us that she did not believe that there was adequate time to consider the issue comprehensively, I think much like the wall you ran into. It's such a large issue we could not get that done comprehensively and intelligently in a limited time, so she focused on the subset issues. Yes, you identified it, and she's identified it.

S. Ruger said, I apologize Council Member Richardson you're talking about specifically about the "specificity" provision. We wouldn't be able to enforce "specificity".

Council Member Richardson said, Thank you! I hope the minutes got that!

S. Ruger said, I apologize, I didn't know what you were talking about specifically. But today's point on the residency requirement. There is very clear definitions on what that is. So we would be able to enforce that. You're absolutely right. On "specificity", I don't know what measure we would use to enforce that.

Council Member Lawson asked about candidates missing deadlines for filing reports and if there is a defined penalty. S. Ruger said, yes. Council Member Angela Lawson asked if it was possible to implement the changes proposed by the ordinance for the 2019 Regular Municipal Election. S. Ruger explained that he is concerned about the timing, because certain changes would be required in the City's campaign finance reporting system to accommodate additional reports. He also stated that the schedule of key dates has already been provided to the candidates and that his office would need to work directly with candidates to impose any changes at this point. He noted that he has let candidates know that this change is being proposed.

Council Member Richardson suggested that the effective date be January 1, 2020.

Council Member Gruber said that the Clerk Office is not ready to implement this and there's concerns when it actually becomes an ordinance and concerns about how they would instruct and educate the candidates for this election.

S. Ruger said, there are concerns we would need to address if this passed; yes.

Council Member Gruber recommended that the word “specificity” be removed to avoid any court action. Council Member Johnston stated she agrees with the removal and keeping the code as is.

CM Gruber said, what I heard previously is that the Clerk’s Office is not ready to implement but given the fact that the candidates have already been told.... Council Member Johnston said excuse me, I don’t think he said he’s not ready to implement, but I want clarification.

S. Ruger said, I mean that we will make it happen. CM Gruber asked, Steve are you ready to implement this right now? S. Ruger replied, well....Steve, this is a yes or no question. S. Ruger said no, we don’t have the system.... Council Member Gruber interrupted, and reiterated that the Clerk said they’re not ready to implement right now and the candidates are already informed on what our processes is, and said to Council Member Richardson, I believe you made a recommendation to make this effective in January 2020? He then asked Council Member Lawson what her thoughts were.

Council Member Lawson said, I don’t think it was fair that you just cut him off. He was basically telling you his concern from an IT perspective. He didn’t say that. You didn’t allow him to answer and I thought that was very unprofessional.

Council Member Gruber and Council Member Richardson voted to move the item forward with an amendment that it is not become effective until January 1, 2020. Council Member Lawson voted to move the item as is.

#### Outcome

The Committee agrees staff should remove the phrase listing “with specificity” and add “per contributor” after the word “aggregate” in Section 54-105.5. The Committee unanimously agreed to move the item forward to Study Session. Council Member Gruber and Council Member Richardson voted to move the item forward with an amendment that it not take effect until January 1, 2020. Council Member Lawson voted to move the ordinance forward as is.

#### Follow-up Action

Staff will forward this item to the June 6, 2019 Study Session.

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## **LIQUOR CODE UPDATES**

### Summary of Issue and Discussion

The item is a follow up to the original presentation in April. The committee requested that the item be forwarded to the Colorado Restaurant Association, Visit Aurora, and The Chamber of Commerce. The item was provided to The Chamber and Visit Aurora on April 30th. Visit Aurora commented there were no issues with the changes presented. No comments have been received from the Chamber. The Colorado Restaurant Association expressed a concern regarding language on conditions of the establishment stating "upon any parking area(s) used by licensee's patrons". This language has been deleted. Additionally they had some questions regarding entry of minors in a Cabaret business. While this language was mostly existing in the ordinance, staff is proposing a few changes to the language. The changes clarify that minors can

be in an event center with their parents but should not be in a night club or bar environment that has a cabaret after 11pm.

Additionally, staff removed the term "Knowingly" from several bullets on conditions of an establishment. The language now matches the language in Regulation 47-900 of the Colorado Liquor rules. Additionally, case law indicates that licensee need not have actual knowledge but constructive knowledge of the activity. The term permit indicates constructive knowledge and the interpretation of the courts is explained in the Colorado Court of Appeals case Full Moon Saloon, Inc. v. City of Loveland.

The committee also requested additional research regarding a case from the 1980s where a judge ruled against the city regarding discipline against a bar for activity in the parking lot or immediate vicinity of the bar by patrons of the establishment. Unfortunately, staff has been unable to find the record of this case and therefore unable to evaluate the details. Analysis of published case law detailed in the memo attached to the agenda item from the City Attorney's office demonstrates that a licensee can be disciplined for activities occurring outside of the walls of the business. The case law indicates that a licensee assumes an obligation to supervise the conduct of its clientele so as to preclude the creation of conditions within the surrounding neighborhood which would amount to a nuisance to those who reside in the area.

The authority to discipline a licensee for these activities exists whether or not the language is incorporated into the ordinance. However, having the language in the ordinance provides additional clarity going forward.

Colorado Liquor Regulation 47-900(A) Conduct of the Establishment is shown below. This language is proposed as conditions of the establishment in the proposed ordinance:

*A. Orderliness, loitering, serving of intoxicated persons.*

*Each person licensed under Article 3, Article 4, and Article 5 of Title 44, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.*

Outcome

The Committee thanked staff and approved moving the item forward to the June 24, 2019 Study Session.

Follow-up Action

Staff will forward this item to the June 24, 2019 Study Session

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**MISCELLANEOUS MATTERS FOR CONSIDERATION**

Summary of Issue and Discussion

- Council Member Gruber requested a Capital Plan update which was given under Consent Item.
  - Council Member Gruber asked for an update regarding City Owned Facilities and maintenance costs.
  - Council Member Gruber wants to watch FTE adds from converting contract employees.
  - Council Member Lawson requested a status of the Homeless Audit.
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- The next meeting is on Tuesday, June 25, 2019.

THESE MINUTES WERE APPROVED AS SUBMITTED

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David Gruber, Chair of the Management and Finance (M&F) Committee

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Date



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## MANAGEMENT AND FINANCE POLICY COMMITTEE

June 25, 2019

Members Present: Council Member David Gruber – Chair

Absent: Council Member Angela Lawson – Vice Chair, and Council Member Charlie Richardson - Member

Others Present: Deputy City Manager Jason Batchelor, T. Velasquez, M. Geyer, C. Dancy, G. Hays, S. Ruger, A. Morales, D. Brotzman, H. Hernandez, C. Boller, B. Shafer, M. Crawford, J. Ivey, A. Fogg, J. Tanaka, P. Williams, C. Walden, C. Brummitt, N. Fini, N. Campbell and T. Hoyle

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### MINUTES

Due to lack of quorum. May 28, 2019 minutes were not approved and will be presented at the July 23, 2019 Management and Finance Policy Committee meeting for approval. In addition, these minutes are information only.

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### CONSENT ITEMS

#### Sales Tax Chart

April of 2019 was 8.9 percent higher than April of 2018.

#### Outcome

The Committee Chair thanked staff.

#### Follow-up Action

No follow-up needed.

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### SADDLEROCK SOUTH METROPOLITAN DISTRICT DISSOLUTION OF DISTRICT NO. 1

#### Summary of Issue and Discussion

District No. 1 has reached the end of its life cycle and exists to solely carry out operations and maintenance functions for the assets of District 2 - 4. In addition, the property District No. 1 sits on is being developed into a commercial project. Once it is developed the Directors of District No. 1 will no longer own the property and therefore not be qualified as to serve as District Directors. Therefore, the Metro District wishes to dissolve District No. 1.

In order to dissolve District No. 1 in a manner that is cost effective and allows the functions of the District to be taken over by the residents of the remaining districts, they are proposing to form the Saddle Rock South Authority. State Statutes allow and provide for the formation of Authorities. The Authority will take over the operations, maintenance and administrative responsibilities once performed by District No. 1. All assets of District No. 1 will be transferred to the Authority.

Creating the Authority will allow residents to participate in the daily operations and functions of District No. 1. The Board of Directors of the Authority will be made up of residents who also

serve on the Boards for Districts 2 - 4. The Authority will not have power to impose taxes and will not impose additional fees on community residents.

On May 5, 2019, the Board of Directors of District No. 1 adopted a resolution deeming it in the District's best interest to dissolve. Upon receipt of the consent of the City, District No. 1 intends to dissolve.

Council Member Gruber asked about the legal aspect and what powers the Authority would have under the law. Jennifer Tanaka stated that under Title 29 they are allowed to create an Authority through contract. All three of the Districts would contribute to the operational costs and have member representational for the Authority board. The Authority does not have any more power than what the underlying Districts have. The Districts are anticipating to impose the same operational mill levy they currently have now. Council Member Gruber asked does the Authority have the ability to invoke or apply a mill levy. Jennifer Tanaka replied no. The Authority does not have the ability to impose a mill levy on top of what the Districts already have.

Council Member Gruber asked does the Authority have the ability to add a homeowners association cost on houses that are within the Authority. Jennifer Tanaka stated the Authority would have the power to impose a fee rate and a penalty charge, but the likelihood of that happening was pretty low, since recently all three Districts have converted from a fee to a tax based district.

Council Member Gruber asked, as far as documentation, would the City hold a copy or does the state. Jennifer Tanaka said certainly a copy would be provided to the City. It's an Intergovernmental Agreement (IGA) among the three Districts and a 2019 annual report will be required to be filed with the city and the local government.

Council Member requested that as Chair of the Management and Finance Committee this item be moved forward to Study Session.

#### Outcome

Moved forward to Study Session by Council Member Gruber, Chair.

#### Follow-up Action

Moved forward to Study Session by Council Member Gruber, Chair.

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## **PROPOSED NEW AND AMENDED SERVICE PLANS FOR METRO DISTRICTS**

### Summary of Issue and Discussion

The city has received several requests from Metro Districts located along 64<sup>th</sup> Avenue, east of E-470 for a modification to the city model service plan. They are proposing to collaborate by forming a Transportation Authority to fund improvements benefitting several development projects in the area. The Aurora Regional Improvement (ARI) mill levy imposed within the city's model service plan allows for the formation of an Authority by three (3) or more districts to fund regional infrastructure with the pledge of their ARI mill levies collected from all member districts.

The property owners have determined that the imposition of the ARI mill levy required by the City is not sufficient to provide the bonding capacity necessary to fund the improvements of 64<sup>th</sup> Avenue along their boundaries, which is the priority of these property owners. Therefore, they are requesting a modification to their model service plans to impose 5 mills from year one instead of 1 mill that is provided for in the city's model service plan. It is important to note that these districts are zoned to include only commercial/industrial uses, no residential will be developed.

Council has in the past approved a similar increase in the ARI mill levy for other districts. The provision contains language that allows for the ARI mill levy to revert back to the model if the Authority being proposed does not form within a year. This is the only modification being proposed, all other provisions are compliant with the city's model service plan.

The process for City Council to consider approval of this modification of the model service plan is by Ordinance instead of Resolution as with other service plan modifications. The ARI mill levy provisions are very specifically identified in City Code, therefore, changes to the mill levy to be imposed must be established by Ordinance.

There are fifteen (15) districts, representing (3) projects requesting the increased ARI mill levy. The projects are High Point, Harvest Mile-Fullenweider and Porteos. There are eleven (11) proposed new districts (HM Metro Districts Nos 1-9 and BOWIP Metropolitan Districts Nos. 1-2) and four (4) existing districts requesting service plan amendments. These are more specifically described below:

### **Proposed Metropolitan Districts:**

1. HM Metropolitan Districts Nos 1-9:
  - Location – Generally Southwest of 68th Avenue and Harvest Mile Road
  - Size – 959 acres
  - Type of District – Mixed Use to include Retail, Commercial, Office, Industrial, and Multi-Family Residential (3,000 residents)
  - Debt Limit - \$500,000,000
  - Current Development Status – Vacant Property, Framework Development Plans are being reviewed.
2. BOWIP Metropolitan Districts Nos 1-2:
  - Location – Northeast corner of 64th Avenue and E-470 (this parcel is pending annexation)
  - Size – 155 acres
  - Type of Development – Mixed Use - Retail, Commercial, Office, Industrial and Residential (2,600 residents)
  - Debt Limit - \$120,000,000
  - Current Development Status – Vacant Property, Framework Development Plans under review.

### **Proposed Amendments to Metropolitan Districts:**

1. Velocity Metropolitan District Nos 4-6: These are the financing districts that serve the Porteos development. Porteos is an approximately 1,000 acre commercial/industrial development.

2. Colorado International Center (CIC) Metropolitan District Nos 10 & 11: These are the financing districts that serve the commercial/industrial portions of the High Point development.

Council Member Gruber asked once the groups are assembled how is that management structure going to work on the south side. Paula Williams said it's intended the HM Metro Districts Nos 1-9 and BOWIP Metropolitan Districts Nos. 1-2 and the Velocity Metropolitan District Nos 4-6 and CIC Metropolitan District Nos 10 & 11 will form a separate Authority pursuant to an IGA. It will be for regional improvements specifically to fund the 64th Avenue improvements.

Council Member Gruber said recently there was a discussion about the Saddlerock Authority, and he asked does the City have a Charter with the South Aurora Regional Improvement Authority (SARIA). J. Batchelor said there's a requirement if a district has an ARI Mill Levy. And there's a couple options, one is they can turn the money back to the City and use it for regional projects or alternatively they can join a larger regional Authority. So, when SARIA was formed the City could vote in the projects that were listed as regional but not in the terms of the funding piece. The City's main concern was the projects were truly regional and prioritized and they got done. Council Member Gruber said, then we'll absorb the road when it's completed. J. Batchelor replied, that's correct.

Council Member Gruber asked what will the Authority look like and what's the City's participation in that Authority. Paula Williams said the Authority will be an entity that will be formed by an establishment agreement and IGA between nine HM Metro Districts, four Velocity Metropolitan Districts, two BOWIP Districts, and the ten CIC Districts. There's a provision in the model service plan as well as an intergovernmental agreement if the districts issue an executed ARI Authority Establishment Agreement. The City has been offered the opportunity to execute an ARI Authority Establishment Agreement that provides the City no less than 30% and no more than 49% of the board members. They will serve as Board of Directors of the ARI Authority to be established and we will remit the mill levy to that new Authority. The City has a right to participate in that Authority Establishment Agreement if it wants.

Council Member Gruber said the part I'm struggling with is, that within this Authority we issue a Service Plan for a Metro District and it goes back to the Master Service Plan and the Authority will be organized under the state law with the IGA's. It makes it a bit nebulous because we don't have oversight of the state or oversight of the City. What I'm looking for is the binding document that associates the City. I understand the voting rights that you explained the City will participate, but I'm concern about specifically identifying two drainage culverts in that road. It's going to be a very expensive road, and I want to make sure the City has a strong position to insure the quality of the road and how that road is going to be turned over. J. Batchelor said the road will be constructed by the City's design standards and that's everything from the amount of road base and pavement standards and that all is in our technical manuals. Whether it's funded through a regional Authority or directly through a Metro District, if it's an improvement that would be turned over to us. We will be able to dictate the standards on how it's built before it will be turned over to us.

Council Member Gruber asked, do you anticipate the City will be participating on the board of this Authority? J. Batchelor said yes. One, helping folks understand how the regional pieces fit in the City's larger regional efforts and in this case it meets the other improvements, and so very much like the City did with the SARIA board.

Outcome

Moved forward to Study Session by Council Member Gruber, Chair.

Follow-up Action

Moved forward to Study Session by Council Member Gruber, Chair.

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**PROPOSED NEW METRO DISTRICTS**

Summary of Issue and Discussion

For the November 2019 election cycle, the city has received requests for formation from the following proposed new districts:

**Proposed Metropolitan Districts:**

1. Pioneer Business Metropolitan District:
  - Location – Southwest corner of E Jewell Avenue and E-470
  - Size – 153.16 acres
  - Type of District – Commercial
  - Debt Limit - \$10,000,000
  - Current Development Status – under construction
2. The Commons at East Creek Metropolitan District:
  - Location – Southwest corner of E Alameda Parkway and E Mississippi Avenue.
  - Size – 6.95 acres
  - Type of Development – Residential- Single Family Attached, Paired Homes (125 residents)
  - Debt Limit - \$10,000,000
  - Current Development Status – Site plan approved
3. White Buffalo Metropolitan Districts Nos 1-3:
  - Location – South of 68th Avenue, on both East and West sides of Powhatan Road
  - Size – 248 acres
  - Type of Development – Commercial/Industrial
  - Debt Limit - \$60,000,000
  - Current Development Status – under construction
4. SLC Metropolitan Districts Nos 1-4:
  - Location – Southwest corner of E Colfax Avenue and Picadilly Road
  - Size – 348 acres
  - Type of Development – Commercial/Industrial
  - Debt Limit - \$156,000,000
  - Current Development Status – FDP under review

5. Painted Prairie Metropolitan Districts Nos 10-12:
- Location – Northeast Corner of East 56th Avenue and Himalaya Road
  - Size – 634 acres
  - Type of Development – Primarily Residential (1,806 residents)
  - Debt Limit - \$300,000,000
  - Current Development Status – Phase I under construction

Outcome

Moved forward to Study Session by Council Member Gruber, Chair.

Follow-up Action

Moved forward to Study Session by Council Member Gruber, Chair.

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**ELECTION COMMISSION**

Summary of Issue and Discussion

Due to lack of a quorum the item was moved to the Management and Finance Policy Committee meeting on July 23, 2019.

Outcome

Item was moved to the Management and Finance Policy Committee meeting, July 23, 2019.

Follow-up Action

No follow-up needed.

**CAREER SERVICE COMMISSION**

Summary of Issue and Discussion

Due to lack of a quorum the item was moved to the Management and Finance Policy Committee meeting on July 23, 2019.

Outcome

Item was moved to the Management and Finance Policy Committee meeting, July 23, 2019.

Follow-up Action

No follow-up needed.

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**INTERNAL AUDIT Q1 PROGRESS REPORT**

Summary of Issue and Discussion

Due to lack of a quorum the item was moved to the Management and Finance Policy Committee meeting on July 23, 2019.

Wayne Sommer provided a brief overview of the report

Through June 6, 70% of all engagements are active (20%) or completed (50%). The DOT/FMCSA Compliance engagement was postponed until the client completes their mitigation work. The Vehicle Replacement engagement was removed from the 2019

audit plan due to a lack of staff resources. 66% of all audit recommendations have been completed or closed. 34% are still pending action.

- Fleet Operational Review: Staff Auditor Michelle Crawford will meet with the new Fleet Services Manager to discuss the audit recommendations and ascertain his plan to address them.
- Citywide Energy Management: There were significant findings regarding controls over invoice payments. Public Works has recommended bringing an intern on board to help implement the City's EnergyCAP software. This software can streamline the invoice payment process and provide information to better manage energy. It was questioned whether we can add any positions given the 2019 budget concerns.
- Disaster Preparedness Follow Up: Emergency Management and IT are taking steps to implement our recommendations.

As there was not a quorum, Internal Audit did not provide their complete report. They will return in July and deliver a report through the six months ending June 30, 2019. This will include an update on the House Aurora Partnership and Animal Shelter Live Release Rate audits.

Outcome

Item was moved to the Management and Finance Policy Committee meeting on July 23, 2019.

Follow-up Action

No follow-up needed.

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**MISCELLANEOUS MATTERS FOR CONSIDERATION**

Summary of Issue and Discussion

- The next meeting is on Tuesday, July 23, 2019.

THESE MINUTES WERE APPROVED AS SUBMITTED

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David Gruber, Chair of the Management and Finance (M&F) Committee

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Date



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Sales Tax Chart
<b>Item Initiator:</b> Greg Hays
<b>Staff Source:</b> Greg Hays, Budget Officer
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

Members of the Management and Finance Policy Committee have asked for the monthly sales tax performance chart.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Attached is the May sales tax performance chart. May of 2019 was 7.7 percent higher than May of 2018.

### **QUESTIONS FOR Committee**

N/A, Information Only

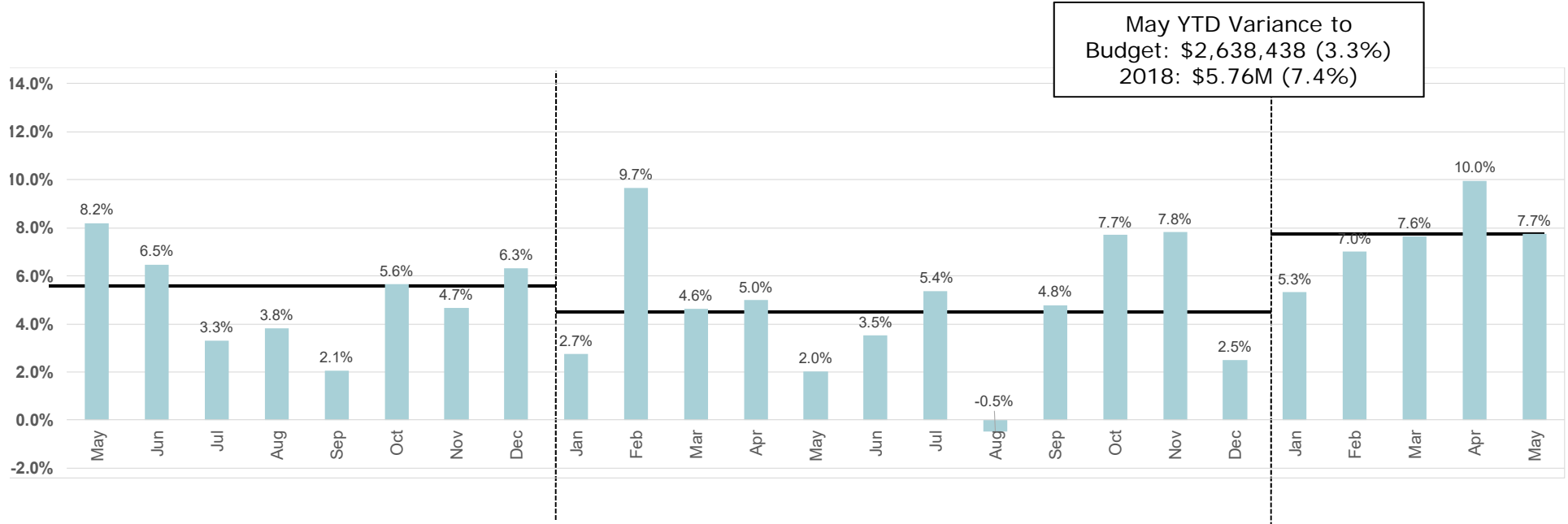
### **EXHIBITS ATTACHED:**

ONLY Sales Tax Chart - RESTATED for Gentax error.pdf

# May Sales Tax Performance



## Percent Change from Prior Year By Month



**2017**  
5.4%

**2018**  
4.5%

**2019**  
7.4%

**Growth Required to hit Budget**  
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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> 2018 Audit Results and Comprehensive Annual Financial Report
<b>Item Initiator:</b> Nancy Wishmeyer
<b>Staff Source:</b> Nancy Wishmeyer, Controller
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b> BKD, LLP - city external audit firm
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The 2018 Comprehensive Annual Financial Report (CAFR) received an unmodified, or "clean" opinion from the auditors. The attached 2018 Single Audit of federal grants also received a clean, unmodified opinion.

The 2017 CAFR received the GFOA Certificate of Achievement for Excellence in Financial Reporting. In the opinion of staff and the auditors, 2018 CAFR also qualifies for the national GFOA award. A link to the 2018 CAFR and the 2018 Single Audit will be placed on the city's internet page.

BKD, LLP Management Letter and required audit communication to the Management and Finance Committee (Board Report): This report is provided for an overall review of the audit and to bring attention to control issues or any reportable items encountered by the auditors during the course of the audit. Detail schedules of unrecorded audit adjustments and a copy of the representation letter provided by management to the auditors are also included in this report.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The city's audited 2018 financial statements have been finalized. Items to be presented include results of the audit and pending 2019 audit.

### **QUESTIONS FOR Committee**

Information Only

### **EXHIBITS ATTACHED:**

2018 Audit Recommendations.doc  
City of Aurora Board Report 12.31.18.pdf  
City of Aurora Single Audit 12.31.18.pdf

**CITY OF AURORA, COLORADO**  
**Implementation of 2018 Single Audit and Management Letter Comments**

<u><b>Audit Recommendation</b></u>	<u><b>Responsible Department</b></u>	<u><b>Status/ Estimated Completion Date</b></u>	<u><b>Planned Action</b></u>
<p><b>Single Audit 2018-001 Financial Statement Control Significant Deficiency – Information Technology – Access and Operations.</b> The City does not have a complete set of IT policies and procedures, some IT program components are decentralized across multiple operating units, and the City does not have a formal plan to provide for ongoing computer operations. Recommend that City develop, publish and operationalize a complete set of IT policies and procedures and communicate them to all applicable employees. City should also enforce consistent application of the account management policy. Further the City should develop a formal plan to ensure ongoing computer operations.</p>	<p>Information Technology</p>	<p>Q1 2020</p>	<p>Management agrees with the finding. The City will update, operationalize, and publish its previously developed IT policies as a complete set and will communicate the policies and procedures to all applicable employees on a routine basis. However, current organizational structure does not allow IT to have control over physical access. Mitigation plans will be developed by Q1 2020 to address the items in the confidential finding that are within IT Department authority. These plans will require monetary and staff investment as well as extensive changes to business process. IT will also identify systems where we cannot effect change and include recommendations for mitigation.</p>
<p><b>Single Audit 2018-002 Financial Statement Control Significant Deficiency – Donated Roads.</b> The City determined that roads donated to the City in 2017 were recorded at the incorrect value. Additionally, the City identified donated roads received prior to 2018 missing from the City's capital asset records. Recommend the City add checks and balances to its processes for recording donated roads to help ensure all inputs determining the acquisition value are properly updated. In addition, the City should develop policies and procedures to reconcile donated roads reported in the capital asset system to roads reported and tracked by the State of Colorado.</p>	<p>Finance Department, Public Works Department</p>	<p>Implemented</p>	<p>Management agrees with the finding and City processes have been updated to include auditor recommendations. During the year-end entry to book donated roads, the Controller's Office will perform additional analysis to ensure that differences, both in value and miles added, is reasonable and explainable. In addition, the Public Works Department has worked with the City's Information Technology Department and the Colorado Department of Transportation to ensure that the City's and the State's reports are in sync. This review will be performed annually.</p>

<u><b>Audit Recommendation</b></u>	<u><b>Responsible Department</b></u>	<u><b>Status/ Estimated Completion Date</b></u>	<u><b>Planned Action</b></u>
<p><b>Management Letter Other Matters 1 – Future Accounting Pronouncements.</b> Future pronouncements include GASB Statement No. 84, <i>Fiduciary Activities</i>, GASB Statement No. 87, <i>Leases</i>, GASB Statement No. 88, <i>Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements</i>, and GASB Statement No. 90, <i>Majority Equity Interests – An Amendment of GASB Statements No. 14 and No. 61</i>.</p>	<p>Finance Department</p>	<p>N/A</p>	<p>Management appreciates the information provided regarding these upcoming accounting standards. Accounting staff is aware of the upcoming changes and will work with the external auditors to ensure all financial statement impacts have been addressed.</p>

# City of Aurora, Colorado

## Report to the Honorable Mayor and Members of City Council

June 11, 2019

Results of the 2018 financial statement audit, internal  
control matters and other required communications.

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**Contents****2018 Audit Results**

Summary of Our Audit Approach and Results .....	2
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**Appendices**

Schedules of Passed Adjustments .....	<i>Tab 1</i>
Management Representation Letter .....	<i>Tab 2</i>

June 11, 2019

Honorable Mayor and Members of City Council  
City of Aurora, Colorado  
Aurora, Colorado

Dear Honorable Mayor and Members of City Council:

We have completed our audit of the financial statements of the City of Aurora, Colorado (the City) as of and for the year ended December 31, 2018. This report includes communications required under auditing standards generally accepted in the United States of America as well as other matters.

Our audit plan represented an approach responsive to the assessment of risk of material misstatement in financial reporting for the City. Specifically, auditing standards require us to:

- Express opinions on the December 31, 2018 financial statements and supplementary information of the City
- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
- Report on Compliance for Each Major Federal Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance
- Issue communications required under auditing standards generally accepted in the United States of America to assist the City Council in overseeing management's financial reporting and disclosure process

This report also presents an overview of areas of audit emphasis, as well as future accounting standards and industry developments for governments.

\* \* \* \* \*

This communication is intended solely for the information and use of the Management and Finance Committee, Members of City Council, the Honorable Mayor, management and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,



Christopher J. Telli, CPA  
Partner



Marcella D. Ardan, CPA  
Director

## Summary of Our Audit Approach and Results

### Our Approach

BKD’s audit approach focuses on areas of highest risk — the unique characteristics of the City’s operating environment, the design effectiveness of your internal controls and your financial statement amounts and disclosures. The objective is to express opinions on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.

### Areas of Audit Emphasis

The principal areas of audit emphasis and results were as follows:

Opinion Unit	Risk Area	Results
All	➤ Management override of controls.	➤ No matters are reportable.
All	➤ Revenue recognition.	➤ No matters are reportable.
Governmental Activities, general fund and other aggregated funds.	➤ System implementation (GenTax).	➤ Areas for improvement were noted as it relates to the City’s design of internal controls over its information technology systems, including the GenTax system. See finding 2018-001 in the separately issued single audit report.
Governmental and Business-type Activities, water, sewer, and other aggregate funds.	➤ Implementation of new accounting standards: GASB 75, <i>Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions</i> and GASB 89, <i>Accounting for Interest Costs Incurred before the End of a Construction Period</i> .	➤ No matters are reportable.
Governmental and Business-type Activities, water, sewer, and other aggregate funds.	➤ Debt.	➤ No matters are reportable.
Governmental and Business-type Activities, water, sewer, and other aggregate funds.	➤ Capital assets.	➤ Noncash errors were noted as it relates to the accounting for donated roads. See finding 2018-002 in the separately issued single audit report.

Opinion Unit	Risk Area	Results
Single Audit	<p>➤ Compliance with requirements described in the U.S. Office of Management and Budget, <i>Compliance Supplement</i> for major federal programs.</p>	<p>➤ No matters are reportable.</p>

## Significant Estimates

The preparation of the financial statements requires considerable judgment because some assets, deferred outflows of resources, liabilities, deferred inflows of resources, revenues and expenses are “estimated” based on management’s assumptions about future outcomes. Estimates may be dependent on assumptions related to economic or environmental conditions, regulatory reform or changes in industry trends.

Some estimates are inherently more difficult to evaluate and highly susceptible to variation because the assumptions relating to future outcomes have a higher degree of uncertainty. To the extent future outcomes are different than expected, management’s estimates are adjusted in future periods, sometimes having a significant effect on subsequent period financial statements. The following are considered to be significant estimates for the City:

- Allowance for Doubtful Accounts
- Useful Lives of Capital Assets
- Valuation of Investments including the Interest Rate Cap
- Liability for Insurance Claims Incurred but not Reported (IBNR)
- Liability for Other Postemployment Benefits
- Sick Leave Accrual
- Arbitrage Liability
- Net Pension Liability (Asset) and Related Deferred Outflows and Inflows of Resources
- Unbilled Utility Revenues
- Valuation of Contributed Capital Assets

## Opinions

### Unmodified, or “Clean,” Opinions Issued on Financial Statements

We have issued unmodified opinions as to whether the financial statements of the City, as of and for the year ended December 31, 2018, are fairly presented, in all material respects. An emphasis of matters paragraph was including highlighting the City’s implementation of new accounting standards. This emphasis of matters paragraph does not modify our opinions.

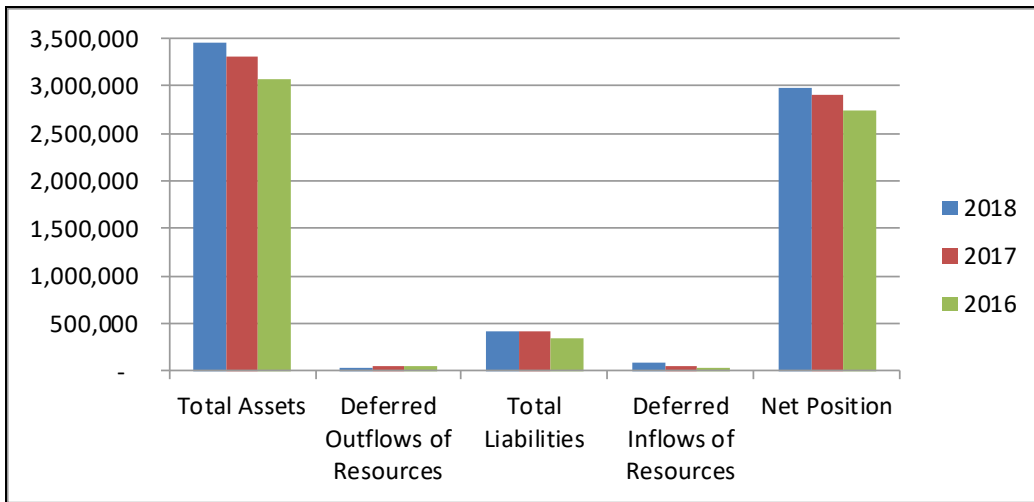
## Requirements Under the Uniform Guidance

Our audit included reporting on major federal programs and includes:

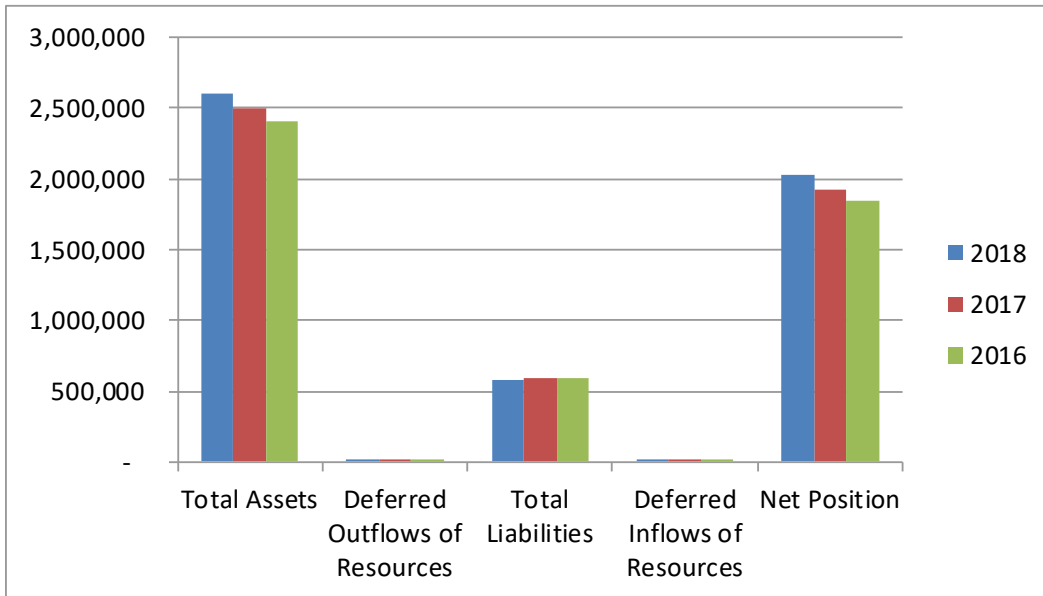
- Schedule of Expenditures of Federal Awards
- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
- Report on Compliance for Each Major Federal Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance
- Schedule of Findings and Questioned Costs
- Data Collection Form

**Statement of Net Position as of December 31**  
(in thousands)

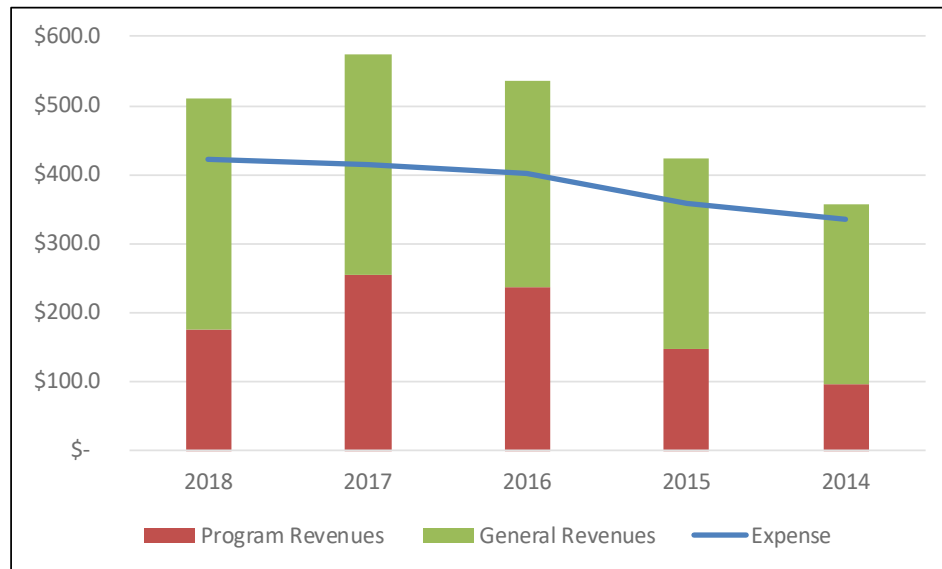
**Governmental Activities**

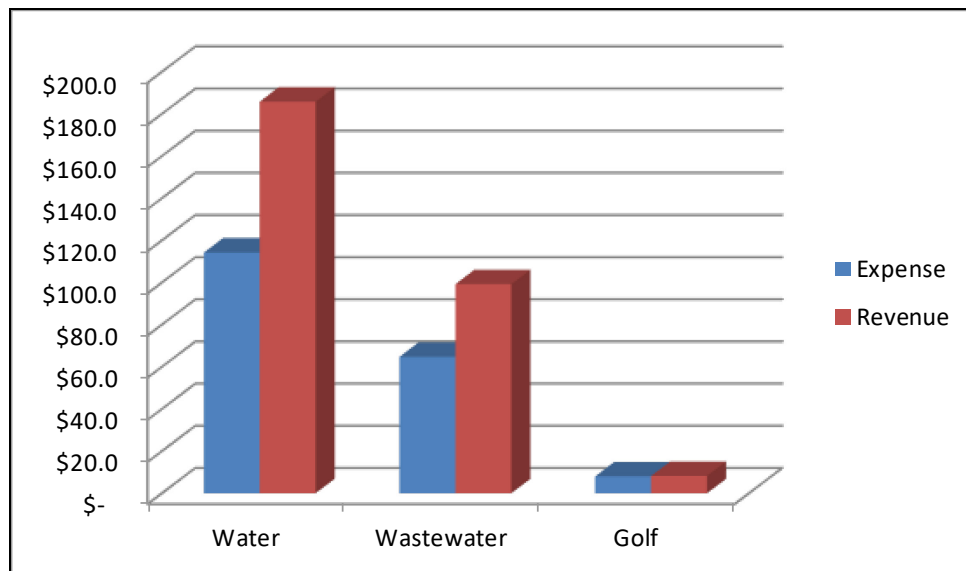
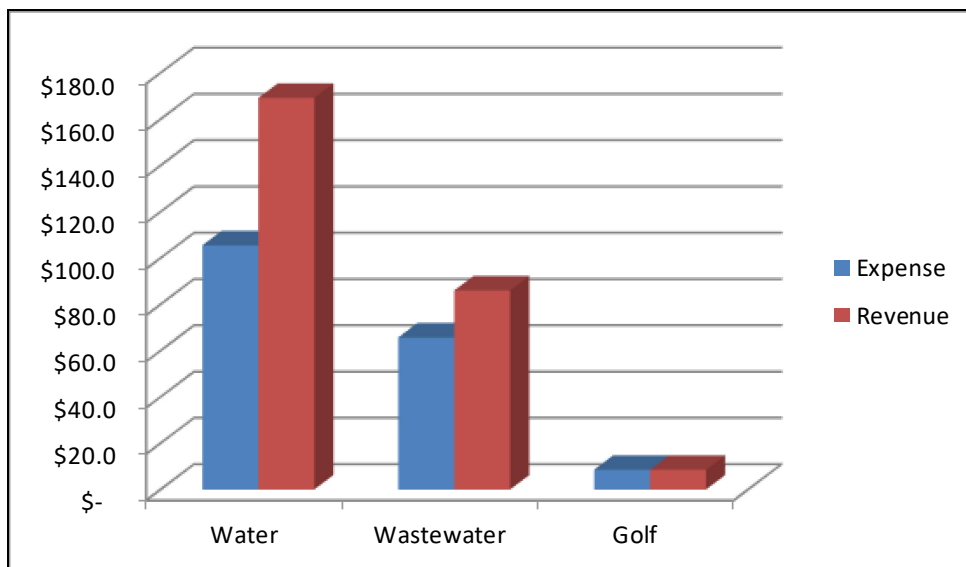


**Business-type Activities**



## Expenses and Program Revenues – Governmental Activities (in millions)

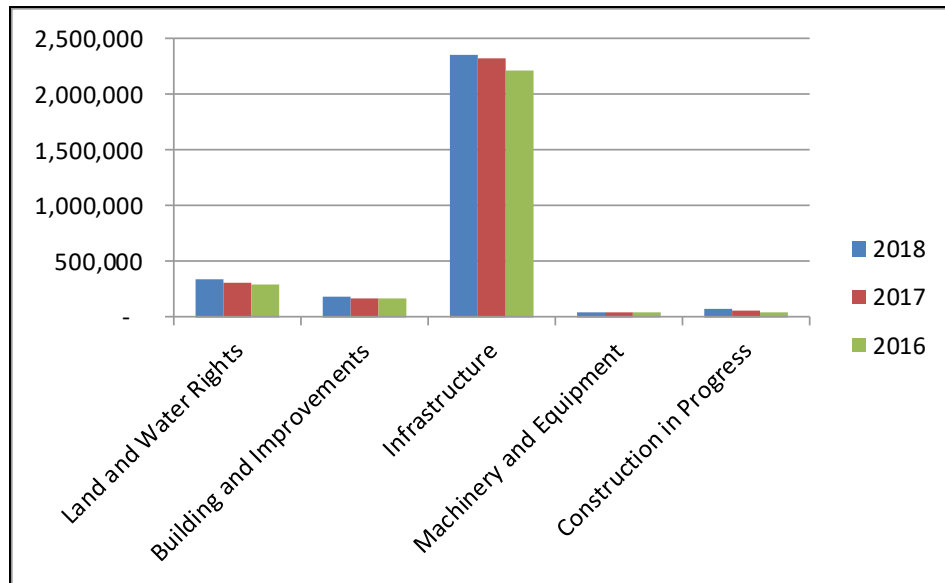


**Expenses and Program Revenues – Business-type Activities**  
(in millions)**2018****2017**

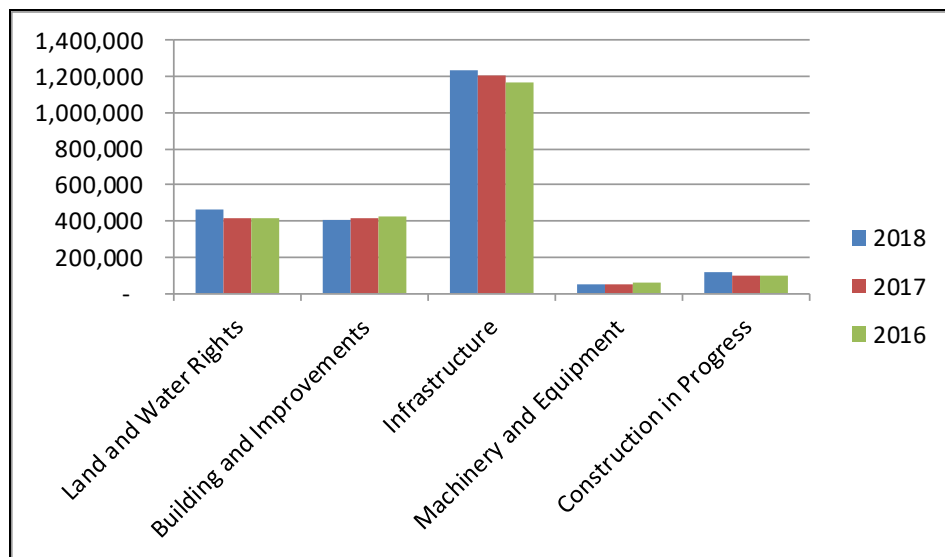


**Capital Assets – Net of Accumulated Depreciation**  
(in thousands)

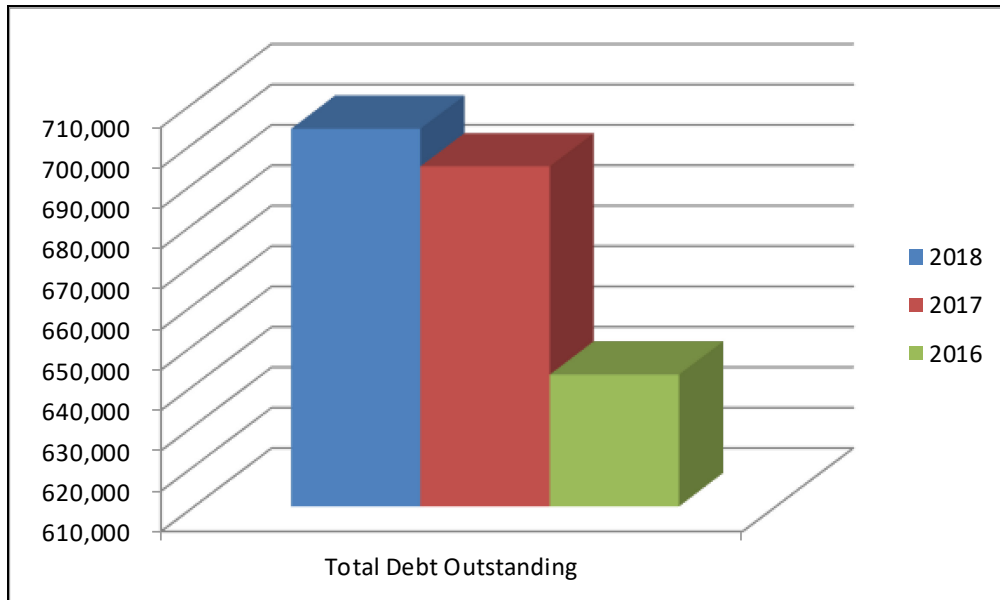
**Governmental Activities**



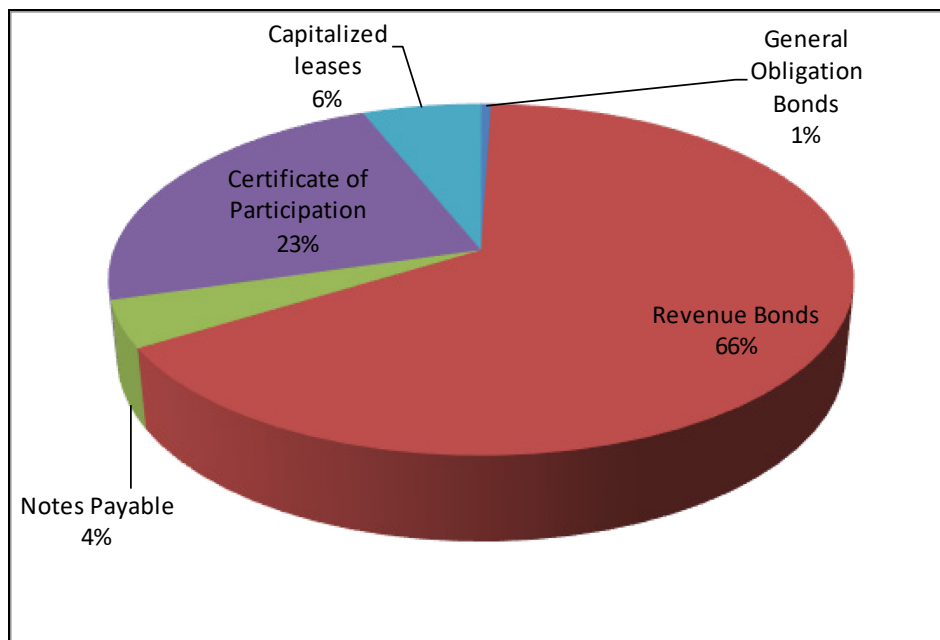
**Business-type Activities**



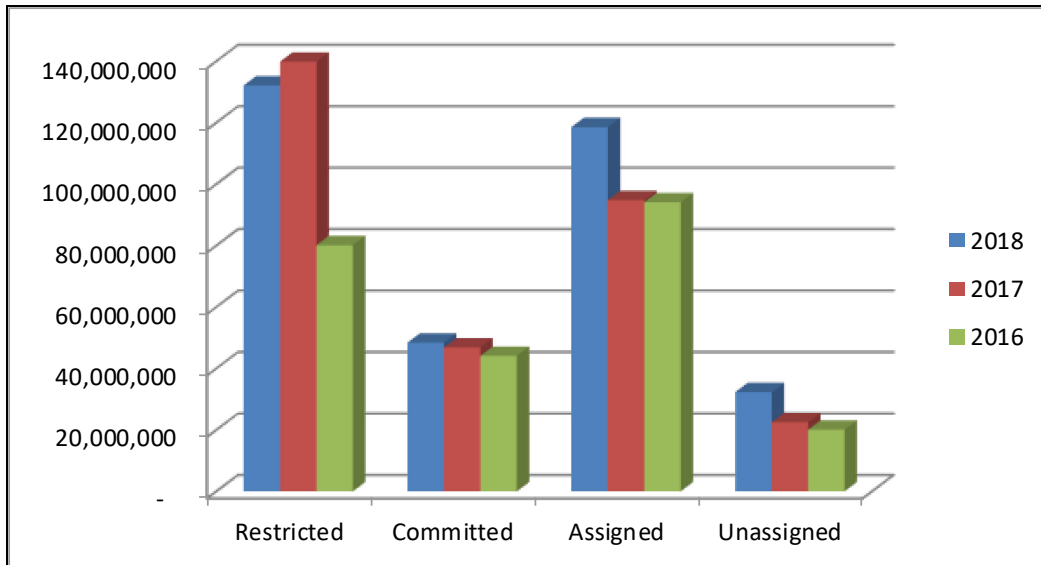
**Outstanding Debt as of December 31**  
(in thousands)



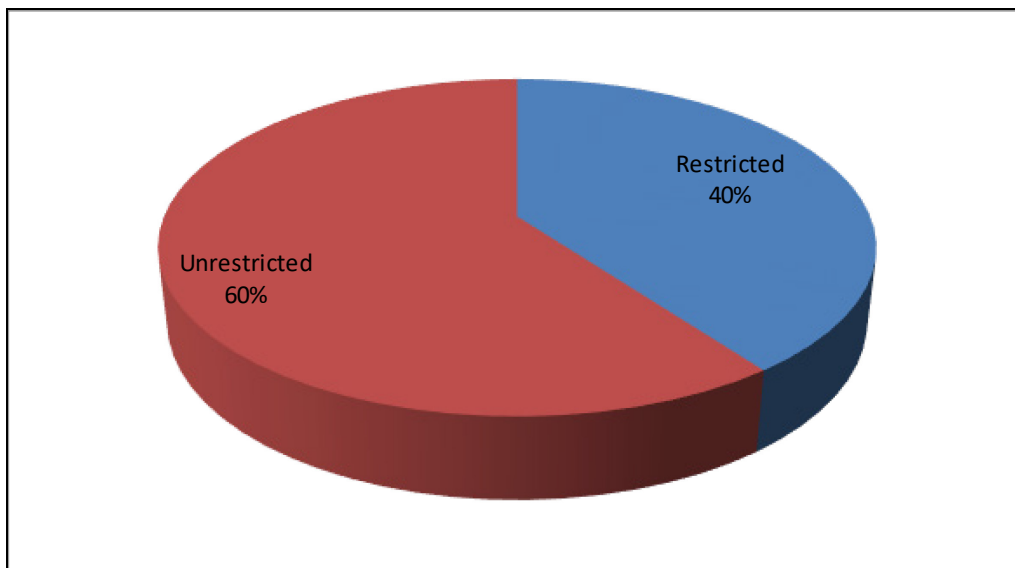
**Outstanding Debt by Type as of December 31, 2018:**

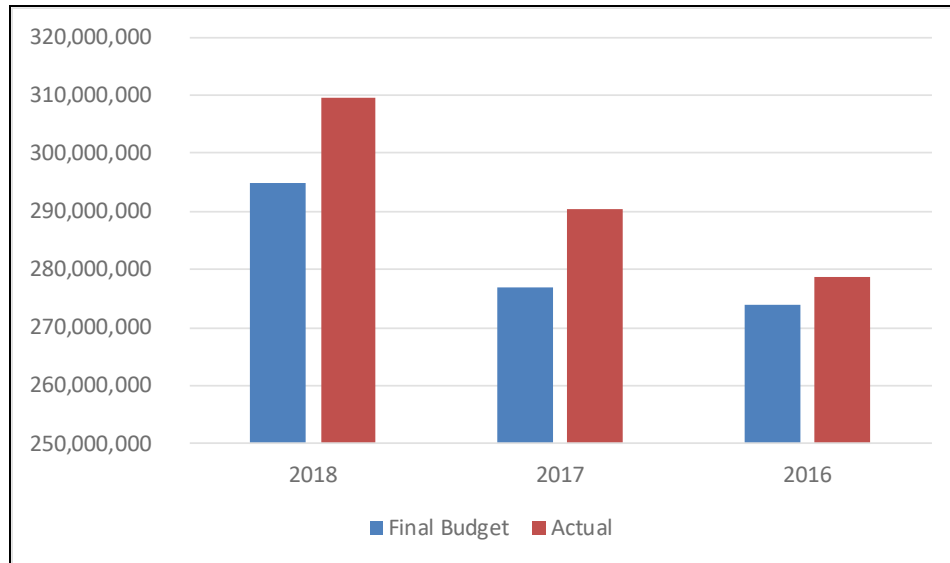


**Total Governmental Funds Fund Balances Break-out**

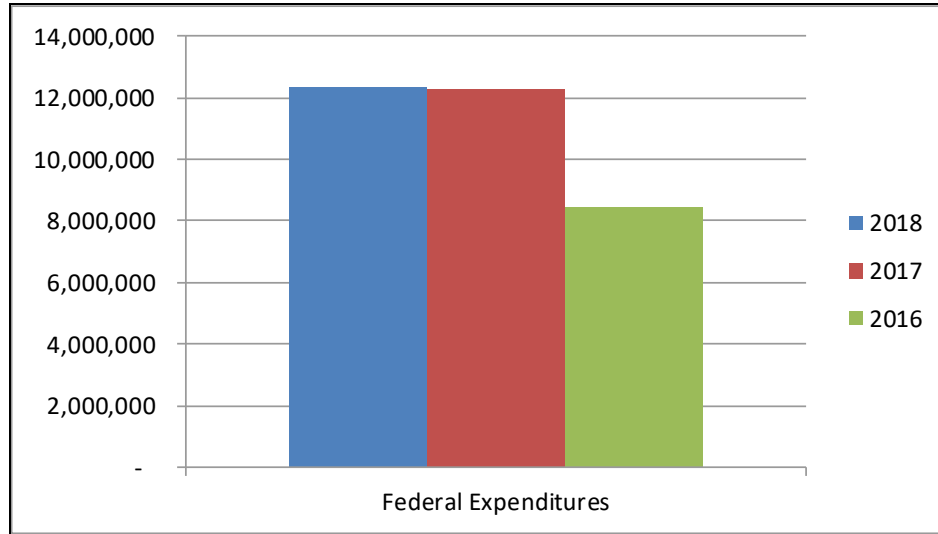


**Restricted vs Unrestricted Fund Balances as of December 31, 2018:**



**Budget to Actual – General Fund Tax Revenue**

### Single Audit Results



	2018	2017	2016
<b>Number of Major Programs</b>	➤ One	➤ Two	➤ Two
<b>Programs Audited</b>	➤ Highway Planning and Construction Cluster	➤ Highway Planning and Construction Cluster ➤ HOME Investment Partnerships Program	➤ Highway Planning and Construction Cluster ➤ CDBG – Entitlement Grants Cluster
<b>Number of Findings</b>	➤ Two	➤ Zero	➤ One
<b>Classification of Findings</b>	<b>Financial Statement Findings</b> ➤ Significant Deficiency – Information Technology – Access and Operations ➤ Significant Deficiency – Accounting for donated roads <b>Federal Award Findings</b> ➤ None	<b>Financial Statement Findings</b> ➤ None <b>Federal Award Findings</b> ➤ None	<b>Financial Statement Findings</b> ➤ None <b>Federal Award Findings</b> <u>Significant Deficiency Over Internal Controls</u> CDBG – Entitlement Grants Cluster: Subrecipient Monitoring

**Required Communications – Financial Statement Audit**

Area	2018 Comments	2017 Comments
<p><b>Significant Accounting Policies</b></p>	<ul style="list-style-type: none"> <li>➤ The City’s significant accounting policies are described in Note 1 of the audited financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The City’s significant accounting policies are described in Note 1 of the audited financial statements.</li> </ul>
<p><b>Alternative Accounting Treatments</b></p> <p>We had discussions with management regarding alternative accounting treatments within accounting principles generally accepted in the United States of America for policies and practices for material items, including recognition, measurement and disclosure considerations related to the accounting for specific transactions as well as general accounting policies.</p>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>
<p><b>Financial Statement Disclosures</b></p> <p>The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures.</p>	<ul style="list-style-type: none"> <li>➤ Adoption of accounting principles.</li> <li>➤ Other Postemployment Benefits (OPEB).</li> <li>➤ Subsequent events.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Subsequent events.</li> <li>➤ Tax abatement agreements.</li> </ul>

Area	2018 Comments	2017 Comments
<p><b>Audit Adjustments</b></p> <p>During the course of any audit, an auditor may propose adjustments to financial statement amounts. Management evaluates our proposals and records those adjustments which, in its judgment, are required to prevent the financial statements from being materially misstated.</p> <p>Some adjustments proposed were not recorded because their aggregate effect is not currently material; however, they involve areas in which adjustments in the future could be material, individually or in the aggregate.</p>	<p><u>Proposed Audit Adjustments Recorded</u></p> <p>Entry to record subsequent benefit payments relating to OPEB.</p> <p><u>Proposed Audit Adjustments Not Recorded</u></p> <p>Entries to adjust accounts payable that were improperly excluded; entry to show impacting of correcting prior year error related to the recording of donated roads.</p> <p>See attached passed adjustment schedules.</p>	<p><u>Proposed Audit Adjustments Recorded</u></p> <p>No matters are reportable.</p> <p><u>Proposed Audit Adjustments Not Recorded</u></p> <p>Entries to adjust accounts payable that were improperly excluded; entry to adjust fixed asset that was improperly capitalized; entry to adjust assets acquired for resale to the lower of cost or market.</p> <p>See attached passed adjustment schedules.</p>
<p><b>Auditor's Judgments About the Quality of the City's Accounting Policies</b></p> <p>During the course of the audit, we made the following observations regarding the City's application of accounting principles.</p>	<p>➤ Adoptions of Governmental Accounting Standards Board Statement (GASB) No. 75, <i>Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions</i> and No. 89, <i>Accounting for Interest Costs Incurred before the End of a Construction Period</i>.</p>	<p>➤ No matters are reportable.</p>
<p><b>Disagreements with Management</b></p> <p>The following matters involved disagreements which if not satisfactorily resolved would have caused a modified auditor's opinion on the financial statements.</p>	<p>➤ No matters are reportable.</p>	<p>➤ No matters are reportable.</p>

Area	2018 Comments	2017 Comments
<p><b>Consultation with Other Accountants</b></p> <p>During the audit, we became aware that management had consulted with other accountants about the following audit or accounting issues.</p>	<p>The Havana Business Improvement District (BID) is audited by Simmons &amp; Wheeler P.C. We placed reliance on the audit of the financial statements of BID as of December 31, 2018, and for the year then ended.</p>	<p>The Havana Business Improvement District (BID) is audited by Simmons &amp; Wheeler P.C. We placed reliance on the audit of the financial statements of BID as of December 31, 2017, and for the year then ended.</p>
<p><b>Significant Issues Discussed with Management</b></p> <p><u>Prior to Retention</u></p> <p>During our discussion with management prior to our engagement, the following issues regarding application of accounting principles or auditing standards were discussed.</p> <p><u>During the Audit Process</u></p> <p>During the audit process, the following issues were discussed or were the subject of correspondence with management.</p>	<p>➤ No matters are reportable.</p> <p>➤ Assets acquired for resale.</p> <p>➤ OPEB calculations and disclosures.</p> <p>➤ GASB 68 calculations and disclosures.</p>	<p>➤ No matters are reportable.</p> <p>➤ CDBG loan program.</p> <p>➤ Assets acquired for resale.</p> <p>➤ Traffic signal escrow.</p>
<p><b>Difficulties Encountered in Performing the Audit</b></p> <p>Our audit requires cooperative effort between management and the audit team. During our audit, we found significant difficulties in working effectively on the following matters.</p>	<p>➤ No matters are reportable.</p>	<p>➤ No matters are reportable.</p>



Area	2018 Comments	2017 Comments
<p><b>Other Material Communications</b></p> <p>Listed are other material communications between management and us related to the audit.</p>	<ul style="list-style-type: none"> <li>➤ Oral communication to management regarding other deficiencies.</li> <li>➤ Management representation letter (attached).</li> <li>➤ Required communication and management letter on SCFD audits (see separately issued letter).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Oral communication to management regarding other deficiencies.</li> <li>➤ Management representation letter (attached).</li> <li>➤ Required communication and management letter on SCFD audits (see separately issued letter).</li> </ul>

### Financial Statement and Single Audit Management Letter Comments

Area	2018	2017
<p><b>Number of Management Letter Comments</b></p>	<ul style="list-style-type: none"> <li>➤ Two</li> </ul>	<ul style="list-style-type: none"> <li>➤ Zero</li> </ul>
<p><b>Classification of Management Letter Comments</b></p>	<p><u>Financial Statement Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ <u>Significant Deficiency:</u> Information Technology – Access and Operations.</li> <li>➤ <u>Significant Deficiency:</u> Accounting for donated roads.</li> </ul> <p>See separately issued single audit report for written findings related to the above significant deficiencies.</p> <p><u>Compliance Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul> <p><u>Other Matters</u></p> <ul style="list-style-type: none"> <li>➤ Accounting Pronouncements Requiring Future Adoption.</li> </ul>	<p><u>Financial Statement Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul> <p><u>Compliance Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul> <p><u>Other Matters</u></p> <ul style="list-style-type: none"> <li>➤ Accounting Pronouncements Requiring Future Adoption.</li> </ul>

## Accounting Pronouncements Requiring Future Adoption

GASB Statement No. 84, *Fiduciary Activities* (GASB 84): GASB 84 establishes criteria for identifying fiduciary activities. It presents separate criteria for evaluating component units, pension and other postemployment benefit arrangements, and other fiduciary activities. The focus is on a government controlling the assets of the fiduciary activity and identification of the beneficiaries of those assets. Fiduciary activities are reported in one of four types of funds: pension (and other employee benefit) trust funds, investment trust funds, private-purpose trust funds, or custodial funds. Custodial funds are used to report fiduciary activities that are not held in a trust. The agency fund designation will no longer be used. GASB 84 also provides guidance on fiduciary fund statements and timing of recognition of a liability to beneficiaries. GASB 84 will require entities to re-evaluate the current treatment of defined contribution and deferred compensation plans.

GASB 84 is effective for the City's December 31, 2019 financial statements.

\* \* \* \* \*

GASB Statement No. 87, *Leases* (GASB 87): GASB 87 provides a new framework for accounting for leases under the principle that leases are financings. No longer will leases be classified between capital and operating. Lessees will recognize an intangible asset and a corresponding liability. The liability will be based on the payments expected to be paid over the lease term, which includes an evaluation of the likelihood of exercising renewal or termination options in the lease. Lessors will recognize a lease receivable and related deferred inflow of resources. Lessors will not derecognize the underlying asset. An exception to the general model is provided for short-term leases that cannot last more than 12 months. Contracts that contain lease and nonlease components will need to be separated so each component is accounted for accordingly.

GASB 87 is effective for the City's December 31, 2020 financial statements, with earlier application encouraged. Governments will be allowed to transition using the facts and circumstances in place at the time of adoption, rather than retroactive to the time each lease was begun.

\* \* \* \* \*

GASB Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements* (GASB 88): This Statement defines debt for purposes of disclosure in notes to financial statements as a liability that arises from a contractual obligation to pay cash (or other assets that may be used in lieu of cash) in one or more payments to settle an amount that is fixed at the date the contractual obligation is established. This Statement requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit; assets pledged as collateral for the debt; and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective acceleration clauses. This Statement also requires that existing and additional information be provided for direct borrowings and direct placements of debt separately from other debt.

GASB 88 is effective for the City's December 31, 2019 financial statements.

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GASB Statement No. 90, *Majority Equity Interests – An Amendment of GASB Statements No. 14 and No. 61* (GASB 90): An equity interest is a financial interest in a legally separate organization evidenced by ownership of shares of the organizations stock or by otherwise having an explicit, measurable right to the net resources of the organization that is usually based on an investment of financial or capital resources by a government. An equity interest is explicit and measurable if the government has a present or future claim to the net resources of the entity and the method for measuring the government’s share of the entity’s net resources is determinable. This statement modifies guidance for reporting a government’s majority equity interest in a legally separate organization and will require organizations to re-evaluate any arrangements presently reported as a joint venture.

GASB 90 is effective for the City’s December 31, 2019 financial statements.

\* \* \* \* \*

This communication is intended solely for the information and use of the Management and Finance Committee, Members of City Council, the Honorable Mayor, management and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

*BKD, LLP*

June 11, 2019

# City of Aurora, Colorado

## ATTACHMENT

This analysis and the attached "Schedule of Uncorrected Misstatements (Adjustments Passed)" reflects the effects on the financial statements if the uncorrected misstatements identified were corrected.

### Governmental Activities (Government-Wide Statements)

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	3,486,050,472		3,486,050,472	
Total Liabilities & Deferred Inflows	(500,408,589)		(500,408,589)	
Total Net Position	(2,985,641,883)		(2,985,641,883)	
General Revenues & Transfers	(520,992,144)		(520,992,144)	
Net Program Revenues/ Expenses	244,620,384	(43,013,299)	201,607,085	-17.58%
Change in Net Position	(100,008,511)	(43,013,299)	(143,021,810)	43.01%

Governmental Activities (Government-Wide Statements)

SCHEDULE OF UNCORRECTED MISSTATEMENTS (ADJUSTMENTS PASSED)

Description	Financial Statement Line Item	Factual (F), Judgmental (J), Projected (P)	Assets		Liabilities		General Revenues & Transfers		Net Program Revenues/ Expenses		Net Position		Net Effect on Following Year					
			DR (CR)		DR (CR)		DR (CR)		DR (CR)		DR (CR)		Change in Net Position		Net Position			
			DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)
Road contribution and mileage rate error in PY, netted			0		0		0		(43,013,299)		43,013,299		0				0	
	Capital Contributions								(39,790,614)									
	Depreciation Expense								(3,222,685)									
	Beginning Net Position										43,013,299							
<b>Total passed adjustments</b>			0		0		0		(43,013,299)		43,013,299		0				0	
																	<b>Impact on Change in Net Position (43,013,299)</b>	
																	<b>Impact on Net Position 0</b>	

# City of Aurora, Colorado

## ATTACHMENT

This analysis and the attached "Schedule of Uncorrected Misstatements (Adjustments Passed)" reflects the effects on the financial statements if the uncorrected misstatements identified were corrected.

### General Fund

#### QUANTITATIVE ANALYSIS

To show prior year effect for invoices rec	350 Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	162,219,849		162,219,849	
Total Liabilities & Deferred Inflows	(49,000,651)	(476,118)	(49,476,769)	0.97%
Total Fund Balance	(113,219,198)	476,118	(112,743,080)	-0.42%
Revenues	(356,870,686)		(356,870,686)	
Expenditures	282,713,916	337,106	283,051,022	0.12%
Change in Fund Balance	(10,936,639)	337,106	(10,599,533)	-3.08%

General Fund

SCHEDULE OF UNCORRECTED MISSTATEMENTS (ADJUSTMENTS PASSED)

Description	Financial Statement Line Item	Factual (F), Judgmental (J), Projected (P)	Assets & Deferred		Liabilities &					Net Effect on Following Year			
			Outflows		Deferred Inflows		Revenues		Expenditures	Fund Balance	Change in Fund Balance		
			DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	
To show prior year effect for invoices received and paid after year end relating to 2017 and which should have been accrued however management determined to pass on recording.		F		0		0					0		0
	Beginning Fund Balance												139,012
	Expenditures												(139,012)
To show financial statement effect for invoices received and paid after year end relating to 2018 and which should have been accrued however management determined to pass on posting		F		0		(476,118)					0		(476,118)
	Accounts Payable					(476,118)							476,118
	Expenditures												476,118
<b>Total passed adjustments</b>				0		(476,118)		0		337,106			139,012
													<b>337,106</b>
													<b>476,118</b>

# City of Aurora, Colorado

## ATTACHMENT

This analysis and the attached "Schedule of Uncorrected Misstatements (Adjustments Passed)" reflects the effects on the financial statements if the uncorrected misstatements identified were corrected.

### City Capital Projects

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	86,744,647		86,744,647	
Total Liabilities & Deferred Inflows	(6,239,689)	(178,559)	(6,418,248)	2.86%
Total Fund Balance	(80,504,958)	178,559	(80,326,399)	-0.22%
Revenues	(18,581,764)		(18,581,764)	
Expenditures	47,164,660	75,186	47,239,846	0.16%
Change in Fund Balance	(21,263,724)	75,186	(21,188,538)	-0.35%



City Capital Projects

SCHEDULE OF UNCORRECTED MISSTATEMENTS (ADJUSTMENTS PASSED)

Description	Financial Statement Line Item	Factual (F), Judgmental (J), Projected (P)	Assets & Deferred		Liabilities &					Net Effect on Following Year					
			Outflows		Deferred Inflows		Revenues		Expenditures	Fund Balance	Change in Fund Balance				
			DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	
To show prior year effect for invoices received and paid after year end relating to 2017 and which should have been accrued however management determined to pass on recording.		F		0		0		0	(103,373)	103,373		0		0	
	Beginning Fund Balance									103,373					
	Expenditures							(103,373)							
To show financial statement effect for invoices received and paid after year end relating to 2018 and which should have been accrued however management determined to pass on posting		F		0		(178,559)		0	178,559	0		(178,559)		178,559	
	Accounts Payable					(178,559)								178,559	
	Expenditures							178,559				(178,559)			
<b>Total passed adjustments</b>				0		(178,559)		0	75,186	103,373		(178,559)		178,559	
										<b>Impact on Change in Fund Balanc</b>		<b>75,186</b>			
										<b>Impact on Fund Balance</b>		<b>178,559</b>			

# City of Aurora, Colorado

## ATTACHMENT

This analysis and the attached "Schedule of Uncorrected Misstatements (Adjustments Passed)" reflects the effects on the financial statements if the uncorrected misstatements identified were corrected.

### Wastewater

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	657,918,411		657,918,411	
Total Liabilities & Deferred Inflows	(55,746,857)	(201,607)	(55,948,464)	0.36%
Total Fund Balance	(602,171,554)	201,607	(601,969,947)	-0.03%
Revenues	(68,572,233)		(68,572,233)	
Expenditures	64,719,725	201,607	64,921,332	0.31%
Change in Fund Balance	(35,535,110)	201,607	(35,333,503)	-0.57%

Wastewater

SCHEDULE OF UNCORRECTED MISSTATEMENTS (ADJUSTMENTS PASSED)

Description	Financial Statement Line Item	Factual (F), Judgmental (J), Projected (P)	Assets & Deferred		Liabilities &		Revenues			Expenditures			Fund Balance		Net Effect on Following Year			
			Outflows		Deferred Inflows								Fund Balance		Change in Fund Balance		Fund Balance	
			DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)
To show financial statement effect for invoices received and paid after year end relating to 2018 and which should have been accrued however management determined to pass on posting		F		0		(201,607)		0			201,607		0		(201,607)		201,607	
	Accounts Payable					(201,607)											201,607	
	Expenses									201,607					(201,607)			
<b>Total passed adjustments</b>				0		(201,607)		0		201,607		0		(201,607)		201,607		
																	<b>Impact on Change in Fund Balanc</b>	<b>201,607</b>
																	<b>Impact on Fund Balance</b>	<b>201,607</b>

# City of Aurora, Colorado

## ATTACHMENT

This analysis and the attached "Schedule of Uncorrected Misstatements (Adjustments Passed)" reflects the effects on the financial statements if the uncorrected misstatements identified were corrected.

### Other Aggregate

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	715,711,189		715,711,189	
Total Liabilities & Deferred Inflows	(91,116,013)	(478,673)	(91,594,686)	0.53%
Total Fund Balance	(624,595,176)	478,673	(624,116,503)	-0.08%
Revenues	(132,412,459)		(132,412,459)	
Expenditures	199,070,391	20,978	199,091,369	0.01%
Change in Fund Balance	30,151,228	20,978	30,172,206	0.07%

Other Aggregate

SCHEDULE OF UNCORRECTED MISSTATEMENTS (ADJUSTMENTS PASSED)

Description	Financial Statement Line Item	Factual (F), Judgmental (J), Projected (P)	Assets & Deferred		Liabilities &		Revenues			Expenditures			Fund Balance			Net Effect on Following Year			
			Outflows		Deferred Inflows		Revenues			Expenditures			Fund Balance			Change in Fund Balance		Fund Balance	
			DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	DR	(CR)	
To show prior year effect for invoices received and paid after year end relating to 2017 and which should have been accrued however management determined to pass on recording.		F		0		0		0			(457,695)				457,695		0		0
	Beginning Fund Balance														457,695				
	Expense/Expenditures										(457,695)								
To show financial statement effect for invoices received and paid after year end relating to 2018 and which should have been accrued however management determined to pass on posting		F		0		(478,673)		0		478,673					0		(478,673)		478,673
	Accounts Payable					(478,673)													478,673
	Expens/Expenditures									478,673							(478,673)		
<b>Total passed adjustments</b>				0		(478,673)		0		20,978					457,695		(478,673)		478,673
															<b>20,978</b>				
															<b>478,673</b>				



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June 11, 2019

**BKD, LLP**  
Certified Public Accountants  
1801 California Street  
Denver, Colorado 80202

We are providing this letter in connection with your audits of our financial statements and of our compliance with requirements applicable to each of our major federal awards programs as of and for the year ended December 31, 2018. We confirm that we are responsible for the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, operations and compliance, and preventing and detecting fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, the following:

1. We have fulfilled our responsibilities, as set out in the terms of our engagement letter dated November 29, 2018, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.
2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

4. We have provided you with:
  - (a) Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters.
  - (b) Additional information that you have requested from us for the purpose of the audit.
  - (c) Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
  - (d) All minutes of meetings of the governing body held through the date of this letter.
  - (e) All significant contracts and grants.
5. All transactions have been recorded in the accounting records and are reflected in the financial statements.
6. We have informed you of all current risks of a material amount that are not adequately prevented or detected by entity procedures with respect to:
  - (a) Misappropriation of assets.
  - (b) Misrepresented or misstated assets, liabilities or net position/fund balance.
7. We believe the effects of the uncorrected financial statement misstatements summarized in the attached schedule are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.
8. We have no knowledge of any known or suspected:
  - (a) Fraudulent financial reporting or misappropriation of assets involving management or employees who have significant roles in internal control.
  - (b) Fraudulent financial reporting or misappropriation of assets involving others that could have a material effect on the financial statements.
9. We have no knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, customers, regulators, suppliers or others.
10. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America. We understand that the term related party refers to an affiliate;

management, and members of their immediate families, component units; and any other party with which the entity may deal if it can significantly influence, or be influenced by, the management or operating policies of the other. The term affiliate refers to a party that directly or indirectly controls, or is controlled by, or is under common control with us.

11. Except as reflected in the financial statements, there are no:
  - (a) Plans or intentions that may materially affect carrying values or classifications of assets and liabilities.
  - (b) Material transactions omitted or improperly recorded in the financial statements.
  - (c) Material gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.
  - (d) Events occurring subsequent to the statement of new position/balance sheet date through the date of this letter requiring adjustment or disclosure in the financial statements.
  - (e) Agreements to purchase assets previously sold.
  - (f) Restrictions on cash balances or compensating balance agreements.
  - (g) Guarantees, whether written or oral, under which the City is contingently liable.
12. We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws and regulations whose effects should be considered when preparing financial statements.
13. We have no reason to believe the City owes any penalties or payments under the Employer Shared Responsibility Provisions of the Patient Protection and Affordable Care Act nor have we received any correspondence from the IRS or other agencies indicating such payments may be due.
14. We have disclosed to you all known actual or possible litigation and claims whose effects should be considered when preparing the financial statements. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America.
15. Adequate provisions and allowances have been accrued for any material losses from:
  - (a) Uncollectible receivables.



- (b) Reducing obsolete or excess inventories to estimated net realizable value.
  - (c) Sales/service commitments, including those unable to be fulfilled.
  - (d) Purchase commitments in excess of normal requirements or above prevailing market prices.
16. Except as disclosed in the financial statements, we have:
- (a) Satisfactory title to all recorded assets, and they are not subject to any liens, pledges or other encumbrances.
  - (b) Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.
17. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.
18. We have reviewed GASB No. 49, Accounting and Financial Reporting for Pollution Remediation Obligations, and have determined that the City does not have any environmental liabilities nor have any obligating events occurred that would require us to record a liability, except for as related to the Highway 30 Landfill Facility.
19. We have notified you of any instances of noncompliance with applicable disclosure requirements of the SEC Rule 15c2-12 and applicable state laws.
20. With regard to deposit and investment activities:
- (a) All deposit and investment transactions have been made in accordance with legal and contractual requirements.
  - (b) Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.
  - (c) We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.
21. With respect to any nonattest services you have provided us during the year, including assistance with formatting, printing and binding the City's single audit reports:
- (a) We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.

- (b) We have established and monitored the performance of the nonattest services to ensure that they meet our objectives.
  - (c) We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.
  - (d) We have evaluated the adequacy of the services performed and any findings that resulted.
22. We acknowledge that we are responsible for compliance with applicable laws, regulations and provisions of contracts and grant agreements.
23. We have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that have a direct and material effect on the determination of amounts in our financial statements or other financial data significant to the audit objectives.
24. We have identified and disclosed to you any violations or possible violations of laws, regulations and provisions of contracts and grant agreements whose effects should be considered for recognition and/or disclosure in the financial statements or for your reporting on noncompliance.
25. We have taken or will take timely and appropriate steps to remedy any fraud, abuse, illegal acts or violations of provisions of contracts or grant agreements that you or other auditors report.
26. We have a process to track the status of audit findings and recommendations.
27. We have identified to you any previous financial audits, attestation engagements, performance audits or other studies related to the objectives of your audit and the corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other studies.
28. We have provided our views on any findings, conclusions and recommendations, as well as our planned corrective actions with respect thereto, to you for inclusion in the findings and recommendations referred to in your report on internal control over financial reporting and on compliance and other matters based on your audit of the financial statements performed in accordance with *Government Auditing Standards*.

29. With regard to federal awards programs:

- (a) We have identified in the schedule of expenditures of federal awards all assistance provided (either directly or passed through other entities) by federal agencies in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, commodities, insurance, direct appropriations or in any other form.
- (b) We have identified the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Compliance Supplement* regarding activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; equipment and real property management; matching, level of effort, earmarking; period of performance of federal funds; procurement and suspension and debarment; program income; reporting; subrecipient monitoring; and special tests and provisions that are applicable to each of our federal awards programs. We have identified to you our interpretation of any applicable compliance requirements subject to varying interpretations.
- (c) We are responsible for complying, and have complied, with the requirements of Uniform Guidance.
- (d) We are responsible to understand and comply with the requirements of federal statutes, regulations and the terms and conditions of federal awards related to each of our federal awards programs and have disclosed to you any and all instances of noncompliance with those requirements occurring during the period of your audit or subsequent thereto to the date of this letter of which we are aware. Except for any instances of noncompliance we have disclosed to you, we believe the City has complied with all applicable compliance requirements.
- (e) We are responsible for establishing and maintaining effective internal control over compliance to provide reasonable assurance we have administered each of our federal awards programs in compliance with federal statutes, regulations and the terms and conditions of the federal awards.
- (f) We have made available to you all federal awards including amendments, if any and any other correspondence or documentation relevant to each of our federal awards programs and to our compliance with applicable requirements of those programs.
- (g) The information presented in federal awards program financial reports and claims for advances and reimbursements is supported by the books and records from which our financial statements have been prepared.

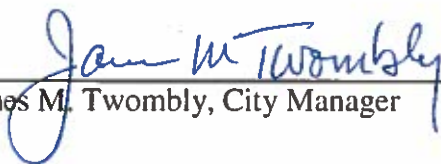
- (h) The costs charged to federal awards are in accordance with applicable cost principles.
- (i) The reports provided to you related to federal awards programs are true copies of reports submitted or electronically transmitted to the federal awarding agency, the applicable payment system or pass-through entity in the case of a subrecipient.
- (j) Amounts claimed or used for matching were determined in accordance with Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) regarding cost principles.
- (k) We have monitored any subrecipients to determine that they have expended federal awards in accordance with federal statutes, regulations and the terms and conditions of the subaward and have met the audit and other requirements of the Uniform Guidance.
- (l) We have taken appropriate corrective action on a timely basis after receipt of any subrecipient's auditor's report that identified findings and questioned costs pertaining to federal awards programs passed through to the subrecipient by us.
- (m) We have considered the results of any subrecipient's audits received and made any necessary adjustments to our books and records.
- (n) We do not believe any of the revolving loan programs operated by the City in the Community Development Block Grants Program, the HOME Investment Partnerships Program and the Brownfields Grant Programs contain continuing compliance requirements other than continued loan repayments and thus deem it proper to exclude the outstanding loan balances, other than new loans executed during the year, from the Schedule of Expenditures of Federal Awards.
- (o) We have disclosed to you any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the applicable compliance requirements for each of our federal awards programs, including any communications received from the end of the period of your audit through the date of this letter.
- (p) We have identified to you any previous compliance audits, attestation engagements and internal or external monitoring related to the objectives of your compliance audit, including findings received and corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other monitoring.

- (q) Except as described in the schedule of findings and questioned costs, we are in agreement with the findings contained therein and our views regarding any disagreements with such findings are consistent, as of the date of this letter, with the description thereof in that schedule.
  - (r) We are responsible for taking corrective action on any audit findings and have developed a corrective action plan that meets the requirements of Uniform Guidance.
  - (s) The summary schedule of prior audit findings correctly states the status of all audit findings of the prior audit's schedule of findings and questioned costs and any uncorrected open findings included in the prior audit's summary schedule of prior audit findings as of the date of this letter.
  - (t) The reporting package does not contain any protected personally identifiable information.
30. The financial statements disclose all significant estimates and material concentrations known to us. Significant estimates are estimates at the statement of net position/balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets for which events could occur which would significantly disrupt normal finances within the next year. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
31. The fair values of financial and nonfinancial assets and liabilities, if any, recognized in the financial statements or disclosed in the notes thereto are reasonable estimates based on the methods and assumptions used. The methods and significant assumptions used result in measurements of fair value appropriate for financial statement recognition and disclosure purposes and have been applied consistently from period to period, taking into account any changes in circumstances. The significant assumptions appropriately reflect market participant assumptions.
32. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis, budgetary comparisons, pension and postemployment benefits information, has been prepared and is measured and presented in conformity with the applicable GASB pronouncements, and we acknowledge our responsibility for the information. The information contained therein is based on all facts, decisions and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. We believe the significant assumptions underlying the measurement and/or presentation of the information are reasonable and appropriate. There has been no change from the preceding period in the methods of measurement and presentation.

33. With regard to supplementary information:

- (a) We acknowledge our responsibility for the presentation of the supplementary information in accordance with the applicable criteria.
- (b) We believe the supplementary information is fairly presented, both in form and content, in accordance with the applicable criteria.
- (c) The methods of measurement and presentation of the supplementary information are unchanged from those used in the prior period.
- (d) We believe the significant assumptions or interpretations underlying the measurement and/or presentation of the supplementary information are reasonable and appropriate.
- (e) If the supplementary information is not presented with the audited financial statements, we acknowledge we will make the audited financial statements readily available to intended users of the supplementary information no later than the date such information and the related auditor's report are issued.

Due care has been exercised in the preparation of the Introductory and Statistical and Other Schedules Sections of the comprehensive annual financial report and we are unaware of any information in those sections that is materially inconsistent with the information reported in the basic financial statements.

  
James M. Twombly, City Manager

  
Terri Velasquez, Director of Finance

  
Nancy Wishmeyer, Controller

# **City of Aurora, Colorado**

## **Single Audit Report**

**Year Ended December 31, 2018**

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Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b><u>Department of Agriculture</u></b>				
Passed through from the Colorado Department of Public Health and Environment:				
Child and Adult Care Food Program	10.558	11 FLA 13568	\$ 12,351	\$ -
Child and Adult Care Food Program	10.558	11 FLA 13568	(21,206)	-
Child and Adult Care Food Program	10.558	11 FLA 13568	49,218	-
Total 10.558			<u>40,363</u>	<u>-</u>
<b>Child Nutrition Cluster</b>				
Passed through from the Colorado Department of Education:				
Summer Food Service Program for Children	10.559	4559	71,442	-
Total Child Nutrition Cluster			<u>71,442</u>	<u>-</u>
<b>Total Department of Agriculture</b>			<u><b>111,805</b></u>	<u><b>-</b></u>
<b><u>Department of Commerce</u></b>				
Direct payments:				
<b>Economic Development Cluster</b>				
Economic Adjustment Assistance	11.307	N/A	187,727	-
Total Economic Development Cluster			<u>187,727</u>	<u>-</u>
<b>Total Department of Commerce</b>			<u><b>187,727</b></u>	<u><b>-</b></u>
<b><u>Department of Housing and Urban Development</u></b>				
Passed through from the Colorado Housing and Finance Authority:				
Housing Counseling Assistance Program	14.169	HC150841001	1,381	-
Housing Counseling Assistance Program	14.169	HC170841003	19,315	-
Total 14.169			<u>20,696</u>	<u>-</u>
Direct payments:				
<b>CDBG - Entitlement Grant Cluster</b>				
Community Development Block Grants/Entitlement Grants	14.218	N/A	2,888,342	14,026
Community Development Block Grants- Neighborhood Stabilization Program (NSP 3)	14.218	N/A	281,688	-
Total CDBG - Entitlement Grant Cluster			<u>3,170,030</u>	<u>14,026</u>
Emergency Solutions Grant Program	14.231	N/A	211,749	186,435
Total 14.231			<u>211,749</u>	<u>186,435</u>
Home Investment Partnerships Program	14.239	N/A	2,000,658	46,182
Total 14.239			<u>2,000,658</u>	<u>46,182</u>
<b>Total Department of Housing and Urban Development</b>			<u><b>5,403,133</b></u>	<u><b>246,643</b></u>

Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b><u>Department of the Interior</u></b>				
Passed through from the Colorado History Center:				
Historic Preservation Fund Grants-In-Aid	15.904	8002344401	1,093	-
Total 15.904			1,093	-
Passed through from the Colorado Department of Natural Resources:				
Outdoor Recreation Acquisition, Development and Planning	15.916	91634 CTGG1 2017 00025	308,629	-
Total 15.916			308,629	-
<b>Total Department of the Interior</b>			<b>309,722</b>	<b>-</b>
<b><u>Department of Justice</u></b>				
Passed through from the City of Colorado Springs, Colorado:				
Missing Children's Assistance (Colorado Internet Crimes Against Children) (FY 2017)	16.543	2015-MC-FX-K030	12,970	-
Total 16.543			12,970	-
Direct payments:				
Edward Byrne Memorial Justice Assistance Grant Program (FY2015)	16.738	N/A	19,298	-
Edward Byrne Memorial Justice Assistance Grant Program (FY2016)	16.738	N/A	1,961	-
Edward Byrne Memorial Justice Assistance Grant Program (FY2017)	16.738	N/A	27,707	-
Passed through from the Colorado Division of Criminal Justice:				
Edward Byrne Memorial Justice Assistance Grant Program (Violence Prevention Program)	16.738	2016-MU-BX-0115	33,287	33,287
Edward Byrne Memorial Justice Assistance Grant Program (Violence Prevention Program)	16.738	2016-DJ-17-3-27-4	74,356	74,356
Edward Byrne Memorial Justice Assistance Grant Program (Emergency Funds MGTf)	16.738	2016-DJ-18-05-59-1	27,881	-
Total 16.738			184,490	107,643
Direct payments:				
Criminal and Juvenile Justice and Mental Health Collaboration Program	16.745	N/A	100,207	-
Total 16.745			100,207	-
Direct payments:				
Equitable Sharing Program (Seizures-Federal)	16.922	N/A	552,016	-
Equitable Sharing Program (MGTF Seizures-Federal)	16.922	N/A	21,626	-
Total 16.922			573,642	-
<b>Total Department of Justice</b>			<b>871,309</b>	<b>107,643</b>

<b>Federal Grantor/Pass-through Grantor/ Program or Cluster Title</b>	<b>Federal CFDA Number</b>	<b>Pass-through Entity Identifying Number</b>	<b>Federal Expenditures</b>	<b>Amount Paid to Subrecipient</b>
<b><u>Department of Transportation</u></b>				
<b>Highway Planning and Construction Cluster</b>				
Passed through from the Colorado Department of Transportation:				
Highway Planning and Construction (Nine Mile Station Bicycle Pedestrian Improvements)	20.205	STU M055-032 (19041)	56,113	-
Highway Planning and Construction (Colfax Bike/Ped TIP)	20.205	M 055 034	136,405	-
Highway Planning and Construction (23rd Avenue Bicycle/Pedestrian Improvements)	20.205	M055 042	83,134	-
Highway Planning and Construction (Tollgate Extension IGA G21086 TIP Grant)	20.205	M055 040	3,046,893	-
Highway Planning and Construction (Tollgate Extension IGA G21199 TIP Grant)	20.205	M055 043	298,868	-
Highway Planning and Construction (Hudson Road Bridge at Coyote Run)	20.205	M055 039	578,194	-
Highway Planning and Construction (Westerly Creek Tollgate Creek Bike/Pedestrian Path)	20.205	M055-045	(99,109)	-
Passed through from the Regional Air Quality Council:				
Highway Planning and Construction (Charge Ahead Colorado)	20.205	1086	4,509	-
Total Highway Planning and Construction Cluster			<u>4,105,007</u>	<u>-</u>
<b>Highway Safety Cluster</b>				
Passed through from the Colorado Department of Transportation:				
State and Community Highway Safety Cluster (2018 Aurora Speed Campaign)	20.600	411014607	60,370	-
State and Community Highway Safety Cluster (2018 Aurora PD Distracted Driver Campaign)	20.600	411014676	43,371	-
State and Community Highway Safety Cluster (2018 Pedestrian Education and Safety Campaign)	20.600	411014704	50,242	-
State and Community Highway Safety (2018 Seatbelt Compliance Campaign)	20.600	411014658	72,320	-
State and Community Highway Safety (2019 Seatbelt Compliance Campaign)	20.600	411017441	17,029	-
State and Community Highway Safety Cluster (2019 Aurora PD Distracted Driver Campaign)	20.600	411017609	17,282	-
State and Community Highway Safety Cluster (2019 Pedestrian Education and Safety Campaign)	20.600	411017608	18,327	-
State and Community Highway Safety Cluster (2019 Aurora Speed Campaign)	20.600	411017327	17,292	-
National Priority Safety Program (2018 DUI Enforcement)	20.616	471001182	160,807	-
National Priority Safety Program (2019 DUI Enforcement)	20.616	19NHTSA405D.1111	26,697	-
National Priority Safety Program (Traffic Records -Data Management)	20.616	30265591	12,825	-
Total Highway Safety Cluster			<u>496,562</u>	<u>-</u>
<b>Total Department of Transportation</b>			<b><u>4,601,569</u></b>	<b><u>-</u></b>

<b>Federal Grantor/Pass-through Grantor/ Program or Cluster Title</b>	<b>Federal CFDA Number</b>	<b>Pass-through Entity Identifying Number</b>	<b>Federal Expenditures</b>	<b>Amount Paid to Subrecipient</b>
<b><u>Department of Treasury</u></b>				
Passed through from the Colorado Housing and Finance Authority:				
Neighborhood Reinvestment Corporation (d/b/a Neighbor Works America)	21.U01	PL114-113X1350	4,066	-
Total 21.000			4,066	-
Direct payments:				
Equitable Sharing Program (Seizures-Federal)	21.016	N/A	1,123	-
Total 21.016			1,123	-
<b>Total Department of Treasury</b>			<b>5,189</b>	<b>-</b>
<b><u>Small Business Administration</u></b>				
Passed through from the Colorado Office of Economic Development and International Trade:				
Small Business Development Centers (Host)	59.037	CTGGI 2018 1101	173,000	-
Total 59.037			173,000	-
<b>Total Small Business Administration</b>			<b>173,000</b>	<b>-</b>
<b><u>Office of National Drug Control Policy</u></b>				
Direct payments:				
High Intensity Drug Trafficking Areas Program (Intelligence)	95.001	N/A	187,141	-
Passed through from Rocky Mountain High Intensity Drug Trafficking Area:				
High Intensity Drug Trafficking Areas Program (FY2017 MGTF)	95.001	G17RM0002A	61,489	-
High Intensity Drug Trafficking Areas Program (FY2018 MGTF)	95.001	G18RM0002A	283,601	-
Total 95.001			532,231	-
<b>Total Office of National Drug Control Policy</b>			<b>532,231</b>	<b>-</b>
<b><u>Department of Homeland Security</u></b>				
Passed through from the West Metro Fire Protection District:				
National Urban Search and Rescue Response System (Hurricanes Harvey and Irma)	97.025	76227 76300 76555	12,046	-
National Urban Search and Rescue Response System (Hurricanes Florence and Michael)	97.025	76678 76933	36,673	-
Total 97.025			48,719	-
Passed through from the Colorado Department of Public Safety Division of Homeland Security and Emergency Management:				
Emergency Management Performance Grants (18 CO LEMS grant)	97.042	18EM-19-59	92,000	-
Total 97.042			92,000	-
Passed through from the Denver Urban Area Security Initiative Homeland Security Grant Program:				
Urban Areas Security Initiative - Training and Travel	97.067	15UASI116DEN	3,309	-
Total 97.067			3,309	-
<b>Total Department of Homeland Security</b>			<b>144,028</b>	<b>-</b>
<b>Total Federal Awards</b>			<b>\$ 12,339,713</b>	<b>\$ 354,286</b>

**(1) Basis of Presentation**

The accompanying Schedule of Expenditures of Federal Awards (the Schedule) includes the federal grant activity of the primary government of the City of Aurora, Colorado (the City). The City's reporting entity is defined in Note 1 in the City's basic financial statements for the year ended December 31, 2018.

The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because this Schedule presents only a selected portion of the operations of the City, it is not intended to and does not present the financial position, changes in net position or cash flows of the City. The schedule of expenditures of federal awards includes federally funded projects received directly from federal agencies and the federal amount of pass-through awards received by the City through the State of Colorado or other non-federal entities

**(2) Summary of Significant Accounting Policies**

The City's summary of significant accounting policies is presented in Note 1 to the City's basic financial statements for the year ended December 31, 2018. Governmental fund and proprietary funds account for the City's federal grant activity. Expenditures reported on the Schedule are recognized on either the accrual basis of accounting or the modified accrual basis of accounting, depending on the basis of accounting used by the respective fund for which the activity is reported. Such expenditures are recognized following, as applicable, the cost principles in OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, or the cost principles contained in Uniform Guidance wherein certain types of expenditures are not allowable or are limited as to reimbursement. Therefore, some amounts presented in the Schedule may differ from amounts presented in, or used in the preparation of, the basic financial statements or reports to federal agencies. Negative amounts shown on the Schedule represent adjustments or credits made in the normal course of business to amounts reported as expenditures in prior periods. The City has elected not to use the 10 percent de minimis indirect cost rate allowed under the Uniform Guidance.

**(3) Federal CFDA Number**

Certain grant programs have not been assigned Catalog of Federal Domestic Assistance (CFDA) numbers by the federal government, or the numbers are not obtainable. These programs are identified in the Schedule by the federal agency number based upon the reporting requirements of the federal data collection form (for example, 21.U01).

**(4) Pass-through Entity Identifying Number**

For federal awards expended by the City as a subrecipient, the Schedule includes identification of the pass-through grantor and the identifying number assigned to the grant by the pass-through grantor where the pass-through grantor has supplied such number to the City.

**(5) Revolving Loan Funds – Not Subject to Compliance**

The City has certain revolving loan funds, which were originally financed with federal financial assistance through the Community Development Block Grants Program, the HOME Investment Partnerships Program and the Brownfields Grant Program. The outstanding balances of these loan funds at December 31, 2018 were \$3,582,883 for the Community Development Block Grants Program, \$13,401,509 for the HOME Investment Partnerships Program, and \$999,955 for the Brownfields Grant Program. Since there are no continuing compliance requirements other than required loan payments, the outstanding loan balances have not been included in the Schedule. New loans made during the year under these programs are included in the Schedule.

**(6) Revolving Loan Funds – Subject to Further Compliance**

The City has certain revolving loan funds reported under CFDA 11.307, which were originally financed from the Department of Commerce, Economic Development Administration through the City's Gifts and Grants Fund. The outstanding balances at December 31, 2018 were \$24,279 in loans outstanding and \$140,511 in funds available to lend. There were no administrative costs for 2018. The 2018 loan write offs were \$22,937. There are no City match requirements.

**(7) Recognition of Prior Expenditures**

The City received a 2016 pass-through grant from the Colorado Department of Natural Resources reported under CFDA 15.916 in 2018. The City incurred expenditures of \$158,342 in 2016 and \$150,287 in 2017, respectively.

**(8) Noncash Awards – Training/Travel**

The City received training and travel that was purchased with Urban Area Security Initiative funds by the City of Denver. The amount reported on the Schedule under CFDA 97.067 is the value of the services on the date it was received by the City and priced by the City of Denver.

**Independent Auditor’s Report on Internal Control Over  
Financial Reporting and on Compliance and Other Matters Based  
on an Audit of Financial Statements Performed in  
Accordance with *Government Auditing Standards***

Honorable Mayor and Members of City Council  
City of Aurora, Colorado  
Aurora, Colorado

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of the City of Aurora, Colorado (the City), as of and for the year ended December 31, 2018, and the related notes to the financial statements, which collectively comprise the City’s basic financial statements, and have issued our report thereon dated June 11, 2019, which contained an emphasis-of-matters paragraph regarding changes in accounting principles and a reference to the report of other auditors. The financial statements of Havana Business Improvement District (BID), the City’s discretely presented component unit, were not audited in accordance with *Government Auditing Standards*, and accordingly, this report does not include reporting on internal control over financial reporting or instances of reportable noncompliance associated with BID.

***Internal Control Over Financial Reporting***

In planning and performing our audit of the financial statements, we considered the City’s internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City’s internal control. Accordingly, we do not express an opinion on the effectiveness of the City’s internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies, and therefore, material weaknesses or significant deficiencies may exist that have not been identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We did identify certain deficiencies in internal control, described in the accompanying schedule of findings and questioned costs as items 2018-001 and 2018-002, that we consider to be significant deficiencies.

### ***Compliance and Other Matters***

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### ***The City's Response to Findings***

The City's response to the findings identified in our audit are described in the accompanying schedule of findings and questioned costs and corrective action plan. The City's response was not subjected to the auditing procedures applied in the audit of the financial statements, and accordingly, we express no opinion on it.

### ***Purpose of this Report***

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

**BKD, LLP**

Denver, Colorado  
June 11, 2019



**Independent Auditor's Report on Compliance for Each Major  
Federal Program; Report on Internal Control Over Compliance;  
and Report on Schedule of Expenditures of Federal Awards  
Required by the Uniform Guidance**

Honorable Mayor and Members of City Council  
City of Aurora, Colorado  
Aurora, Colorado

**Report on Compliance for Each Major Federal Program**

We have audited City of Aurora's (the City) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of the City's major federal program for the year ended December 31, 2018. The City's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

***Management's Responsibility***

Management is responsible for compliance with federal statutes, regulations and the terms and conditions of its federal awards applicable to its federal programs.

***Auditor's Responsibility***

Our responsibility is to express an opinion on compliance for the City's major federal program based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the City's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for the major federal program. However, our audit does not provide a legal determination of the City's compliance.

### **Opinion on the Major Federal Program**

In our opinion, the City complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on its major federal program for the year ended December 31, 2018.

### **Report on Internal Control Over Compliance**

Management of the City is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the City's internal control over compliance with the types of requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for the major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

## **Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance**

We have audited the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of the City as of and for the year ended December 31, 2018, and the related notes to the financial statements, which collectively comprise the City's basic financial statements. We issued our report thereon dated June 11, 2019, which contained unmodified opinions on those financial statements, an emphasis-of-matters paragraph regarding changes in accounting principles and referenced the report of other auditors. Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the basic financial statements as a whole.

*BKD, LLP*

Denver, Colorado  
June 11, 2019

## Section I – Summary of Auditor’s Results

### *Financial Statements*

1. Type of report the auditor issued on whether the financial statements audited were prepared in accordance with accounting principles generally accepted in the United States of America (GAAP):  
 Unmodified       Qualified       Adverse       Disclaimer
2. Internal control over financial reporting:  
Material weakness(es) identified?       Yes       No  
Significant deficiency(ies) identified?       Yes       None reported
3. Noncompliance considered material to the financial statements noted?       Yes       No

### *Federal Awards*

4. Internal control over compliance for major federal awards programs:  
Material weakness(es) identified?       Yes       No  
Significant deficiency(ies) identified?       Yes       None reported
5. Type of auditor’s report issued on compliance for major federal award programs:  
 Unmodified       Qualified       Adverse       Disclaimer
6. Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)?       Yes       No
7. Identification of major federal programs:

<b>CFDA Number</b>	<b>Name of Federal Program or Cluster</b>
20.205	Highway Planning and Construction Cluster

8. Dollar threshold used to distinguish between Type A and Type B programs: \$750,000.
9. Auditee qualified as a low-risk auditee?       Yes       No

## Section II – Financial Statement Findings

Reference  
Number

Finding

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**2018-001 Finding: Information Technology - Access and Operations**

*Government Auditing Standards* allow for information that is considered sensitive in nature, such as detailed information related to information technology system security, to be issued through a separate “classified or limited use” report. This is due to the potential damage that could be caused by the misuse of that information. We consider the specific technical details of this finding to be sensitive in nature and not appropriate for public disclosure. Therefore, the details of the following finding have been provided to City of Aurora in a separate, confidential memorandum.

**Criteria or Specific Requirement:** Information technology general controls require that the information technology system is fully documented and managed appropriately to protect the City's financial and other data. Standard industry guidelines were utilized to assess the City's information technology systems as it relates to access management and redundancy, recovery and backup.

**Condition:** During the Information Technology Control Design review, we noted that the City does not have a complete set of IT policies and procedures, some IT program components are decentralized across multiple operating units, and the City does not have a formal plan to provide for ongoing computer operations.

**Effect:** The combination of these factors creates a risk that ongoing operations are not adequately protected or supported. Due to the nature of the sensitive information handled by the City's programs, and the importance of the City's ongoing operations, vulnerability as well as the risk that operations may be suspended for periods of time without proper support, the magnitude of the issue warrants attention for correction.

**Cause:** The cause appears to be a result from the lack of proper official policies, centralized planning and decision making on project and software/hardware procurement, and the components of an organizational infrastructure to support the IT needs throughout the vast network of the City's operations.

**Recommendation:** The City should develop, publish, and operationalize a complete set of IT policies and procedures to strengthen its internal control over logical and physical access. Communication of these policies and procedures is needed to all applicable employees to ensure processes are followed during periods of turnover. The City should also ensure that appropriate management oversight is in place to enforce consistent application of the account management policy to mitigate specific information security problems noted in the confidential finding. Further, the City should develop a formal plan for ensuring ongoing computer operations to mitigate specific problems noted in the confidential finding.

**Views of Responsible Officials:** The City agrees with the finding. See separate report for planned corrective actions.

**Reference  
Number**

**Finding**

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**2018-002 Finding:** Accounting for donated roads

**Criteria or Specific Requirement:** Governmental Accounting Standards Board (GASB) codification section 1400 requires donated capital assets to be reported at their acquisition value at the time of acquisition plus ancillary charges, if any. Acquisition value may be calculated from manufacturers' catalogs or price quotes in periodicals, recent sales of comparable assets, or other reliable information.

**Condition:** Roads donated to the City in 2017 were recorded at the incorrect value. Additionally, the City identified donated roads received prior to 2018 missing from the City's capital asset records.

**Effect:** The value of the donated roads recorded in 2017 were overstated by \$63 million. Additionally, \$23 million in roads donated prior to 2018 were not recorded as part of the City's capital asset records. The net effect of both errors resulted in a \$40 million overstatement of infrastructure reported in the governmental activities. The City corrected the underlying records in 2018 and an entry was proposed but not recorded for the effect of this correction on current year and prior year financials.

**Cause:** The incorrect mileage of donated roads was used in the 2017 calculation. Furthermore, the City lacked policies and procedures to ensure all roads received by the City were recorded in the City's capital asset system.

**Recommendation:** We recommend that the City add checks and balances to its processes for recording donated roads to help ensure all inputs determining the acquisition value are properly updated. In addition, we recommend that the City develop policies and procedures to reconcile donated roads reported in the capital asset system to roads reported and tracked by the State of Colorado.

**Views of Responsible Officials:** The City agrees with the finding. See separate report for planned corrective actions.

### Section III – Federal Award Findings and Questioned Costs

Reference Number	Finding
No matters are reportable.	

**Reference  
Number**

**Summary of Finding**

**Status**

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No matters are reportable



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Cigarette Tax Remove Sales Tax Exemption
<b>Item Initiator:</b> Vaughn, Trevor - Manager Of Tax And Licensing - Finance
<b>Staff Source:</b> Vaughn, Trevor - Manager Of Tax And Licensing - Finance
<b>Deputy City Manager Signature:</b> Michelle Wolfe
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City Pursuant to the city's home rule authority granted to the City of Aurora under Article XX Section 6 (g) of the Colorado Constitution, the City has the power of taxation for local municipal purposes. City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. Section 5-1 Aurora City Charter. (Hernandez)

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

At the City Council Spring Workshop on April 27th, 2019 the City Council indicated that a majority supported the consideration of the elimination of the exemption of sales tax on cigarettes.

This item was presented at the City Council Study Session on June 27th. A majority of City Council requested that it be presented to the Management and Finance Committee.

The City of Aurora exempted cigarettes from sales and use tax on tangible personal property in 1963 as the state applied excise tax to the product and provided revenue sharing from the excise tax. The state prohibited the revenue sharing if the city were to collect sales tax on cigarettes. With the passage of house bill 19-1033, the state removed the prohibition of the collection of sales tax to receive the revenue sharing of the excise tax.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Passage of house bill 19-1033 removes the prohibition on the collection of sales tax by municipalities that receive a share of the state excise tax allocated to local governments. The state allocates 27% of the 20 cents per pack cigarette tax to local governments. As a result of the law change, four cities previously excluded from the revenue sharing will now receive a sharing of the revenue. This will result in a decrease of the sharing revenue provided to Aurora. Additionally, the 20 cents per pack is not an ad valorem tax

similar to sales tax, therefore this tax does not maintain pace with inflation. The estimated revenue from the revenue sharing is \$633,713 in 2019. Demand for cigarettes has also decreased this amount as the city received \$833,000 in 1999. The removal of the cigarette tax exemption is anticipated to generate up to approximately \$2.3 million. The net revenue increase will be less than 1% of the City's sales and use tax collections of \$236.9 million, and less than .5% of total General Fund tax revenues.

The state of Colorado eliminated the cigarette sales tax exemption in 2009 and RTD and SCFD eliminated the exemption in 2013. The City's sales and use tax is levied on tangible personal property and therefore removal of the exemption is not a new tax. Additionally, removal of the exemption would further simplify the administrative burden of the tax code for retailers as the City would also apply sales tax to cigarettes. While there will be a revenue increase of less than 1% of total sales and use tax and less than .5% of total General Fund tax revenues, this increase is more than offset by revenue losses from other simplification actions taken by City Council action over the years in exempting various items from sales tax that are also exempted from state sales tax. Notable examples of these exemptions include the following;

- Food for home consumption
- On premise short term rentals of tangible personal property
- Sales of precious metal bullion and collector coins
- Internet access services
- Sales to charitable organizations
- Sales to governments
- Sales to agricultural producers
- Manufacturing equipment
- Prescription drugs
- Prosthetic devices
- Insulin

The effective date of the ordinance will be December 1, 2019. This will allow for a full year of collections in 2020. Retailers will be notified as soon as possible upon final approval of the ordinance. Notification will be done via mailers and web messages through the City's tax portal.

**QUESTIONS FOR Committee**

Does the committee approve of the proposed ordinance moving forward for full city council consideration?

**EXHIBITS ATTACHED:**

2019a\_1033\_signed.pdf

2019a\_hb1033\_fiscal note.pdf

2019-Cigarette Tax Exemption Removal-Ordinance-6-10.pdf

similar to sales tax, therefore this tax does not maintain pace with inflation. The estimated revenue from the revenue sharing is \$633,713 in 2019. Demand for cigarettes has also decreased this amount as the city received \$833,000 in 1999. The removal of the cigarette tax exemption is anticipated to generate up to approximately \$2.3 million. The net revenue increase will be less than 1% of the City's sales and use tax collections of \$236.9 million, and less than .5% of total General Fund tax revenues.

The state of Colorado eliminated the cigarette sales tax exemption in 2009 and RTD and SCFD eliminated the exemption in 2013. The City's sales and use tax is levied on tangible personal property and therefore removal of the exemption is not a new tax. Additionally, removal of the exemption would further simplify the administrative burden of the tax code for retailers as the City would also apply sales tax to cigarettes. While there will be a revenue increase of less than 1% of total sales and use tax and less than .5% of total General Fund tax revenues, this increase is more than offset by revenue losses from other simplification actions taken by City Council action over the years in exempting various items from sales tax that are also exempted from state sales tax. Notable examples of these exemptions include the following;

- Food for home consumption
- On premise short term rentals of tangible personal property
- Sales of precious metal bullion and collector coins
- Internet access services
- Sales to charitable organizations
- Sales to governments
- Sales to agricultural producers
- Manufacturing equipment
- Prescription drugs
- Prosthetic devices
- Insulin

The effective date of the ordinance will be December 1, 2019. This will allow for a full year of collections in 2020. Retailers will be notified as soon as possible upon final approval of the ordinance. Notification will be done via mailers and web messages through the City's tax portal.

**QUESTIONS FOR Committee**

Does the committee approve of the proposed ordinance moving forward for full city council consideration?

**EXHIBITS ATTACHED:**

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2019a\_hb1033\_fiscal note.pdf

2019-Cigarette Tax Exemption Removal-Ordinance-6-10.pdf

of the sharing revenue provided to Aurora. Additionally, the 20 cents per pack is not an ad valorem tax similar to sales tax, therefore this tax does not maintain pace with inflation. The estimated revenue from the revenue sharing is \$633,713 in 2019. Demand for cigarettes has also decreased this amount as the city received \$833,000 in 1999. The removal of the cigarette tax exemption is anticipated to generate up to approximately \$2.3 million. The net revenue increase will be less than 1% of the City's sales and use tax collections of \$236.9 million, and less than .5% of total General Fund tax revenues.

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- 2019a\_1033\_signed.pdf
- 2019a\_hb1033\_fiscal note.pdf
- 2019-Cigarette Tax Exemption Removal-Ordinance-6-10.pdf

# An Act

HOUSE BILL 19-1033

BY REPRESENTATIVE(S) Tipper and Kennedy, Arndt, Bird, Caraveo, Duran, Galindo, Gonzales-Gutierrez, Jaquez Lewis, Kipp, Lontine, McCluskie, Mullica, Roberts, Becker, Froelich, Snyder; also SENATOR(S) Fields and Priola, Court, Gonzales.

CONCERNING A LOCAL GOVERNMENT'S AUTHORITY TO REGULATE PRODUCTS CONTAINING NICOTINE.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 18-13-121, amend (3) as follows:

**18-13-121. Furnishing cigarettes, tobacco products, or nicotine products to minors.** (3) Nothing in this section prohibits a statutory or home rule municipality, COUNTY, OR CITY AND COUNTY from enacting an ordinance OR RESOLUTION that prohibits a ~~person under eighteen years of age~~ MINOR from purchasing any cigarettes, tobacco products, or nicotine products or imposes requirements more stringent than provided in this section.

**SECTION 2.** In Colorado Revised Statutes, 25-14-301, amend

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(3)(c) and (4) as follows:

**25-14-301. Possession of cigarettes, tobacco products, or nicotine products by a minor prohibited - definitions.** (3) As used in this section, unless the context otherwise requires:

(c) "Tobacco product" ~~shall have~~ HAS the same meaning as ~~set forth~~ in "CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT", AS DEFINED IN section 18-13-121 (5). ~~C.R.S.~~

(4) Nothing in this section ~~shall be construed to prohibit any~~ PROHIBITS A statutory or home rule municipality, COUNTY, OR CITY AND COUNTY from enacting an ordinance OR RESOLUTION that prohibits the possession of cigarettes, ~~or tobacco products, OR NICOTINE PRODUCTS~~ by a ~~person who is under eighteen years of age~~ MINOR or imposes requirements more stringent than provided in this section.

**SECTION 3.** In Colorado Revised Statutes, **add** article 30 to title 29 as follows:

**ARTICLE 30**  
**Regulation of Cigarettes, Tobacco Products, and**  
**Nicotine Products**

**29-30-101. Regulation of cigarettes, tobacco products, and nicotine products.** THE CITY COUNCIL OF A STATUTORY OR HOMERULE CITY OR THE TOWN COUNCIL OF A STATUTORY TOWN MAY ADOPT AN ORDINANCE TO REGULATE THE POSSESSION OR PURCHASING OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, AS DEFINED IN SECTION 18-13-121 (5), BY A MINOR OR TO REGULATE THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS.

**SECTION 4.** In Colorado Revised Statutes, 30-15-401, **amend** (1.5) as follows:

**30-15-401. General regulations - definitions.** (1.5) In addition to any other powers, the board of county commissioners has the power to adopt a resolution or an ordinance ~~prohibiting minors from possessing~~ TO REGULATE THE POSSESSION OR PURCHASING OF cigarettes, ~~or tobacco products, OR NICOTINE PRODUCTS~~, as defined by section ~~39-28.5-101 (5)~~,

~~C.R.S.~~ 18-13-121 (5), BY A MINOR OR TO REGULATE THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS.

**SECTION 5.** In Colorado Revised Statutes, 39-22-623, amend (1) introductory portion and (1)(a)(II)(A) as follows:

**39-22-623. Disposition of collections - definition.** (1) The proceeds of all ~~moneys~~ MONEY collected under this ~~article~~ ARTICLE 22, less the reserve retained for refunds, shall be credited as follows:

(a) (II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns ~~which~~ THAT levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county ~~shall be~~ IS considered as a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues ~~which~~ THAT may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and ~~such~~ THE DEPARTMENT SHALL APPLY THE percentage for allocation so certified ~~shall be applied by said department~~ in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax ~~moneys~~ MONEY, units of local government are prohibited from imposing ~~fees, licenses, or taxes~~ on any person as a condition for engaging in the business of selling cigarettes. ~~or from attempting in any manner to impose a tax on cigarettes.~~ For purposes of this paragraph (a) SUBSECTION (1)(a)(II), the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1) FOR ANY CITY, TOWN, OR COUNTY THAT WAS PREVIOUSLY DISQUALIFIED FROM THE APPORTIONMENT SET FORTH IN THIS SUBSECTION (1)(a)(II)(A) BY REASON OF IMPOSING A FEE OR LICENSE RELATED TO THE SALE OF CIGARETTES, THE CITY, TOWN, OR COUNTY IS ELIGIBLE FOR ANY ALLOCATION OF MONEY THAT IS BASED ON AN APPORTIONMENT MADE ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II)(A), AS AMENDED, BUT NOT FOR AN ALLOCATION OF MONEY THAT IS BASED ON AN APPORTIONMENT MADE

PAGE 3-HOUSE BILL 19-1033



BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1)(a)(II)(A), AS AMENDED.

**SECTION 6.** In Colorado Revised Statutes, amend 39-28-112 as follows:

**39-28-112. Taxation of cigarettes, tobacco products, or nicotine products by municipalities, counties, and city and counties - definitions.**

(1) ~~No provision of This article shall be construed to~~ ARTICLE 28 DOES NOT prevent the A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY IN THIS STATE FROM imposing, levying, and collecting of any SPECIAL SALES tax upon sales of cigarettes, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, or upon the occupation or privilege of selling cigarettes, ~~by any city or town in this state~~ TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, nor ~~shall the provisions of~~ DOES this article be interpreted to ARTICLE 28 affect any existing authority of local ~~municipalities~~ GOVERNMENTS to impose a SPECIAL SALES tax on cigarettes, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS to be used for local and ~~municipal~~ GOVERNMENTAL purposes.

(2) (a) EACH COUNTY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS UNDER THE FOLLOWING CIRCUMSTANCES:

(I) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN THE UNINCORPORATED AREAS OF THE COUNTY;

(II) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN THE MUNICIPALITIES WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT DO NOT LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. THE COUNTY MAY LEVY A SPECIAL SALES TAX IN A MUNICIPALITY PURSUANT TO THIS SUBSECTION (2)(a)(II) ONLY UNTIL THE MUNICIPALITY OBTAINS VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS. IF THE MUNICIPALITY OBTAINS

SUCH VOTER APPROVAL, THE COUNTY SPECIAL SALES TAX AUTHORIZED BY THIS SUBSECTION (2)(a)(II) IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(III) A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A COUNTY SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO THIS SUBSECTION (2) IN EACH MUNICIPALITY WITHIN THE BOUNDARIES OF THE COUNTY, IN WHOLE OR IN PART, THAT LEVIES A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, IF THE GOVERNING BODY OF THE COUNTY AND THE GOVERNING BODY OF THE MUNICIPALITY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT PERTAINING TO THE COUNTY'S LEVY, COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF A COUNTY SPECIAL SALES TAX UPON ALL SALES OF ALL CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT PURSUANT TO THIS SUBSECTION (2)(a)(III) MAY INCLUDE A PROVISION FOR THE APPORTIONMENT OF A SPECIFIED PERCENTAGE OF THE GROSS COUNTY CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS SPECIAL SALES TAX REVENUE COLLECTED BY THE COUNTY TO THE MUNICIPALITY.

(b) NOTWITHSTANDING SECTION 29-2-103 (2), A COUNTY MAY LEVY, COLLECT, ENFORCE, AND ADMINISTER A SPECIAL SALES TAX PURSUANT TO THIS SUBSECTION (2) IN LESS THAN THE ENTIRE COUNTY WHEN THE COUNTY SATISFIES ONE OR MORE OF THE CONDITIONS OF THIS SUBSECTION (2).

(c) NO SPECIAL SALES TAX SHALL BE LEVIED PURSUANT TO THIS SUBSECTION (2) UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE COUNTY IN ACCORDANCE WITH ARTICLE 2 OF TITLE 29. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH THIS SUBSECTION (2) SHALL BE SUBMITTED TO THE ELIGIBLE ELECTORS OF THE COUNTY ONLY ON THE DATE OF THE STATE GENERAL ELECTION OR ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR. ANY ELECTION ON THE PROPOSAL MUST BE

CONDUCTED BY THE COUNTY CLERK AND RECORDER IN ACCORDANCE WITH THE "UNIFORM ELECTION CODE OF 1992", ARTICLES 1 TO 13 OF TITLE 1.

(3) IF A COUNTY LEVIES, COLLECTS, ENFORCES, AND ADMINISTERS A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(4) (a) EACH MUNICIPALITY IN THE STATE IS AUTHORIZED TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A MUNICIPAL SPECIAL SALES TAX UPON ALL SALES OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS.

(b) A SPECIAL SALES TAX SHALL NOT BE LEVIED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION UNTIL THE PROPOSAL HAS BEEN REFERRED TO AND APPROVED BY THE ELIGIBLE ELECTORS OF THE MUNICIPALITY IN ACCORDANCE WITH ARTICLE 10 OF TITLE 31. ANY PROPOSAL FOR THE LEVY OF A SPECIAL SALES TAX IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION MUST BE SUBMITTED TO THE ELIGIBLE ELECTORS OF THE MUNICIPALITY ON THE DATE OF THE STATE GENERAL ELECTION, ON THE FIRST TUESDAY IN NOVEMBER OF AN ODD-NUMBERED YEAR, OR ON THE DATE OF A MUNICIPAL BIENNIAL ELECTION. ANY ELECTION ON THE PROPOSAL MUST BE CONDUCTED BY THE CLERK OF THE MUNICIPALITY IN ACCORDANCE WITH THE "COLORADO MUNICIPAL ELECTION CODE OF 1965", ARTICLE 10 OF TITLE 31.

(5) IF A COUNTY OR MUNICIPALITY OBTAINED APPROVAL FROM THE ELIGIBLE ELECTORS OF THE COUNTY OR MUNICIPALITY PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (5), TO LEVY, COLLECT, ENFORCE, AND ADMINISTER A SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE SPECIAL SALES TAX IS VALID AND THE COUNTY OR MUNICIPALITY IS AUTHORIZED TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX; EXCEPT THAT, IN THE CASE OF A COUNTY, THE COUNTY IS AUTHORIZED TO CONTINUE

TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX SO LONG AS THE COUNTY COMPLIES WITH SUBSECTION (2) OF THIS SECTION. IF A COUNTY LEVIES, COLLECTS, ENFORCES, AND ADMINISTERS A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

(6) (a) NOTWITHSTANDING ARTICLE 2 OF TITLE 29, A SPECIAL SALES TAX IMPOSED BY A COUNTY OR MUNICIPALITY PURSUANT TO THIS SECTION SHALL NOT BE COLLECTED, ADMINISTERED, OR ENFORCED BY THE DEPARTMENT OF REVENUE, BUT SHALL INSTEAD BE COLLECTED, ADMINISTERED, AND ENFORCED BY THE COUNTY OR MUNICIPALITY IMPOSING THE SPECIAL SALES TAX.

(b) A COUNTY OR MUNICIPALITY IN WHICH A SPECIAL SALES TAX IS IMPOSED PURSUANT TO THIS SECTION MAY AUTHORIZE A RETAILER SELLING CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO RETAIN A PERCENTAGE OF THE SPECIAL SALES TAX COLLECTED PURSUANT TO THIS SECTION TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE SPECIAL SALES TAX TO THE COUNTY OR MUNICIPALITY. THE COUNTY OR MUNICIPALITY SHALL DETERMINE THE PERCENTAGE THAT A RETAILER MAY RETAIN PURSUANT TO THIS SUBSECTION (6)(b).

(7) A COUNTY OR MUNICIPALITY IN WHICH THE ELIGIBLE ELECTORS HAVE APPROVED A SPECIAL SALES TAX PURSUANT TO THIS SECTION MAY CREDIT THE REVENUES COLLECTED FROM THE SPECIAL SALES TAX TO THE GENERAL FUND OF THE COUNTY OR MUNICIPALITY OR TO ANY SPECIAL FUND CREATED IN THE COUNTY'S OR MUNICIPALITY'S TREASURY. THE GOVERNING BODY OF A COUNTY OR MUNICIPALITY MAY USE REVENUES COLLECTED FROM THE SPECIAL SALES TAX IMPOSED PURSUANT TO THIS SECTION FOR ANY PURPOSE AS DETERMINED BY THE GOVERNING BODY.

(8) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE

REQUIRES:

(a) "CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-13-121 (5).

(b) "SPECIAL SALES TAX" MEANS A SALES TAX IMPOSED BY A LOCAL GOVERNMENT THAT IS SEPARATE FROM A GENERAL SALES TAX IMPOSED PURSUANT TO SECTION 29-2-102 OR 29-2-103, AS APPLICABLE, AND MAY BE IMPOSED IN ADDITION TO THE TAXES IMPOSED PURSUANT TO THIS PART 1.

**SECTION 7.** In Colorado Revised Statutes, amend 39-28.5-109 as follows:

**39-28.5-109. Taxation by cities and towns.** ~~No provision of This article shall be construed to~~ ARTICLE 28.5 DOES NOT prevent the A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY FROM imposing, levying, and collecting ~~of any SPECIAL SALES tax upon sales of CIGARETTES, tobacco products, OR NICOTINE PRODUCTS, AS THAT TERM IS DEFINED IN SECTION 18-13-121 (5), or upon the occupation or privilege of selling such CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE products. by any city or town in this state, nor shall the provisions of This article be interpreted to~~ ARTICLE 28.5 DOES NOT affect any existing authority of local municipalities GOVERNMENTS to impose a SPECIAL SALES tax on CIGARETTES, tobacco products, OR NICOTINE PRODUCTS, IN ACCORDANCE WITH SECTION 39-28-112, to be used for local and municipal GOVERNMENTAL purposes.

**SECTION 8. Effective date.** This act takes effect July 1, 2019.

**SECTION 9. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



KC Becker  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES



Leroy M. Garcia  
PRESIDENT OF  
THE SENATE

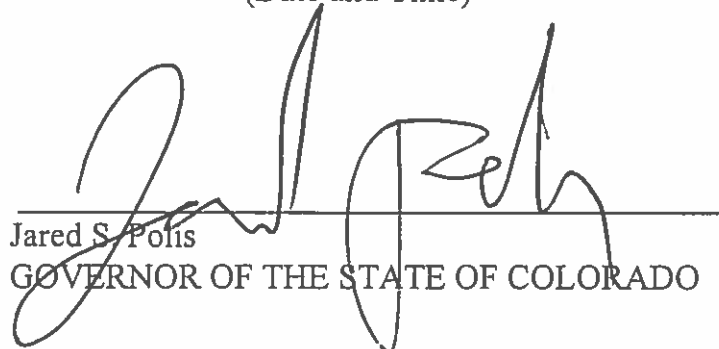


Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES



Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED March 28, 2019 at 2:35 p.m.  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**HB 19-1033**

# FINAL FISCAL NOTE

<b>Drafting Number:</b>	LLS 19-0670	<b>Date:</b>	May 30, 2019
<b>Prime Sponsors:</b>	Rep. Tipper; Kennedy Sen. Fields; Priola	<b>Bill Status:</b>	Signed into Law
		<b>Fiscal Analyst:</b>	Anna Gerstle   303-866-4375 Anna.Gerstle@state.co.us

**Bill Topic:** LOCAL GOVERNMENTS MAY REGULATE NICOTINE PRODUCTS

**Summary of Fiscal Impact:**

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes several changes to the regulation and taxation of cigarettes, tobacco products, and nicotine products. The bill increases state workload, and revenue and expenditures for some local governments.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** This fiscal note reflects the enacted bill.

## Summary of Legislation

The bill makes several changes related to the regulation of cigarettes, nicotine products, and tobacco products (nicotine products) by local governments.

**Local regulation of sale to and possession by minors.** Under current law, a municipality may enact an ordinance or resolution that prohibits a minor from purchasing nicotine products or that imposes requirements around providing those products to minors that are more stringent than the state. The bill allows counties to enact similar policies. Counties may also enact policies that regulate the possession and purchase by, and sale of nicotine products to minors under the age of 21.

**Distribution of state cigarette tax revenue.** Under current law, the Department of Revenue distributes 27 percent of state cigarette tax revenues to municipalities and counties in proportion to the amount of state sales tax revenue collected within each jurisdiction. In order to receive its distribution of cigarette tax revenue, local governments cannot impose or attempt to impose fees, licenses, or taxes on people selling cigarettes. The bill allows local governments to impose fees or licenses requirements, or attempt to impose taxes on cigarette sales, without losing their portion of state cigarette tax revenue. The bill maintains current law that a local government may not impose a cigarette tax and receive its distribution of state sales cigarette tax revenue. Local governments that have required fees or licenses related to the sale of cigarette sales are eligible to receive their portion of revenue beginning on July 1, 2019.

**Special sales taxes.** The bill permits counties to levy, collect, and enforce a county special sales tax on nicotine products, if approved by voters. The special sales tax may only be imposed in unincorporated areas and cities within the county that do not levy a municipal special sales tax. If a municipality imposes or decides to impose special sales tax on nicotine products, the county special sales tax is invalid; however, the county and municipality may enter into an intergovernmental agreement specifying the county's levy, collection, and enforcement of the county special sales tax within the municipality.

Special sales taxes on cigarette, tobacco products, and nicotine products that are imposed by a county or municipality are collected and administered by the entity imposing the tax, not the Department of Revenue. The municipality or county imposing the tax may allow retailers to retain a percentage of the tax to cover the cost of collecting and remitting the tax.

In addition, the bill clarifies that statutory and home-rule municipalities and counties have the same authority to tax and regulate cigarette, tobacco, and nicotine products.

## Background

**Cigarette tax distributions.** Under current law, 27 percent of state cigarette tax revenue is required to be distributed to local governments, based on the amount collected in each jurisdiction. The December 2018 Legislative Council Staff economic forecast estimated that \$9.8 million in cigarette tax revenue will be distributed to local governments in FY 2019-20 and \$9.6 million in FY 2020-21.

Currently, four cities (Aspen, Avon, Basalt, and Edgewater) regulate or tax cigarette products and, therefore, do not receive their portion of state cigarette tax collections. In addition, some cities have raised the age to purchase or possess cigarettes to 21 years old.

## State Expenditures

Beginning in FY 2019-20, the bill increases workload for the Department of Revenue by a minimal amount to distribute state cigarette tax revenue to the four cities that currently do not receive a portion of state tax revenue due to their local regulation and taxation of cigarette, nicotine, and tobacco. No change in appropriations is required.

## Local Government

Beginning in FY 2019-20, the bill increases revenue and expenditures for local governments, as discussed below.

**Revenue.** The bill increases revenue for any county that imposes a special sales tax on nicotine products or requires licensing or other fees for entities selling such products. It is unknown how many counties will implement such policies.



In addition, revenue will increase for cities that impose licensing or fee requirements (Avon, Basalt, and Edgewater), and thus, do not receive a portion of the state cigarette tax revenue under current law. For other local governments, revenue from state cigarette tax distributions will decrease proportionally as three more cities will receive revenue distributions. The amount that these cities would receive is not available at the time of writing.

**Expenditures.** For cities and counties that establish new regulation or impose new taxes on nicotine products, expenditures will increase to implementation and enforcement of those policies. Expenditure increases will be at the discretion of the local government and will vary by municipality and county.

**Effective Date**

The bill was signed into law by the Governor on March 28, 2019, and takes effect July 1, 2019.

**State and Local Government Contacts**

Counties	Information Technology	Law
Local Affairs	Municipalities	Revenue

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes).

ORDINANCE NO. 2019-\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, AMENDING ARTICLE II OF CHAPTER 130 OF THE CITY CODE RELATING TO THE REMOVAL OF THE CIGARETTE TAX EXEMPTION

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO THAT:

Section 1. Article IV Section 130-157 subsection (3) of the city code of the City of Aurora is hereby amended to read as follows:

Sec. 130-366. Items exempt from taxation.

**~~(3) Sales of cigarettes.~~**

Section 2. Article IV Section 130-198 subsection (10) of the city code of the City of Aurora is hereby amended to read as follows is hereby amended to read as follows:

Sec. 130-198. Items exempt from taxation.

**(10) The storage, use or consumption of cigarettes, prescription drugs for animals or humans and prosthetic devices for humans which shall not include therapeutic devices.**

Section 3. Notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall take effect on December 1, 2019.

Section 4. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 5. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the city clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PASSED AND ORDERED PUBLISHED BY REFERENCE this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

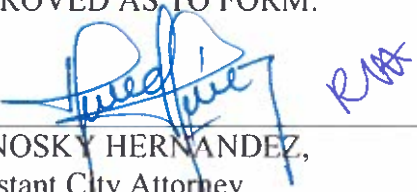
\_\_\_\_\_  
BOB LEGARE, Mayor

ATTEST:

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STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:



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HANOSKY HERNANDEZ,  
Assistant City Attorney

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## Management and Finance Policy Committee Agenda Item Commentary

**Item Title:**

FOR AN ORDINANCE AUTHORIZING THE USE OF LEASE-PURCHASE FINANCING FOR THE REFUNDING OF THE CITY'S OUTSTANDING REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2009A AS WELL AS THE CONSTRUCTION OF VARIOUS CAPITAL IMPROVEMENTS PURSUANT TO THE TERMS OF ONE OR MORE LEASE-PURCHASE AGREEMENTS BY AND BETWEEN AURORA CAPITAL LEASING CORPORATION OR ANOTHER LESSOR TO BE IDENTIFIED AND THE CITY OF AURORA, COLORADO, AS LESSEE; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

**Item Initiator:** Mike Shannon**Staff Source:** Mike Shannon, Manager Debt and Investments X37538**Deputy City Manager Signature:** Michelle Wolfe**Outside Speaker:****Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City**ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

In the summer and fall of 2009, staff was actively looking at refinancing all of the debt associated with the AMC. This outstanding variable rate debt along with an interest rate swap was at the time believed to be the most effective means of finance. However, following the financial turmoil and erratic financial markets that arose in late 2008, variable rate debt structures like this became very problematic and expensive. Consequently, a decision was made to replace all of this variable rate debt and associated interest rate swaps with a new transaction which became the Series 2009A COPs. At closing, this outstanding debt was \$84.1 million, matured in 2030, and had an interest rate of 5%

**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The City now has the opportunity to refund the Series 2009A COPs related to the original construction of the AMC. In 2009 this new debt was issued with a 10 year par call which means it can be refinanced with new debt in 2019. The current 2009A COPs have a final maturity of 2030, annual debt service payments of \$7.7 million, \$72.785 million outstanding, and an interest rate of 5%.

By refinancing this outstanding debt now, staff believes new debt can be issued with a final maturity of 2031, annual debt service payments of \$7.1 million, and an interest rate below 3%. This will result in NPV savings of \$12.7 million or 17.5%. The reason for adding one more year to the maturity is to enable the issuance of up to \$6 million in additional debt for improvements and repairs to any of the properties located on the AMC campus. Studies are currently underway to see what types of repairs/improvements might be necessary. Expected items may include, but are not limited to, security additions to the AMC administrative building, repairs to the garage, and other items that could extend the useful life of the properties on the AMC campus.

Attached is the Ordinance which outlines the parameters of a potential transaction, which staff hopes to close by late October. Key highlights of the Ordinance includes a debt issuance not to exceed \$80 million (including new money of \$6 million), a maturity not to exceed 15 years (anticipate 11 years), and a rate not to exceed 5% (actual rate expected to be below 3%).

Staff strongly supports this transaction.

**QUESTIONS FOR Committee**

Does the Management and Finance Committee wish to move this item forward to Study Session for the refinancing of all the Series 2009A COPs related to the AMC Facility with the goal of refinancing this debt for savings?

**EXHIBITS ATTACHED:**

1. July 12 Aurora Refunding and Improvement COPs Series 2019 - Authorizing Ordinance.doc

ORDINANCE NO. 2019-\_\_\_\_\_

A BILL

FOR AN ORDINANCE AUTHORIZING THE USE OF LEASE-PURCHASE FINANCING FOR THE REFUNDING OF THE CITY'S OUTSTANDING REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2009A AS WELL AS THE CONSTRUCTION OF VARIOUS CAPITAL IMPROVEMENTS PURSUANT TO THE TERMS OF ONE OR MORE LEASE-PURCHASE AGREEMENTS BY AND BETWEEN AURORA CAPITAL LEASING CORPORATION OR ANOTHER ENTITY TO BE IDENTIFIED, AS LESSOR, AND THE CITY OF AURORA, COLORADO, AS LESSEE; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and,

WHEREAS, the City is authorized pursuant to Section 31-15-801, C.R.S., as amended, the City's home rule powers, and Section 2-683 of the City Code to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years; and,

WHEREAS, the City has previously entered into a Lease Purchase Agreement dated as of June 1, 1994 (the "1994 Lease") with Aurora Capital Leasing Corporation ("ACLC") with respect to certain assets (the "1994 Leased Property") currently leased to and used by the City in consideration of the payment by the City, subject to annual appropriation, of rentals consisting of a principal component and an interest component (the "Base Rentals") and certain other amounts for the operation and maintenance costs of the 1994 Leased Property (the "Additional Rentals"); and

WHEREAS, for the purpose of financing or refinancing the 1994 Leased Property and for other purposes, the City has previously entered into a First Amendment to Lease Purchase Agreement dated as of August 1, 2000 (the "First Lease Amendment"), a Second Amendment to Lease Purchase Agreement dated as of March 7, 2002 (the "Second Lease Amendment"), a Third Amendment to Lease Purchase Agreement dated as of October 15, 2004 (the "Third Lease Amendment"), a Fourth Amendment to Lease Purchase Agreement dated as of April 1, 2005 (the "Fourth Lease Amendment"), a Fifth Amendment to Lease Purchase Agreement dated as of April 1, 2005 (the "Fifth Lease Amendment"), a Sixth Amendment to Lease Purchase Agreement dated as of April 1, 2005 (the "Sixth Lease Amendment"), a Seventh Amendment to Lease Purchase Agreement dated as of May 1, 2005 (the "Seventh Lease Amendment"), an Eighth Amendment to Lease Purchase Agreement dated as of February 1, 2006 (the "Eighth Lease Agreement"), a Ninth

Amendment to Lease Purchase Agreement dated as of January 1, 2007 (the “Ninth Lease Amendment”), a Tenth Lease Amendment dated as of May 1, 2008 (the “Tenth Lease Amendment”), an Eleventh Lease Amendment dated as of September 1, 2009 (the “Eleventh Lease Amendment”), a Twelfth Lease Amendment dated as of June 23, 2016 (the “Twelfth Lease Amendment”), and a Thirteenth Lease Amendment dated as of June 23, 2016 (the “Thirteenth Lease Amendment”), and

WHEREAS, in connection with the 1994 Lease and such amendments, ACLC has previously entered into a Trust Indenture dated as of June 1, 1994 (the “1994 Indenture”) with Norwest Bank Colorado, N.A., now known as Wells Fargo Bank, National Association (the “Trustee”) providing for the issuance of Refunding Certificates of Participation, Series 1994 (the “Series 1994 Certificates”); and

WHEREAS, ACLC has previously entered into a First Supplemental Indenture dated as of August 1, 2000 (the “First Supplemental Indenture”) by and between ACLC and the Trustee, providing for the issuance of Certificates of Participation, Series 2000 (the “Series 2000 Certificates”) for the purpose of financing additional 1994 Leased Property; a Second Supplemental Indenture dated as of October 15, 2004 (the “Second Supplemental Indenture”) by and between ACLC and the Trustee, providing for the issuance of Refunding Certificates of Participation, Series 2004 (the “Series 2004 Certificates”) for the purpose of refunding, paying and discharging the Series 1994 Certificates, a Third Supplemental Indenture dated as of February 1, 2005 (the “Third Supplemental Indenture”) by and between ACLC and the Trustee providing for the issuance of the Certificates of Participation, Series 2005 (the “Series 2005 Certificates”) for the purpose of financing additional 1994 Leased Property, a Fourth Supplemental Indenture dated as of February 1, 2006 (the “Fourth Supplemental Indenture”) by and between ACLC and the Trustee, providing for the issuance of Refunding Certificates of Participation, Series 2006A-1 (the “Series 2006A-1 Certificates”) and Series 2006A-2 (the “Series 2006A-2 Certificates) for the purpose of advance refunding the Series 2000 Certificates, a Fifth Supplemental Indenture dated as of May 1, 2008 (the “Fifth Supplemental Indenture”) providing for the issuance of Refunding Certificates of Participation, Series 2008A (the “Series 2008A Certificates”) for the purpose of effecting a current refunding of the Series 2006A-2 Certificates, and a Sixth Supplemental Indenture dated as of September 1, 2009 (the “Sixth Supplemental Indenture”) providing for the issuance of Refunding Certificates of Participation, Series 2009A (the “Series 2009A Certificates”) for the purpose of effecting a current refunding of the Series 2008A Certificates; and

WHEREAS, the Charter of the City permits the refunding or refinancing of all types of City obligations for savings or to effect other economies; and

WHEREAS, the City Council of the City (the “Council”) desires to refinance all or a portion of the Series 2009A Certificates (the “Refunding Project”), in order to reduce the amounts of Base Rental payments due thereunder in the aggregate or in particular years, or effect other economies; and

WHEREAS, the Council intends that the Refunding Project shall be implemented if it accomplishes any one or any combination of such purposes; and



WHEREAS, in order to provide for the capital asset needs of the City, the Council hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease-purchase financing for the construction of certain capital improvement projects on the Aurora Municipal Center campus (the “Improvement Project” and, together with the Refunding Project, the “Project”), for use by the City for governmental or proprietary purposes; and

WHEREAS, the City wishes to fund the Project from the proceeds of one or more lease-purchase financings (the “Financing”) to be completed within 12 months of the date hereof; and

WHEREAS, the City is the owner in fee simple of certain real property and improvements, in one or more parcels, described or identified in this Ordinance (the “Leased Property”); and

WHEREAS, in order to finance the costs of the Project, the Council desires to demise to a suitable financing entity (the “Financing Entity”), which entity may be an institutional investor, a trustee bank or Aurora Capital Leasing Corporation (“ACLC”), pursuant to that certain Site Lease to be dated as of its dated date (the “Site Lease”) between the City, as lessor, and the Financing Entity, as lessee, a leasehold interest in the Leased Property for a lump-sum payment of not more than \$80,000,000 and sublease the Leased Property back with improvements from the Financing Entity pursuant to that certain Lease Purchase Agreement dated as of the date of the Site Lease (the “Lease”) between the Financing Entity, as sublessor, and the City, as sublessee; and

WHEREAS, the Financing may be completed in whole or in part as a private placement or as a public offering to the best advantage of the City; and

WHEREAS, to the extent that all or any part of the Financing is to be completed as a private placement involving ACLC, ACLC shall transfer its right, title and interest in the Lease to one or more banks or institutional investors selected by the Finance Director through an informal competitive process (the “Purchaser”) pursuant to a Purchase and Assignment Agreement dated as of the date of the Site Lease (the “Assignment”) between ACLC and the Purchaser; and

WHEREAS, to the extent that all or any part of the Financing is to be completed as a public offering, either a trustee bank (the “Trustee”) approved by the Authorized Officers (as defined herein) of the City shall act as lessor under the Lease or ACLC shall assign its right, title and interest in the Lease to such Trustee pursuant to a Mortgage and Indenture of Trust dated as of the date of the Site Lease (the “Indenture”), and the Trustee shall deliver, pursuant to the Indenture, Certificates of Participation representing interests in the right to receive base rent payable by the City (the “Certificates”), subject to annual appropriation by the Council; and

WHEREAS, there have been filed for public inspection with the City Clerk in connection herewith the proposed forms of the Site Lease, the Lease and the Indenture (collectively, the “Financing Documents”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. *Ratification of Actions.* All actions heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council or the officers of the City, directed toward the completion of the Project and the preparation of any of the Financing Documents are hereby ratified, approved and confirmed.

Section 2. *The Project.* The City is hereby authorized to obtain lease-purchase financing for all or any portion of the Project through one or more Leases with ACLC, provided that any such Lease shall be executed and delivered within 12 months of the date hereof.

Section 3. *Manner of Offering; Final Terms.* The Director of Finance is hereby authorized to determine, based on the recommendation of the City's financial advisor, the identity of the Financing Entity, whether the Financing will be completed as a public competitive sale, as a negotiated sale through an underwriter or as a private placement with one or more institutional purchasers, and whether the Financing will be completed as a lease and lease-back or as a sale and lease-back of the Leased Property, in all other respects consistent with the provisions of this Ordinance. The institutional purchaser in a private placement transaction shall deliver an investor letter in a form acceptable to Bond Counsel and the Finance Director.

The Leased Property may include some or all of the following assets within the Aurora Municipal Center complex: (a) the Municipal Center; (b) the Municipal Center Parking Garage; (c) the Central Library (d) the Police Headquarters and (e), the Municipal Justice Center and the Detention Center. To allow for the most efficient and economical use of assets in the Financing, the Director of Finance is hereby authorized and directed, prior to the sale of the Series 2019 Certificates, to select for inclusion in the Leased Property all or any appropriate portion of such assets, taking into account the total amount required for Project costs and the advice of the financial advisor. In the event that the Director of Finance determines to include less than all of such assets in the Leased Property, Council shall be notified and requested to make a supplemental finding, by resolution, concerning the maximum reasonable rental value of those assets actually included in the Leased Property. To the extent required by law, including the provisions of §39-1-103, Colorado Revised Statutes, any Leased Property that is real property shall be amortized separately from that portion, if any, of the Leased Property that is personal property.

The aggregate principal amount of Series 2019 Certificates shall not exceed \$80,000,000. The interest component of rental payments to be made by the City shall accrue at a rate not to exceed five percent (5.0%). The term of any Lease hereunder shall not exceed one hundred and eighty-three (183) months. Rental payments may be made annually, semi-annually, or at any other convenient interval as determined by the Director of Finance. Prior to the execution of the Financing Documents or any other instrument contemplated by this Ordinance, the final forms thereof, the real and personal property constituting the Leased Property and the final terms of the Financing, not inconsistent herewith, shall be approved by a certificate (a "Final Terms Certificate") signed by the Director of Finance, the City Manager or any other Authorized Officer of the City.

Section 4. *Findings; Authorizations.* The Council hereby finds and determines, pursuant to the City's home rule powers and the laws of the State of Colorado, that the Improvement Project is necessary, convenient, and in furtherance of the governmental purposes of

the City and in the best interests of the City and its citizens; and the Council hereby authorizes the Project by means of lease-purchase financing.

Section 5. *Agency Relationship.* Pursuant to the Lease, the City shall act as the agent of the Financing Entity solely for the purposes of acquisition and construction of the Improvement Project, solely with proceeds of the Financing.

Section 6. *Approval and Execution of Documents; Authorized Officers.* The Financing Documents in substantially the forms filed in the office of the City Clerk prior to the final adoption of this Ordinance are in all respects approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to affix the seal of the City to, and attest, each Financing Document hereunder intended to be executed by the City, in substantially the form filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by the City Attorney. The Council hereby designates the Director of Finance or her or his designee to act as “Authorized Officers” of the City under each Lease.

Section 7. *Additional Documents.* The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance.

Section 8. *No General Obligation or Other Indebtedness.* The obligation of the City to make rental payments under each Lease is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. Such payments are subject to termination and nonrenewal by the City in accordance with the provisions of the Lease. No provision of this Ordinance or any Lease hereunder shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year.

Section 9. *Expression of Need.* The City hereby declares its current need for the Improvement Project. It is hereby declared to be the present intention and expectation of the Council that each Lease will be renewed annually until all of the Financing Entity’s interest in the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

Section 10. *Reasonable Rentals.* The Council hereby determines and declares that, after execution and delivery of each Lease within the parameters authorized in Section 3 of this Ordinance, the rental payments due thereunder will represent the fair value of the use of the Leased Property and the Purchase Option Price, as defined therein, will represent, as of any date upon which the City may exercise its option to purchase such Leased Property, the fair purchase price of such Leased Property. The Council further hereby determines and declares that, after the

execution and delivery of each Lease, the rental payments due thereunder will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the cost of acquiring the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and use of the Leased Property pursuant to the terms and provisions of each Lease, the City's option to purchase the Leased Property, and the expected eventual vesting of unencumbered title to, or other indicia of ownership of, the Leased Property in the City. The Council hereby determines and declares that, after execution and delivery of each Lease, the maximum duration of the portion of the Lease allocable to any item of the Leased Property separately identified in the payment schedule appended thereto will not exceed the weighted average useful life of such Leased Property and, any item of Leased Property that is real property shall be amortized separately from any other item of Leased Property that is personal property.

Section 11. *Severability.* The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 12. *Repealer.* All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

Section 13. *Publication.* Pursuant to Section 5-5 of the City Charter, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this      day of August, 2019.

PASSED AND ORDERED PUBLISHED BY REFERENCE this      day of September, 2019.

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Bob LeGare, Mayor

ATTEST:

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Stephen Ruger, City Clerk

APPROVED AS TO FORM:

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Hanosky Hernandez, Assistant City Attorney

**LEASE PURCHASE AGREEMENT**

by and between

**AURORA CAPITAL LEASING CORPORATION,**  
as Lessor

and

**THE CITY OF AURORA, COLORADO,**  
as Lessee

Dated as of October 15, 2019

**The interest of Aurora Capital Leasing Corporation (“ACLCLC”) in this Lease Purchase Agreement has been assigned to [TRUSTEE], solely in its capacity as trustee (the “Trustee”) under the Mortgage and Indenture of Trust dated as of the date hereof between ACLC and the Trustee and is subject to the security interest of the Trustee.**

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## **LEASE PURCHASE AGREEMENT**

**THIS LEASE PURCHASE AGREEMENT** dated as of October 15, 2019 (this “Lease”), between **AURORA CAPITAL LEASING CORPORATION**, a Colorado nonprofit corporation duly organized and validly existing under the laws of the State of Colorado, as lessor (“**ACLC**”), and the **CITY OF AURORA, COLORADO** (the “**City**”), a home rule municipality and political subdivision of the State of Colorado (the “**State**”) duly organized and existing under the laws of the State, as lessee;

### **WITNESSETH:**

WHEREAS, **ACLC** (a) is a nonprofit corporation that is duly organized, validly existing and in good standing under the laws of the State of Colorado (the “**State**”), (b) is duly qualified to do business in the State and (c) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease the Leased Property (defined herein) to the City and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, the City is a duly and regularly created, organized and existing political subdivision of the State, existing as such under the Constitution and statutes of the State and the home rule charter (the “**Charter**”) of the City; and

WHEREAS, the City is authorized by Section 31-15-801, Colorado Revised Statutes, as amended, and Section 2-683 of the Code of Ordinances of the City (the “**City Code**”) to enter into long-term rental or leasehold agreements to provide land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, in order to generate moneys to finance the costs of (i) refinancing all or a portion of the outstanding Refunding Certificates of Participation, Series 2009A (the “**Refunding Project**”) and (ii) the construction of certain capital improvement projects on the Aurora Municipal Center campus (the “**Improvement Project**” and together with the Refunding Project, the “**Project**”), the City Council of the City (the “**Council**”) has determined that the City shall enter into that certain Site Lease, dated as of the date of this Lease, pursuant to which the City is to demise a leasehold interest in the land and improvements thereto (existing thereon now or in the future) described in Exhibit A hereto to **ACLC**, and sublease such property back from **ACLC** pursuant to this Lease; and

WHEREAS, in order to finance the costs of the Project, the Certificates (defined herein) will be issued pursuant to the Indenture (defined herein) between **ACLC** and the Trustee, and **ACLC** will assign to the Trustee all of **ACLC**’s right, title and interest in, to and under this Lease and will mortgage and grant a security interest in the Leased Property to the Trustee; and

WHEREAS, the financing of the Project, and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an ordinance finally passed and adopted by the Council;

WHEREAS, the Base Rentals and Additional Rentals (defined herein) payable by the City hereunder shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (defined herein) beyond the Fiscal Year for which such payments have been appropriated; and

WHEREAS, ACLC has determined that the lease of the Leased Property to the City pursuant to this Lease is in the best interests of ACLC; and

WHEREAS, the City has determined that the lease of the Leased Property from ACLC pursuant to this Lease serves a public purpose and is in the best interests of the City and its residents; and

WHEREAS, ACLC desires to lease the Leased Property to the City and the City desires to lease the Leased Property from ACLC pursuant to this Lease; and

WHEREAS, the execution, delivery and performance of this Lease by ACLC has been duly authorized by ACLC and, upon the execution and delivery of this Lease by ACLC and the City, this Lease will be enforceable against ACLC in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America; and

WHEREAS, the execution, delivery and performance of this Lease by the City has been duly authorized by the City and, upon the execution and delivery of this Lease by the City and ACLC, this Lease will be enforceable against the City in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

NOW, THEREFORE, for and in consideration of the mutual covenants and the representations, covenants and warranties herein contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

The following capitalized terms shall have the following meanings in this Lease:

“*ACLC*” means Aurora Capital Leasing Corporation or any successor thereto.

“*ACLC Representative*” means the Finance Director [of the City] or any officer of ACLC; and any other person or persons designated to act on behalf of ACLC under this Lease by a written certificate furnished to the City and the Trustee containing the specimen signature of such person

and signed on behalf of ACLC by any officer of ACLC. The identity of ACLC Representative may be changed by ACLC from time to time by furnishing a new certificate to the City and the Trustee.

“*Additional Rentals*” means the costs and expenses incurred by the City in performing its obligations under this Lease with respect to the Leased Property, this Lease, the Indenture, the Certificates and any matter related thereto; the costs and expenses incurred by the City in paying the reasonable expenses of ACLC and the reasonable fees and expenses of the Trustee pursuant to Section 9.05 hereof; all amounts paid by the City to the Trustee to fund the Rebate Fund pursuant to Section 9.06 hereof; and all other costs and expenses incurred by the City in connection with the foregoing; provided, however, that Additional Rentals do not include the Base Rentals or the Purchase Option Price.

“*Base Rental Payment Date*” means one of the dates in the “Base Rental Payment Date” column in Exhibit B hereto, as from time to time amended or supplemented.

“*Base Rentals*” means the payments by the City pursuant to Section 5.01 hereof, for and in consideration of the right to use the Leased Property during the Lease Term.

“*Board*” means, with respect to ACLC, the Board of Directors of ACLC.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“*City*” means the City of Aurora, Colorado.

“*City Representative*” means any other person or persons designated to act on behalf of the City for the purposes of performing any act under this Lease and the Indenture by a written certificate furnished to ACLC and the Trustee containing the specimen signature of such person and signed on behalf of the City by any officer of the City Council of the City. The identity of the City Representative may be changed by the City from time to time by furnishing a new certificate to ACLC and the Trustee.

“*Certificates*” is defined in the Indenture.

“*Debt Service Fund*” is defined in the Indenture.

“*Event of Default*” means an event described in Section 11.01 hereof.

“*Event of Nonappropriation*” means an event described in Section 5.04(b) hereof.

“*Fiscal Year*” means the City’s fiscal year, which begins on January 1 of each year and ends on December 31 of such year.

“*Force Majeure*” means any event that is not within the control of the City, including without limitation, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority;

insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; or breakages or accidents affecting machinery, transmission pipes or canals.

“*Governmental Corporation*” means any federal, state, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“*Improvement Project*” means the financing of the construction of certain capital improvement projects on the Aurora Municipal Center campus.

“*Indenture*” means the Mortgage and Indenture of Trust dated as of the date hereof between ACLC and the Trustee and any amendment or supplement thereto.

“*Initial Term*” means the period commencing on the date the Certificates are issued and ending on December 31, 2019.

“*Lease*” means this Lease Purchase Agreement and any amendment or supplement hereto.

“*Lease Term*” means the Initial Term and each Renewal Term.

“*Leased Property*” means the Site Leased Property and any improvements thereto, whether existing now or hereafter.

“*Net Proceeds*” means (a) the gross proceeds received from any event referred to in Section 7.06(a) hereof, minus (b) all expenses incurred in the collection of such gross proceeds or award.

“*Outstanding*” is defined in the Indenture.

“*Owner*” is defined in the Indenture.

“*Permitted Encumbrances*” means, the Permitted Encumbrances identified in the Site Lease as well as, as of any particular time, (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to Section 7.02(b) hereof; (b) this Lease and the Indenture; (c) easements, licenses, rights of way, rights and privileges, restrictions and exceptions which the City Representative certifies will not materially adversely affect the value, or interfere with or impair the effective use or operation, of the Leased Property, including easements granted pursuant to Section 7.03 hereof; (d) any financing statements filed to perfect security interests granted pursuant to this Lease or granted by ACLC to the Trustee; any encumbrance represented by financing statements filed to perfect purchase money security interests in any portion of or all of the Leased Property; (f) any applicable zoning requirements; and (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not, in the opinion of ACLC, materially impair title to the Leased Property.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Project*” means, collectively, the Improvement and Refunding Project.

“*Purchase Option Price*” means the amount that the City must pay to purchase the interest of ACLC in the Leased Property pursuant to Section 8.01 hereof.

“*Rebate Fund*” is defined in the Indenture.

“*Refunding Project*” means the refinancing of all or a portion of the outstanding Refunding Certificates of Participation, Series 2009A.

“*Renewal Term*” means the 12-month period, commencing on January 1 of each year and ending on December 31 of such year, in which the City renews the Lease Term.

“*Requirement of Law*” means any federal, state or local statute, ordinance, rule or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any common law doctrine or theory, any provision or condition of any permit or any other binding determination of any Governmental Corporation relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety issues.

[“*S&P*” is defined in the Indenture.]

“*Scheduled Lease Term*” means the period from the commencement of the Initial Term through the date described in Section 4.01(b)(i) hereof.

“*Site Lease*” means the Site Lease dated as of the date hereof between the City, as lessor, and ACLC, as lessee, and any amendment or supplement thereto.

“*Site Leased Property*” means the real property described in Exhibit A to the Site Lease.

“*State*” means the State of Colorado.

“*Trustee*” means [TRUSTEE], or any successor thereto, solely in its capacity as trustee under the Indenture.

“*Trustee Representative*” means the officer of the Trustee who executes the Indenture on behalf of the Trustee; any other person or persons designated to act on behalf of the Trustee under the Indenture or this Lease by a written certificate furnished to the City and ACLC by any officer of the Trustee. The identity of the Trustee Representative may be changed by the Trustee from time to time by furnishing a new certificate to the City and ACLC.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties by ACLC.** ACLC represents, covenants and warrants that:

(a) ACLC (i) is a nonprofit corporation that is organized, validly existing and in good standing under the laws of the State, (ii) is duly qualified to do business in the State and (iii) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease its interest in the Leased Property to the City and to execute, deliver and perform its obligations hereunder.

(b) The lease of ACLC's interest in the Leased Property to the City pursuant to this Lease is in the best interests of ACLC.

(c) The execution, delivery and performance of this Lease by ACLC has been duly authorized by ACLC.

(d) This Lease is enforceable against ACLC in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Lease by ACLC do not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which ACLC is now a party or by which ACLC is bound, or constitute a default under any of the foregoing, in a manner which affects the validity or enforceability of the provisions of this Lease or the Indenture.

(f) There is no litigation or proceeding pending or, to the best knowledge of ACLC, threatened against ACLC or any other Person affecting the right of ACLC to execute, deliver or perform its obligations under this Lease.

(g) ACLC acknowledges and recognizes that this Lease will expire upon the occurrence of an Event of Nonappropriation, and that a decision to decline to appropriate funds in a manner that results in an Event of Nonappropriation is solely within the discretion of the City Council of the City.

**Section 2.02. Representations, Covenants and Warranties by City.** The City represents, covenants and warrants that:

(a) The City is a political subdivision of the State, duly organized and existing under the laws of the State and the Charter. The City is authorized to enter into the transactions contemplated by this Lease and the Site Lease and to carry out its obligations under this Lease and the Site Lease.

(b) The lease of ACLC's interest in the Leased Property from ACLC pursuant to this Lease serves a public purpose and is in the best interests of the City, its residents and taxpayers.

(c) The execution, delivery and performance of this Lease by the City have been duly authorized by the City.

(d) This Lease is enforceable against the City in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Lease by the City do not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitute a default under any of the foregoing, in a manner which affects the validity or enforceability of the provisions of this Lease or the Indenture.

(f) There is no litigation or proceeding pending or, to the best knowledge of the City, threatened against the City or any other Person affecting the right of the City to execute, deliver or perform its obligations under this Lease.

(g) The City will recognize economic and other benefits by leasing the Leased Property pursuant to this Lease; the Leased Property is, and any Leased Property substituted for the initial Leased Property will be, property that is necessary and essential to the City's purpose and operations; the City expects that the Leased Property will adequately serve the needs for which it is being leased throughout the Scheduled Lease Term.

(h) The City has not to date caused the occurrence of an event of non-appropriation with respect to any lease obligation of the City and presently intends and expects that this Lease will be continued annually throughout the Scheduled Lease Term; provided, however, that this subsection is not intended to, and does not, limit the right of the City, in its absolute discretion, to allow this Lease to expire through an Event of Nonappropriation.

(i) The Base Rentals payable in each Fiscal Year during the Scheduled Lease Term are not more than the fair value of the use of the Leased Property during such Fiscal Year. The Base Rentals and Additional Rentals payable in each Fiscal Year during the Scheduled Lease Term do not exceed a reasonable amount so as to place the City under an economic compulsion (i) to continue this Lease beyond any Fiscal Year, (ii) not to exercise its right to allow this Lease to expire at any time through an Event of Nonappropriation or (iii) to exercise any of its options to purchase ACLC's interest in the Leased Property hereunder. The Purchase Option Price is the City's best estimate of the fair purchase price of the Leased Property at the time of exercise of the City's option to purchase ACLC's interest in the Leased Property by paying the Purchase Option Price. The Scheduled Lease Term and the final maturity of the Certificates do not exceed the weighted average useful

life of any real property improvements currently located on the Site Leased Property. In making the representations, covenants and warranties set forth above in this subsection, the City has given due consideration to the purposes for which the Leased Property will be used by the City, the benefits to the City from the use of the Leased Property, the City's options to purchase ACLC's interest in the Leased Property hereunder and the terms of this Lease governing the use of, and the City's options to purchase ACLC's interest in, the Leased Property.

### ARTICLE III

#### **DEMISING CLAUSE; ENJOYMENT OF LEASED PROPERTY**

**Section 3.01. Demising Clause.** ACLC demises and leases its interest in the Leased Property to the City in accordance with the terms of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

**Section 3.02. Enjoyment of Leased Property.** ACLC covenants that, during the Lease Term and so long as no Event of Default shall have occurred and be continuing, the City shall peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from ACLC, except as expressly required or permitted by this Lease.

### ARTICLE IV

#### **LEASE TERM**

##### **Section 4.01. Lease Term.**

(a) The term of this Lease shall be comprised of the Initial Term, with successive one-year Renewal Terms.

(b) This Lease shall expire upon the earliest of any of the following events:

(i) the last day of the month in which the final Base Rental payment is scheduled to be paid in accordance with Exhibit B hereto;

(ii) December 31 of any Fiscal Year during which an Event of Nonappropriation has occurred; or

(iii) the purchase of ACLC's interest in the Leased Property by the City pursuant to Section 8.01 hereof.

(c) This Lease shall terminate following an Event of Default in accordance with Section 11.02(a) hereof.

**Section 4.02. Effect of Expiration or Termination of Lease Term.** Upon the expiration or termination of the Lease Term:



(a) all unaccrued obligations of the City hereunder shall expire or terminate, but all obligations of the City that have accrued hereunder prior to such expiration or termination shall continue until they are discharged in full; and

(b) if the expiration or termination occurs because of the occurrence of an Event of Nonappropriation or an Event of Default, the City's right to possession of the Leased Property hereunder shall cease and (i) the City shall immediately vacate the Leased Property; and (ii) if and to the extent the City Council of the City has appropriated funds for payment of Base Rentals and Additional Rentals payable during, or with respect to the City's use of the Leased Property during, the period between expiration or termination of the Lease Term and the date the Leased Property is vacated pursuant to clause (i), the City shall pay such Base Rentals and Additional Rentals to ACLC or, in the case of Additional Rentals, the other Person entitled thereto.

## ARTICLE V

### **BASE RENTALS AND ADDITIONAL RENTALS; EVENT OF NONAPPROPRIATION**

#### **Section 5.01. Payment of Base Rentals.**

(a) The City shall, subject only to the other sections of this Article, pay Base Rentals directly to the Trustee during the Lease Term in immediately available funds in the amounts and on the Base Rental Payment Dates set forth in Exhibit B hereto, as it may be modified from time to time; provided, however, that there shall be credited against the amount of Base Rentals payable on any Base Rental Payment Date the amount on deposit in the Debt Service Fund representing (i) accrued interest from the sale of Certificates, (ii) earnings from the investment of moneys in the Debt Service Fund, and (iii) any moneys delivered to the Trustee by ACLC, the City or any other Person that are accompanied by instructions to apply the same to the payment of Base Rentals or to deposit the same in the Debt Service Fund. Thirty days prior to each Base Rental Payment Date, the Trustee shall notify the City as to the exact amounts that will be credited against the Base Rentals due on such date. If further amounts that are to be credited against Base Rentals accrue during such 30-day period, such amounts shall be carried over to be applied as a reduction of the Base Rentals payable on the next succeeding Base Rental Payment Date.

(b) A portion of each payment of Base Rentals is paid as, and represents payment of, interest, and Exhibit B hereto, as it may be amended and supplemented from time to time, sets forth the interest component of each payment of Base Rentals.

**Section 5.02. Payment of Additional Rentals.** The City shall, subject only to Sections 7.02(b) and 8.02(b) hereof and the other sections of this Article, pay Additional Rentals directly to the Persons to which they are owed (which, in the case of payments required to be made to fund the Rebate Fund pursuant to the Indenture, is the Trustee) in immediately available funds in the amounts and on the dates on which they are due.

**Section 5.03. Unconditional Obligations.** The obligation of the City to pay Base Rentals during the Lease Term shall, subject only to the other sections of this Article, and the obligation

of the City to pay Additional Rentals during the Lease Term shall, subject to Sections 7.02(b) and 8.02(b) hereof and the other sections of this Article, be absolute and unconditional and shall not be abated for any reason related to the Leased Property. Notwithstanding any dispute between the City and ACLC or between the City or ACLC and any other Person relating to the Leased Property, the City shall, during the Lease Term, subject to Sections 7.02(b) and 8.02(b) hereof and the other sections of this Article, make all payments of Base Rentals and Additional Rentals when due; the City shall not withhold any Base Rentals or Additional Rentals payable during the Lease Term pending final resolution of such dispute and shall not assert any right of set off or counter claim against its obligation to pay Base Rentals or Additional Rentals; provided, however, that the making of any Base Rental or Additional Rental payment shall not constitute a waiver by the City of any rights, claims or defenses which the City may assert; and no action or inaction on the part of ACLC shall affect the City's obligation to pay Base Rentals or Additional Rentals during the Lease Term.

**Section 5.04. Event of Nonappropriation.**

(a) The officer of the City who is responsible for formulating budget proposals with respect to payments of Base Rentals and Additional Rentals is hereby directed (i) to estimate the Additional Rentals payable in the next ensuing Fiscal Year prior to the submission of each annual budget proposal to the City Council of the City during the Lease Term and (ii) to include in each annual budget proposal submitted to the City Council of the City during the Lease Term the entire amount of Base Rentals scheduled to be paid and the Additional Rentals estimated to be payable during the next ensuing Fiscal Year; it being the intention of the City that any decision to continue or to terminate this Lease shall be made solely by the City Council of the City, in its sole discretion, and not by any other department, agency or official of the City.

(b) An Event of Nonappropriation shall be deemed to have occurred:

(i) on December 31 of any Fiscal Year if the City has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals scheduled to be paid and all Additional Rentals estimated to be payable in the next ensuing Fiscal Year; or

(ii) if:

(A) an event described in Section 7.06(a) hereof has occurred;

(B) the Net Proceeds received as a consequence of such event are not sufficient to repair, restore, modify, improve or replace the Leased Property in accordance with Section 7.06 hereof; and

(C) the City has not appropriated amounts sufficient to proceed under clause (i) of Section 7.06I hereof by December 31 of the Fiscal Year in which such event occurred or by December 31 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Leased Property becomes apparent, on December 31 of the Fiscal Year in which such event occurred or on December 31 of any

subsequent Fiscal Year in which such insufficiency became apparent, as applicable.

(c) Notwithstanding clause (b) of this Section, ACLC may, with the notice to and consent of the Trustee, waive any such failure to appropriate under clause (b) of this Section which is cured by the City within a reasonable period of time.

(d) In the event that the City shall determine to exercise its annual right to elect not to extend this Lease effective on December 31 of any Fiscal Year, the City shall give written notice to such effect to ACLC and the Trustee not later than October 15 of such Fiscal Year; provided, however, that a failure to give such notice shall not (i) constitute an Event of Default, (ii) prevent the City from electing not to extend this Lease, or (iii) result in any liability on the part of the City.

(e) The City shall furnish ACLC and the Trustee with copies of all appropriation measures relating to Base Rentals, Additional Rentals or the Purchase Option Price promptly upon the adoption thereof by the City Council of the City.

#### **Section 5.05. Limitations on Obligations of City.**

(a) Payments of Base Rentals and Additional Rentals by the City shall constitute currently appropriated expenditures of the City and may be paid from any legally available funds.

(b) The City's obligations under the Lease shall be subject to the City's annual right, in its absolute discretion, to elect not to extend this Lease upon the occurrence of an Event of Nonappropriation.

(c) No provision of the Certificates, the Indenture or this Lease shall be construed or interpreted (i) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article X, Section 5 or Article IX, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (iii) as a delegation of governmental powers by the City.

(d) The City shall be under no obligation whatsoever to exercise its option to purchase all or any portion of ACLC's interest in the Leased Property.

(e) No provision of this Lease shall be construed to pledge or to create a lien on any class or source of moneys of the City, nor shall any provision of this Lease restrict the future issuance of any obligations of the City, payable from any class or source of moneys of the City (provided, however, that the restrictions set forth in the Indenture shall apply to the issuance of Additional Certificates).

## ARTICLE VI

### OPERATION AND MAINTENANCE OF LEASED PROPERTY

#### Section 6.01. Taxes, Utilities and Insurance.

(a) The City shall pay, as Additional Rentals, all of the following expenses with respect to the Leased Property:

(i) all taxes, assessments and other charges lawfully made by any governmental body; provided that any such taxes, assessments or other charges that may lawfully be paid in installments may be paid in installments as such installments are due;

(ii) all gas, water, steam, electricity, heat, power and other utility charges incurred in connection with the Leased Property;

(iii) casualty and property damage insurance with respect to the Leased Property in an amount equal to the greater of: (A) the principal amount of all Certificates Outstanding, or (B) the full replacement value of all improvements; and

(iv) public liability insurance with respect to the activities to be undertaken by the City in connection with the Leased Property and this Lease: (A) to the extent such activities result in injuries for which immunity is not available under Section 24-10-114, C.R.S. or any successor statute, in an amount not less than the amounts for which the City may be liable to third parties thereunder and (B) for all other activities, in an amount not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may from time to time be amended, to a \$1,000,000 annual aggregate, for claims to which the defense of sovereign immunity applies.

(b) The City shall not allow any liens for taxes, assessments, other governmental charges or utility charges to exist with respect to any portion of the Leased Property. If the City shall first notify ACLC and the Trustee of the intention of the City to do so and provide the Trustee and ACLC with an opinion of Independent Counsel, to the effect that by nonpayment of any such item the interest of the Trustee in the Leased Property will not be materially interfered with or endangered or the Leased Property or any portion thereof will not be subject to loss or forfeiture, the City may, however, in good faith contest any such tax, assessment, other governmental charge or utility charge and, in the event of any such contest, may permit the tax, assessment, other governmental charge or utility charge so contested to remain unpaid during the period of such contest and any appeal therefrom. If the City cannot provide the Trustee with such opinion of Independent Counsel such tax, assessment, other governmental charge or utility charge shall be paid forthwith; provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, other governmental charge or utility charge. At the request and expense of the City, ACLC and the Trustee will cooperate fully with the City in any such contest.

(c) The insurance policies provided pursuant to paragraph (a) of this Section may be provided by one or more private or public insurance companies or organizations, or may be provided through a self-insurance program, subject to the following conditions:

(i) if the insurance is provided by a private or public insurance company or organization:

(A) the insurance policy (1) shall have a deductible clause in an amount not in excess of the amounts reasonably expected to be available to the City to pay such deductible in the event of an insured event, (2) shall name the City, ACLC, and the Trustee as insureds, (3) shall be so written or endorsed as to make losses, if any, payable to the City, ACLC and the Trustee, as their respective interests may appear, and (4) shall explicitly waive any co-insurance penalty;

(B) a copy of each such insurance policy, or of each certificate evidencing such policy, shall be delivered to the City, ACLC and, to the Trustee prior to the issuance of the Certificates, a certificate stating compliance with such insurance requirements shall be provided to the Trustee annually, beginning on or before [October \_\_], 20[20], and copies of new insurance policies shall be provided to the Trustee;

(C) full payment of insurance proceeds under any casualty or property damage insurance policy up to the dollar limit required by paragraph (a)(iii) of this Section in connection with damage to the Leased Property shall, under no circumstance, be contingent on the degree of damage sustained at other property owned or leased by the City or ACLC;

(D) each such insurance policy shall be provided by a commercial insurer rated "A" by A.M. Best or in one of two highest rating categories of S&P; and

(E) the City may insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other properties as well, as long as such blanket insurance policies comply with the requirements hereof; and

(ii) if the insurance is provided through a self-insurance program maintained by the City,

(A) an independent insurance consultant acceptable to ACLC shall initially and annually certify to ACLC and the Trustee that (1) the reserves supporting such self-insurance program are held by an independent custodian and are adequate for the purposes of such program and (2) such self-insurance program is maintained on an actuarially sound basis;

(B) in the event the self-insurance program is discontinued, the actuarial soundness of the program shall be maintained; and

(C) losses, if any, shall be payable in accordance with the provisions of this section.

(d) The City shall cause an insurance consultant, which may be the person providing the insurance, to annually review the coverage of the policies of insurance maintained pursuant to this Section and to make recommendations thereon, and shall comply with such recommendations.

(e) The Trustee has no duty or obligation to determine the sufficiency of any such insurance or to monitor the City's compliance with any recommendations of any insurance consultants.

**Section 6.02. Maintenance and Operation of Leased Property.** The City shall maintain, preserve and keep the Leased Property, or cause the Leased Property to be maintained, preserved and kept in good repair, working order and condition, subject to normal wear and tear, shall operate the Leased Property, or cause the Leased Property to be operated, in an efficient manner and at a reasonable cost, and shall make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 8.05 and 8.07 hereof.

## ARTICLE VII

### **OWNERSHIP, ENCUMBRANCES, MODIFICATIONS OR ADDITIONS TO LEASED PROPERTY; DAMAGE OR CONDEMNATION OF LEASED PROPERTY**

**Section 7.01. Rights in the Leased Property.** ACLC's interest in the Leased Property shall be held in the name of ACLC, subject to this Lease, until ACLC's interest in the Leased Property is conveyed or otherwise disposed of as provided herein, and the City shall have no right, title or interest in the Leased Property except as expressly set forth herein. The City shall cooperate fully with ACLC, and take whatever action may be necessary to enable ACLC to file, register or record, and re-file, re-register or re-record, this Lease or a financing statement or other security documents in such offices as ACLC may determine and wherever required or permitted by law for the proper protection of ACLC's interest in the Leased Property.

#### **Section 7.02. Limitations on Disposition of and Encumbrances on Leased Property.**

(a) Except as otherwise permitted in this Article or Article VIII hereof and except for Permitted Encumbrances, (i) none of ACLC, the City or the Trustee, shall sell, assign, transfer or convey any portion of or any interest in the Leased Property or directly or indirectly create, incur or assume any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property; and (ii) the City shall promptly take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim.

(b) Notwithstanding paragraph (a) of this Section, if the City shall first notify ACLC and the Trustee of the intention of the City to do so and provide the Trustee and ACLC with an opinion of Independent Counsel to the effect that by failing to discharge or satisfy such item the interest of ACLC or the Trustee in the Leased Property will not be materially interfered with or endangered, or the Leased Property or any part thereof will

not be subject to loss or forfeiture, the City may in good faith contest any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, and in the event of any such contest, may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. If the City does not provide such opinion of Independent Counsel such item shall be satisfied and discharged forthwith; provided, however, that such satisfaction and discharge shall not constitute a waiver by the City of the right to continue to contest such item. At the request and expense of the City, ACLC and the Trustee will cooperate fully with the City in any such contest.

(c) Notwithstanding paragraph (a) of this Section, ACLC shall be permitted to enter into agreements with the State of Colorado, or any agency or department thereof, whereby ACLC is entitled to receive grant moneys relating to the historical preservation of the Leased Property and whereby restrictions may be placed upon the maintenance and use of the Leased Property.

**Section 7.03. Granting of Easements.** As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, ACLC and the Trustee shall, at the request of the City:

(a) consent to the grant of easements, licenses, rights of way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to the real property included in the Leased Property, free from this Lease and any security interest or other encumbrance created hereunder or under the Indenture;

(b) release existing easements, licenses, rights of way and other rights and privileges with respect to the Leased Property, free from this Lease and the Indenture and any security interest or other encumbrance created hereunder or thereunder, with or without consideration; and

(c) execute and deliver any instrument necessary or appropriate to confirm and grant or release any easement, license, right of way or other grant or privilege under clause (a) or (b) of this Section, upon receipt of: (i) a copy of the instrument of grant or release; and (ii) a written application signed by the City Representative requesting such instrument and stating that such grant or release will not materially adversely affect the value, or interfere with the effective use or operation, of the Leased Property.

**Section 7.04. Subleasing by City.** All or any part of the Leased Property may, subject to Section 7.02 hereof, be subleased by the City upon satisfaction of the following conditions:

(a) this Lease, and the obligations of the City hereunder, shall remain obligations of the City, and the City shall maintain its direct relationships with ACLC, notwithstanding any sublease;

(b) ACLC consents to such sublease, which consent shall not be unreasonably withheld;

(c) no sublease shall extend beyond the Lease Term; and

(d) the City provides ACLC and the Trustee with an opinion of Independent Counsel to the effect that sublease does not result in a violation of the covenants provided in Section 9.04 hereof or the Tax Compliance Certificate.

**Section 7.05. Modification of Leased Property.** The City, at its own expense, may remodel, or make substitutions, additions, modifications or improvements to the Leased Property, provided that (a) such remodeling, substitutions, additions, modifications and additions (i) shall not in any way damage the Leased Property as it existed prior thereto and (ii) shall become part of the Leased Property; (b) the value of the Leased Property after such remodeling, substitutions, additions, modifications and additions shall be at least as great as the value of the Leased Property prior thereto; and (c) the Leased Property, after such remodeling, substitutions, additions, modifications and additions, shall continue to be used as provided in and shall otherwise be subject to the terms of this Lease.

**Section 7.06. Damage to, Condemnation of, Material Defect in or Loss of Title to Leased Property.**

(a) If (i) the Leased Property (or any portion thereof) is destroyed or damaged by fire or other casualty, (ii) title to, or the temporary or permanent use of, the Leased Property (or any portion thereof) or the estate of the City, ACLC or the Trustee in the Leased Property (or any portion thereof), is taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, (iii) any material defect in title with respect to the Leased Property (or any portion thereof) becomes apparent or (iv) title to or the use of the Leased Property (or any portion thereof) is lost by reason of a defect in the title thereto, then, the Net Proceeds of any insurance, performance bond or condemnation award or the Net Proceeds received as a consequence of any default or breach of warranty under any contract relating to the Leased Property shall be deposited into a special trust fund held by the Trustee.

(b) If the costs of the repair, restoration, modification, improvement or replacement of the Leased Property following an event described in paragraph (a) of this Section are equal to or less than the Net Proceeds available, such Net Proceeds shall be used promptly to repair, restore, modify, improve or replace the Leased Property (or portion thereof) and any excess shall be delivered to the City.

(c) If the costs of the repair, restoration, modification, improvement or replacement of the Leased Property following an event described in paragraph (a) of this Section are more than the amount of Net Proceeds available, then:

(i) the City may elect either:

(A) to use the Net Proceeds promptly to repair, restore, modify or improve the Leased Property (or portion thereof), and pay (subject to Article V hereof) as Additional Rentals the costs thereof in excess of the amount of the Net Proceeds or replace the Leased Property with property of a value equal to or in excess of the value of the Leased Property; or



(B) to pay (subject to Article V hereof) the Purchase Option Price, in which case the Net Proceeds shall be delivered to the City.

(ii) if, by December 31 of the Fiscal Year in the event described in paragraph (a) of this Section occurred (or December 31 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Leased Property becomes apparent), the City has not appropriated amounts sufficient to proceed under either clause (i) of this paragraph, an Event of Nonappropriation shall be deemed to have occurred; or

(iii) any election made by the City under clause (i)(A) of this subsection shall be supported by a certificate of an independent architect.

(d) The City shall not voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to default or breach of warranty under any contract relating to the Leased Property without the written consent of ACLC and the Trustee.

(e) No event described in subsection (a) of this paragraph shall affect the obligation of the City to pay Base Rentals or Additional Rentals hereunder, regardless of whether the Leased Property is repaired, modified, improved or replaced in full or in part, subject, however, to Article V hereof.

**Section 7.07. Condemnation by the City.** The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to all or any portion of the Leased Property, the appraised value of the condemned portion of the Leased Property shall be not less than the greater of (a) if the Certificates are then subject to redemption under the Indenture, the redemption price of the Certificates that are attributable to the condemned property minus a proportionate share of the cash, if any, then on deposit in the reserve fund, if any, established with respect to the Certificates or (b) if the Certificates are not then subject to redemption, the amount necessary to defease the Certificates attributable to the condemned property to the first date on which the Certificates are subject to redemption under the Indenture minus a proportionate share of the cash, if any, then on deposit in the reserve fund, if any, established with respect to the Certificates.

**Section 7.08. Personal Property of City.** The City, at its own expense, may install equipment and other personal property in or on the Leased Property, which equipment or other personal property shall not become part of the Leased Property unless it is permanently affixed to the Leased Property or removal of it would materially damage the Leased Property, in which case it will become part of the Leased Property.

## ARTICLE VIII

### **CITY'S PURCHASE OPTION; RELEASE OF LEASED PROPERTY**

**Section 8.01. City's Purchase Option.** The City is hereby granted the option to purchase ACLC and the Trustee's respective interests in the Leased Property by paying to the Trustee the

Purchase Option Price. The Purchase Option Price shall be an amount which, together with other amounts then on deposit in the Debt Service Fund that are available for such purpose, is sufficient (a) to pay all the Outstanding Certificates at maturity, to redeem all the Outstanding Certificates in accordance with the redemption provisions of the Indenture or to defease all the Outstanding Certificates in accordance with the defeasance provisions of the Indenture and (b) to pay all Additional Rentals payable through the date of conveyance of the Leased Property to the City or its designee pursuant to this Article, including, but not limited to, all fees and expenses of the Trustee relating to the conveyance of the Leased Property and the payment, redemption or defeasance of the Certificates.

### **Section 8.02. Conveyance or Release of the Leased Property.**

(a) ***Scheduled Release of Leased Property.*** When the principal component of Base Rentals paid by the City in accordance with the schedule set forth in Exhibit B hereto equals the amount set forth in Exhibit C hereto, if any, and all Additional Rentals then due and owing from the City shall have been paid by the City, the cost of the corresponding portion of the Leased Property set forth in Exhibit C (or of any property substituted for such portion of the Leased Property pursuant to any provision of this Lease), if any, shall be deemed to have been fully amortized and ACLC shall release its interest in such portion of the Leased Property (or any property substituted for the portion of the Leased Property pursuant to any provision of this Lease) from this Lease and the Site Lease.

(b) ***Conveyance or Release of the Leased Property in Whole.*** ACLC shall transfer and convey or release its interest in the Leased Property to the City in the manner provided for in Section 8.03 of this Lease; provided, however, that prior to such transfer and conveyance no Event of Default shall have occurred and be continuing, and the City shall have paid all Base Rentals set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case ACLC shall transfer and convey ACLC's interest in the Leased Property to the City.

The City is hereby granted the option to terminate this Lease and to purchase the interest of ACLC in the Leased Property upon payment by the City in compliance with paragraph (a) or (b) of this Section 8.02, of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the City has fulfilled all payment obligations with respect hereto and is not then in default hereunder. There shall be deemed to be such payment in full if the City shall deposit in escrow or in trust with ACLC or with ACLC's designee in advance of any Base Rental Payment Date on or after that date that is at least 12 months after the date of commencement of this Lease, in the manner contemplated by Section 11-56-109, Colorado Revised Statutes, funds or securities sufficient to pay all Base Rentals to and including such date, and to pay the Purchase Option Price on such date.

### **Section 8.03. Manner of Release.**

(a) Upon a release of a portion of ACLC's interest in the Leased Property (or of any property substituted for such portion of the Leased Property pursuant to any provision of this Lease) pursuant to Section 8.02(a), ACLC shall execute and deliver to the

City a Partial Release of the Leased Property conveying ACLC's interest in such portion of the Leased Property to the City and releasing ACLC's leasehold interest in such portion of the Leased Property, as it then exists, to the City subject to the following: (a) Permitted Encumbrances; (b) all liens, encumbrances and restrictions created or suffered to exist by ACLC as required or permitted by this Lease; and (c) any lien or encumbrance created by action of the City. After such release and conveyance, the portion of the Leased Property so released and conveyed shall no longer be a part of the Leased Property for any purpose of this Lease. ACLC shall fully cooperate with the City in executing, delivering and recording such documents as may be necessary to effectuation the provisions of this Section; provided that the City shall pay all reasonable costs, fees and expenses of ACLC in connection herewith.

(b) At the closing of any purchase or other conveyance of ACLC's interest in all of the Leased Property pursuant to Section 8.02(b) of this Lease, ACLC shall execute and deliver to the City a Release of Site Lease and Lease, conveying ACLC's interest in all the Leased Property to the City and releasing ACLC's leasehold interest in all of the Leased Property, as it then exists, to the City subject to the following: (a) Permitted Encumbrances; (b) all liens, encumbrances and restrictions created or suffered to exist by ACLC as required or permitted by this Lease; and (c) any lien or encumbrance created by action of the City. ACLC shall fully cooperate with the City in executing, delivering and recording such documents as may be necessary to effectuate the provisions of this Section; provided that the City shall pay all reasonable costs, fees and expenses of ACLC in connection herewith.

## ARTICLE IX

### GENERAL COVENANTS

**Section 9.01. Further Assurances and Corrective Instruments.** So long as this Lease is in full force and effect and no Event of Nonappropriation or Event of Default shall have occurred, ACLC, the City and the Trustee shall have full power to carry out the acts and agreements provided herein and ACLC, the City and the Trustee shall from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property leased or intended to be leased hereunder, or for otherwise carrying out the intention of or facilitating the performance of this Lease.

**Section 9.02. Compliance with Requirements of Law.** ACLC, the City and the Trustee shall comply with all applicable Requirements of Law in performing their respective obligations with respect to the Leased Property hereunder. Without limiting the generality of the preceding sentence, the City, in particular, shall use the Leased Property in a manner such that (a) the Leased Property at all times is operated in compliance with all Requirements of Law; and (b) all permits required by Requirements of Law in respect of the City's use of the Leased Property are obtained, maintained in full force and effect and complied with.

### **Section 9.03. Participation in Legal Actions.**

(a) At the request of and at the cost of the City, ACLC and the Trustee shall join and cooperate fully in any legal action in which the City asserts its right to the enjoyment of the Leased Property; that involves the imposition of any charges, costs or other obligations or liabilities on or with respect to the Leased Property or the City's enjoyment of the Leased Property for which the City is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the City's execution, delivery and performance of its obligations hereunder.

(b) At the request of ACLC or the Trustee, the City shall, at the cost of the City, join and cooperate fully in any legal action in which ACLC or the Trustee asserts its ownership of or interest in the Leased Property; that involves the imposition of any charges, costs or other obligations on or with respect to the Leased Property for which ACLC or the Trustee is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the execution and delivery of this Lease by ACLC or the performance of its obligations hereunder.

**Section 9.04. Tax Covenant of City.** The City shall not take any action or omit to take any action with respect to the Certificates, the proceeds of the Certificates, the Project, the Leased Property or any other funds or property of the City and it will not permit any other Person to take any action or omit to take any action with respect to the Trust Estate or the Leased Property or the use thereof if such action or omission would cause interest on any of the Certificates to be included in gross income for federal income tax purposes or to be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining "adjusted net-book earnings" for the purpose of computing the alternative minimum tax imposed on such corporations). In furtherance of this covenant, the City agrees to comply with the procedures set forth in the Tax Compliance Certificate delivered in connection with the issuance of the Certificates and the provisions of any similar certificate or instrument delivered in connection with the issuance of any Additional Certificates. The covenants set forth in this Section shall remain in full force and effect notwithstanding the payment in full or defeasance of the Certificates until the date on which all obligations in fulfilling such covenants have been met. The covenants set forth in this Section shall not, however, apply to any Additional Certificates if, at the time of issuance, the City intends the interest on such Additional Certificates to be subject to federal income tax.

**Section 9.05. Payment of Expenses of ACLC and the Trustee.** The City shall pay the reasonable expenses of ACLC and reasonable fees and expenses of the Trustee (as set forth in Section 3.08 of the Indenture) in connection with the Leased Property, this Lease, the Site Lease, the Indenture, the Certificates or any matter related thereto, including, but not limited to, costs of defending any claim or action brought against ACLC or Trustee or their directors or officers relating to the foregoing, excepting, however, any liability for any action constituting willful or wanton misconduct.

**Section 9.06. Payments to Rebate Fund.** The City shall pay to the Trustee all amounts required to be deposited into the Rebate Fund as and when required by the Indenture.

**Section 9.07. Construction of the Project.** The City agrees to construct the Project, subject to the provisions of Section 3.05 of the Indenture.

## ARTICLE X

### LIMITS ON OBLIGATIONS OF ACLC

**Section 10.01. Disclaimer of Warranties.** ACLC MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. In no event shall ACLC be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by the City of any item, product or service provided for herein.

**Section 10.02. Financial Obligations of ACLC Limited to Available Funds.** Notwithstanding any other provision hereof, all financial obligations of ACLC under this Lease and the Indenture are limited to the funds available to ACLC from payments from the City pursuant hereto.

## ARTICLE XI

### EVENTS OF DEFAULT AND REMEDIES

**Section 11.01. Events of Default Defined.**

(a) Any of the following shall constitute an “Event of Default” under this Lease:

(i) failure by the City to pay any specifically appropriated Base Rentals to the Trustee on or before the applicable Base Rental Payment Date; provided, however, that a failure by the City to pay Base Rentals on the applicable Base Rental Payment Date shall not constitute an Event of Default if such payment is received by the Trustee within five days following such Base Rental Payment Date;

(ii) failure by the City to pay any Additional Rental for which funds have been specifically appropriated when due, or if such Additional Rental is payable to a Person other than ACLC or the Trustee, when nonpayment thereof has, or may have, a material adverse effect upon the Leased Property or the interest of ACLC or the Trustee in the Leased Property;

(iii) failure by the City to vacate the Leased Property immediately following an Event of Nonappropriation in accordance with Section 4.02(b) hereof; or

(iv) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in

clause (i), (ii) or (iii) above, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied shall be given to the City by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Trustee shall not withhold its consent to an extension of such time if corrective action shall be instituted by the City within the applicable period and diligently pursued until the default is corrected.

(b) The provisions of paragraph (a) of this Section are subject to the following limitations:

(i) the City shall be obligated to pay Base Rentals and Additional Rentals only during the Lease Term, except as otherwise expressly provided in Section 4.02(b)(ii) hereof; and

(ii) if, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than its obligation to pay Base Rentals or Additional Rentals hereunder, the City shall not be deemed in default during the continuance of such inability; provided, however, that the City shall, as promptly as legally and reasonably possible, remedy the cause or causes preventing the City from carrying out such agreement, except that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

**Section 11.02. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee, acting for ACLC, may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) terminate the current Lease Term and give notice to the City to immediately vacate the Leased Property;

(b) sell or lease its interest in all or any portion of the Leased Property;

(c) recover from the City:

(i) the portion of Base Rentals and Additional Rentals payable pursuant to Section 4.02(b)(ii) hereof; and

(ii) the portion of Base Rentals and Additional Rentals for the then current Fiscal Year that has been specifically appropriated by the City Council of the City, regardless of when the City vacates the Leased Property; and

(d) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease, subject, however, to the limitations on the obligations of the City set forth in Sections 6.05 and 12.03 hereof and the limitations on the obligations of ACLC set forth in Article X hereof.

**Section 11.03. Limitations on Remedies.** A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in Section 11.02(d) hereof. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation, or a failure to vacate the Leased Property following an Event of Nonappropriation, only to the extent provided in Section 11.02I(i) hereof.

**Section 11.04. No Remedy Exclusive.** Subject to Section 11.03 hereof, no remedy herein conferred upon or reserved to ACLC is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle ACLC to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**Section 11.05. Waivers.**

(a) ACLC may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(b) In the event the Trustee waives any Event of Default described in Section 11.01(a)(i) hereof, any subsequent payment by the City of Base Rentals then due and owing shall be paid to the Trustee to be applied in accordance with the terms of the Indenture.

ARTICLE XII

MISCELLANEOUS

**Section 12.01. Assignment by ACLC.** ACLC shall not assign this Lease or any rights herein, including but not limited to its rights to receive and enforce payments hereunder, to any Person other than the Trustee.

**Section 12.02. Assignment by City.** This Lease may not be assigned by the City for any reason without the prior written consent of ACLC and the Trustee.

**Section 12.03. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon ACLC and the City and their respective successors and assigns, subject, however, to the limitations set forth in Sections 13.01 and 13.02 hereof. The Trustee shall be a third-party beneficiary of this Lease to the extent rights are granted to it herein and, by accepting the assignment of ACLC's interest herein pursuant to the Indenture, shall be bound by the terms hereof.

**Section 12.04. ACLC, City and Trustee Representatives.** Whenever under the provisions hereof the approval of ACLC, the City or the Trustee is required, or the City, ACLC or the Trustee is required to take some action at the request of the other, unless otherwise provided,

such approval or such request shall be given for ACLC by ACLC Representative, for the City by the City Representative and for the Trustee by the Trustee Representative, and ACLC, the City and the Trustee shall be authorized to act on any such approval or request.

**Section 12.05. Notices.** All notices, assignments or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the following addresses, provided that either party may provide a new address by notice to the other:

If to City:	City of Aurora, Colorado 15151 East Alameda Parkway Aurora, Colorado 80012
If to ACLC:	Aurora Capital Leasing Corporation 15151 East Alameda Parkway Aurora, Colorado 80012
If to the Trustee:	[TRUSTEE] [UPDATE] [UPDATE] Attention: _____

**Section 12.06. No Individual Liability.** All covenants, stipulations, promises, agreements and obligations of the City or ACLC, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City or ACLC, as the case may be, and not of any member, director, officer, employee, servant or other agent of the City or ACLC in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, servant or other agent of the City or ACLC or any natural person executing this Lease or any related document or instrument.

**Section 12.07. Amendments, Changes, and Modifications.** Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified or altered other than by the execution of a subsequent document in the same manner as this Lease is executed.

**Section 12.08. Events Occurring on Days That Are Not Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right under this Lease is a day that is not a Business Day, such payment may be made, such act may be performed or such right may be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

**Section 12.09. Severability.** In the event that any provision of this Lease, other than the obligation of the City to pay Base Rentals or Additional Rentals and the Purchase Option Price hereunder and the obligation of ACLC to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City pursuant to Article VIII hereof, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.



**Section 12.10. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 12.11. Applicable Law.** The laws of the State shall be applied in the interpretation, execution and enforcement of this Lease.

**Section 12.12. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, ACLC and the City have executed this Lease as of the date first above written.

AURORA CAPITAL LEASING  
CORPORATION, as Lessor

By \_\_\_\_\_  
President

CITY OF AURORA, COLORADO, as Lessee

[SEAL]

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARAPAHOE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2019, by Jason Batchelor, as President of Aurora Capital Leasing Corporation.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires  
\_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARAPAHOE        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2019 by Bob LeGare, as Mayor of the City of Aurora, Colorado, and by Stephen Ruger, as City Clerk of said City.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires

\_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF THE LEASED SITE**

The Leased Property consists of ACLC's leasehold interest in the Site Leased Property. The Site Leased Property consists of the following:

[To be inserted]

**EXHIBIT B**

**BASE RENTALS PAYMENT SCHEDULE**

<b>Base Rentals Payment Date</b>	<b>Total Base Rentals Due on Payment Date</b>	<b>Base Rentals Interest Component</b>	<b>Base Rentals Principal Component</b>	<b>Base Rentals Annual Total</b>
November 25, 2019	\$	\$	\$	\$
May 25, 2020			--	--
November 25, 2020				
May 25, 2021			--	--
November 25, 2021				
May 25, 2022			--	--
November 25, 2022				
May 25, 2023			--	--
November 25, 2023				
May 25, 2024			--	--
November 25, 2024				
May 25, 2025			--	--
November 25, 2025				
May 25, 2026			--	--
November 25, 2026				
May 25, 2027			--	--
November 25, 2027				
May 25, 2028			--	--
November 25, 2028				
May 25, 2029			--	--
November 25, 2029				
May 25, 2030			--	--
November 25, 2030				
May 25, 2031			--	--
November 25, 2031				
May 25, 2032			--	--
November 25, 2032				
May 25, 2033			--	--
November 25, 2033				
May 25, 2034			--	--
November 25, 2034				
May 25, 2035			--	--
November 25, 2035				
May 25, 2036			--	--
November 25, 2036				
May 25, 2037			--	--
November 25, 2037				

**EXHIBIT C**

**LEASED PROPERTY RELEASE SCHEDULE**

<b>Leased Property to be Released</b>	<b>Total amounts of base rentals principal payments deemed to have been made in order to release <sup>1</sup></b>
	\$
	\$
	\$

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<sup>1</sup> Pursuant to Section 8.02 of this Lease, when the principal component of Base Rentals paid by the City totals the amount set forth in this column, the corresponding portion of the Leased Property will be deemed amortized and shall be released.

AFTER RECORDING PLEASE RETURN TO:

Kutak Rock LLP  
1801 California Street  
Suite 3000  
Denver, CO 80202  
Attention: Mario T. Trimble, Esq.

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**SITE LEASE**

between

**CITY OF AURORA, COLORADO**  
as Lessor,

and

**AURORA CAPITAL LEASING CORPORATION,**  
as Lessee

Dated as of October 15, 2019

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**THIS SITE LEASE** dated as of October 15, 2019 (this “Site Lease”), between the **CITY OF AURORA, COLORADO**, as lessor (the “City”), a home rule municipality and political subdivision of the State of Colorado (the “State”) duly organized and existing under the laws of the State, and **AURORA CAPITAL LEASING CORPORATION**, a Colorado nonprofit corporation, as Lessee (together with its successors and assigns, “ACLC”);

**WITNESSETH:**

WHEREAS, pursuant to Section 31-15-801, Colorado Revised Statutes, the City’s home rule powers and Section 2-683 of the Code of Ordinances of the City (the “City Code”), the City is authorized to enter into long term rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years; and

WHEREAS, in order to generate moneys to finance the costs of (i) refinancing all or a portion of the outstanding Refunding Certificates of Participation, Series 2009A (the “Refunding Project”) and (ii) the construction of certain capital improvement projects on the Aurora Municipal Center campus (the “Improvement Project” and together with the Refunding Project, the “Project”), the City Council of the City (the “Council”) has determined that the City shall grant a leasehold interest in such land and improvements (whether existing now or hereafter), as more particularly described in Exhibit A hereto (the “Site Leased Property”) for a lump-sum payment set forth in Section 3 hereof, and sublease the Site Leased Property back from ACLC pursuant to that certain Lease dated as of the date of this Site Lease (the “Lease”) between ACLC, as sublessor, and the City, as sublessee; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows;

**Section 1. Definitions.** Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease.

**Section 2. Site Lease and Terms.** The City hereby leases to ACLC and ACLC hereby leases from the City, on the terms and conditions hereinafter set forth, the Site Leased Property, which consists of the real property (including all improvements thereon, whether existing now or hereafter) described in Exhibit A attached hereto and made a part hereof, subject to Permitted Encumbrances as described in the Lease and set forth in Exhibit B hereto, and such lease to ACLC is hereby deemed to be in the best interests of the City and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 20\_\_ (the “Site Lease Termination Date”), unless such term is sooner terminated as hereinafter provided. If prior to the Site Lease Termination Date, the interest of ACLC in the Site Leased Property has been purchased by the City pursuant to the Lease as a result of the City’s payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 8.01 of the Lease, then the term of this Site Lease shall end immediately upon such payment.

**Section 3. Rent and Payment.** The City acknowledges receipt from ACLC as rent and payment hereunder, in full, the lump sum of DOLLARS (\$ .00) (the “Rental Payment”) and other good and valuable consideration. The City hereby covenants to apply or cause to be applied such funds solely to the costs of the Project.

**Section 4. Purpose.** ACLC shall use the Site Leased Property for the purpose of subletting the same to the City pursuant to the Lease; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease, the City shall vacate the Site Leased Property as provided in the Lease, ACLC may exercise the remedies provided in the Lease and ACLC may use or sublet the Site Leased Property for the remaining term of this Site Lease for any lawful purposes.

**Section 5. Owner in Fee.** The City covenants that it is the owner in fee of the Site Leased Property, subject only to Permitted Encumbrances as defined in the Lease and set forth in Exhibit B hereto.

**Section 6. Assignments and Subleases.** Unless an Event of Nonappropriation or an Event of Default under the Lease shall have occurred and except as may otherwise be provided in the Lease, ACLC may not assign its rights under this Site Lease or sublet the Site Leased Property without the written consent of the City.

**Section 7. Termination of Lease.** In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, ACLC may sublease the Site Leased Property or any portion thereof, or sell or assign its interest in this Site Lease, provided that during the period following termination of the Lease, if this Site Lease is still in effect, the City shall have the rights provided in Section 8.01 of the Lease to purchase ACLC’s rights in the Site Leased Property and terminate this Site Lease. Except as provided in this Site Lease or in the Lease, neither the City nor ACLC will sell, mortgage or encumber the Site Leased Property or any portion thereof during the term of this Site Lease.

**Section 8. Right of Entry.** The City reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease, for any of its duly authorized representatives to enter upon the Site Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

**Section 9. Termination.** ACLC agrees, upon the termination of this Site Lease, to quit and surrender the Site Leased Property and any fixtures, improvements and structures built thereon, to the City free and clear of liens and encumbrances except Permitted Encumbrances as defined in the Lease and set forth in Exhibit B hereto, and subject to any leases or tenancies granted by ACLC following an Event of Nonappropriation or Event of Default, provided that upon termination of this Site Lease the City shall have assumed and succeed to the rights of ACLC with respect to any such leases or tenancies. ACLC agrees that any fixtures, permanent improvements and structures existing upon the Site Leased Property, including any improvements and structures built on the Site Leased Property, at the time of the termination of this Site Lease shall remain thereon and all right, title and interest of ACLC therein shall vest in the City. ACLC and any sublessee or assignee shall execute and deliver, upon request by the

City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such legal interests in the City.

In the event that the Lease is held invalid or unenforceable as to the Site Leased Property by a final unappealable judgment which has the effect of terminating the Lease, such judgment shall also cause the termination of this Site Lease.

**Section 10. Default.** In the event ACLC shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to ACLC, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and the Lease shall be deemed to occur as a result of the exercise of such remedies.

**Section 11. Quiet Enjoyment and Acknowledgment of Leasehold.** ACLC at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Site Leased Property and any improvements and structures built on the Site Leased Property, subject to the provisions of the Lease, and the City hereby acknowledges that ACLC shall have a leasehold interest in the land comprising the Site Leased Property and in all fixtures, improvements and structures on the Site Leased Property listed in Exhibit A, subject to the Lease.

**Section 12. Waiver of Personal Liability.** All liabilities under this Site Lease on the part of ACLC are solely liabilities of ACLC, and the City hereby releases each and every director, member, officer, employee and agent of ACLC of and from any personal or individual liability under this Site Lease. No director, member, officer, employee or agent of ACLC shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by ACLC hereunder.

**Section 13. Taxes; Maintenance; Insurance.** During the Lease Term of the Lease and in accordance with the provisions of the Lease, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Site Leased Property and any improvements thereon, and all maintenance costs and utility charges in connection with the Site Leased Property and any improvements thereon. In the event that the Lease is terminated for any reason and this Site Lease is not terminated, ACLC or any sublessee or assignee of the Site Leased Property shall pay or cause to be paid when due all taxes and assessments imposed thereon and maintain the Site Leased Property in good condition.

The provisions of the Lease shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease. The City agrees to maintain, at its expense, the same coverages following the termination of the Lease if this Site Lease is not terminated; provided that any obligation of the City to make payment therefor shall be subject to annual appropriation by the Council.

**Section 14. Damage, Destruction, or Condemnation.** The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of the Site Leased Property or any improvements and structures built on the Site Leased Property during the Lease

Term of the Lease. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated, and (c) any improvements and structures built on the Site Leased Property or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, ACLC shall be entitled to the net proceeds of any insurance claim. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated and (c) title to or use of the Site Leased Property, any improvements and structures built on the Site Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, ACLC shall be entitled to the net proceeds from said condemnation in an amount equal to the Purchase Option Price in effect on the date of termination of the Lease and the City shall be entitled to the remaining net proceeds in excess of said amount.

**Section 15. Waiver of Jury Trial.** ALL PARTIES TO THIS SITE LEASE HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS SITE LEASE OR THE LEASE.

**Section 16. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 17. No Merger.** The City and ACLC intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease by ACLC and the City nor the exercise of any remedies under this Site Lease or the Lease shall operate to terminate or extinguish this Site Lease or the Lease, except as specifically provided herein and therein.

**Section 18. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed shall be made by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the Lease, or to such other addresses as the respective parties may from time to time designate in writing.

**Section 19. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

**Section 20. Execution.** This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

IN WITNESS WHEREOF, the City and ACLC have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the City has affixed its corporate seal hereto all as of the day and year first above written.

[SEAL]

CITY OF AURORA, COLORADO  
as Lessor

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

AURORA CAPITAL LEASING  
CORPORATION, as Lessee

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

[Signature Page to Site Lease]

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARAPAHOE        )

This instrument was acknowledged before me this \_\_\_\_ day of October, 2019, by Bob LeGare, as Mayor of the City of Aurora, Colorado, and by Stephen Ruger, as City Clerk of said City.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARAPAHOE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2019, by Jason Batchelor, as President of Aurora Capital Leasing Corporation, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE SITE LEASED PROPERTY**

[To be inserted]



**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

[To be inserted]

**MORTGAGE AND INDENTURE OF TRUST**

between

**AURORA CAPITAL LEASING CORPORATION,**  
as Grantor

and

**[TRUSTEE],**  
as Trustee

Dated as of October 15, 2019

**This is a security agreement with respect to chattels,  
as well as a mortgage on real estate and other property.**

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## MORTGAGE AND INDENTURE OF TRUST

**THIS MORTGAGE AND INDENTURE OF TRUST** (this “Indenture”) is dated as of October 15, 2019, and is entered into by and between the **AURORA CAPITAL LEASING CORPORATION**, a nonprofit corporation duly organized and validly existing under the laws of the State of Colorado, as grantor (the “Corporation”), and [TRUSTEE], a national banking association duly organized and validly existing under the laws of the United States of America, as trustee (the “Trustee”).

### WITNESSETH:

WHEREAS, ACLC (a) is a nonprofit corporation that is duly organized, validly existing and in good standing under the laws of the State of Colorado (the “State”), (b) is duly qualified to do business in the State and (c) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own and manage its properties, to conduct its affairs in the State, to grant the Trust Estate (defined herein) to the Trustee and to execute, deliver and perform its obligations under this Indenture; and

WHEREAS, the Trustee (a) is a national banking association that is duly organized, validly existing and in good standing under the laws of the United States of America, (b) is duly qualified to do business in the State and (c) is authorized, under its articles of association, action of its board of directors and applicable law, to conduct its affairs in the State, to accept the grant of the Trust Estate (defined herein) from ACLC hereunder and to execute, deliver and perform its obligations under this Indenture; and

WHEREAS, the City of Aurora, Colorado (the “City”) is a home-rule city and political subdivision of the State of Colorado (the “State”) duly organized and operating under its charter (the “Charter”) and the laws of the State; and

WHEREAS, the City Council of the City (the “Council”) has determined that it is in the best interests of the City and its citizens to finance all of the costs of (i) refinancing all or a portion of the outstanding Refunding Certificates of Participation, Series 2009A (the “Refunding Project”) and (ii) the construction of certain capital improvement projects on the Aurora Municipal Center campus (the “Improvement Project” and together with the Refunding Project, the “Project”) (as more specifically described in the Lease, the “Project”); and

WHEREAS, in order to effect such financing, the Council desires to enter into that certain Site Lease dated as of the date hereof (the “Site Lease”) between the City, as lessor, and ACLC, as lessee; and that certain Lease Purchase Agreement dated as of the date hereof (the “Lease”), between the City, as lessee, and ACLC, as lessor; and

WHEREAS, pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property (as defined in the Lease); and

WHEREAS, pursuant to this Indenture, the right of ACLC to receive the Base Rentals, and rights to receive certain other payments as provided herein and in the Lease (with certain exceptions as provided herein and in the Lease) have been assigned to the Trustee; and

WHEREAS, pursuant to this Indenture, ACLC has also granted to the Trustee a first mortgage on and a security interest in ACLC's leasehold interest in the Leased Property, which leasehold interest is obtained by ACLC pursuant to the Site Lease, and ACLC's interest in the Site Lease has also been assigned to the Trustee hereunder; and

WHEREAS, Refunding and Improvement Certificates of Participation, Series 2019 (the "Certificates") will be executed and delivered by the Trustee pursuant to this Indenture evidencing assignments of proportionate interests in rights to receive Base Rentals and certain other payments, which rights have been assigned to the Trustee by ACLC; and

WHEREAS, the Trustee has entered into this Indenture for and on behalf of the registered owners of the Certificates (the "Certificate Owners"), and will hold its rights hereunder, including its rights with respect to the Leased Property, except as otherwise specifically provided herein, for the equal and proportionate benefit of the Certificate Owners, and will disburse moneys received by the Trustee in accordance with this Indenture; and

WHEREAS, the Certificates are to be in substantially the form set forth in Appendix A to this Indenture, with such necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture; and

WHEREAS, all things necessary to make the Certificates, when executed and delivered by the Trustee as in this Indenture provided, legal, valid and binding assignments of proportionate interests in rights to receive certain Revenues (as defined in the Lease) and certain other payments, as herein provided, and to constitute this Indenture a valid, binding and legal instrument for the security of the Certificates, in accordance with its terms, have been done and performed.

NOW, THEREFORE, THIS MORTGAGE AND INDENTURE OF TRUST WITNESSETH:

That ACLC, in consideration of the premises and the mutual covenants herein contained and for the benefit of the Owners and the sum of One Dollar to it duly paid by the Trustee at or before the execution of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and interest on all Certificates at any time Outstanding under this Indenture, according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions in the Certificates and herein contained, and to declare the terms and conditions upon and subject to which the Certificates are issued and secured, has executed and delivered this Indenture and has granted, bargained, sold, warranted, mortgaged, alienated, remised, released, conveyed, assigned, pledged, set over and confirmed, and by these presents does grant, bargain, sell, warrant, mortgage, alien, remise, release, convey, assign, pledge, set over and confirm unto the Trustee and to its successors and assigns forever, all and singular the following described property, franchises and income, including any title therein acquired after these presents (hereinafter referred to as the "Trust Estate"):

(a) the Leased Property described in Appendix B hereto and the tenements, hereditaments, appurtenances, rights, privileges and immunities thereto belonging or appertaining, subject to the terms of the Lease (defined herein);

(b) all rights, title and interest of ACLC in, to and under the Site Lease and the Lease, other than the rights, title and interest of ACLC with respect to certain payments or reimbursement to ACLC under the Site Lease and the Lease for its costs, fees and expenses;

(c) all Base Rentals and Additional Rentals (defined in the Lease); and

(d) all money and securities from time to time held by the Trustee under this Indenture and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specially mortgaged, pledged or hypothecated, as and for additional security hereunder, by ACLC, or by anyone on its behalf, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

SUBJECT, HOWEVER to ACLC's retention of its rights to payment of its expenses and indemnification under the Lease and the rights of third parties to Additional Rentals payable to them under the Lease;

TO HAVE AND TO HOLD the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its successors in said trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms herein set forth for the equal and proportionate benefit, security and protection of all Owners, without privilege, priority or distinction as to the lien or otherwise of any of the Certificates over any other of the Certificates, except as otherwise provided herein;

PROVIDED, HOWEVER, that if the principal of the Certificates and the interest due or to become due thereon, shall be paid at the times and in the manner mentioned in the Certificates, according to the true intent and meaning thereof, and if there are paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof, then, upon such final payments, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared, that all Certificates issued and secured hereunder are to be executed, authenticated and delivered and all said property, rights, interests, revenues and receipts hereby pledged, assigned and mortgaged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and ACLC has agreed and covenanted, and does hereby agree and covenant, with the Trustee for the benefit of the Owners, as follows:



## ARTICLE I

### DEFINITIONS

The following capitalized terms shall have the following meanings in this Indenture:

“*Additional Certificates*” means any Additional Certificates issued pursuant to Section 2.10 hereof.

“*Additional Rentals*” is defined in the Lease.

“*Base Rentals*” is defined in the Lease.

“*Bond Counsel*” means (a) as of the date of issuance of the Certificates, Kutak Rock LLP, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by ACLC with nationally recognized expertise in the issuance of municipal securities.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“*Certificates*” means the Certificates authorized by Section 2.03 hereof and any Additional Certificates.

“*City*” means the City of Aurora, Colorado.

“*City Representative*” is defined in the Lease.

“*Code*” means the Internal Revenue Code of 1986, as amended, and regulations thereunder.

“*Completion Date*” means the first date on which the Improvement Project may be declared completed, as evidenced by a certificate delivered to the Trustee by the City.

“*Corporation*” means Aurora Capital Leasing Corporation or any successor thereto.

“*Corporation Representative*” is defined in the Lease.

“*Costs*” or “*Costs of the Project*” means all costs and expenses to be incurred by ACLC (or the City on its behalf), and the reimbursement to the City for all costs and expenses heretofore incurred by the City prior to the Completion Date with respect to the Improvement Project (except as otherwise provided below) and any costs associated with the completion of the Refunding Project, including, without limitation:

(a) costs of acquiring any portion of the Leased Property and making any necessary or incidental improvements thereto;

(b) obligations incurred or assumed for labor, materials and equipment in connection with the Project;

(c) the cost of performance and payment bonds and of insurance of all kinds (including, without limitation, title and liability insurance) that may be necessary or appropriate in connection with the Project;

(d) the costs of engineering, architectural and other professional and technical services, including obligations incurred or assumed for preliminary design and development work, test borings, surveys, estimates, plans and specifications in connection with the Project;

(e) administrative costs related to the Project incurred prior to the respective Completion Date, including supervision of the acquisition of any portion of the Leased Property, the relocation of current tenants and demolition of certain structures thereon, the performance of all of the other duties required by or consequent upon the Project, including, without limitation, costs of preparing and securing all Project documents, architectural, engineering and other professional and technical fees, legal fees and expenses, appraisal fees, independent inspection fees, auditing fees and advertising expenses in connection with the Project;

(f) all costs which shall be required to be paid under the terms of any Project contract;

(g) all costs which are considered to be a part of the costs of the Project in accordance with generally accepted accounting principles;

(h) interest on the Certificates issued to finance the Project through the Completion Date, to the extent the moneys in the Certificate Fund are not sufficient to pay such interest;

(i) the actual costs incurred in acquiring any property, performing demolition, site preparation and infill, or relocation costs for which moneys are transferred pursuant to Section 3.05(b) hereof; and

(j) any and all other costs necessary to effect the Project or to acquire or complete the Project to the extent the same are permitted by the laws of the State and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates.

“*Costs of Issuance*” means administrative costs of issuance of any Certificates, including the initial compensation and expenses of the Trustee, any fees and expenses of any underwriter or financial advisor that provides services in connection with the issuance of any Certificates, any fees or expenses of ACLC prior to the Completion Date, legal fees and expenses, costs of immediately available funds, costs of publication, printing and engraving, accountants’ fees and recording and filing fees.

“*Costs of Issuance Fund*” means the fund created by and designated as such in Section 3.03 hereof.

“*Debt Service Fund*” means the special fund created by Section 3.01 hereof.

“*Defeasance Securities*” means Permitted Investments which are (a) cash that is insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in clause (b) of this definition; or (b) certificates or interest-bearing notes or obligations

of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

“*Escrow Account*” means the account created by and designated as such in Section 3.02 hereof.

“*Escrow Agent*” means [ESCROW AGENT], solely in its capacity as escrow agent under the Refunding Escrow Agreement.

“*Event of Default*” means (a) when used with respect to the Lease, an event described in Section 12.01 thereof and (b) when used with respect to this Indenture, an event described in Section 7.01 hereof.

“*Event of Nonappropriation*” means, when used with respect to the Lease, an event described in Section 6.04(b) of the Lease.

“*Fiscal Year*” means the City’s fiscal year, which begins on January 1 of each year and ends on December 31 of each year.

[“*Fitch*” means Fitch Ratings and its successors and assigns.]

“*Indenture*” means this Mortgage and Indenture of Trust and any amendment or supplement hereto.

“*Independent Counsel*” means an attorney duly admitted to the practice of law before the highest court in the State and who is not an employee of ACLC, the City or the Trustee.

“*Initial Purchaser*” means (a) \_\_\_\_\_ and (b) with respect to any Additional Certificates, the purchasers designated as such in any Supplemental Indenture.

“*Interest Payment Date*” means June 1 and December 1 of each year, (a) beginning on [December 1, 2019] with respect to the Certificates and (b) beginning on the June 1 and December 1 specified in the Supplemental Indenture entered into in connection with such Certificates with respect to any Additional Certificates.

“*Lease*” means the Lease Purchase Agreement dated as of the date hereof between ACLC and the City and any amendment or supplement thereto.

“*Lease Revenues*” means (a) the Base Rentals; (b) any Net Proceeds; (c) any portion of the proceeds of any Certificates deposited with or by the Trustee in the Debt Service Fund to pay accrued or capitalized interest on the Certificates; (d) any earnings on moneys on deposit in the Debt Service Fund; (e) all other revenues derived from the Lease, excluding Additional Rentals; and (f) any other moneys to which the Trustee may be entitled for the benefit of the Owners.

“*Lease Term*” is defined in the Lease.

“*Leased Property*” is defined in the Lease.

“*Net Proceeds*” when used with respect to the Leased Property, has the meaning set forth in the Lease.

“*Operations Center*” means the operations center of the Trustee in \_\_\_\_\_,\_\_\_\_\_.

“*Opinion of Counsel*” means a written opinion of legal counsel, who may be counsel to the Trustee or ACLC.

“*Outstanding*” means all Certificates which have been executed and delivered, except:

(a) Certificates canceled or which shall have been surrendered to the Trustee for cancellation;

(b) Certificates in lieu of which other Certificates have been executed under Section 2.07 or 2.08 hereof;

(c) Certificates which have been redeemed as provided in Article IV hereof (including Certificates redeemed on payment of an amount less than the outstanding principal thereof and accrued interest thereon to the redemption date as provided in Section 4.01 hereof);

(d) Certificates which are due and for which the Trustee holds funds for the benefit of the Owner thereof pursuant to Section 3.06 hereof; and

(e) Certificates which are otherwise deemed discharged pursuant to Section 10.01 hereof.

“*Owner*” of a Certificate means the registered owner of any Certificate as shown in the registration records of the Trustee.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Permitted Encumbrances*” when used with respect to the Leased Property, has the meaning set forth in the Lease.

“*Permitted Investments*” means any security or other obligation that is a legal investment of funds of the City under State law and the investment policy of the City, as amended from time to time and posted on the City’s official website.

“*Project Fund*” means the special fund created by Section 3.05 hereof.

“*Rebate Fund*” means the special fund created by Section 3.04 hereof.

“*Record Date*” means, with respect to each Interest Payment Date, the fifteenth day of the month immediately preceding the month (whether or not a Business Day) in which the Interest Payment Date occurs.

“*Refunding Escrow Agreement*” means the Refunding Escrow Agreement dated as of October \_\_, 2019 between the City and the Escrow Agent, solely in its capacity as escrow agent, with respect to the refunding and defeasance of the outstanding Refunding Certificates of Participation, Series 2019A.

“*Requirement of Law*” is defined in the Lease.

“*Site Lease*” means the Site Lease dated as of the date hereof between the City, as lessor, and ACLC, as lessee, and any amendment or supplement thereto.

“*Site Leased Property*” is defined in the Lease.

“*Special Record Date*” means a special date fixed to determine the names and addresses of Owners of Certificates for purposes of paying defaulted interest in accordance with Section 2.02 hereof.

“*State*” means the State of Colorado.

“*Supplemental Indenture*” means any indenture supplementing or amending this Indenture that is adopted pursuant to Article XI hereof.

[“*S&P*” means S&P Global Ratings and its successors and assigns.]

“*Trust Estate*” means the property mortgaged, pledged and assigned to the Trustee pursuant to the granting clauses hereof. The Trust Estate does not include the Rebate Fund, the Escrow Account or any escrow accounts established pursuant to Section 10.01 hereof.

“*Trustee*” means [TRUSTEE], acting solely in its capacity as trustee pursuant hereto, and any successor thereto appointed hereunder.

“*Trustee Representative*” is defined in the Lease.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF CERTIFICATES

**Section 2.01. Authorized Amount of Certificates.** No Certificates may be issued hereunder except in accordance with this Article. The aggregate principal amount of Certificates that may be issued hereunder shall not be limited in amount.

**Section 2.02. Issuance of Certificates.**

(a) The Certificates shall be issued, sold and delivered hereunder, for the purpose of providing funds for the Project and paying the Costs of Issuance.

(b) The Certificates shall be issuable only as fully registered Certificates in the denominations of \$5,000 and any integral multiple thereof (provided that no Certificate may be in a denomination which exceeds the principal coming due on any maturity date

and no individual Certificate may be issued for more than one maturity). The Certificates shall be numbered in such manner as shall be determined by the Trustee.

(c) The principal of any Certificate shall be payable to the Owner thereof as shown on the registration records of the Trustee upon maturity or prior redemption thereof and upon presentation and surrender at the Operations Center of the Trustee unless the Certificates are held in book-entry form then presentation is not required. Payment of interest on the Certificates shall be made by check or draft of the Trustee mailed, or by wire transfer to DTC (as defined below) on or before each Interest Payment Date, to the Owner thereof at his address as it last appears on the registration records of the Trustee at the close of business on the Record Date. Any such interest not so timely paid shall cease to be payable to the person who is the Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given by the Trustee to the Owners of the Certificates, not less than 10 days prior to the Special Record Date, by first-class mail or by electronic means, to each such Owner as shown on the Trustee's registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. Alternative means of payment of interest may be used if mutually agreed to in writing between the Owner of any Certificate and the Trustee.

### **Section 2.03. Certificate Details.**

(a) The Certificates designated as the "Refunding and Improvement Certificates of Participation, Series 2019, evidencing undivided interests in the right to receive certain revenues payable by the City of Aurora, Colorado under a Lease Purchase Agreement dated as of October 15, 2019" (the "Certificates") shall be issued in the aggregate principal amount of \$\_\_\_\_\_. The Certificates shall be dated October \_\_, 2019, shall mature on the dates and in the amounts set forth below and shall bear interest from their original dated date to maturity at the rates per annum shown below, payable on each Interest Payment Date; except that Certificates which are reissued upon transfer, exchange or other replacement shall bear interest at the rates per annum shown below from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the original dated date of the Certificates:

<b>Dates Maturing (December 1)</b>	<b>Amounts Maturing</b>	<b>Interest Rate (Per Annum)</b>
2020	\$	%
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2032		
2033		
2034		
2035		
2037		

(b) The Certificates shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Trustee executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). All covenants, statements, representations and agreements contained in the Certificates are hereby approved and adopted as the covenants, statements, representations and agreements of the Trustee. Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Indenture and is incorporated herein as if set forth in full in the body of this Indenture.

(c) Notwithstanding any other provision hereof, the Certificates shall be delivered only in book-entry form registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, acting as securities depository of the Certificates and principal of and interest on the Certificates shall be paid by wire transfer to DTC; provided, however, if at any time the ACLC determines, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Certificates, ACLC may, at its discretion, either (i) designate a substitute securities depository for DTC and reregister the Certificates as directed by such substitute securities depository or (ii) terminate the book-entry registration system and direct the Trustee to reregister the Certificates in the names of the beneficial owners thereof provided to it by DTC. Neither ACLC nor the Trustee shall have any liability to DTC, Cede & Co., any substitute securities depository, any Person in whose name the Certificates are reregistered at the direction of any substitute securities depository, any beneficial owner of the Certificates or any other Person for (A) any determination made by ACLC pursuant to the proviso at the end of the immediately preceding sentence or (B) any action taken to implement such determination and the procedures related thereto that is taken pursuant to

any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute securities depository or any Person in whose name the Certificates are reregistered.

**Section 2.04. Limited Obligations.** Each Certificate shall represent an undivided interest in the right to receive Lease Revenues and shall be payable solely from the Trust Estate in accordance with, and subject to the terms of this Indenture. No provision of the Certificates, this Indenture, or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a delegation of governmental powers by the City.

**Section 2.05. Execution and Authentication of Certificates.** The manual signature of a duly authorized signatory of the Trustee shall appear on each Certificate. Any Certificate shall be deemed to have been executed by a duly authorized signatory of the Trustee if signed by the Trustee, but it shall not be necessary that the same signatory sign all of the Certificates issued hereunder. If any signatory of the Trustee whose signature appears on a Certificate shall cease to be such official before delivery of the Certificates, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained a duly authorized signatory of the Trustee until delivery.

**Section 2.06. Delivery of Certificates.** Upon the execution and delivery of this Indenture, the Trustee shall execute and deliver the Certificates to the Initial Purchaser as hereinafter in this Section provided:

(a) Prior to the delivery by the Trustee of any of the Certificates, there shall be filed with the Trustee (i) originally executed counterparts of the Site Lease, the Lease and this Indenture; (ii) an executed copy of the ordinance adopted by the City Council of the City approving the Site Lease and the Lease; (iii) an executed copy of a resolution adopted by the Board of Directors of ACLC authorizing the execution and delivery by ACLC of the Site Lease, the Lease and this Indenture; and (iv) the title insurance policy or commitment, satisfactory to ACLC required by Section 6.04 hereof.

(b) Thereupon, the Trustee shall deliver the Certificates to the Initial Purchaser, upon payment to the Trustee of the amount of \$\_\_\_\_\_ (representing the par amount of the Certificates, plus original issue premium of \$\_\_\_\_\_, minus an underwriting discount of \$\_\_\_\_\_, constituting the net proceeds of the Certificates, bid by the Initial Purchaser at a public sale of the Certificates.

(c) The proceeds of the Certificates shall be applied for the following purposes:

(i) An amount equal to \$\_\_\_\_\_ shall be disbursed to the Trustee to pay certain costs of executing and delivering the Certificates as authorized by the City.



(ii) An amount equal to \$\_\_\_\_\_ shall be disbursed by the Trustee to the Escrow Agent, to be credited to the Escrow Account and applied to the completion of the Refunding Project pursuant to the Refunding Escrow Agreement.

(iii) An amount equal to \$\_\_\_\_\_ shall be disbursed to the Trustee and credited to the Project Fund, to be used to pay costs associated with the Improvement Project.

**Section 2.07. Mutilated, Lost, Stolen or Destroyed Certificates.** In the event that any Certificate is mutilated, lost, stolen or destroyed, a new Certificate may be executed on behalf of the Trustee, of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that the Trustee shall have received such evidence, information or indemnity from the Owner of the Certificate as it and ACLC may reasonably require, and provided further, in case of any mutilated Certificate, that such mutilated Certificate shall first be surrendered to the Trustee. In the event that any such Certificate shall have matured, instead of issuing a replacement Certificate, the Trustee may pay the same without surrender thereof. The Trustee may charge the Owner of the Certificate with its reasonable fees and expenses in this connection and require payment of such fees and expenses as a condition precedent to the delivery of a new Certificate.

**Section 2.08. Registration of Certificates; Persons Treated as Owners; Transfer and Exchange of Certificates.**

(a) Records for the registration and transfer of Certificates shall be kept by the Trustee which is hereby appointed the registrar for the Certificates. The principal of and interest on any Certificate shall be payable only to or upon the order of the Owner or his legal representative (except as otherwise herein provided with respect to Record Dates and Special Record Dates for the payment of interest). Upon surrender for transfer of any Certificate at the Operations Center of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Trustee shall enter such transfer on the registration records and shall execute and deliver in the name of the transferee or transferees a new fully registered Certificate or Certificates of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned.

(b) Fully registered Certificates may be exchanged at the Operations Center of the Trustee for an equal aggregate principal amount of fully registered Certificates of the same maturity of other authorized denominations. The Trustee shall execute and deliver Certificates which the Owner making the exchange is entitled to receive, bearing numbers not previously assigned.

(c) The Trustee may require the payment, by the Owner of any Certificate requesting exchange or transfer, of any reasonable charges as well as any taxes, transfer fees or other governmental charges required to be paid with respect to such exchange or transfer.

(d) The Trustee shall not be required to transfer or exchange (i) all or any portion of any Certificate during the period beginning 15 Business Days before the day of

the mailing by the Trustee of notice calling any Certificates for prior redemption and ending at the close of business on the day of such mailing, or (ii) all or any portion of a Certificate after the mailing of notice calling such Certificate or any portion thereof for prior redemption.

(e) Except as otherwise herein provided with respect to Record Dates and Special Record Dates for the payment of interest, the person in whose name any Certificate shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or interest on any Certificate shall be made only to or upon the written order of the Owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge such Certificate to the extent of the sum or sums paid.

**Section 2.09. Cancellation of Certificates.** Whenever any Outstanding Certificates shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment thereof or for or after replacement pursuant to Section 2.07 or 2.08 hereof, such Certificates shall be promptly cancelled in accordance with the customary practices of the Trustee and applicable retention laws.

**Section 2.10. Issuance of Additional Certificates.**

(a) So long as the Lease Term shall remain in effect and no Event of Nonappropriation under the Lease, no Event of Default under the Lease and no Event of Default hereunder shall have occurred, one or more issues of Additional Certificates may be issued upon the terms and conditions provided in this Section. The maturity dates, for such Additional Certificates shall be December 1 and the Interest Payment Dates for such Additional Certificates shall be June 1 and December 1 of the years set forth in the Supplemental Indenture relating to such Additional Certificates. Additional Certificates may be issued to provide funds to pay any one or more of the following: (i) the costs of refunding all or any portion of the Outstanding Certificates; and (ii) the costs of making at any time or from time to time such additions, modifications and improvements for or to the Leased Property as ACLC may deem necessary or desirable.

(b) Additional Certificates may be issued only in accordance with paragraph (a) of this Section and only upon there being furnished to the Trustee:

(i) Originally executed counterparts of a Supplemental Indenture expressly providing that, for all the purposes hereof, the Leased Property shall include any property being financed by the Additional Certificates, and that the Certificates shall mean and include the Additional Certificates being issued as well as any Certificates and Additional Certificates theretofore issued, except that the series description of the Additional Certificates, the date or dates of the Additional Certificates, the maturity dates and Interest Payment Dates for the Additional Certificates, the rate or rates of interest on the Additional Certificates, and provisions for the redemption thereof, if any, all may be as provided in the Supplemental Indenture rather than as provided in this Indenture.

(ii) The addition to the Trust Estate of an assignment of the Lease Revenues from or with respect to the property financed with the proceeds of such Additional Certificates.

(iii) A written opinion of Bond Counsel to the effect that the issuance of the Additional Certificates and the execution thereof have been duly authorized, that all conditions precedent to the delivery thereof have been fulfilled, that the issuance of Additional Certificates will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any Certificates, and that the issuance, sale and delivery of the Additional Certificates will not constitute an Event of Default under this Indenture nor cause any violation of the covenants or representations herein.

(iv) A commitment or other evidence satisfactory to ACLC that the amount of the title insurance policy required by Section 6.04 hereof will be increased, if necessary, to reflect the amount of the Additional Certificates and all other Outstanding Certificates (or such lesser amount as shall be the maximum insurable value of the real property included in the Leased Property).

(v) A certificate from ACLC Representative certifying that the Lease Revenues are expected to be sufficient to pay the principal of and interest on the Additional Certificates and all other Outstanding Certificates when due.

(vi) Written instructions to the Trustee by ACLC to deliver the Additional Certificates to the purchaser or purchasers therein identified upon payment to the Trustee of a specified sum plus accrued interest.

(c) No Additional Certificates shall be issued by ACLC unless no Event of Default shall have occurred and be continuing with respect to the Outstanding Certificates.

(d) Each of the Additional Certificates issued pursuant to this Section shall be proportionately and ratably secured with the Certificates originally issued and all other issues of Additional Certificates, if any, issued pursuant to this Section, without preference, priority or distinction of any Certificates or Additional Certificates over any other.

**Section 2.11. Negotiability.** Subject to the registration provisions hereof, the Certificates shall be fully negotiable and shall have all the qualities of negotiable paper, and the Owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Certificates shall be paid, and the Certificates shall be transferable, free from and without regard to any equities, set-offs or cross-claims between or among ACLC, the Trustee and the original or any intermediate owner of any Certificates.

## ARTICLE III

### FUNDS AND ACCOUNTS

#### Section 3.01. Debt Service Fund.

(a) ***Creation of the Debt Service Fund.*** There is hereby created and established with the Trustee a special fund designated the “Aurora Capital Leasing Corporation Certificates of Participation Debt Service Fund, Series 2019” (the “Debt Service Fund”). The Trustee shall establish an interest account (the “Interest Account”) and a principal account (the “Principal Account”) within the Debt Service Fund.

(b) ***Payments into the Interest Account of the Debt Service Fund.*** There shall be deposited into the Interest Account of the Debt Service Fund (i) all accrued interest and capitalized interest received at the time of the issuance of the Certificates; (ii) that portion of each payment of Base Rentals made by the City which is designated and paid as the interest component thereof under Exhibit B to the Lease; (iii) any moneys transferred to the Interest Account of the Debt Service Fund from the Costs of Issuance Fund pursuant to Section 3.03 hereof; and (iv) all other moneys received by the Trustee under this Indenture accompanied by directions that such moneys are to be deposited into the Interest Account of the Debt Service Fund.

(c) ***Payments into the Principal Account of the Debt Service Fund.*** There shall be deposited into the Principal Account of the Debt Service Fund (i) that portion of each payment of Base Rentals made by the City which is designated and paid as the principal component thereof under Exhibit B to the Lease, as it may be amended; (ii) any moneys transferred to the Principal Account of the Debt Service Fund from the Costs of Issuance Fund pursuant to Section 3.03 hereof; and (iii) all other moneys received by the Trustee under this Indenture accompanied by directions that such moneys are to be deposited into the Principal Account of the Debt Service Fund.

(d) ***Use of Moneys in the Debt Service Fund.*** Moneys in the Interest Account of the Debt Service Fund shall be used solely for the payment of interest on the Certificates and moneys in the Principal Account of the Debt Service Fund shall be used solely for the payment of the principal of the Certificates; provided that (i) in the event that there are any remaining moneys upon payment of the interest due on the Certificates, such moneys may be used for the payment of principal of the Certificates; and (ii) moneys representing accrued interest received at the time of the issuance of any series of Certificates shall be used solely to pay the first interest due on such Certificates; provided, further, that all moneys in the Debt Service Fund shall be available to pay the redemption price of Certificates in connection with a redemption of all the Certificates and to pay the principal of and interest on any Certificates following an Event of Default or Event of Nonappropriation.

**Section 3.02. Escrow Account.** A special account is hereby created and established with the Escrow Agent pursuant to the Refunding Escrow Agreement, to be designated the “Escrow Account,” and into which shall be deposited the amount set forth in Section 2.06(b) above from

proceeds of the Series 2019 Certificates. The moneys in the Escrow Account shall be used solely for the Refunding Project as provided in the Refunding Escrow Agreement

**Section 3.03. Costs of Issuance Fund.** A special fund is hereby created and established by the Trustee and designated the “Costs of Issuance Fund.” There shall be deposited into the Costs of Issuance Fund or transferred to the City the amount set forth in Section 2.06(c)(i) above from proceeds of the Certificates. Such moneys deposited into the Costs of Issuance Fund shall be disbursed by the Trustee to pay the costs of execution and delivery of the Certificates as directed by the City or paid directly by the City. The Trustee may rely conclusively on any such direction and shall not be required to make any independent investigation in connection therewith. Upon the earlier of [December 31, 2019] or receipt by the Trustee of a written notice of the City that the remaining moneys in the Costs of Issuance Fund are not needed to pay the costs of execution and delivery of the Certificates the Trustee shall transfer such remaining amounts to the Interest Account of the Debt Service Fund and the Costs of Issuance Fund shall, without further direction, be closed.

**Section 3.04. Rebate Fund.**

(a) ***Creation of the Rebate Fund.*** A special fund is hereby created and established with the Trustee to be designated the “Aurora Capital Leasing Corporation Certificates of Participation Rebate Fund, Series 2019” (the “Rebate Fund”).

(b) ***Deposits into the Rebate Fund.*** There shall be deposited into the Rebate Fund (i) all amounts paid by the City pursuant to paragraph (e) of this Section; and (ii) all other moneys delivered to the Trustee by the City, ACLC or any other Person that are accompanied by instructions to deposit the same into the Rebate Fund.

(c) ***Use of Moneys in the Rebate Fund.*** Not later than 60 days after December 1, 2021, and every five years thereafter, the Trustee on behalf of the City shall pay to the United States of America 90% of the amount required, if any, to be on deposit in the Rebate Fund as of such payment date. No later than 60 days after the final retirement of the Certificates, the Trustee on behalf of the City shall pay to the United States of America 100% of the amount required, if any, to be on deposit in the Rebate Fund which shall remain in effect for such period of time as is necessary for such final payment to be made. Each payment required to be paid to the United States of America pursuant to this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038-T and a statement summarizing the determination of the amount to be paid to the United States of America. There is reserved in ACLC and the City the right, in all events, to pursue such remedies and procedures as are available in order to assert any claim of overpayment of any rebated amounts.

(d) ***Administration of Rebate Fund.*** ACLC shall make or cause to be made all requisite rebate calculations and notify the Trustee of the resulting rebate amount so as to provide the information required to transfer moneys to the Rebate Fund pursuant to paragraph (b) of this Section. The Trustee shall make deposits to and disbursements from the Rebate Fund in accordance with the Investment Instructions (the “Investment

Instructions”) and the Tax Compliance Certificate (the “Tax Compliance Certificate”) executed by the City in connection with the issuance of the Certificates. The Trustee shall invest the Rebate Fund pursuant to said Investment Instructions and shall deposit income from said investments immediately upon receipt thereof in the Rebate Fund, all as set forth in the Investment Instructions. The Investment Instructions may be superseded or amended by new Investment Instructions drafted by and accompanied by an opinion of Bond Counsel addressed to the Trustee to the effect that the use of said new Investment Instructions will not cause the interest on the Certificates to be includible in the gross income of the recipients thereof for purposes of federal income taxation. The City may employ, at its expense, a designated agent to calculate the amount of deposits to and disbursements from the Rebate Fund based upon information furnished by ACLC and the Trustee. If a withdrawal from the Rebate Fund is permitted as a result of the computation described in the Investment Instructions, the amount withdrawn shall be deposited in the Debt Service Fund. Record of the determinations required by this Section and the Investment Instructions must be retained by ACLC and the Trustee until six years after the final retirement of the Certificates. The Trustee has no duty or obligation to confirm the accuracy of any such calculations.

(e) ***Payments by the City.*** The City has agreed in the Lease that, to the extent that the Lease is in effect, if, for any reason, the amount on deposit in the Rebate Fund is less than the amount required to be paid to the United States of America on any date, the City will pay to the Trustee the amount required to make such payment on such date.

### **Section 3.05. Project Fund.**

(a) ***Creation of the Project Fund.*** There is hereby created and established with the Trustee a special fund designated the “Aurora Capital Leasing Corporation Certificates of Participation, Series 2019, Project Fund” (the “Project Fund”). The Trustee may establish such additional accounts or subaccounts within the Project Fund as may be necessary or desirable. Neither the Trustee nor the Owners of the Certificates shall have any interest in the Project Fund.

(b) ***Deposits into the Project Fund.*** Simultaneously with the delivery of the Certificates, the Trustee shall transfer into the Project Fund proceeds from the sale of the Certificates as provided in Section 2.06 hereof.

(c) ***Investment of Amounts in the Project Fund.*** Amounts in the Project Fund may be invested in Permitted Investments upon the written direction of a City Representative, in repurchase agreements having terms exceeding 365 days and otherwise qualifying as Permitted Investments.

(d) ***Administration of Project Fund.*** The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all payments therefrom, which shall be open to inspection by the City, ACLC, the Owners or their duly authorized agents during normal business hours of the Trustee. After the Completion Date, on which date the City shall have delivered to the Trustee a certificate evidencing the completion of the Project (the “Completion Certificate”), the Trustee shall file a statement of income and

disbursements with respect to the Project Fund with the City and ACLC. Any moneys then remaining in the Project Fund shall be transferred by the Trustee to the Debt Service Fund and applied to the principal of or interest on the Certificates, or to the Rebate Fund, as directed by a City Representative. The City and ACLC currently expect the Completion Date to occur on or before \_\_\_\_\_, 20\_\_.

(e) ***Events of Default and Exercise of the Purchase Option Price.*** Upon the occurrence of an Event of Default hereunder and the exercise by the Trustee of the remedies specified herein and in the Lease, any moneys in the Project Fund shall be transferred by the Trustee to the Interest Account of the Debt Service Fund and, with respect to any moneys in excess of the amount required to complete the Project, to the Principal Account of the Debt Service Fund. In the event of an exercise of the Purchase Option pursuant to the Lease, any moneys in the Project Fund shall be transferred to the Principal Account of the Debt Service Fund and shall be applied to the payment of the principal of and premium, if any, on the Certificates.

(f) ***Disbursements from the Project Fund.*** Pursuant to the Lease, the City has agreed to construct the Project on behalf of ACLC. ACLC hereby authorizes and directs the Trustee to make payments from the Project Fund to pay (or to reimburse the City for the payment of) the Costs of the Project. Each such payment of Costs of the Project shall be made only upon receipt by the Trustee of a requisition signed by a City Representative in substantially the form attached hereto as Appendix C, together with a detailed explanation showing the payment to be necessary and reasonable, stating (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due or was made, (iii) the amount to be paid or for which reimbursement is sought, (iv) that none of the items for which the payment or reimbursement is proposed to be made has been the subject of any payment or reimbursement theretofore made from the Project Fund, and (v) the nature of each item for which the payment or reimbursement is proposed to be made and, if applicable, that such item is or was reasonable and necessary in connection with the construction of the Project, and in all cases is a proper charge against the Project Fund. No disbursement requested in any requisition shall be made by the Trustee for the Project unless the City Representative also certifies that the requirements of a design-build contract or other applicable contract with respect to lien waivers for work on the Project have been met. The Trustee may rely conclusively on any such direction and shall not be required to make any independent investigation in connection therewith. The Trustee is not responsible for determining the accuracy of information provided in any requisition and shall not be concerned with or accountable to anyone for the use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

**Section 3.06. Nonpresentment of Certificates.** In the event any Certificate shall not be presented for payment when due, if funds sufficient to pay such Certificate shall have been made available to the Trustee for the benefit of the Owner thereof, it shall be the duty of the Trustee to hold such funds without liability for interest thereon, for the benefit of the Owner of such Certificate, who shall be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on or with respect to such Certificate. Funds so held but unclaimed by an Owner shall be delivered to ACLC after the expiration of three years or, upon receipt by the

Trustee of an opinion of Bond Counsel that such funds may be released to ACLC on such earlier date, on any earlier date designated by ACLC.

**Section 3.07. Moneys to Be Held in Trust.** The Debt Service Fund, the Costs of Issuance Fund, the Rebate Fund, the Project Fund and any other fund or account created hereunder shall be held by the Trustee, for the benefit of the Owners as specified in the Indenture, subject to the terms of this Indenture, the Lease and the Site Lease. Any escrow account established pursuant to Section 10.01 hereof shall be held for the benefit of the Owners of the Certificates to be paid therefrom as provided in the applicable escrow agreement.

**Section 3.08. Repayment to the City from the Trustee.** After payment in full of the principal of and interest on the Certificates, all rebate payments due to the United States of America, the fees and expenses of the Trustee and ACLC and all other amounts required to be paid hereunder, any remaining amounts held by the Trustee pursuant hereto shall be paid to the City.

## ARTICLE IV

### REDEMPTION OF CERTIFICATES

**Section 4.01. Redemption of Certificates in Whole Upon an Event of Nonappropriation or Event of Default Under the Lease.**

(a) The Certificates shall be called for redemption, in whole, at a redemption price determined pursuant to paragraph (b) of this Section, on any date, in the event of the occurrence of an Event of Nonappropriation under the Lease or the occurrence and continuation of an Event of Default under the Lease.

(b) The redemption price for any redemption pursuant to this Section shall be the lesser of (i) the principal amount of the Certificates, plus accrued interest to the redemption date (without any premium); or (ii) the sum of (A) the amount, if any, received by the Trustee or ACLC from the exercise of remedies under the Lease with respect to the Event of Nonappropriation or the occurrence and continuation of the Event of Default that gave rise to such redemption and (B) the other amounts available in the Trust Estate for payment of the redemption price of the Certificates, which amounts shall be allocated among the Certificates in proportion to the principal amount of each Certificate. Notwithstanding any other provision hereof, the payment of the redemption price of any Certificate pursuant to this Section shall be deemed to be the payment in full of such Certificate and no Owner of any Certificate redeemed pursuant to this Section shall have any right to any payment from ACLC, the Trustee or the City in excess of such redemption price.

(c) In addition to any other notice required to be given under this Article or any other provision hereof, the Trustee shall, immediately after the Trustee has been notified of or has knowledge of the occurrence of an Event of Nonappropriation or an Event of Default under the Lease, notify the Owners (i) that such event has occurred and (ii) whether or not the funds then available to it for such purpose are sufficient to pay the redemption price set forth in clause (i) of paragraph (b) of this Section. If the funds then available to



the Trustee are sufficient to pay the redemption price set forth in clause (i) of paragraph (b) of this Section, such redemption price shall be paid as soon as possible. If the funds then available to the Trustee are not sufficient to pay the redemption price set forth in clause (i) of paragraph (b) of this Section, ACLC and the Trustee shall (A) immediately pay the portion of the redemption price that can be paid from the funds available, net of any funds which, in the judgment of the Trustee, should be set aside to pursue remedies under the Lease and (B) subject to the provisions of Article VII hereof, immediately begin to exercise and shall diligently pursue all remedies available to them under the Lease in connection of such Event of Nonappropriation or Event of Default. The remainder of the redemption price, if any, shall be paid to the Owners if and when funds become available to the Trustee from the exercise of such remedies. Any excess funds, after payment of the amounts described herein, shall be retained by ACLC.

**Section 4.02. Optional Redemption of Certificates Prior to Maturity.** The Certificates maturing on or prior to December 1, 20\_\_ are not subject to optional redemption prior to their respective maturity dates. The Certificates maturing on and after December 1, 20\_\_ are subject to redemption at the option of the City on December 1, 20\_\_ and any date thereafter at a redemption price equal to 100% of their principal amount plus accrued interest to the date of redemption.

**Section 4.03. Mandatory Sinking Fund Redemption.** The Certificates maturing on December 1, 20\_\_ are also subject to mandatory sinking fund redemption by lot on December 1 of each year set forth below, at a redemption price equal to the principal amount thereof (without redemption premium), plus accrued interest to the redemption date:

Year (December 1)	Principal Amount
20__	\$
20__	
20__ <sup>1</sup>	

<sup>1</sup> Stated maturity; not a sinking fund redemption.

The Certificates maturing on December 1, 20\_\_ are also subject to mandatory sinking fund redemption by lot on December 1 of each year set forth below, at a redemption price equal to the principal amount thereof (without redemption premium), plus accrued interest to the redemption date:

Year (December 1)	Principal Amount
20__	\$
20__	
20__ <sup>1</sup>	

<sup>1</sup> Stated maturity; not a sinking fund redemption.

**Section 4.04. Notice of Redemption.**

(a) Except in the case of redemption pursuant to Section 4.01 hereof, Certificates shall be redeemed only by written notice from the City to the Trustee of its

election to redeem in accordance with the applicable Section. The notice shall specify the places where the amounts due upon such redemption are payable, the redemption date and the principal amount of each maturity of the Certificates to be redeemed and shall be given at least 30 days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. Notice of the call for any redemption, identifying the Certificates or portions thereof to be redeemed and specifying the terms of such redemption, shall be given by the Trustee by mailing a copy of the redemption notice by United States first class mail or sending by electronic means, at least 30 days prior to the date fixed for redemption, and to the Owner of each Certificate to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of any proceedings of any Certificates as to which no such failure has occurred.

(b) Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice.

(c) If at the time of mailing of notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Certificates called for redemption, which moneys are or will be available for redemption of Certificates, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

#### **Section 4.05. Redemption Payments.**

(a) On or prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the Certificates called for redemption, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to this Indenture (which, in the case of redemption pursuant to Section 4.01 hereof, may be less than the full principal amount of the Outstanding Certificates and accrued interest thereon to the redemption date), interest on the Certificates or portions thereof thus called for redemption shall no longer accrue after the date fixed for redemption.

(b) The Trustee shall pay to the Owners of Certificates so redeemed the amounts due on their respective Certificates, at the Operations Center of the Trustee upon presentation and surrender of the Certificates.

**Section 4.06. Cancellation.** All Certificates which have been redeemed shall not be reissued but shall be canceled by the Trustee in accordance with Section 2.09 hereof.

**Section 4.07. Delivery of New Certificates upon Partial Redemption of Certificates.** Upon surrender and cancellation of a Certificate for redemption in part only, a new Certificate or Certificates of the same maturity and of authorized denomination in an aggregate principal amount equal to the unredeemed portion thereof, shall be executed on behalf of and delivered by the Trustee.

**ARTICLE V**  
**INVESTMENTS**

**Section 5.01. Investment of Moneys.** All moneys held as part of any other fund, account or subaccount created hereunder shall, subject to Sections 5.02 and 6.03 hereof, be deposited or invested and reinvested by the Trustee, at the written direction of ACLC, in Permitted Investments; provided, however, that the Trustee shall make no deposits or investments of any moneys in any fund or account created hereunder which shall interfere with or prevent withdrawals for payment of the Certificates, or interest thereon; and provided, further, that no forward delivery agreements, hedge, purchase and resale agreements or par-put agreements may be used with respect to the investment of moneys in any fund or account included in the Trust Estate for the Certificates. The Trustee may conclusively rely upon the City's written instruction as to both the suitability and legality of the directed investments. If the City fails to provide written directions concerning investment of moneys held by the Trustee, the Trustee may invest in a money market fund that qualifies as a Permitted Investment. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase is a Permitted Investment remains a Permitted Investment thereafter. Any and all such deposits or investments shall be held by or under the control of the Trustee. The Trustee may make any and all such deposits or investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Trustee shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions of this Section 5.01. Income from deposits or investments of moneys held in the Rebate Fund shall be deposited as provided in Section 3.04 hereof and income from deposits or investments of moneys held in any escrow account established pursuant to Section 10.01 hereof shall be deposited as provided in the escrow agreement governing such escrow account. Otherwise, except as otherwise provided by Article III hereof, deposits or investments shall at all times be a part of the fund, account or subaccount from which the moneys used to acquire such deposits or investments shall have come, and all income and profits on such deposits or investments shall be credited to, and losses thereon shall be charged against, such fund, account or subaccount. In computing the amount in any fund or account created hereunder for any purpose hereunder, investments shall be valued at cost (exclusive of accrued interest) or par, whichever is less.

The Trustee is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Trustee to ACLC that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by ACLC, unless ACLC notifies the Trustee in writing to the contrary within thirty (30) days of the date of such statement. The Trustee shall without further direction from ACLC sell such qualified investments as and when required to make any payment for the purpose for which such investments are held. ACLC acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant ACLC the right to receive brokerage confirmations of security transactions, ACLC waives the receipt of such confirmations. The Trustee shall furnish to ACLC periodic statements which include details of all investment transactions made by the Trustee.

The Shareholder Communications Act of 1985 and its regulation require that banks and trust companies make an effort to facilitate communication between registrants of U.S. securities and the parties who have the authority to vote or direct the voting of those securities regarding proxy dissemination and other corporate communications. Unless ACLC indicates its objection in writing, the Trustee will provide the obligatory information to the registrant of securities held pursuant to this Indenture upon request. ACLC's objection will apply to all securities held pursuant to this Indenture now and in the future unless ACLC otherwise notifies the Trustee in writing.

**Section 5.02. Tax Certification.** The Trustee certifies and covenants to and for the benefit of the Owners that so long as any of the Certificates remain Outstanding, moneys in any fund or account held by the Trustee under this Indenture, whether or not such moneys were derived from the proceeds of the sale of the Certificates or from any other source, will not be knowingly deposited or invested in a manner which will cause the interest on the Certificates to be included in gross income for federal income tax purposes; provided however, that the Trustee shall not be obligated to confirm that any such deposit or investment made by the Trustee pursuant to any direction of the City or ACLC is in compliance with its covenant under this Section.

## ARTICLE VI

### COVENANTS OF ACLC

**Section 6.01. Representations, Covenants and Warranties Regarding Execution, Delivery and Performance of Indenture.** ACLC represents, covenants and warrants that:

(a) ACLC (i) is a nonprofit corporation that is organized, validly existing and in good standing under the laws of the State, (ii) is duly qualified to do business in the State and (iii) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own and manage its properties, to conduct its affairs in the State, to grant the Trust Estate to the Trustee and to execute, deliver and perform its obligations hereunder.

(b) The grant of the Trust Estate to the Trustee pursuant to this Indenture is in the best interests of ACLC.

(c) The execution, delivery and performance of this Indenture by ACLC have been duly authorized by ACLC.

(d) This Indenture is enforceable against ACLC in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Indenture by ACLC does not and will not conflict with or result in a breach of the terms, conditions or

provisions of any restriction or any agreement or instrument to which ACLC is now a party or by which ACLC is bound, or constitute a default under any of the foregoing, in a manner which affects the validity or enforceability of the provisions of this Indenture or the Lease.

(f) There is no litigation or proceeding pending or, to the best of its knowledge, threatened against ACLC or any other Person affecting the right of ACLC to execute, deliver or perform its obligations under this Indenture.

**Section 6.02. Maintenance of Existence; Performance of Obligations.**

(a) ACLC shall at all times maintain its corporate existence and will use its best efforts to maintain, preserve and renew all the rights and powers provided to it under its articles of incorporation and bylaws, action of its board of directors and applicable law; provided, however, that this covenant shall not prevent the assumption, by operation of law or otherwise, by any Person of the rights and obligations of ACLC hereunder, but only if and to the extent such assumption does not materially impair the rights of the Owners of any Outstanding Certificates.

(b) ACLC shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of ACLC under the provisions of this Indenture, the Lease, any other instrument or other arrangement to which it is a party that benefits the Owners of any Outstanding Certificates and any other Requirement of Law.

**Section 6.03. Tax Covenant.** ACLC shall not take any action or omit to take any action with respect to the Certificates, the proceeds of the Certificates, the Trust Estate, the Leased Property or any other funds or property of ACLC and it will not permit any other Person to take any action or omit to take any action with respect to the Trust Estate or the Leased Property or the use thereof if such action or omission would cause interest on any of the Certificates to be included in gross income for federal income tax purposes or to be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining “adjusted net book earnings” for the purpose of computing the alternative minimum tax imposed on such corporations). In furtherance of this covenant, ACLC shall comply with the procedures set forth in the Tax Compliance Certificate delivered in connection with the issuance of the Certificates and the provisions of any similar certificate or instrument delivered in connection with the issuance of any Additional Certificates. The covenants set forth in this Section shall remain in full force and effect notwithstanding the payment in full or defeasance of the Certificates until the date on which all obligations in fulfilling such covenants have been met. The covenants set forth in this Section shall not, however, apply to any series of Certificates if, at the time of issuance, ACLC intends the interest on such series of Certificates to be subject to federal income tax.

**Section 6.04. Title Insurance.** The Trustee shall be provided with an ALTA Lender’s Policy issued to the Trustee in an amount not less than the lesser of either the outstanding principal amount of Certificates or the insurable value of such real property, insuring the Trustee’s first mortgage interest in ACLC’s leasehold interest in the Site Leased Property, subject only to Permitted Encumbrances. The Trustee shall have no obligation to review any title policy delivered

to it hereunder for compliance with the provisions hereof and shall hold such title policy solely as a repository for the benefits of the Certificate Owners.

**Section 6.05. Sale or Encumbrance of Leased Property.** As long as there are any Outstanding Certificates, and as except otherwise permitted by this Indenture and except as the Lease otherwise specifically requires, ACLC shall not sell or otherwise dispose of any of its interest in the Leased Property unless it determines that such sale or other disposal will not materially adversely affect the rights of the Owners of the Certificate.

**Section 6.06. Rights of Trustee under Lease.** ACLC hereby covenants to the Trustee for the benefit of the Owners that ACLC will observe and comply with its obligations under the Lease, and that all the representations made by ACLC in the Lease are true. Wherever in the Lease it is stated that the Lessor will notify ACLC, or wherever the Lease gives ACLC or the Trustee some right or privilege, such part of the Lease shall be as if it were set forth in full in this Indenture. ACLC agrees that the Trustee, as assignee of ACLC under the Lease, may enforce, in its name or in the name of ACLC, all rights of ACLC and all obligations of the City under the Lease, for and on behalf of the Owners, whether or not ACLC is in default under this Indenture.

**Section 6.07. Defense of Trust Estate.** ACLC shall at all times, to the extent permitted by law, defend, preserve and protect its title to its interest in the Leased Property and the other property or property rights included the Trust Estate, the grant of the Trust Estate to the Trustee under this Indenture and all the rights of the Owners under this Indenture against all claims and demands of all Persons whomsoever.

**Section 6.08. Reserved.**

**Section 6.09. Inspection of the Leased Property.** The Trustee and its duly authorized agents shall have the right (but shall have no obligation), on reasonable notice to ACLC and the City, at all reasonable times, to examine and inspect the Leased Property (subject to such regulations as may be imposed by ACLC and the City for security purposes). The Trustee and its duly authorized agents shall also be permitted (but shall have no obligation), at all reasonable times, to examine the books, records, reports and other papers of ACLC with respect to the Leased Property.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01. Events of Default.** Any of the following shall constitute an “Event of Default” under this Indenture:

- (a) default in the payment of the principal of any Certificate when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption;
- (b) default in the payment of any installment of interest on any Certificate when the same shall become due and payable;

(c) the occurrence of an Event of Nonappropriation or an Event of Default under the Lease; or

(d) failure by ACLC to cure any noncompliance with any other provision of this Indenture within 30 days after receiving notice of such noncompliance, which 30-day period may be extended for an additional 30 days upon evidence that ACLC is proceeding with due diligence to cure such noncompliance.

### **Section 7.02. Remedies on Default.**

(a) Upon the occurrence of an Event of Default described in Section 7.01(c) hereof, the Trustee, as assignee of the rights of ACLC under the Lease may, or at the request of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and upon receipt of assurances or indemnification satisfactory to it that it will be repaid for such action, shall, without any further demand or notice, take one or any combination of the remedial steps described in Section 12.02 of the Lease.

(b) The Trustee shall also be entitled, upon any Event of Default described in Section 7.01(c) hereof, to any moneys in any funds or accounts created hereunder (except the Rebate Fund and any escrow accounts established pursuant to Section 10.01 hereof).

(c) Upon any Event of Default described in Section 7.01(a) or (b) hereof, the Trustee may take whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners, including but not limited to, its rights as assignee of ACLC's rights under the Lease.

(d) No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(e) Subject to Section 7.03 hereof, if any Event of Default under this Indenture shall have occurred and if requested by the Owners of a majority in aggregate principal amount of Certificates then Outstanding and upon receipt of assurances or indemnification satisfactory to it that it will be repaid for such action, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owners.

(f) The Trustee, as assignee of the rights of the Lease, shall control all remedies available to ACLC under the Lease.

(g) The remedies set forth in paragraphs (a) through (f) of this Section are exercisable by the Trustee subject to the rights of the Owners set forth in Section 7.03 hereof.

**Section 7.03. Majority of Owners May Control Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Certificates then Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the

time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof.

**Section 7.04. Rights and Remedies of Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default under this Indenture has occurred of which the Trustee has been notified as provided in Section 8.02(h) hereof, or of which by Section 8.02(h) hereof it is deemed to have notice, and the Owners of not less than a majority in aggregate principal amount of Certificates then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceedings in its own name; nor unless they have also offered to the Trustee indemnity as provided in Section 8.02 hereof nor unless the Trustee shall thereafter fail or refuse to exercise within a reasonable period of time (not to exceed 30 days) the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request, and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his, her, its or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Certificates then Outstanding. Nothing contained in this Indenture shall, however, affect or impair the right of any Owner to enforce the payment of the principal of or interest on any Certificate at and after the maturity thereof.

**Section 7.05. Purchase of Leased Property by Owner or Trustee; Application of Certificates Toward Purchase Price.** Upon the occurrence of an Event of Default hereunder, the lien on the Leased Property created and vested in the Trustee hereunder may be foreclosed either by sale at public auction or by proceedings in equity. Upon any such sale, any Owner or the Trustee may bid for and purchase the Trustee's interest in the Leased Property; and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in his, her, its or their own absolute right without further accountability; and any purchaser at any such sale may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash for the costs and expenses of the sale, compensation and other charges, in paying purchase money, turn in Certificates then Outstanding in lieu of cash, to the amount which shall, upon distribution of the Net Proceeds of such sale and any other moneys available hereunder, be payable thereon. If the Trustee shall acquire title to any portion of the Leased Property as a result of any such foreclosure sale, or any proceeding or transaction in lieu of foreclosure, the Trustee shall thereafter sell its interest in the Leased Property; and may take any further lawful action with respect to its interest in the Leased Property which it shall deem to be in the best interest of the Owners, including but not limited to the enforcement of all rights and remedies set forth in the Lease and this Indenture and the taking of all other courses of action permitted herein or therein.



**Section 7.06. Waiver of Appraisalment, Valuation, Stay, Execution and Redemption Laws.** ACLC agrees, to the extent permitted by law, that in case of the occurrence of an Event of Default hereunder, neither ACLC nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Indenture, or the absolute sale of the Trust Estate to the extent permitted hereunder, or the final and absolute surrender of possession, immediately after such sale, to the purchasers; and ACLC, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws, and any and all right to have the estates comprised in the security intended to be hereby created marshaled upon any foreclosure of the lien hereof and agrees that the Trustee or any court having jurisdiction to foreclose such lien may sell its interest in the Leased Property as an entirety.

**Section 7.07. Trustee May Enforce Rights Without Certificates.** All rights of action and claims under this Indenture or any of the Certificates Outstanding hereunder may be enforced by the Trustee without the possession of any of the Certificates or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Certificates, and any recovery of judgment shall be for the ratable benefit of the Owners, subject to the provisions hereof.

**Section 7.08. Trustee To File Proofs of Claim in Receivership, Etc.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the Leased Property, the Trustee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have claims of the Trustee and of the Owners allowed in such proceedings for the entire amount due and payable on the Certificates under this Indenture, at the date of the institution of such proceedings and for any additional amounts which may become due and payable by it after such date, without prejudice, however, to the right of any Owner to file a claim in its own behalf.

**Section 7.09. Delay or Omission; No Waiver.** No delay or omission of the Trustee or of any Owner to exercise any right or power accruing upon any Event of Default hereunder shall exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture may be exercised from time to time and as often as may be deemed expedient.

**Section 7.10. No Waiver of One Event of Default to Affect Another.** No waiver of any Event of Default hereunder, whether by the Trustee or the Owners, shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

**Section 7.11. Discontinuance of Proceedings on Event of Default; Position of Parties Restored.** In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case ACLC, the City, the Trustee and the Owners shall be restored to their former positions and rights hereunder with respect to the Trust

Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 7.12. Waivers of Events of Default.** The Trustee may in its discretion waive any Event of Default hereunder and its consequences, and notwithstanding anything else to the contrary contained in this Indenture shall do so upon the written request of the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding; provided, however, that there shall not be waived without the consent of the Owners of 100% of the Certificates then Outstanding as to which the Event of Default exists (a) any Event of Default in the payment of the principal of any Outstanding Certificates at the date of maturity specified therein or (b) any Event of Default in the payment when due of the interest on any such Certificates, unless prior to such waiver or rescission, all arrears of interest and all arrears of payments of principal then due (including interest on all overdue installments at the highest rate due on the Certificates), and all expenses of the Trustee in connection with such Event of Default shall have been paid or provided for. In case of any such waiver, or in case any proceedings taken by the Trustee on account of any such Event of Default hereunder shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case ACLC, the Trustee, the City and the Owners shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default hereunder, or impair any right consequent thereon.

## ARTICLE VIII

### CONCERNING THE TRUSTEE

**Section 8.01. Representations, Covenants and Warranties Regarding Execution, Delivery and Performance of Indenture.** The Trustee represents, covenants and warrants that:

(a) the Trustee (i) is a national banking association that is duly organized, validly existing and in good standing under the laws of the United States of America, (ii) is duly qualified to do business in the State and (iii) is authorized, under its articles of association, action of its board of directors and applicable law, to conduct its affairs in the State, to accept the grant of the Trust Estate (defined herein) from ACLC hereunder and to execute, deliver and perform its obligations under this Indenture;

(b) the execution, delivery and performance of this Indenture by the Trustee have been duly authorized by the Trustee;

(c) this Indenture is enforceable against the Trustee in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America;

(d) the execution, delivery and performance of the terms of this Indenture by the Trustee do not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Trustee is now a party or by which the Trustee is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Indenture or the Lease, result in the creation or imposition of a lien or encumbrance whatsoever upon the Trust Estate or any of the property or assets of the Trustee;

(e) there is no litigation or proceeding pending or threatened against the Trustee affecting the right of the Trustee to execute, deliver or perform its obligations under this Indenture; and

(f) the Trustee acknowledges and recognizes that the Lease will be terminated upon the occurrence of an Event of Nonappropriation thereunder, and that a failure by the City to appropriate funds in a manner that results in an Event of Nonappropriation under the Lease is a legislative act that is solely within the discretion of the Board of Directors of the City.

**Section 8.02. Duties of the Trustee.** The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default hereunder and after the curing of all Events of Default which may have occurred under this Indenture, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a reasonable and prudent person would exercise or use under the circumstances in the conduct of the affairs of another in exercising any rights or remedies or performing any of its duties hereunder.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and in Section 8.02(g) and shall be entitled to act upon the advice or an Opinion of Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the advice or an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or non-action taken by or omitted to be taken in good faith in reliance upon such advice or Opinion of Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Certificates (except in respect of the execution of the Certificates on behalf of the Trustee), for collecting any insurance moneys or for the validity of the execution by ACLC of this Indenture, any Supplemental Indenture or any instruments of further assurance, or for the

sufficiency of the security for the Certificates issued hereunder or intended to be secured hereby, or for the value of or title to the Leased Property. The Trustee shall have no obligation to perform any of the duties of ACLC under the Lease.

(d) The Trustee shall not be accountable for the use of any Certificates delivered to the Initial Purchaser hereunder. The Trustee may become the Owner of Certificates with the same rights which it would have if not Trustee.

(e) The Trustee may conclusively rely and shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. The Trustee shall not be required to make any independent investigation in connection with any such certificate or document. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate shall be conclusive and binding upon any Certificates issued in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to conclusively rely upon a certificate signed on behalf of ACLC by ACLC Representative or such other person as may be designated for such purpose by ACLC, as sufficient evidence of the facts therein contained.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct including without limitation a breach of fiduciary duty or gross negligence.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by ACLC to cause to be made any of the payments to the Trustee required to be made by Article III hereof, unless the Trustee shall be specifically notified in writing of such Event of Default by ACLC or by the Owners of at least 10% in aggregate principal amount of Certificates then Outstanding and in the absence of such notice so delivered the Trustee may conclusively assume there are no Events of Default hereunder except as aforesaid.

(i) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law.

(j) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, but shall not be required, to inspect any and all of the Leased Property (subject to such regulations as may be imposed by ACLC or the City for security purposes), including all books, papers

and records of ACLC pertaining to the Leased Property and the Certificates, and to take such memoranda from and in regard thereto as may be desired.

(k) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything in this Indenture to the contrary, the Trustee shall have the right, but shall not be required, to demand in respect of the delivery of any Certificates, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee.

(m) The Trustee shall not be required to advance any of its own funds in the performance of its obligations hereunder unless it has received assurances or indemnification satisfactory to it that it will be repaid.

Before taking action under this Indenture the Trustee may require that a satisfactory indemnity bond be furnished by the City, ACLC or Holders for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

(n) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or paying agent.

(o) The Trustee may inform the Certificate Owners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event, no fiduciary duty exists which imposes any obligation for the Trustee to foreclose upon, manage, maintain or operate the Leased Property, if the Trustee in its individual capacity determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

### **Section 8.03. Reserved.**

**Section 8.04. Compensation of Trustee.** During the Lease Term, the Trustee shall be entitled to compensation in accordance with its agreement with ACLC, which, notwithstanding any other provision hereof, may be amended at any time by agreement of ACLC and the Trustee without the consent of or notice to the Owners. In no event shall the Trustee be obligated to advance its own funds in order to take any action hereunder. The rights of the Trustee to payments pursuant to this Section shall be superior to the rights of the Owners with respect to the Trust Estate. ACLC shall from time to time subject to any agreement then in effect with the Trustee, pay the Trustee compensation for its ordinary services and reimburse the Trustee for all its advances and expenditures hereunder, including, but not limited to, advances to and fees and

expenses of accountants, agents, appraisers, consultants, counsels or other experts employed by it in the observance and performance of its rights and obligations hereunder in accordance with the agreement described previously in this Section. In the event that it should become necessary for the Trustee to perform extraordinary services, the City shall also pay as Additional Rentals reasonable additional compensation therefor and reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expense are occasioned by the negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore. The obligations under this Section 8.04 shall survive the termination and discharge of this Indenture.

#### **Section 8.05. Resignation or Replacement of Trustee.**

(a) The present or any future Trustee may resign by giving written notice to ACLC not less than 60 days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of a successor qualified as provided in paragraph (c) of this Section; provided, however, that if no successor is appointed within 60 days following the date designated in the notice for the Trustee's resignation to take effect, the resigning Trustee may petition a court of competent jurisdiction for the appointment of a successor. The present or any future Trustee may be removed at any time by ACLC in the event ACLC reasonably determines that the Trustee is not duly performing its obligations hereunder or that such removal is in the best interests of ACLC or the Owners, or by an instrument in writing, executed by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, for any breach of any of the Trustee's duties hereunder.

(b) In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Owners of a majority in aggregate principal amount of the Certificates Outstanding by an instrument or concurrent instruments signed by such Owners, or their attorneys in fact duly appointed; provided that ACLC may, by an instrument executed by order of ACLC, appoint a successor until a new successor shall be appointed by the Owners as herein authorized. ACLC upon making such appointment shall forthwith give notice thereof to each Owner and to the City, which notice may be given concurrently with the notice of resignation given by any resigning Trustee. Any successor so appointed by ACLC shall immediately and without further act be superseded by a successor appointed in the manner above provided by the Owners of a majority in aggregate principal amount of the Certificates Outstanding.

(c) Every successor shall be a bank or trust company in good standing, located in or incorporated under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act hereunder, having a capital and surplus of not less than \$10,000,000. Any successor appointed hereunder shall execute, acknowledge and deliver to ACLC an instrument accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as Trustee herein; but the Trustee retiring shall, nevertheless, on the written demand of its successor, execute

and deliver an instrument conveying and transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the predecessor, which shall duly assign, transfer and deliver to the successor all properties and moneys held by it under this Indenture. Should any instrument in writing from ACLC be required by any successor for more fully and certainly vesting in and confirming to it, the said instruments in writing shall, at the reasonable discretion of ACLC, be made, executed, acknowledged and delivered by ACLC on request of such successor.

(d) The instruments evidencing the resignation or removal of the Trustee and the appointment of a successor hereunder, together with all other instruments provided for in this Section shall be filed and/or recorded by the successor Trustee in each recording office, if any, where this Indenture shall have been filed and/or recorded.

**Section 8.06. Conversion, Consolidation or Merger of Trustee.** Any bank or trust company into which the Trustee or its successor may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business as a whole shall be the successor of the Trustee under this Indenture with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties hereto or thereto, anything herein or therein to the contrary notwithstanding. In case any of the Certificates to be issued hereunder shall have been executed, but not delivered, any successor Trustee may adopt the signature of any predecessor Trustee, and deliver the same as executed; and, in case any of such Certificates shall not have been executed, any successor Trustee may execute such Certificates in the name of such successor Trustee.

**Section 8.07. Intervention by Trustee.** In any judicial proceeding to which ACLC or the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the Owners of at least 10% in aggregate principal amount of Certificates Outstanding.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

**Section 9.01. Supplemental Indentures Not Requiring Consent of Owners.** The Trustee and ACLC may, without the consent of, or notice to, the Owners, enter into a Supplemental Indenture for any one or more or all of the following purposes:

(a) to add to the covenants and agreements of ACLC contained in this Indenture other covenants and agreements to be thereafter observed by ACLC;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Indenture, or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and do not adversely affect the interests of the Owners;

(c) to subject to this Indenture additional revenues, properties or collateral (including release and substitution of property permitted under the Lease);

(d) to set forth the terms and conditions and other matters in connection with the issuance of Additional Certificates, pursuant to Section 2.10 hereof, including Additional Certificates issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage for the entire term thereof and Additional Certificates which by their terms appreciate in value to a stated face amount at maturity;

(e) to effect any change in connection with the preservation of the exclusion from gross income for federal income tax purposes interest on the Certificates; or

(f) to effect any other changes in this Indenture which, in the opinion of Bond Counsel, do not materially adversely affect the rights of the Owners.

### **Section 9.02. Supplemental Indentures Requiring Consent of Owners.**

(a) Exclusive of Supplemental Indentures under Section 9.01 hereof, the written consent of the Owners of not less than a majority in aggregate principal amount of the Certificates Outstanding shall be required for the execution by ACLC and the Trustee of any Supplemental Indenture; provided, however, that without the consent of the Owners of all the Certificates Outstanding nothing herein contained shall permit, or be construed as permitting:

(i) a change in the terms of redemption or maturity of the principal amount of or the interest on any Outstanding Certificate, or a reduction in the principal amount of any redemption of any Outstanding Certificate or the rate of interest thereon, without the consent of the Owner of such Certificate;

(ii) the deprivation as to the Owner of any Certificate Outstanding of the lien created by this Indenture (other than as originally permitted hereby);

(iii) a privilege or priority of any Certificate or Certificates over any other Certificate or Certificates, except as permitted herein; or

(iv) a reduction in the percentage of the aggregate principal amount of the Certificates required for consent to any Supplemental Indenture.

(b) If at any time ACLC shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to the Owners of the Certificates at the addresses last shown on the registration records of the Trustee or by electronic means to DTC or its successors. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Owners. If, within 60 days or such longer period as shall be prescribed by ACLC following the mailing of such notice, the Owners of not less than a majority, or, with respect to the matters specified in clauses (i) through (iv) of paragraph (a) of this Section, 100%, in aggregate principal



amount of the Certificates Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or to enjoin or restrain the Trustee or ACLC from executing the same or from taking any action pursuant to the provisions thereof.

**Section 9.03. Execution of Supplemental Indenture.** The Trustee is authorized to join with ACLC in the execution of any Supplemental Indenture entered into in accordance with this Article and to make further agreements and stipulations which may be contained therein, but the Trustee shall not be obligated to enter into any Supplemental Indenture which affects its rights, duties or immunities under this Indenture. Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture; and all the terms and conditions contained in any such Supplemental Indenture shall be deemed to be part of this Indenture for any and all purposes. In case of the execution and delivery of any Supplemental Indenture, express reference may be made thereto in the text of the Certificates issued thereafter, if any, if deemed necessary or desirable by the Trustee. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it, who may be counsel for the City, as conclusive evidence that any such proposed Supplemental Indenture complies with the provisions of this Indenture and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such Supplemental Indenture.

**Section 9.04. Amendments, Etc., of the Lease Not Requiring Consent of Owners.** ACLC may, with the written consent of the Trustee, but without the consent of or notice to the Owners, amend, change or modify the Lease as may be required:

- (a) by the provisions of the Lease or this Indenture;
- (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease;
- (c) in order more precisely to identify the Leased Property or to add additional or substituted improvements or properties acquired in accordance with the Lease;
- (d) in order to provide for the acquisition, construction or installation of additional property under the Lease;
- (e) in connection with the issuance of Additional Certificates, including Additional Certificates issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage for the entire term thereof and Additional Certificates which by their terms appreciate in value to a stated face amount at maturity;
- (f) in connection with any Supplemental Indenture permitted by this Article;
- (g) to effect any change in connection with the preservation of the exclusion from gross income for federal income tax purposes of interest on the Certificates;
- (h) to effect any change that (i) does not reduce the revenues available to the Trustee from the Lease below the amount required to make all the payments and transfers

required by Article III hereof, (ii) does not reduce the value of the Leased Property and (iii) does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates; or

(i) to effect any other changes in the Lease which, in the opinion of Bond Counsel, do not materially adversely affect the rights of the Owners.

**Section 9.05. Amendments, etc., of the Lease Requiring Consent of Owners.** Except for the amendments, changes or modifications permitted by Section 9.04 hereof, neither ACLC nor the Trustee shall consent to any other amendment, change or modification of the Lease without notice to and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Certificates Outstanding given and procured as provided in Section 9.02 hereof. If at any time ACLC shall request the consent of the Trustee to any such proposed amendment, change or modification of the Lease, the Trustee shall, upon receipt of amounts necessary to pay expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 9.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal corporate trust office of the Trustee for inspection by all Owners.

## ARTICLE X

### MISCELLANEOUS

#### **Section 10.01. Discharge of Indenture.**

(a) If, when the Certificates secured hereby shall become due and payable in accordance with their terms or otherwise as provided in this Indenture, the whole amount of the principal of and interest due and payable upon all of the Certificates shall be paid, or provision shall have been made for the payment of the same, together with all other sums payable hereunder, including all unpaid fees and expenses of the Trustee, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of ACLC to the Trustee and the Owners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall transfer and convey to (or to the order of) ACLC all property assigned, pledged or mortgaged to the Trustee by ACLC then held by the Trustee pursuant to this Indenture, and the Trustee shall execute such documents as may be reasonably required by ACLC and shall turn over to (or to the order of) ACLC any surplus in any fund, account or subaccount (except the Rebate Fund) created under this Indenture, except any escrow accounts theretofore established pursuant to this Section.

(b) All or any portion of the Outstanding Certificates shall prior to the maturity or redemption date thereof be deemed to have been paid (“defeased”) within the meaning and with the effect expressed in this Section if (i) in case said Certificates are to be redeemed on any date prior to their maturity, ACLC shall have given to the Trustee in form satisfactory to the Trustee irrevocable instructions to give notice of redemption of such Certificates on said redemption date, such notice to be given on a date and otherwise in

accordance with the provisions of Section 4.04 hereof, (ii) there shall have been deposited in trust either moneys in an amount which shall be sufficient, or Defeasance Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held in trust at the same time, shall be sufficient to pay when due the principal of and interest due and to become due on said Certificates on and prior to the redemption date or maturity date thereof, as the case may be and (iii) a certified public accountant shall have delivered a verification report verifying the deposit described in clause (ii) above. Neither the Defeasance Securities nor moneys deposited in trust pursuant to this Section or principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Certificates; provided any cash received from such principal or interest payments on such Defeasance Securities deposited in trust, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Securities of the type described in clause (ii) of this paragraph maturing at the times and in amounts sufficient to pay when due the principal of and interest to become due on said Certificates on or prior to such redemption date or maturity date thereof, as the case may be. At such time as any Certificates shall be deemed paid as aforesaid, such Certificates shall no longer be secured by or entitled to the benefits of this Indenture, except for the purpose of exchange and transfer and any payment from such moneys or Defeasance Securities deposited in trust.

(c) Prior to any discharge of this Indenture pursuant to this Section or the defeasance of any Certificates pursuant to this Section becoming effective, there shall have been delivered to ACLC and the Trustee an opinion of Bond Counsel, addressed to ACLC and the Trustee, to the effect that all requirements of the Indenture for such defeasance have been complied with and that such discharge or defeasance will not constitute a violation by ACLC of its tax covenant in Section 6.03 hereof.

(d) In the event that there is a defeasance of only part of the Certificates of any maturity, the Trustee shall, if requested by ACLC, institute a system to preserve the identity of the individual Certificates or portions thereof so defeased, regardless of changes in Certificate numbers attributable to transfers and exchanges of Certificates.

**Section 10.02. Further Assurances and Corrective Instruments.** ACLC and the Trustee agree that so long as this Indenture is in full force and effect, ACLC and the Trustee shall have full power to carry out the acts and agreements provided herein and they will from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Trust Estate, or for otherwise carrying out the intention of or facilitating the performance of this Indenture.

**Section 10.03. Financial Obligations of Corporation Limited to Trust Estate.** Notwithstanding any other provision hereof, all financial obligations of ACLC under this Indenture are limited to the Trust Estate.

**Section 10.04. Reserved.**

**Section 10.05. Evidence of Signature of Owners and Ownership of Certificates.**

(a) Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing, proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Certificates shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(i) the fact and date of the execution by any Owner or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public; and

(ii) the fact of the ownership by any person of Certificates and the amounts and numbers of such Certificates, and the date of the ownership of the same, may be proved by the registration records of the Trustee.

(b) Any request or consent of the Owner of any Certificate shall bind all transferees of such Certificate in respect of anything done or suffered to be done by ACLC or the Trustee in accordance therewith.

**Section 10.06. Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than ACLC, the City, the Trustee and the Owners of the Certificates, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of ACLC or the Trustee shall be for the sole and exclusive benefit of ACLC, the City, the Trustee and the Owners, and their respective successors and assigns.

**Section 10.07. Corporation and Trustee Representatives.** Whenever under the provisions hereof the approval of ACLC or the Trustee is required, or ACLC or the Trustee is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for ACLC by ACLC Representative and for the Trustee by the Trustee Representative, and ACLC, the Trustee and the City shall be authorized to act on any such approval or request.

**Section 10.08. Titles, Headings, Etc.** The titles and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 10.09. Manner of Giving Notices.** All notices, assignments or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by electronic means or mailed by registered mail, postage prepaid, to the parties at the following addresses, provided that either party may provide a new address by notice to the other:

If to City: City of Aurora, Colorado  
15151 East Alameda Parkway  
Aurora, Colorado 80012

If to Lessor: Aurora Capital Leasing Corporation  
15151 East Alameda Parkway  
Aurora, Colorado 80012

If to the Trustee: [TRUSTEE]  
[UPDATE]  
[UPDATE]  
Attention: \_\_\_\_\_

**Section 10.10. No Individual Liability.** All covenants, stipulations, promises, agreements and obligations of ACLC or the Trustee, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of ACLC or the Trustee, as the case may be, and not of any member, director, officer, employee, servant or other agent of ACLC or the Trustee in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, servant or other agent of ACLC or the Trustee or any natural person executing this Indenture or any related document or instrument.

**Section 10.11. Events Occurring on Days That Are Not Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right under this Indenture is a day that is not a Business Day, such payment may be made, such act may be performed or such right may be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Indenture.

**Section 10.12. Severability.** In the event that any provision of this Indenture, other than the obligation of ACLC to deliver the Trust Estate to the Trustee, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 10.13. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.14. Applicable Law.** The laws of the State shall be applied in the interpretation, execution and enforcement of this Indenture.

**Section 10.15. Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.16. Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, ACLC and the Trustee have executed this Indenture as of the date first above written.

AURORA CAPITAL LEASING  
CORPORATION

By \_\_\_\_\_  
President

[TRUSTEE], as Trustee

By \_\_\_\_\_  
Authorized Signatory

TATE OF COLORADO                    )  
  ) ss.  
COUNTY OF ARAPAHOE            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2019, by Jason Batchelor, as President of Aurora Capital Leasing Corporation.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary

My commission expires:

\_\_\_\_\_



STATE OF COLORADO            )  
CITY AND                            ) ss.  
COUNTY OF DENVER            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2019, by \_\_\_\_\_ as an authorized signatory of [TRUSTEE], a national banking association.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary

My commission expires:

\_\_\_\_\_

**APPENDIX A**

**FORM OF CERTIFICATE**

**AURORA CAPITAL LEASING CORPORATION  
REFUNDING AND IMPROVEMENT CERTIFICATE OF PARTICIPATION,  
SERIES 2019**

**Evidencing Assignment of a  
Proportionate Undivided Interest in the  
Right to Receive Certain Revenues Payable by the  
CITY OF AURORA, COLORADO  
Under a Lease Purchase Agreement dated as of October 15, 2019**

No. \_\_\_\_ \$ \_\_\_\_\_

<b>Interest Rate:</b>	<b>Maturity Date:</b>	<b>Original Issue Date:</b>	<b>CUSIP:</b>
_____%	December 1, 20__	October __, 2019	051556 ____

REGISTERED OWNER:

PRINCIPAL SUM:

THIS CERTIFIES THAT THE REGISTERED OWNER (named above), or registered assigns, has a proportionate undivided interest in rights to receive certain revenues, as described below, pursuant to an annually renewable Lease Purchase Agreement dated as of October 15, 2019 (the "Lease"), between the Aurora Capital Leasing Corporation, a Colorado nonprofit corporation, as lessor ("ACLC") and the City of Aurora, Colorado, as lessee (the "City") thereunder. The interest of the Registered Owner of this Refunding and Improvement Certificate of Participation, Series 2019 (this "Certificate") is secured as provided in the Lease and in the Mortgage and Indenture of Trust dated as of October 15, 2019 (the "Indenture"), between ACLC and [TRUSTEE], as trustee, or its successor (the "Trustee") for the Registered Owners of the Certificates (the "Certificate Owners"), whereby the rights (with certain exceptions) of ACLC under the Lease have been assigned by ACLC to the Trustee for the benefit of the Certificate Owners. Under the Indenture, ACLC has also granted to the Trustee, for the benefit of the Certificate Owners, a mortgage on and a security interest in the Leased Property (as hereinafter defined). Pursuant to the Lease and the Indenture, the Registered Owner hereof is entitled to receive, solely out of and to the extent available from the sources hereinafter identified, on the Maturity Date (stated above) (or earlier as hereinafter provided), the Principal Sum (stated above), and interest thereon as described in the Indenture at the Interest Rate (stated above) and payable semiannually on June 1 and December 1 of each year, commencing [December 1, 2019]. Principal of this Certificate is payable in lawful money of the United States of America upon presentation and surrender of this Certificate at the operations center of the Trustee in Kansas City, Missouri; and interest on this Certificate is payable to the Registered Owner hereof by check or draft of the Trustee to be mailed to such Registered Owner, on or before each interest payment date (or, if such

interest payment date is not a Business Day, as defined in the Indenture, on or before the next succeeding Business Day), at the address of such Registered Owner as it last appears in the registration books kept by the Trustee; provided, however, the Trustee may make payments of interest on this Certificate by such alternate means as may be mutually agreed upon by the Registered Owner hereof and the Trustee, with any cost or expense to be paid by the Registered Owner.

This Certificate is one of a series of Refunding and Improvement Certificates of Participation, Series 2019 evidencing assignments of proportionate undivided interests in rights to receive certain revenues, as described below, pursuant to the Lease and the Indenture, executed and delivered in an aggregate principal amount of \$\_\_\_\_\_, pursuant to the Indenture for the purposes, among others, of providing funds to finance the costs of (i) refinancing all or a portion of the outstanding Refunding Certificates of Participation, Series 2009A and (ii) the construction of certain capital improvement projects on the Aurora Municipal Center campus. ACLC's leasehold interest in the Leased Property is leased by ACLC to the City pursuant to the Lease. Under the Lease, the City has agreed to pay directly to the Trustee annual rental payments (the "Base Rentals") in consideration for its right to use the Leased Property, the proceeds of which are required by the Indenture to be applied by the Trustee to the payment of the principal of and interest on the Certificates. In addition to the Base Rentals, the City has agreed, subject to annual appropriation, to make certain other payments (the "Additional Rentals") sufficient to pay the fees and expenses of the Trustee, certain insurance premiums, taxes, utility charges, costs of maintenance and repair and other expenses expressly required to be paid by the City under the Lease.

The Lease is subject to annual renewal at the option of the City. The obligation of the City to pay Base Rentals and Additional Rentals under the Lease will terminate in the event that the City, for any reason, fails to budget and appropriate, specifically with respect to the Lease, moneys to pay all Base Rentals and reasonably estimated Additional Rentals during the next occurring renewal term of the Lease. In the event that the Lease Term (as defined in the Lease) is terminated by the City as set forth above (herein referred to as an "Event of Nonappropriation") or is terminated by reason of an Event of Default (as defined in the Lease), the principal amount of this Certificate and interest thereon will be payable from such moneys, if any, as may be available for such purpose, including any moneys received by the Trustee from the leasing of or a liquidation of the Leased Property. Under certain circumstances, this Certificate and the interest thereon may also be payable from the Net Proceeds (as defined in the Lease) of title or casualty insurance policies or condemnation awards.

Reference is hereby made to the Lease and the Indenture for a description of the rights, duties and obligations of the City, ACLC, the Trustee and the Certificate Owners, the terms upon which the Certificates are secured, the terms and conditions upon which the Certificates will be deemed to be paid at or prior to maturity or redemption of the Certificates upon the making of provision for the full or partial payment thereof, and the rights of the Certificate Owners upon the occurrence of an Event of Default or an Event of Nonappropriation.

NEITHER THE LEASE NOR THE CERTIFICATES CONSTITUTES A GENERAL OBLIGATION OR A MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY WITHIN THE MEANING OF

ANY CONSTITUTIONAL DEBT LIMITATION. NEITHER THE LEASE, THE INDENTURE NOR THE CERTIFICATES HAVE DIRECTLY OR INDIRECTLY OBLIGATED THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED FOR ANY FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. EXCEPT TO THE EXTENT PAYABLE FROM THE PROCEEDS OF THE SALE OF THE CERTIFICATES AND INCOME FROM THE INVESTMENT THEREOF, FROM NET PROCEEDS OF CERTAIN INSURANCE POLICIES AND CONDEMNATION AWARDS, FROM NET PROCEEDS OF THE LEASING OF OR A LIQUIDATION OF THE LEASED PROPERTY OR FROM OTHER AMOUNTS MADE AVAILABLE UNDER THE INDENTURE, THE CERTIFICATES WILL BE PAYABLE DURING THE LEASE TERM SOLELY FROM BASE RENTALS TO BE PAID BY THE CITY UNDER THE LEASE. ALL PAYMENT OBLIGATIONS OF THE CITY UNDER THE LEASE, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION OF THE CITY TO PAY BASE RENTALS, ARE FROM YEAR TO YEAR ONLY AND DO NOT CONSTITUTE A MANDATORY PAYMENT OBLIGATION OF THE CITY IN ANY FISCAL YEAR BEYOND A FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. THE LEASE IS SUBJECT TO ANNUAL RENEWAL AT THE OPTION OF THE CITY AND WILL BE TERMINATED UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION OR AN EVENT OF DEFAULT. IN SUCH EVENT, ALL PAYMENTS FROM THE CITY UNDER THE LEASE WILL TERMINATE, AND THE CERTIFICATES AND THE INTEREST THEREON WILL BE PAYABLE FROM CERTAIN MONEYS, IF ANY, HELD BY THE TRUSTEE UNDER THE INDENTURE, AND ANY MONEYS MADE AVAILABLE BY ACTION OF THE TRUSTEE REGARDING THE LEASED PROPERTY. ACLC HAS NO OBLIGATION TO MAKE ANY PAYMENTS ON THE CERTIFICATES. NEITHER THE CERTIFICATES, THE LEASE NOR THE INDENTURE SHALL GIVE RISE TO A PECUNIARY LIABILITY OF ACLC.

The Certificates are executed and delivered solely as fully registered Certificates in denominations of \$5,000 and any integral multiple thereof.

This Certificate is transferable by the Registered Owner hereof in person or by his or her attorney duly authorized in writing on the registration books kept at the principal corporate trust office of the Trustee upon surrender of this Certificate together with a duly executed written instrument of transfer satisfactory to the Trustee. Upon such transfer, a new fully registered Certificate or Certificates and of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be executed and delivered to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Indenture. The Trustee may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof, whether or not this Certificate shall be overdue, for the purpose of receiving payment and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The Certificates maturing on or prior to December 1, 20\_\_ are not subject to optional redemption prior to their respective maturity dates. The Certificates maturing on and after December 1, 20\_\_ are subject to redemption at the option of the City on December 1, 20\_\_ and any date thereafter at a redemption price equal to 100% of their principal amount plus accrued interest to the date of redemption.

The Certificates maturing on December 1, 20\_\_ are also subject to mandatory sinking fund redemption by lot on December 1 of each year set forth below, at a redemption price equal to the principal amount thereof (without redemption premium), plus accrued interest to the redemption date:

<b>Year (December 1)</b>	<b>Principal Amount</b>
20__	\$
20__	
20__ <sup>1</sup>	

<sup>1</sup> Stated maturity; not a sinking fund redemption.

The Certificates maturing on December 1, 20\_\_ are also subject to mandatory sinking fund redemption by lot on December 1 of each year set forth below, at a redemption price equal to the principal amount thereof (without redemption premium), plus accrued interest to the redemption date:

<b>Year (December 1)</b>	<b>Principal Amount</b>
20__	\$
20__	
20__ <sup>1</sup>	

<sup>1</sup> Stated maturity; not a sinking fund redemption.

The Trustee may waive an Event of Nonappropriation or an Event of Default under certain circumstances as provided in the Lease and the Indenture.

The Indenture permits amendments thereto and to the Lease, upon the agreement of the City and the Trustee and compliance with the other requirements of the Indenture, including but not limited to, in certain cases the approval of the registered owners of not less than a majority, or, for certain amendments, 100% in aggregate principal amount of the Certificates at the time outstanding. The Indenture also contains provisions permitting amendments to the Indenture and the Lease without the consent of the Registered Owners of the Certificates for certain purposes. The Indenture requires the written consent of the Trustee to any amendment of the Indenture or the Lease which modifies the rights, duties or immunities of the Trustee.

Any consent or request by the Registered Owner of this Certificate shall be conclusive and binding upon such owner and upon all future registered owners of this Certificate and of any Certificate issued upon the transfer of this Certificate whether or not notation of such consent or request is made upon this Certificate.

This Certificate is issued with the intent that the laws of the State of Colorado shall govern its legality, validity, enforceability and construction.

This Certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Lease, until executed on behalf of the Trustee.

IN WITNESS WHEREOF, this Certificate has been executed with the manual signature of an authorized signatory of the Trustee, all as of the date set forth below.

[TRUSTEE], as Trustee

By \_\_\_\_\_  
Authorized Signatory

Execution Date: October \_\_, 2019

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please print or type name and address of Transferee)  
(Tax Identification or Social Security No. \_\_\_\_\_)

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_  
Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member of the Medallion Signature Program.

\_\_\_\_\_  
NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Certificate in every particular without alteration or enlargement or any change whatever.

**TRANSFER FEE MAY BE REQUIRED**

[End of Form of Certificate]

## **APPENDIX B**

### **DESCRIPTION OF THE SITE LEASED PROPERTY**

The Leased Property consists of the Site Leased Property and any improvements thereto, whether existing now or hereafter. The Site Leased Property consists of the following:

#### **Legal Description:**

[To be inserted]



**APPENDIX C**

**FORM OF REQUISITION**

City of Aurora, Colorado  
Requisition No. \_\_

[TRUSTEE], as Trustee  
[UPDATE]  
[UPDATE]  
Attention: \_\_\_\_\_

The undersigned City under a Lease Purchase Agreement dated October 15, 2019 (the "Lease") with the Aurora Capital Leasing Corporation, hereby requisitions the following sum from the Project Fund established under the Mortgage and Indenture of Trust dated October 15, 2019 (the "Indenture") between the Aurora Capital Leasing Corporation and [TRUSTEE], as Trustee, and in connection with such request, certifies and warrants as follows:

**Total Requisition Amount:** \$ \_\_\_\_\_

Name and Address of Payee: \_\_\_\_\_

The sum of \$ \_\_\_\_\_ by wire transfer to:

Account Name: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Address \_\_\_\_\_

ABA No.: \_\_\_\_\_

Account Number: \_\_\_\_\_

Reference:

Name and Address of Payee: \_\_\_\_\_

The sum of \$ \_\_\_\_\_ by wire transfer to:

Account Name: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Address \_\_\_\_\_

ABA No.: \_\_\_\_\_

Account Number: \_\_\_\_\_

Reference:

The City further certifies and warrants that (a) the obligation described above has been properly incurred, is a proper charge against the Project Fund and has not been the basis of any previous withdrawal or requisition; (b) all conditions required by the Lease to be met prior to the disbursement of the above amount have been satisfied; (c) the disbursement requested is due and payable and will be used for "Costs of the Project" permitted under the Lease; (d) each item for which this payment or reimbursement is proposed to be made is or was reasonable and necessary in connection with the design, planning, acquisition, construction, improvement or equipping of the Project; and (e) the requirements of all applicable contracts related hereto with respect to lien waivers for work on the Project have been met.

CITY OF AURORA, COLORADO

Date:

\_\_\_\_\_

By:

\_\_\_\_\_

Authorized Person

Attach: Invoice supporting payment

**CLOSING AGENDA AND  
LIST OF CLOSING DOCUMENTS**

**\$ \_\_\_\_\_  
Refunding and Improvement Certificates of Participation,  
Series 2019  
Evidencing Proportionate Undivided Interests in the Right to Receive Certain  
Revenues Pursuant to a Lease Purchase Agreement between  
Aurora Capital Leasing Corporation and the City of Aurora, Colorado**

Closing Time:           October \_\_, 2019  
                                  9:00 a.m.

Place of Closing:       Kutak Rock LLP  
                                  1801 California Street, Suite 3000  
                                  Denver, CO 80202

**DOCUMENTS TO BE DELIVERED AT CLOSING**

**BASIC DOCUMENTS**

1.     Site Lease
2.     Lease Purchase Agreement
3.     Mortgage and Indenture of Trust
4.     Refunding Escrow Agreement
5.     Certificate Purchase Agreement
6.     Preliminary Official Statement
7.     Rule 15c2-12 Certificate
8.     Final Official Statement
9.     Continuing Disclosure Undertaking
10.    Final Terms Certificate

**REAL ESTATE DOCUMENTS**

11.    UCC Financing Statements
12.    Title Insurance Policy

## **CERTIFICATES**

13. General and Insurance Certificate of City, covering signatures, incumbency and absence of material litigation, with Certified Copies of Ordinance No. 2019-\_\_ and Resolution No. 2019-\_\_ and evidence of insurance coverage
14. General Certificate of ACLC, covering signatures, incumbency and absence of material litigation and identifying Authorized Representatives, with Articles of Incorporation, Certificate of Good Standing, Bylaws and Resolution attached
15. General Certificate of Trustee
16. Tax Compliance Certificate, including Issue Price Certificate and Certificate of the Financial Advisor
17. IRS Form 8038-G, with evidence of filing
18. Delivery Certificate and Cross Receipt

## **OPINIONS**

19. Opinion of Bond Counsel
20. Supplemental Opinion of Bond Counsel as to Official Statement
21. Opinion of City Attorney
22. Opinion of City Attorney as Counsel to ACLC

## **MISCELLANEOUS**

23. Specimen Certificates
24. Blanket Letter of Representations to The Depository Trust Company
25. Settlement Memorandum
26. Evidence of Ratings

## **ACTIONS TO BE TAKEN AFTER CLOSING**

1. File Site Lease
2. File Lease Purchase Agreement
3. File Mortgage and Indenture of Trust
4. File UCC Financing Statements

**REFUNDING ESCROW AGREEMENT**

This **REFUNDING ESCROW AGREEMENT** (this “Agreement”) is dated as of the \_\_\_ day of October, 2019, by and between **THE CITY OF AURORA, COLORADO** (the “City”), and **[ESCROW]**, a national banking association duly organized and existing under the laws of the United States, being a member of the Federal Deposit Insurance Corporation, having full and complete trust powers, and having an office and place of business in the State of Colorado (the “Bank”), as escrow agent;

**WITNESSETH :**

WHEREAS, there have previously been executed and delivered by Wells Fargo Bank, National Association, as trustee (the “2009 Trustee”), pursuant to a Trust Indenture entered into by the 2009 Trustee, dated as of June 1, 1994, as amended six supplemental indentures through and including that certain Sixth Supplemental Indenture dated as of September 1, 2009 (collectively, the “Previous Indenture”), the “Refunding Certificates of Participation, Series 2009A” (the “Series 2009A Certificates”), evidencing proportionate undivided interests in rights to receive certain revenues pursuant to a Lease Purchase Agreement between Aurora Capital Lasing Corporation (“ACLC”) and the City (as amended from time to time, the “2009 Lease”), which 2009A Certificates are currently outstanding in principal amount of \$[72,785,000] and bear interest at rates ranging from 3.50% to 5.00% (the “Refunded Certificates”); and

WHEREAS, the Refunded Certificates are subject to prior redemption on December 1, 2019 at a redemption price equal to 100% of the principal amount of the Refunded Certificates then outstanding plus accrued interest to the redemption date; and

WHEREAS, the City Council of the City (the “Council”) adopted an Ordinance on September \_\_, 2019 authorizing the refunding of the Refunded Certificates through the issuance of “Refunding and Improvement Certificates of Participation, Series 2019, evidencing proportionate undivided interests in the right to receive certain revenues pursuant to a Lease Purchase Agreement between Aurora Capital Leasing Corporation and the City of Aurora, Colorado” (the “Series 2019 Certificates”); and

WHEREAS, the principal of and interest on the Refunded Certificates are payable to the 2009 Trustee; and

WHEREAS, a portion of the net proceeds derived from the issuance of the Series 2019 Certificates are to be deposited with the Bank in a separate account of the Bank (the “Escrow Account”) to be used to refund and pay the Refunded Certificates; and

WHEREAS, the Previous Indenture provides that all or any portion of the Refunded Certificates may be deemed discharged upon the payment to the 2009 Trustee of either moneys in an amount sufficient, or Defeasance Securities (as defined in the Previous Indenture), the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys, which together with the moneys, if any, deposited with or held by the 2009 Trustee at the same time, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to

become due on said Series 2009A Certificates on and prior to the redemption date or maturity date thereof, as the case may be; and

**NOW THEREFORE, IT IS AGREED:** That in consideration of the mutual covenants herein contained and in consideration of the sum of ten dollars and other good and valuable consideration duly paid by, or on behalf of, the City to the Bank at or before the execution and delivery of this Agreement, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Refunded Certificates, according to the schedule set forth herein, the parties hereto mutually undertake, promise, and agree for themselves, their respective representatives, successors and assigns, as follows:

**Section 1.** The City shall cause to be deposited with the Bank in the Escrow Account, the total amount of \$\_\_\_\_\_ representing a portion of the net proceeds of the Series 2019 Certificates plus other legally available funds of the City, if any, which amount will be at all times at least sufficient to pay the principal of and interest on the Refunded Certificates in accordance with the schedule set forth in the special report of a certified public accountant (the “Verification Report”), attached hereto as Exhibit B and made a part hereof.

The Refunded Certificates maturing on and after December 1, 2020 shall be called for redemption prior to maturity and shall be paid on the date and at the price set forth below:

**Prior Redemption  
Date and Price**

December 1, 2019 at  
a price equal to 100% of par  
and accrued interest

Interest and principal coming due on the Refunded Certificates following the date of this Agreement shall be paid from the Escrow Account in their due course.

The Bank will [cause the 2009 Trustee to?] provide the registered owner of each Refunded Certificate written notice of the redemption of the Refunded Certificates maturing on and after December 1, 2020 in substantially the form attached hereto as Exhibit A and notify the registered owners of each of the Refunded Certificates maturing on and after December 1, 2020 of the call and redemption of such certificates in the time and manner required by the Previous Indenture.

At the time of actual execution of this Agreement, the Bank will immediately invest the funds on deposit in the Escrow Account in the Defeasance Securities, if any, listed in the Verification Report, which report verifies that the computations regarding the sufficiency of the amounts on deposit in the Escrow Account to pay the principal of and interest on the Refunded Certificates as set forth in this Section are mathematically correct, and shall fully secure any cash balance in the Escrow Account in the manner set forth herein. Such Defeasance Securities, if any, are irrevocably pledged and placed in escrow and in trust for the payment of the principal of, premium, if any, and interest on the Refunded Certificates. Upon such investment, the Bank hereby agrees that pursuant to the terms of the Previous Indenture, the Refunded Certificates will be defeased and the Previous Indenture and the 2009 Lease will be released.

**Section 2.** If, for any reason, at any time the funds on hand in the Escrow Account shall be insufficient to meet such payments, as the same shall be about to become due and payable, the City shall forthwith deposit in the Escrow Account such additional legally available funds as may be required fully to meet the amounts so about to become due and payable. Notice of such insufficiency shall be given as hereinafter provided, but the Bank shall in no manner be responsible for the City's failure to make such deposit.

**Section 3.** The Bank shall hold said special deposit, together with the obligations herein authorized to be purchased, at all times in a special fund and irrevocable trust account, which is accounted for separately from other funds and securities on deposit with it; shall never at any time use, loan, or borrow the same in any way; and shall from time to time invest and reinvest said deposit to the fullest extent possible, but in all events within the limitations set forth herein, and only in Defeasance Securities, in such manner that sufficient funds will be available to pay the principal of, premium if any, and interest on the Refunded Certificates, as the same accrue and become due and payable from time to time according to the schedule hereinabove set forth. Nothing herein contained shall be construed as requiring the Bank to keep on hand the identical moneys, or any part thereof, received for the Escrow Account, but moneys of an equal amount, except to the extent such are represented by the Defeasance Securities contained in the Escrow Account, must always be maintained on hand as funds held by the Bank, and a special account thereof, evidencing such fact, shall at all times be maintained on the books of the Bank.

**Section 4.** The Bank shall from time to time redeem at maturity all or any appropriate portion of the Defeasance Securities in the Escrow Account, according to the schedules of maturities set forth in the Verification Report, without notice to the City, in sufficient amounts so that the proceeds therefrom and the interest thereon as the same accrues, will be sufficient to pay the principal of, premium if any, and interest on the Refunded Certificates as the same become due in accordance with the schedule set forth in the Verification Report attached hereto as Exhibit B.

**Section 5.** The Bank shall maintain the Escrow Account until thirty (30) days after the date upon which the Refunded Certificates are fully redeemed and paid, as to principal, premium if any, and interest, whereupon the Bank shall redeem any obligations remaining in the Escrow Account and shall remit to the City all moneys, if any, then remaining in the Escrow Account; provided however, that before such remittance is made to the City, sufficient funds must have been deposited with the appropriate paying agent for the Refunded Certificates to pay the principal of, premium if any, and interest on each series of the Refunded Certificates which remain outstanding on such date.

**Section 6.** The Bank shall fully collateralize the moneys in the Escrow Account not so invested, if any, by Defeasance Securities only, in an amount at all times at least equal to the total unexpended amount of said moneys.

**Section 7.** The Bank shall not be liable or responsible for any loss resulting from any investment made pursuant to this Agreement and in full compliance with its provisions.

**Section 8.** The funds received by the Bank shall not be considered as a banking deposit by the City. The funds so received by the Bank, as escrow agent, shall not be subject to checks drawn or withdrawals made by the City.

**Section 9.** The Bank shall [cause the 2009 Trustee to?] forward or transfer to the appropriate Refunded Certificates debt service payment accounts, sums which shall be sufficient for the payment of the principal of, premium if any, and interest becoming due on each principal or interest payment date for the Refunded Certificates in accordance with the schedule set forth herein and in the Verification Report attached hereto. The amount so forwarded or transferred shall be in sufficient time to permit such payment on time without default. It shall not be necessary for the City to take any affirmative action whatsoever as a condition precedent to the duty of the Bank to forward or transfer such funds to the proper paying agent at the necessary times.

**Section 10.** The Bank shall immediately notify the City by first class United States mail, postage prepaid or by overnight delivery service, whenever, for any reason, the funds on hand in the Escrow Account, plus the securities therein and interest on said securities, as the same accrues, will be insufficient to pay the principal of, premium if any, and interest on the Refunded Certificates in accordance with the schedule set forth herein.

**Section 11.** The Bank, during the month of January following the issuance of the Series 2019 Certificates, shall forward to the City a statement in detail of the income, investments, redemptions, and transfers of moneys from the Escrow Account for the immediately preceding fiscal year, which, for the purpose of this Agreement, commences the first day of January of each calendar year and ends on the last day of December of the same year. In addition, the City shall have the right, at any time, to examine all the Bank's records regarding the status of the Escrow Account and the details of said income, investments, redemptions, and transfers.

**Section 12.** The Bank shall be under no obligation to inquire into or be in any way responsible for the performance or non-performance by the City or any paying agent of any of the City's or paying agent's obligations, or to protect any of the City's rights under any financing documents or any of the City's other contracts with or franchises or privileges from any state, county, municipality, or other governmental agency, or with any corporation or individual; and the Bank shall not be liable for any act done or step taken or omitted by it or for any mistake of fact or law or for anything which it may do or refrain from doing, except for its negligence or its default in the performance of any obligations imposed upon it hereunder.

**Section 13.**

(a) In order to ensure continuing compliance with Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, the Bank agrees that, except as provided in this Section, it will not invest or reinvest any cash received in payment of the principal of and interest on the Defeasance Securities in the Escrow Account.

(b) The Bank shall invest or reinvest any such cash balance, at the written direction of the City, if invested in Defeasance Securities that mature in an amount at least equal to the purchase price of such Defeasance Securities on the next scheduled payment date for the Refunded Certificates and if the City and the Bank have been advised in writing by nationally recognized municipal bond counsel that in the opinion of said bond counsel, the investment or reinvestment of such cash balance could be unlimited, or limited as set forth in said opinion, and said opinion would also state:



(i) the investment or reinvestment of any cash balance as directed would not adversely affect the exclusion from gross income of the interest paid or to be paid on the Refunded Certificates; and

(ii) that such investment or reinvestment would not cause the City to be or become subject to any sanctions or penalties pursuant to any applicable law.

The Bank shall thereafter, at the written direction of the City, invest and reinvest any of said cash held in the Escrow Account to the greatest extent possible, in noncallable Defeasance Securities maturing prior to any date on which such moneys will be required in the Escrow Account, such computations having been verified in writing by a certified public accountant, in the manner provided in this Agreement, limited only as herein otherwise provided and by any limitation expressed in said opinion of bond counsel in its original form or as the same may, from time to time, be modified. The cash derived from such investment or reinvestment in excess of the amounts needed in the Escrow Account to pay the principal of, premium if any, and interest on the Refunded Certificates as they become due in accordance with the schedule set forth herein, shall be paid to the City by the Bank. The City shall deposit such moneys with [TRUSTEE] as trustee for the Series 2019 Certificates for the payment of debt service on the Series 2019 Certificates. Until such use, the City will not invest such moneys at a yield in excess of the yield on the Series 2019 Certificates.

**Section 14.** The Bank, on behalf of the City, shall file an appropriate notice, by written or electronic means, of the defeasance of the Refunded Certificates with Municipal Securities Rulemaking Board's Electronic Municipal Market Access System, with a portal at <http://emma.msrb.org>, which notice shall be captioned "Material Event Notice," shall prominently state the date, title and CUSIP numbers of the Refunded Certificates and shall describe the defeasance of such Refunded Certificates. A form of such notice is attached hereto as Exhibit C.

**Section 15.** This Agreement shall be effective on the date the Escrow Account is fully funded in accordance with Section 1 hereof. Time shall be of the essence in the performance of the obligations from time to time imposed upon the Bank by this Agreement.

**Section 16.** In the event of a violation of any provision of this Agreement, the City may remove the Bank as escrow agent hereunder by notifying the Bank and may appoint a successor escrow agent. Upon any such removal, the City shall promptly appoint a successor escrow agent by an instrument in writing, which successor escrow agent shall give notice of such appointment to all Owners as soon as practicable; provided that in the event the City does not appoint a successor escrow agent within 60 days following the giving of any such notice of removal, the removed Bank may petition any appropriate court having jurisdiction to appoint a successor escrow agent.

Any removal of the Bank and appointment of a successor escrow agent shall become effective only upon the acceptance of the appointment by the successor escrow agent and the transfer by the retiring Bank to the successor escrow agent of all property held by it hereunder as escrow agent. Any rating agency maintaining a rating on the Series 2019 Certificates or the

Refunded Certificates shall be notified on or about the date of any such removal and appointment of successor escrow agent.

**Section 17.** The liability of the Bank to transfer funds for the payment of the principal of, premium, if any, and interest on the Refunded Certificates shall be limited to the proceeds of the Defeasance Securities and the cash balances that have been deposited into the Escrow Account.

The recitals herein and in the proceedings authorizing the Series 2019 Certificates shall be taken as the statements of the City and shall not be considered as made by, or imposing any obligation or liability upon, the Bank.

The Bank, in its capacity as such, is not a party to the proceedings authorizing the Series 2019 Certificates or the Refunded Certificates and is not responsible for nor bound by any of the provisions thereof (except to the extent that the Bank may be a place of payment and paying agent and/or a paying agent/registrar therefor). In its capacity as escrow agent, it is agreed that the Bank need look only to the terms and provisions of this Agreement.

The Bank makes no representations as to the value, conditions or sufficiency of the Escrow Account, or any part thereof, or as to the title of the City thereto, or as to the security afforded thereby or hereby, and the Bank shall not incur any liability or responsibility in respect to any of such matters.

It is the intention of the parties hereto that the Bank shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

Unless it is specifically otherwise provided herein, the Bank has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the City with respect to arrangements or contracts with others, with the Bank's sole duty hereunder being to safeguard the Escrow Account, to dispose of and deliver the same in accordance with this Agreement. If, however, the Bank is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Bank shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination the Bank shall be liable only for its own willful misconduct or its negligence. In determining the occurrence of any such event or contingency the Bank may request from the City or any other person such reasonable additional evidence as the Bank in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, the City at any time. The Bank may consult with counsel, who may be counsel of or to the City, with regard to all matters hereof and the duties hereunder, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance herewith.

**Section 18.** The Bank shall receive fees for performing the services hereunder and for the expenses incurred or to be incurred by the Bank in the administration of this Agreement as set forth in Exhibit D hereto. Such arrangement for compensation and expenses is intended as compensation for the ordinary services as contemplated by this Agreement (but not including costs

of investments under Section 3 which will be billed to the City at usual and customary rates, if applicable), and if the Bank renders any service hereunder not provided for in this Agreement, or the Bank is made a party to or intervenes in any litigation pertaining to this Agreement, or institutes interpleader proceedings relative thereto, the Bank shall be compensated reasonably by the City for such extraordinary services approved in writing by the City and reimbursed for all fees, costs, liability and expenses (including reasonable attorneys' fees) occasioned thereby. The Bank hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Account for any fees for its services, whether regular or extraordinary, as Bank, or in any other capacity, or for reimbursement for any of its expenses as Bank or in any other capacity.

**Section 19.** Any corporation or association with or into which the Bank may be merged or converted or with or into which it may be consolidated, or to which the Bank may sell or transfer its corporate trust business and assets as a whole, or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Bank hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

If at any time the Bank or its legal successor or successors should become unable, through operation of law or otherwise, to act as escrow agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Bank hereunder. In such event the City, by appropriate action, promptly shall appoint an escrow agent to fill such vacancy. If no successor escrow agent shall have been appointed by the City within 60 days, a successor may be appointed by the owners of a majority in principal amount of the Refunded Certificates then defeased by an instrument or instruments in writing filed with the City, signed by such owners or by their duly authorized attorneys-in-fact. If, in a proper case, no appointment of a successor escrow agent shall be made pursuant to the foregoing provisions of this Section within three months after a vacancy shall have occurred, the owner of any Refunded Certificate may apply to any court of competent jurisdiction to appoint a successor escrow agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor escrow agent.

Any successor escrow agent shall be a corporation organized and doing business under the laws of the United States or the State of Colorado, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$100,000,000 and subject to the supervision or examination by federal or state authority.

Any successor escrow agent shall execute, acknowledge and deliver to the City and the Bank an instrument accepting such appointment hereunder, and the Bank shall execute and deliver an instrument transferring to such successor escrow agent, subject to the terms of this Agreement, all the rights, powers and trusts of the escrow agent hereunder. Upon the request of any such successor escrow agent, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor escrow agent all such rights, powers and duties.

The obligations assumed by the escrow agent pursuant to this Agreement may be transferred by the Bank to a successor escrow agent if (a) the requirements of this Section with respect to a successor escrow agent are satisfied; (b) the successor escrow agent has assumed all the obligations of the Bank under this Agreement; and (c) all of the Defeasance Securities and money held by the Bank pursuant to this Agreement have been duly transferred to such successor escrow agent.

**Section 20.** This Agreement shall not be amended except to cure any ambiguity or formal defect or omission in this Agreement. No amendment shall be effective unless the same shall be in writing and signed by the parties thereto. No such amendment shall adversely affect the rights of the owners of the Refunded Certificates or the Series 2019 Certificates. No such amendment shall be made without first receiving written confirmation from the rating agencies (if any) which are then rating the Refunded Certificates that such administrative changes will not result in a withdrawal or reduction of its rating then assigned to the Refunded Certificates. If this Agreement is amended, prior written notice and copies of the proposed changes shall be given to the rating agencies which are then rating the Refunded Certificates.

**Section 21.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

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IN WITNESS WHEREOF, the parties hereto have caused this Refunding Escrow Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[SEAL]

CITY OF AURORA, COLORADO

By \_\_\_\_\_  
Bob LeGare, Mayor

Attest:

By \_\_\_\_\_  
Stephen Ruger, City Clerk

[ESCROW] as escrow agent

By \_\_\_\_\_  
Authorized Officer

[Signature Page to Refunding Escrow Agreement]

**EXHIBIT A**

**FORM OF REDEMPTION NOTICE**

**REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2009A  
EVIDENCING PROPORTIONATE UNDIVIDED INTERESTS IN RIGHTS  
TO RECEIVE CERTAIN REVENUES PURSUANT TO A  
LEASE PURCHASE AGREEMENT  
BETWEEN AURORA CAPITAL LEASING CORPORATION  
AND THE CITY OF AURORA, COLORADO**

NOTICE IS HEREBY GIVEN that the outstanding above captioned Refunding Certificates of Participation, Series 2009A, dated September 30, 2009, originally issued in the aggregate principal amount of \$84,160,000, maturing on and after December 1, 2020 in the aggregate principal amount of \$[68,670,000] (the “Refunded Certificates”), have been duly called for redemption on December 1, 2019. The Refunded Certificates more specifically include the following certificates:

<b>Principal Amount</b>	<b>Maturity Date (December 1)</b>	<b>CUSIP Numbers</b>
\$ 4,290,000	2020	051556 EU8
4,505,000	2021	051556 EV6
4,730,000	2022	051556 EW4
4,965,000	2023	051556 EX2
5,215,000	2024	051556 EY0
5,475,000	2025	051556 EZ7
5,750,000	2026	051556 FA1
6,035,000	2027	051556 FB9
6,340,000	2028	051556 FC7
6,655,000	2029	051556 FD5
14,710,000	2030	051556 FE3

On December 1, 2019, the redemption date, the Refunded Certificates will become due and payable. They can be surrendered for payment at the following address:

[Escrow Agent to Provide]

The redemption price of the Refunded Certificates will be equal to 100% of the principal amount of the Refunded Certificates then outstanding plus accrued interest to the redemption date. Interest on the Refunded Certificates redeemed on December 1, 2019, pursuant to this notice, will be paid to said date. FROM AND AFTER DECEMBER 1, 2019, INTEREST ON THE REFUNDED CERTIFICATES CALLED FOR REDEMPTION WILL CEASE TO ACCRUE.

Upon surrender of a certificate to be partially redeemed, if any, it will be cancelled and a new certificate equal to the principal amount of the unredeemed portion will be issued.

NOTICE: Withholding of 31% of gross redemption proceeds of any payment made within the United States may be required by the Interest and Dividend Compliance Act of 1983 unless the Trustee has the correct taxpayer identification (social security or employer identification number) of the payee. Please furnish a properly completed Form W-9 when presenting your securities.

Dated: \_\_\_\_\_, 2019

(To be delivered at least 30 days and not more than 60 days prior to December 1, 2019)

[ESCROW]

By \_\_\_\_\_  
Authorized Signatory

**EXHIBIT B**  
**to**  
**REFUNDING ESCROW AGREEMENT**

(Verification Report Attached)



**EXHIBIT C**

**FORM OF MATERIAL EVENT NOTICE**

**MUNICIPAL SECONDARY MARKET DISCLOSURE**

**REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2009A  
EVIDENCING PROPORTIONATE UNDIVIDED INTERESTS IN RIGHTS  
TO RECEIVE CERTAIN REVENUES PURSUANT TO A  
LEASE PURCHASE AGREEMENT  
BETWEEN AURORA CAPITAL LEASING CORPORATION  
AND THE CITY OF AURORA, COLORADO**

NOTICE IS HEREBY GIVEN that the outstanding above captioned Refunding Certificates of Participation, Series 2009A, dated September 30, 2009, originally issued in the aggregate principal amount of \$84,160,000, and currently outstanding in the aggregate principal amount of \$[72,785,000] (the “Refunded Certificates”), have been defeased and the Refunded Certificates maturing on and after December 1, 2020 will be called for redemption on December 1, 2019 (the “Redemption Date”). The Refunded Certificates more specifically include the following certificates:

<b>Principal Amount</b>	<b>Maturity Date (December 1)</b>	<b>CUSIP Numbers</b>
\$ 4,290,000	2020	051556 EU8
4,505,000	2021	051556 EV6
4,730,000	2022	051556 EW4
4,965,000	2023	051556 EX2
5,215,000	2024	051556 EY0
5,475,000	2025	051556 EZ7
5,750,000	2026	051556 FA1
6,035,000	2027	051556 FB9
6,340,000	2028	051556 FC7
6,655,000	2029	051556 FD5
14,710,000	2030	051556 FE3

The Refunded Certificates have been defeased by action of the City Council of the City, with a portion of the proceeds from the sale of Refunding and Improvement Certificates of Participation, Series 2019, there being on deposit with [ESCROW] (the “Bank”), under an Escrow Agreement between the City and the Bank, direct obligations of (including obligations issued or held in book entry form on the books of), or obligations the principal of and interest on which are guaranteed by, the United States of America, the maturing principal of and interest on which, together with cash held in escrow, will be sufficient to pay the principal of and interest on the Refunded Certificates in accordance with their terms until December 1, 2019 and the Refunded Certificates maturing on and after December 1, 2020 shall be called for optional redemption at a price equal to the principal amount of such certificates, plus accrued interest to the Redemption Date, without redemption premium.

**EXHIBIT D**  
**FEE SCHEDULE**

(Fee Schedule of Escrow Agent Attached)

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> IT Project and Smart City Update
<b>Item Initiator:</b> Aleta Jeffress
<b>Staff Source:</b> Aleta Jeffress
<b>Deputy City Manager Signature:</b> Jason Batchelor
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

Ongoing IT Project Updates

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

This update will include the following: IT Project(s) update, including the Project Portfolio Baseline and current project requests (58). Overview of the Smart City project progress being conducted by CityFi (vendor).

### **QUESTIONS FOR Committee**

Informational only.

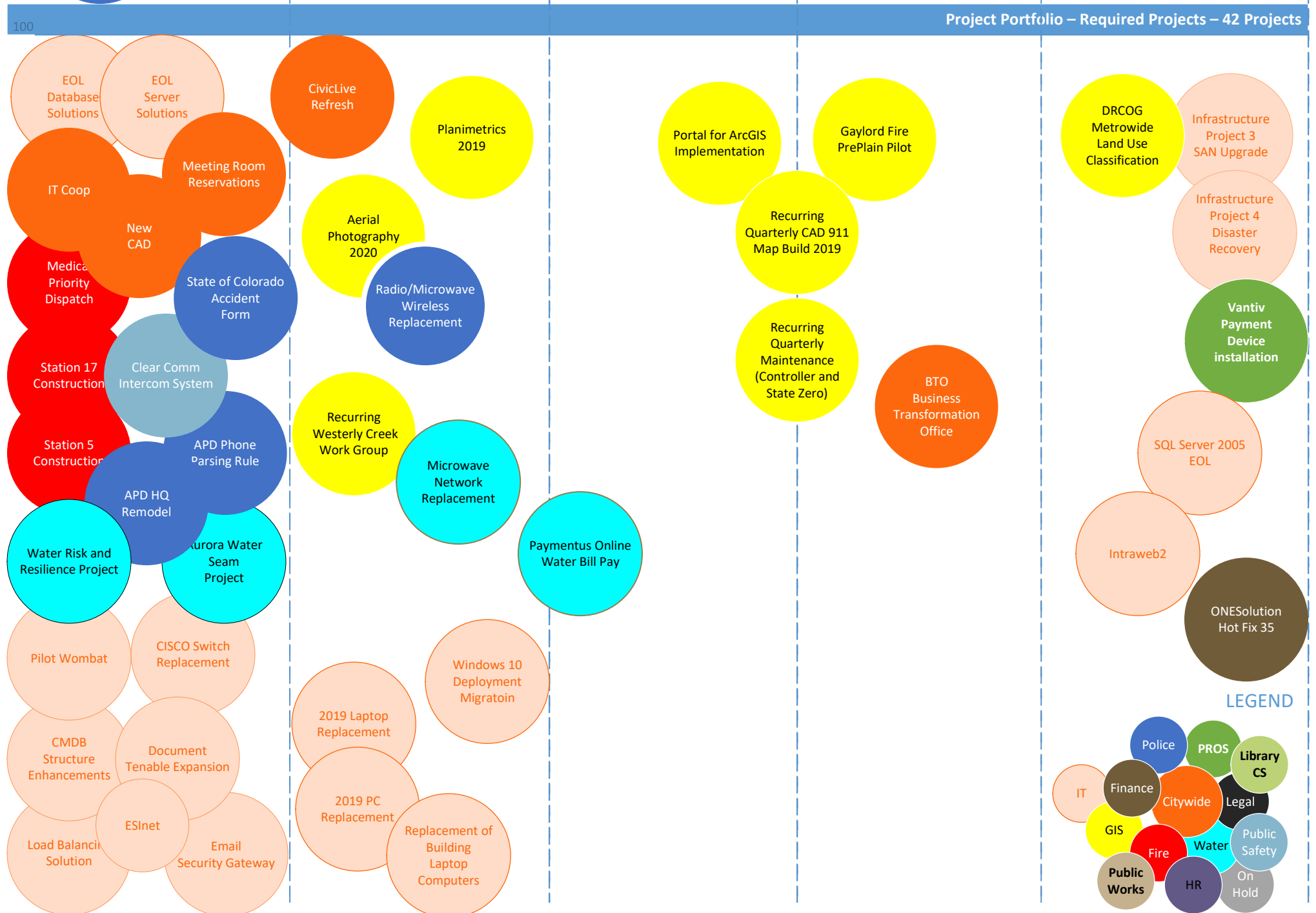
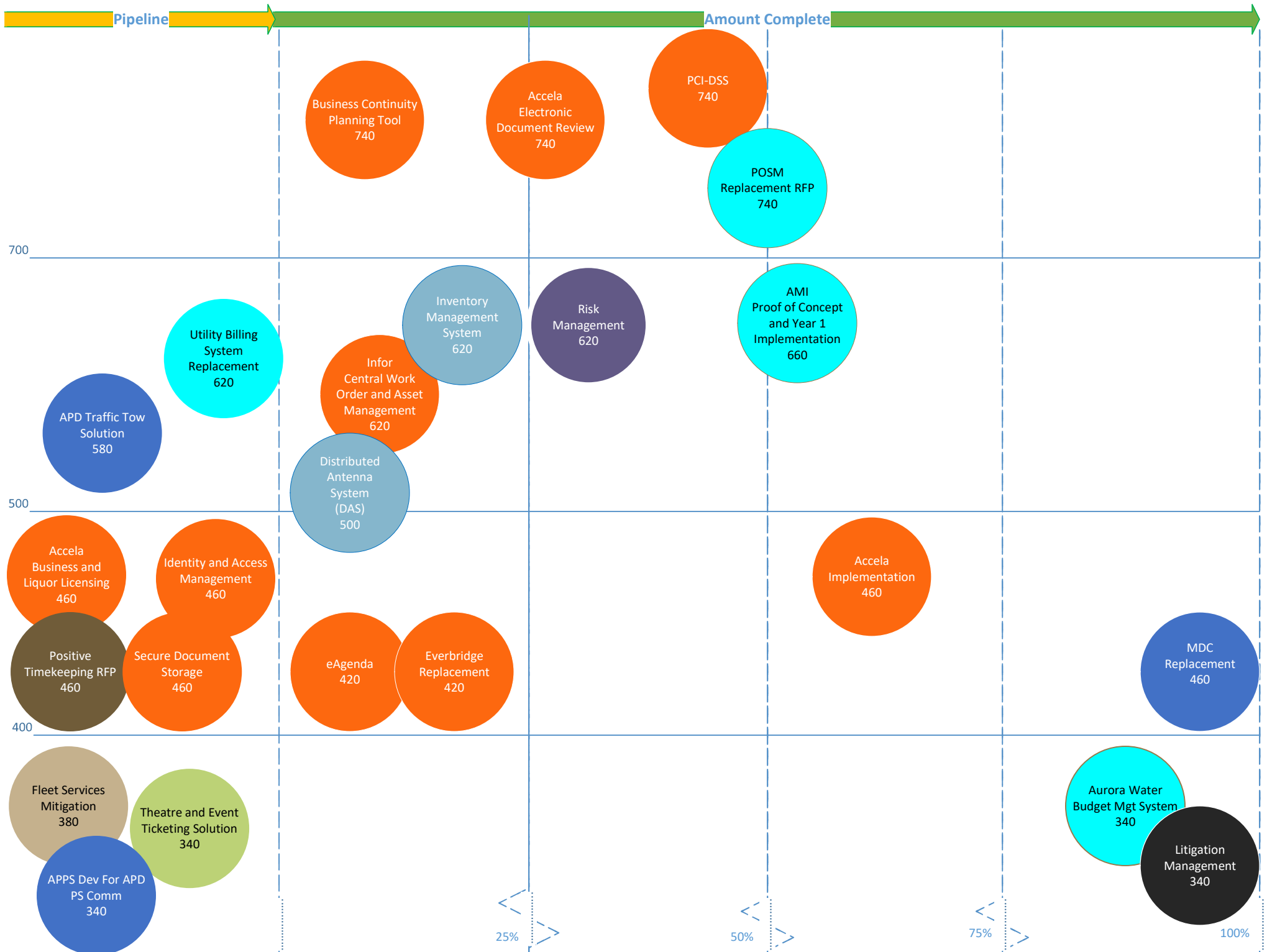
### **EXHIBITS ATTACHED:**

ProjectPortfolioBaseline 2019 July.pdf

# Project Portfolio Baseline Business Governance/IT PMO

July 2019

Business Governance Prioritized Projects – 24 Projects



**LEGEND**

M&F Meeting: July 23, 2019

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Update on City Facilities for 2019
<b>Item Initiator:</b> Lynne Center
<b>Staff Source:</b> Lynne Center, Deputy Director Public Works Operations
<b>Deputy City Manager Signature:</b> Nancy Freed
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

Council Member Gruber requested an updated overview of City owned facilities including condition and utilization status of those facilities.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Staff has attached a list of the city owned facilities for review. The list itemizes the 2,423,774 square feet of buildings currently in the inventory, of which the City maintains 2,404,009 square feet. Facilities Operations budget is currently \$5,097,131 including staff, equating to \$2.12 per square foot. In addition, the Major Building Repair fund provides for major building component replacement. The current budget for repairs is \$3,625,299 equating to \$1.51 per square foot. The combined budgets equate to \$3.63 per square foot. The city is incorporating asset management system for buildings in a new system for managing work orders. The asset management system will allow Facilities Operations to track maintenance costs by building and proactively schedule capital maintenance. The system will include and track conditions of building, building system and equipment component. Condition assessments are completed by staff every three years and are currently in progress for 2019 with a report expected by January 2020.

### **QUESTIONS FOR Committee**

N/A

### **EXHIBITS ATTACHED:**

City Facilities Inventory June 2019.pdf

## CITY OF AURORA BUILDING SQUARE FOOTAGE LIST - PER AREA

Rev 3 Date: May 30, 2019

Maximo Location #	Maximo Description	Building Address	Total Bldg Sq. Ft.
<b>AMC CAMPUS BUILDINGS</b>			
L1147-53	AMC - CAMPUS	15151 E. Alameda Parkway	285,627
L1154-57	AMC GARAGE	15153 E. Alameda Parkway	241,033
L1158	CENTRAL LIBRARY	14949 E. Alameda Parkway	54,002
L1160	COURTS	14999 E. Alameda Parkway	122,749
L1162	DETENTION	15001 E. Alameda Parkway	50,251
L1166	DISTRICT 2 POLICE HQ	15001 E. Alameda Parkway	72,192
L1163	HISTORY MUSEUM	15051 E. Alameda Parkway	18,034
<b><u>SUBTOTAL AMC SF</u></b>			<b>843,888</b>

### NORTH AREA BUILDINGS

L1244	ANIMAL SHELTER	15750 E. 32nd Avenue	12,647
L1169	AURORA HILLS	50 S. Peoria Street	10,800
L1170	AURORA HILLS MAINT	12538 E. 2nd Avenue	2,480
L1178	BECK CENTER AND SWIMMING POOL	800 N. Telluride Street	58,795
L1283	BICENTENNIAL ART	13655 E. Alameda Avenue	3,197
L1286	BICENTENNIAL MINI-GOLF	13600 E. Bayaud Avenue	917
L1290	CENTENNIAL HOUSE	1671 Galena Street	1,008
L1184	CENTRE HILLS	16300 E. Centretch Parkway	1,180
L1185	CENTRE HILLS MAINT	16300 E. Centretch Parkway	1,152
L1295	COAL CRK SCHOOL	170 S. Chambers Road	952
L1197	DELANEY FARM HOUSE	170 S. Chambers Road	864
L1198	DELANEY ROUND	170 S. Chambers Road	855
L1297	DELMAR POOL	12000 E. 6th Avenue	5,058
L1203	DISTRICT 1 POLICE FITZ	13347 E. Montview Boulevard	44,105
L1903	DISTRICT 2 POLICE - ABILENE	6 Abilene Street	35,535
<b>L1917</b>	<b>EAST METRO MEDICAL SERVICES</b>	<b>452 Sable Blvd.</b>	<b>13,263</b>
L1301	FIRE 1	9801 E. 16th Avenue	11,871
L1303	FIRE 2	12600 Hoffman Boulevard	11,688
L1305	FIRE 3	3172 Peoria Street	9,940
L1309	FIRE 5	1339 S. Airport Blvd.	6,337
L1316	FIRE 8	250 S. Chambers Road	7,529
L1324	FIRE 12	19491 E. 34th Drive	8,074
L1922	FIRE 16	6500 Liverpool St	16,588
L1199	FITZ GUARDBOUSES (Generals Park)	1561 Quentin Street	610
L1211	FITZ GYM-HOMELESS RESOURCE CENTER	13387 E. 19th Avenue	12,035
L1205	FITZ QUONSET	2088 Wheeling Street	4,000
L1209	FITZ 620	1952 Victor Street	4,480
L1210	FITZ 621	1962 Victor Street	4,480
L1809	FITZ 622	1972 Victor Street	4,480
L1212	FITZ QUADE	13318 E. Montview Boulevard	3,700
L1213	FITZ TRAINING 635	13328 E. Montview Boulevard	8,220
L1226	FOX THEATER	9900 E. Colfax Avenue	14,606
L1845	GULLY HOME	170 S. Chambers Road	540
L1336	HOFFMAN HEIGHTS LIBRARY	1298 S. Peoria Street	20,140
L1911	HYATT PARKING GARAGE	13182 E. 14th Pl.	171,077
L1219	LOWRY - SOLAR BUILDING	1026 Clinton Street	1,987
L1222	MLK LIBRARY COMPLEX	9898 E. Colfax Avenue	28,606
L1332	MOORHEAD RECREATION CENTER	2390 S. Havana Street	38,645
L1218	MORNING STAR	1016 Boston Street	6,940



Maximo Location #	Maximo Description	Building Address	Total Bldg Sq. Ft.
L1240	NORTH SAT WORKSHOP	15700 E. 32nd Avenue	54,735
L1238	NORTH SAT ADMIN	15740 E. 32nd Avenue	6,917
L1242	NORTH SAT COLD STORAGE - STREETS	15732 E. 32nd Avenue	8,000
L1243	NORTH SAT SALT DOME	15730 E. 32nd Avenue	8,494
L1780	NORTH SAT COLD STORAGE - TRAFFIC	15710 E. 32nd Avenue	1,250
L1892	NORTH SAT TRUCK WASH	15712 E. 32nd Avenue	2,100
L1341	PARKLANE POOL	13003 E. 30th Avenue	2,192
L1344	PISTOL RANGE - STORAGE	18301 8th Avenue	4,515
L1345	PISTOL RANGE - TRAINING	18301 8th Avenue	1,480
L1936	PISTOL RANGE - TRAILER	18301 8th Avenue	1,416
L1348	SENIOR CENTER	30 Del Mar Circle	21,663
L1250	SPORTS PARK A	19890 E. Sports Park Drive	1,182
L1251	SPORTS PARK B	19780 E. Sports Park Drive	1,555
L1252	SPORTS PARK C	19760 E. Sports Park Drive	1,516
L1253	SPORTS PARK E	19550 E. Sports Park Drive	1,182
L1254	SPORTS PARK W	19101 E. Sports Park Drive	1,182
L1906	SPORTS PARK N	19050 E. Sports Park Drive	1,680
L1255	SPORTS PARK MAINT. BLDG.	18601 E. Sports Park Drive	3,677
L1933	SPORTS PARK MAINT. STORAGE	18604 E. Sports Park Drive	1,332
L1464	SPORTS PARK VEHICLE STORAGE BLDG.	18601 E. Sports Park Drive	3,600
L1422	SPORTS PARK TREE FARM BLDG.	18601 E. Sports Park Drive	576
L1915	SPORTS PARK STORAGE (N. of Pond)	19891 E. Sports Park Drive	960
L1261	SPRING HILL CONCESSION	810 Telluride Street	457
L1260	SPRING HILL MAINT. BLDG	810 Telluride Street	2,400
L1259	SPRING HILL MAINT. OFFICE	810 Telluride Street	864
L1570	STAR K (Morrison Nature Center)	16002 Smith Road	1,870
		<b>SUBTOTAL NORTH SF</b>	<b>726,176</b>
<b>SOUTH AREA BUILDINGS</b>			
L1281	AQUA VISTA POOL	18700 W. Wagontrail Circle	1,357
L1910	CAPSTC Police, Fire Training Center	25950 E. Quincy Ave.	44,023
L1187	CENTRAL A (Multi-departments)	13645 E. Ellsworth Avenue	39,480
L1188	CENTRAL B (Light fleet)	13625 E. Ellsworth Avenue	31,754
L1189	CENTRAL C (Facilities Operatons)	13636 E. Ellsworth Avenue	18,500
L1190	CENTRAL D (Police evidence)	13616 E. Ellsworth Avenue	8,999
L1191	CENTRAL F (Parks operations)	13615 E. Ellsworth Avenue	2,420
L1193	CENTRAL HEAVY FLEET	13607 E. Ellsworth Avenue	36,850
L1633	CENTRAL K - (Facilities Operations)	13614 E. Ellsworth Avenue	8,250
L1192	CENTRAL WASTEWATER	13646 E. Ellsworth Avenue	27,001
L1942	CENTRAL RECREATION	18150 E. Vassar Place	61,260
L1269	DISTRICT 3 POLICE TALLYNS REACH	23911 E. Arapahoe Road	35,300
L1299	EXPO RECREATION CENTER	10955 E. Exposition Avenue	7,111
L1307	FIRE 4	1110 S. Quentin Street	6,148
L1312	FIRE 6	15585 E. Hampden Circle	6,684
L1314	FIRE 7	2290 S. Blackhawk Street	9,062
L1318	FIRE 9	17200 E. Mexico Avenue	7,529
L1320	FIRE 10	3951 S. Reservoir Road	8,850
L1322	FIRE 11	2291 S. Joliet Street	10,289
L1270	FIRE 13 TALLYNS REACH	23911 E. Arapahoe Road	16,847
L1326	FIRE 14	22298 E. Aurora Parkway	9,583
L1649	FIRE 15	1880 Flat Rock Trail	12,829
L1195	GREENHOUSE BACK BLDG	151 Potomac Street	3,776
L1194	GREENHOUSE MAIN BLDG.	151 Potomac Street	5,470
L1328	HAVANA HEIGHTS	10901 E. Warren Avenue	2,998

Maximo Location #	Maximo Description	Building Address	Total Bldg Sq. Ft.
L1912	ILIFF PARKING GARAGE	14000 E. Wesley Ave.	184,900
L1232	MEADOW HILLS CART	3609 S. Dawson Street	3,744
L1230	MEADOW HILLS MAINTENANCE	13650 E. Hampden Avenue	1,685
L1229	MEADOW HILLS PROSHOP	3609 S. Dawson Street	11,371
L1805	MEADOW HILLS POOL BATHHOUSE	3609 S. Dawson Street	1,372
L1806	MEADOW HILLS POOL CHECK-IN	3609 S. Dawson Street	484
L1330	MEADOWOOD RECREATION CENTER	3054 W. Laredo Street	11,530
L1236	MURPHY CREEK CART	1700B Old Tom Morris Road	4,665
L1934	MURPHY CREEK COLD STORAGE	1690B Old Tom Morris Road	2,248
L1235	MURPHY CREEK MAINTENANCE	1690A Old Tom Morris Road	4,180
L1234	MURPHY CREEK PROSHOP	1700A Old Tom Morris Road	5,770
L1339	OLYMPIC PARK	15501 E. Yale Avenue	1,936
L1343	PHEASANT RUN POOL	14971 E. Pheasant Run Parkway	1,711
L1927	PLAINS CONSERVATION - ADMIN	21901 E. Hampden Avenue	1,170
L1928	PLAINS CONSERVATION - MAINT BLD	21901 E. Hampden Avenue	1,440
L1929	PLAINS CONSERVATION - VISITOR	21901 E. Hampden Avenue	2,384
L1930	PLAINS CONSERVATION - YURT	21901 E. Hampden Avenue	706
L1931	PLAINS CONSERVATION - PICNIC	21901 E. Hampden Avenue	1,158
L1939	PLAINS CONSERVATION - GRANGE BLDG	21911 E. HAMPDEN AVE	1,525
L1175	RESERVOIR BATH HOUSE	5800 S. Powhaton Road	1,558
L1176	RESERVOIR BOAT HOUSE RR	5800 S. Powhaton Road	687
L1935	RESERVOIR BOAT HOUSE INSP	5800 S. Powhaton Road	234
L1173	RESERVOIR CONCESSION	5800 S. Powhaton Road	1,877
L1174	RESERVOIR MEETING	5800 S. Powhaton Road	1,086
L1172	RESERVOIR TOWER	5800 S. Powhaton Road	1,486
L1546	RESERVOIR-ENTRY SHACK	5800 S. Powhaton Road	200
L1545	RESERVOIR-MAINTENANCE BARN	5800 S. Powhaton Road	10,800
L1248	SADDLE ROCK CART (below proshop)	21710 E. Arapahoe Road	4,869
L1247	SADDLE ROCK MAINTENANCE	21710 E. Arapahoe Road	5,862
L1246	SADDLE ROCK PROSHOP	21705 E. Arapahoe Road	4,953
L1350	SOUTH BRANCH (MISSION VIEJO)	15324 E. Hampden Circle	14,840
L1263	SOUTH SATELLITE	14303 E. Hampden Avenue	16,238
L1264	SOUTH SATELLITE OUT BUILDINGS	14303 E. Hampden Avenue	1,520
L1736	SOUTHEAST SATELLITE BUILDING	27801 E. Quincy Avenue	4,500
L1354	SUMMER VALLEY REC. CENTER	17400 E. Lehigh Place	2,748
L1405	TALLYNS REACH LIBRARY	23911 E. Arapahoe Road	25,512
L1272	UTAH POOL	1810 S. Peoria Street	33,896
L1278	VILLAGE GREEN POOL	1300 S. Chambers Circle	356
L1277	VILLAGE GREEN REC. CENTER	1300 S. Chambers Circle	7,074
		<b>SUBTOTAL SOUTH SF</b>	<b>806,645</b>
<b>LEASED BUILDINGS</b>			
Location #	Leased Buildings	Address	Sq. Ft.
L1893	1400 DALLAS STREET	1400 Dallas St.	11,500
N/A	BUILDING BY DAY LABOR*	1521, 1527 and 1531 Dayton St.	1,150
N/A	BUILDING ACROSS FROM CRAWFORD*	1633 Florence St.	4,072
L1487	HORNBEIN BLDG *	9901 E. 16th Avenue	2,732
L1485	MLK MUSIC CITY *	9758 E. Colfax Ave	2,562
L1899	PEOPLES BUILDING	9995 E. Colfax Ave.	15,800
L1895	VINTAGE THEATER *	1468 Dayton St.	9,249
		<b>SUBTOTAL LEASED SF</b>	<b>47,065</b>
		<b>GRAND TOTAL SF</b>	<b>2,423,774</b>
	* Building maintained Others		

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Internal Audit Second Quarter Progress Report Against the Annual Audit Plan
<b>Item Initiator:</b> Wayne Sommer
<b>Staff Source:</b> Wayne Sommer, Internal Audit Manager
<b>Deputy City Manager Signature:</b> Jason Batchelor
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### **ACTIONS(S) PROPOSED** *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item and Move Forward to Regular Meeting
- Information Only

### **HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

Internal Audit provides a quarterly update on progress against the annual audit plan to the Audit Committee.

### **ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Internal Audit is following up on the detailed report provided at the June 26, 2019 meeting that was absent a quorum. We will provide details on select completed engagements.

### **QUESTIONS FOR Committee**

### **EXHIBITS ATTACHED:**

Internal Audit 2019 Progress Report as of June 30 2019.pdf



# **2019 Annual Audit Plan**

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## **Progress Report as of June 30, 2019**

# **A**

**Prepared by the Office of the Internal Auditor**

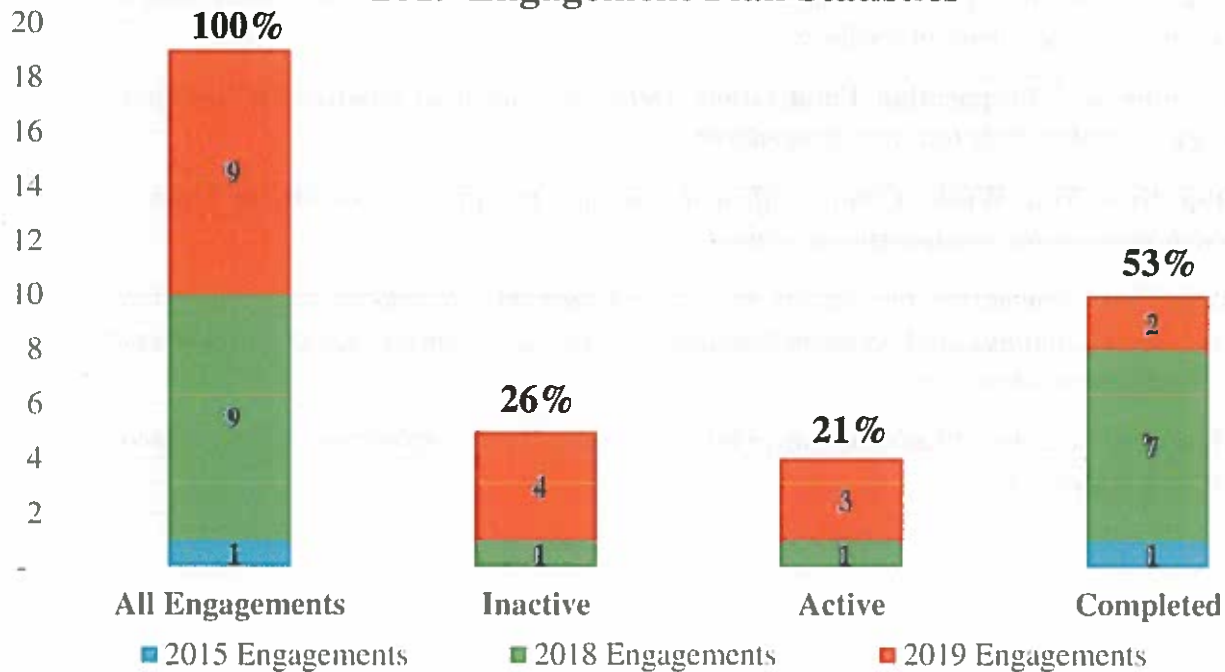


## 2019 YTD ENGAGEMENTS SUMMARY

Through June 30, Internal Audit has completed 50% of all engagements; 20% are active. We added two new engagements in the most recent quarter. In total, 70% of all our engagements are either active or complete. The 2020 Risk Assessment, from which we develop our annual audit plan, is on schedule.

We removed two engagements from our audit plan: DOT/FMCSA Compliance and Vehicle Replacement. Regarding DOT compliance, after further discussion with department management regarding the objectives, we determined that there would be no value to an audit at this time as the activity is cleaning up some compliance-related issues. We agreed that we would revisit an audit in the future. Regarding Vehicle Replacement, we do not have the bandwidth to address this engagement. Other engagements (Grants Acquisition and Management and Purchasing, Part 2) are higher priorities.

### 2019 Engagement Plan Statistics



As of June 6, 2019

## Agile Engagements

Internal Audit applies an agile approach to the engagements listed below. This approach brings valuable information to our clients more quickly than the traditional approach through a report provided when each milestone is completed.

This is an explanation of our Milestone objectives:

**Team Preparation:** *Ensure that the engagement team can properly conduct the engagement.*

**Client Evaluation:** *Gain a deeper understanding of the client's operating environment and client issues that may affect the engagement objectives and that may influence subsequent engagement procedures.*

**Process Controls and Efficiency:** *Determine whether appropriate process controls exist and whether processes are efficient.*

**Risks:** *Assess the impact of identified risks on the engagement objectives, scope, and on the objectives test work procedures.*

**Planning and Preparation Finalization:** *Determine the final engagement objectives, scope, and objectives test work procedures.*

**Objectives Test Work:** *Obtain sufficient evidence to afford a reasonable basis for conclusions on the engagement objectives.*

**Reporting:** *Summarize the results of our engagement procedures and our related conclusions, findings, and recommendations in a clear and concise report that addresses all engagement objectives.*

**Wrap Up:** *Complete all administrative tasks necessary for a complete and orderly closeout of the engagement.*



2019 Annual Audit Plan—Progress Report as of June 30, 2019

In the table below, purple shading shows current milestone work in process or completed; orange shading represents milestones in which we expect to be working during the coming quarters. Engagement descriptions and objectives for active engagements follow the table below.

Engagements	Milestones							
	Team Preparation	Client Evaluation	Internal Controls	Risk Evaluations	Preparation Finalization	Objectives Test Work	Reporting	Wrap Up
Fleet Management	[Purple shading]							
Payroll Operations	[Purple shading]		Q3	Q4				
Grants Acquisition and Management Pt 1	Q3	Q4						
Purchasing Operations Review Pt 1	[Purple shading]							
APD Property and Evidence	[Purple shading]							
APD Vice and Narcotics	[Purple shading]							
Succession Planning Survey	[Purple shading]	Q3						Q4
City Governance	Likely rollover engagement							
P-card Transactions	Q4							
Grants Acquisition and Management Pt 2	Likely rollover engagement							
Purchasing Operations Review Pt 2	Q3							
<i>New House Aurora Partnership</i>	[Purple shading]						Q3	Q3
<i>New APD Program Expense Review</i>	[Purple shading]							Q3

## **Finance Payroll Operations Review**

The Payroll section of Finance is responsible for the accurate processing and payment of salaries and wages to over 3,000 full-time, part-time, and seasonal workers. Payroll processing involves meeting immovable deadlines, accurately processing salary and wage payments, ensuring timely funds transfers for tax and benefit payments, as well as securing employee information. Payroll operations are critical to the smooth delivery of City services.

### **Objectives:**

- ❖ Assess the efficiency and effectiveness of overall payroll operations
- ❖ Ensure that controls sufficiently safeguard employee information maintained internally and appropriately shared with outside parties
- ❖ Ensure that controls ensure accurate payroll processing

## **Finance Grant Acquisition and Management Processes-Part 1**

The City grant process is decentralized. Individual departments are responsible for seeking out and applying for grants. They are also responsible for the management of the grant funds—including all compliance aspects—throughout the grant's life cycle. The City offers *eCivis*, a grants management system that allows departments to research grants, apply for them, and track/manage any awarded grants. Compliance by departments with established grant management protocols is critical to providing accurate data related to grant activities and avoiding unnecessary financial and reputational risks.

### **Objectives:**

- ❖ Determine that policies, procedures, and controls are adequate to support grants procurement and management
- ❖ Ascertain the degree to which the current structure supports grant acquisition and effective grants management
- ❖ Evaluate the degree of staff compliance

During Part 1, Internal Audit will address the first objective, documenting all processes and systems related to grant acquisition and management. We will conduct a preliminary adequacy evaluation in anticipation of further work on the remaining objectives in 2019.

## Human Resources Succession Planning Survey

Cities are in the midst of great employment change. “Since the youngest of the baby boomers are now turning fifty, it is only a matter of time before this entire generation has gone, taking their skills, knowledge and experience out of the work force.”<sup>1</sup> Forty-four percent of cities report that retirements in the most recently completed year were higher than the year before, and the share of retirement eligible employees postponing their retirement date has fallen by more than half since 2009 (from 44 to 21 percent).<sup>2</sup>

For the City government to thrive there will need to be succession-planning efforts that transfer institutional memory and develop internal candidates to more cost effectively fill newly opened positions.

Internal Audit will join with Human Resources in developing and distributing a citywide survey on the topic.

### Objectives:

- ❖ Understand the ways and the degree to which departments are preparing for staff transition.
- ❖ Establish a baseline for City succession planning.

## City Management City Governance Practices

According to the International Standards for the Professional Practice of Internal Audit (The Standards), Standard 2110—Governance, the internal audit activity must assess and make appropriate recommendations to improve the organization’s governance processes for:

- Overseeing risk management and control.
- Promoting appropriate ethics and values within the organization.
- Ensuring effective organizational performance management and accountability.
- Communicating risk and control information to appropriate areas of the organization.
- Coordinating the activities of, and communicating information among, the board, external and internal auditors, other assurance providers, and management.

The Standards also require Internal Audit to evaluate the design, implementation, and effectiveness of the organization’s ethics-related objectives, programs, and activities and to assess whether the information technology governance of the organization supports the organization’s strategies and objectives.

### Objectives:

- ❖ Understand the City’s governance practices as referenced in the Standards.

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<sup>1</sup> <https://www.inc.com/john-boitnott/how-to-bridge-the-talent-gap-as-baby-boomers-leave-your-company.html>

<sup>2</sup> *Survey Findings State and Local Government Workforce: 2018 Data and 10 Year Trends, May 2018*; Center for State and Local Government Excellence.

- ❖ Assess and make appropriate recommendations to improve the organization’s governance processes.

### **Finance P-card Transaction Propriety**

We will conduct a P-card transaction audit to evaluate transaction compliance with City policies and proper recording in the financial records. Internal Audit will employ databased auditing techniques in this engagement. We will consider a dollar threshold, high-risk merchant category codes (MCCs) and/or suppliers (e.g., Amazon), key words that could indicate a prohibited purchase per City policies and procedures, transactions occurring during non-business hours, and any other relevant considerations.

#### **Objectives:**

- ❖ Determine whether P-Card holders are managing and using resources in an efficient, effective, and economical manner.
- ❖ Determine whether P-Card holders are administering funds in compliance with applicable laws, regulations, policies, and procedures.
- ❖ Determine whether authorized P-Card transactions are properly recorded in the financial records.

### **Finance Grant Acquisition and Management-Part 2**

The City grant process is decentralized. Individual departments are responsible for seeking out and applying for grants. They are also responsible for the management of the grant funds—including all compliance aspects—throughout the grant’s life cycle. The City offers *eCivis*, a grants management system that allows departments to research grants, apply for them, and track/manage any awarded grants. Compliance by departments with established grant management protocols is critical to providing accurate data related to grant activities and avoiding unnecessary financial and reputational risks.

#### **Objectives:**

- ❖ Ascertain the degree to which the current structure supports grant acquisition and effective grants management.
- ❖ Evaluate the degree of staff compliance.

## **Purchasing** Holistic Operations Review-Part 2

The Purchasing Services Division is responsible for acquiring goods and services through a competitive bid process. Internal Audit is proposing a review of the Division's activities to ensure they possess sufficient capacity to handle City needs in a timely fashion.

### Objectives:

- ❖ Determine that Purchasing resources (staffing and automation) and processes are sufficient to ensure that Purchasing can meet anticipated demand.
- ❖ Assess the effectiveness of our software acquisition process and procurement controls for complex IT systems. *(As requested by the M&F Committee.)*
- ❖ Determine the degree of City staff compliance with purchasing processes and policies.
- ❖ Assess the impact of any discovered non-compliance.

## **NEW -- Neighborhood Services** House Aurora Partnership

House Aurora Partnership (HAP) was formed during the King's Inn housing crisis. HAP is funded with Marijuana tax revenues. The Audit Committee requested that Internal Audit review the program.

### Objectives:

- ❖ Ensure House Aurora Partnership spent its funding in accordance with the program's overall mission.
- ❖ Review the effectiveness of the House Aurora Partnership if possible.

## **NEW -- APD** Program Expense Review

Aurora Police requested an audit of a portion of their special programs to ensure that funds were spent appropriately.

### Objectives:

- ❖ Verify that expenditures involving City funds for the Volunteer, Aurora for Youth, Explorers, and Teen Academy were appropriate.
- ❖ Review controls and procedures for the programs for effectiveness.

## Traditional Engagements

We either started these engagements before we began our agile approach, or they are too brief in scope to benefit from the new approach. All these engagements are complete.

Engagements	Inactive	Planning	Fieldwork	Reporting	Complete
Citywide Energy Management Disaster Preparedness Follow-up APD Metro Gang Task Force Change of Command Culture Survey, Public Safety Communications GenTax Audit Animal Shelter Live Release Rate					

## Other Matters

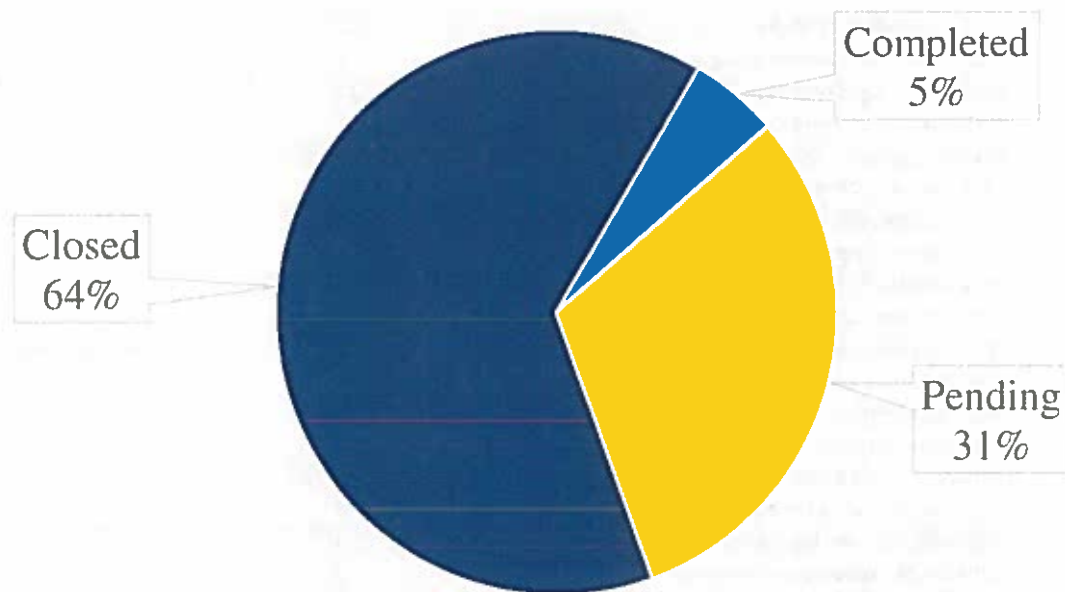
**2020 Risk Assessment:** We have revised the 2020 Risk Assessment Survey. The survey was sent to all Directors, Department Heads, Supervisors, and a sample of Staff during June.

**Staff Professional Development:** All staff is on track to complete their annually required 40 hours (minimum) of continuing professional training for 2019.

## RECOMMENDATIONS

We maintain and track the implementation status of our audit recommendations in our TeamMate audit software. The chart below displays the status of recommendations as of July 8, 2019. As of that date, 31% of all audit recommendations issued remained incomplete. That number is higher than the 24% reported at the end of 2018 due to a net increase of 32 recommendations (47 new and 15 completed or closed) during the first half of 2019. The table that follows outlines the status of audit recommendations by engagement. The table outlines active audits with outstanding recommendations and closed audits where the client has implemented all recommendations. Internal Audit regularly monitors the progress made on these recommendations.

### Recommendation Status



**Closed:** Client management has approved the implementation. No further action is necessary.

**Completed:** The client has implemented the recommendation and is waiting for client management’s final approval.

**Pending:** Implementation is not completed.

2019 Annual Audit Plan—Progress Report as of June 30, 2019

<u>Report Release Date</u>	<u>Audit Plan Year and Engagement Name</u>	<u>Closed</u>	<u>Completed</u>	<u>Pending</u>	<u>Grand Total</u>
February 2017	2015 HIPAA Compliance	6	-	3	9
January 2016	2015 Payroll and HR Audit	13	-	2	15
January 2016	2015 PROS Timesheet Audit	2	-	1	3
March 2018	2016 Fire Department Overtime	8	10	4	22
September 2017	2016 Core 4 Culture Impact Assessment	-	-	4	4
April 2017	2016 Overall Disaster Preparedness Assessment	5	2	4	11
September 2017	2016 Citywide Physical Security Assessment	12	-	11	23
May 2018	2017 Lethal and Less Lethal Weapons Inventory and Control Review	9	-	9	18
January 2019	2018 Change of Command Metro Gang Task Force	4	2	2	8
May 2019	2018 Fleet Management Operational Review	-	-	34	34
June 2019	2018 Overall Disaster Preparedness: Recommendations Follow-up	1	-	6	7
May 2019	2019 CALEA Property and Evidence	-	-	5	5
	<b>Subtotal</b>	<b>60</b>	<b>14</b>	<b>85</b>	<b>159</b>
	<i>Subtotal as percentage of grand total</i>	<b>38%</b>	<b>9%</b>	<b>53%</b>	<b>100%</b>
	2015 AFD Logistics Facility	5	-	-	5
	2015 Aqua Vista Cash Handling Audit	3	-	-	3
	2015 Aurora History Museum Cash Audit	15	-	-	15
	2015 Aurora Reservoir Cash Handling Audit	1	-	-	1
	2015 Aurora Sports Park Cash Handling Audit	1	-	-	1
	2015 Cashier's Office Cash Handling Audit	13	-	-	13
	2015 Meadowood Center Cash Handling Audit	2	-	-	2
	2015 Records Section Cash Handling Audit	7	-	-	7
	2015 Service Desk and Change Management Audit	5	-	-	5
	2015 Treasury Cash Management Audit	2	-	-	2
	2015 Utah Pool Cash Handling Audit	11	-	-	11
	2016 2015 Vice and Narcotics Audit	3	-	-	3
	2016 CALEA Property and Evidence	7	-	-	7
	2016 Citywide Cash Counts	8	-	-	8
	2016 Court Void Review	19	-	-	19
	2016 Fox Theater Business Process Review	3	-	-	3
	2017 APD Vice and Narcotics	1	-	-	1
	2017 CALEA Property and Evidence	2	-	-	2
	2018 CALEA Property and Evidence	4	-	-	4
	2018 APD Vice and Narcotics	1	-	-	1
	2018 Review of Police Grant A-GRIP	2	-	-	2
	2019 APD Vice and Narcotics	1	-	-	1
	<b>Subtotal</b>	<b>116</b>	<b>-</b>	<b>-</b>	<b>116</b>
	<i>Subtotal as percentage of grand total</i>	<b>100%</b>	<b>0%</b>	<b>0%</b>	<b>100%</b>
<b>Grand Total</b>		<b>176</b>	<b>14</b>	<b>85</b>	<b>275</b>
	<i>Subtotal as percentage of grand total</i>	<b>64%</b>	<b>5%</b>	<b>31%</b>	<b>100%</b>



## Implementation Notes

### 2015 HIPAA Compliance

- Revised completion dates are December 31, 2019

### 2015 Payroll and HR Audit

- Revised completion dates are December 31, 2019

### 2015 PROS Timesheet Audit

- Completion is dependent upon a decision regarding the City's payroll systems

### 2016 Fire Department Overtime

- AFR is actively pursuing recommendation implementation. Reviewed status with Chief Gray on June 19 and recommended that 7 could be marked completed; further discussion on others is pending

### 2016 Core 4 Culture Impact Assessment

- Human Resources is addressing the recommendations

### 2016 Overall Disaster Preparedness Assessment

- Revised completion dates are December 31, 2019 (Internal Audit completed a follow-up engagement on the recommendations from this original engagement: see *2018 Overall Disaster Preparedness: Recommendations Follow Up* below)

### 2016 Citywide Physical Security Assessment

- Management charged a cross-departmental steering committee with overseeing the recommendation implementation process. This committee is progressing slowly and providing regular progress reports to the City Manager.

### 2017 Lethal and Less Lethal Weapons Inventory and Control Review

- The implementation effort is waiting on the completion of a software RFP for a new inventory system.

### 2018 Change of Command Metro Gang Task Force

- Implementation of recommendations is in process.

### 2018 Fleet Management Operational Review

- We will work with the new Fleet Manager on implementation

### 2018 Overall Disaster Preparedness: Recommendations Follow Up

- Implementation is in progress; revised dates are in Q4 2019.

### 2019 CALEA Property and Evidence Audit

- Implementation is in progress

## INTERNAL AUDIT TEAM

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### **Wayne Sommer** | Internal Audit Manager

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Wayne is a Certified Public Accountant (CPA) and a Chartered Global Management Accountant (CGMA) with 39 years of diverse work experience. He began his career as an auditor for KPMG in Washington, DC (then known as Peat Marwick Mitchell and Co), advancing to the Audit Senior level with specialization in not-for-profit entities and financial institutions. He spent the next seven years in various financial and management capacities at Trustbank Savings, FSB in Virginia (also known as Dominion Federal Savings and Loan.) Prior to coming to the City of Aurora, Wayne spent 23 years at the International City/County Management Association (ICMA) in Washington, DC with 14 of those as Director, Administration and Finance, and the last nine working in executive management roles performing strategic planning, business development, and organizational change and development. Wayne also managed ICMA's U.S. Programs, which offered research and consulting products and services to local governments, the private sector, and the Federal government. Wayne has been with the City of Aurora since May 2014.

**Professional Associations:** American Institute of Certified Public Accountants; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Michelle Crawford** | Internal Audit Staff

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Michelle is a Certified Internal Auditor (CIA), a Certified Fraud Examiner (CFE), and has 12 years of experience in governmental auditing. She began her education at the University of Montana where she received her Bachelors in Business Administration. She then obtained her Masters in Accountancy from Missouri State University. Upon graduation from Missouri State University, she started her career at the Missouri State Auditor's office as a Staff Auditor I and progressed over the next seven years to a Senior Auditor. As an auditor with the State Auditor's office, she conducted performance audits of local governments and worked on the statewide Single Audit. Michelle has been with the City of Aurora since October 2014.

**Professional Associations:** Association of Certified Fraud Examiners; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Sheree Van Buren** | Internal Audit Staff

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Sheree graduated from Colorado State University in 2010 with a Bachelor of Science in Business Administration – Accounting degree. Prior to joining the City of Aurora, she spent three years as an Audit Associate with PwC, LLP. During this time, Sheree worked in the financial services industry, performing year-end financial statement audits for local and international investment companies. She is a Certified Internal Auditor (CIA). Sheree has been with the City of Aurora since August 2014.

**Professional Associations:** Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association, National Forum for Black Public Administrators.

## Appendix A: Completed Engagement Summary Reports

- Fleet Operational Review
- Purchasing Operations Review, Part 1
- APD Vice and Narcotics
- CALEA—APD Property and Evidence
- Citywide Energy Management
- Disaster Preparedness Follow Up
- APD Metro Gang Task Force Change of Command
- Culture Survey—Public Safety Communications Department
- GenTax
- Animal Shelter Live Release Rate





## ENGAGEMENT SUMMARY REPORT

### Fleet Management Operational Review Engagement

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

#### **BACKGROUND**

Fleet Management is responsible for the acquisition and disposal, repair and maintenance of the city's vehicle and equipment assets and the fuel that propels them. The Fleet Maintenance staff maintains over 2,500 pieces of City owned vehicles and equipment, ranging from small grounds maintenance equipment to fire apparatus. The condition and availability of fleet assets is critical to maintaining public safety and discharging City services. In addition, the City fuels its vehicle and apparatus fleet through City-owned fuel pumps and City-provided fuel cards used at local gas stations.

#### **SCOPE**

January 1, 2017 through April 30, 2018

#### **OBJECTIVES**

Ascertain the existence and effectiveness of internal controls.

Determine compliance with established policies and procedures.

Evaluate the efficiency and effectiveness of the citywide fleet processes.

#### **CONCLUSIONS**

It is our opinion, based upon the results of our process mapping, review of risks, and fieldwork, significant control weaknesses exist; internal controls are either missing or not operating effectively.

Due to the lack of documented policies and procedures, we could not determine compliance with established policy and procedures.

It is our opinion, based upon the results of our process mapping and fieldwork that processes are inefficient and not always effective.

<p><b>Key Recommendations</b></p> <p><b>Controls over fuel access</b></p> <p>We recommend that Fleet:</p> <ul style="list-style-type: none"><li>• Develop a process to review monthly fuel use. Identify and terminate any employees no longer actively working for the city within one month of their termination.</li><li>• Perform regular scheduled reconciliations (at a minimum, every six months) between Human Resources active employees and the Fleet Driver ID list to ensure it only includes active employees. An optional approach would be to send departments the list of user names along with the monthly fuel invoices for their review.</li><li>• Develop a standard protocol for assigning fuel user names including fixed formats. Review all current users and correct any non-compliance with the new standards and formats.</li></ul>
<p><b>Policies &amp; Procedures</b></p> <p>We recommend Fleet update policies and procedures to include all of Fleet operations, such as inventory management, and to address citywide Fleet topics such as ride share. Centrally store Fleet policies.</p>
<p><b>Fleet Fire Repair Service Trends</b></p> <p>We recommend Fleet and AFR work together to develop mutually satisfactory internal benchmarks for downtime and repair times. Fleet Fire should expand its use of data analysis and trend monitoring for downtime, repair time, and any other key performance indicators that they find useful. Monitoring should be rigorous and sufficiently regular to allow adequate time to identify the root causes of any significant trend changes and make more data-driven decisions. Fleet should continue to collaborate with AFR in monitoring the data to ensure any process changes are making a desired impact.</p> <p>We recommend Aurora Fire Rescue investigate digitizing the current manual checklists and ensure the appropriate items are included on them. Additionally, AFR should provide the completed checklists monthly to the Fleet liaison so they can monitor for compliance and proactively identify service needs.</p>
<p><b>Utilization Reviews</b></p> <p>We recommend that Fleet develop a process for utilization following best practices and present utilization data to management at regular intervals (annually, at a minimum, and especially before budgeting decisions are made.) Fleet should also develop a schedule for regular utilization reviews for all Departments. At minimum, complete reviews annually.</p>
<p><b>Parts room processes</b></p> <p>We recommend Fleet document the inventory process and include the following:</p> <ul style="list-style-type: none"><li>• Frequency of partial inventories using a risk based approach (higher risk, higher frequency)</li><li>• Document who performs the inventories and when</li><li>• Process for Parts Supervisor to review inventory including frequency, review of discrepancies and adjustments</li></ul>

**FASTER data utilization**

We recommend that Fleet exploit FASTER's data and data presentation capabilities to monitor trends, identify areas to increase operational efficiency, and make better overall decisions.

**Pool Car Utilization**

We recommend Fleet create a citywide campaign to increase staff knowledge of the current pool car program. Develop and evaluate ways to expand pool car use. Methods to improve the quality of the pool car experience could include user groups and citywide surveys to obtain feedback, evaluating current vehicle locations, and employing the automated key-box system. Utilization data gathered using telematics would provide detailed utilization information including trips per day. If utilization rates do not improve, Fleet should reevaluate alternatives to the current pool car program.

**Labor and overhead rates**

We recommend Fleet develop procedures to work with the Finance Budget office to recalculate the labor and overhead rates using actual expenses on an annual basis or as necessary.

**Performance measures**

We recommend that Fleet:

- Utilizes the FASTER software to send the survey to 100% of customers
- Reconfigures the survey questions format to ensure the complete results can be translated to the measure
- Includes the Fire shop in the performance measures
- Work with the City Budget office to develop useful performance measures for all areas including reevaluating percentage of repairs and measures for inventory and fuel.

**Scheduling services**

Develop procedures utilizing FASTER to schedule services via a customer portal. Develop training and guidelines to allow customers to schedule their own services where appropriate.

Evaluate the requirements necessary to allow users to enter required information via a kiosk or desktop computer. Assess the cost of any equipment with the benefit of reducing the time required for dual entry and printed forms.

***Management is actively working on implementing all the audit recommendations.***







## ENGAGEMENT EXECUTIVE SUMMARY

### Purchasing Operations Review – Part 1

*This Executive Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.*

#### BACKGROUND

The Purchasing Services Division is responsible for acquiring goods and services through a competitive bid process. Internal Audit reviewed the division's activities to ensure they possess sufficient capacity to handle City needs in a timely fashion.

#### SCOPE

January 1, 2017 through December 31, 2018

#### MILESTONES

- Client evaluation
- Process controls and efficiency
- Risks in IT, governance, and fraud

#### CONCLUSIONS

- The Purchasing division has a positive working culture. City staff are very satisfied with the services provided by the Purchasing division.
- There are sufficient controls in place for the significant purchasing processes.
- We did not identify any IT risks. We assessed the governance level as good<sup>1</sup>. We did not identify any significant fraud risks.

#### KEY RECOMMENDATIONS AND RESPONSE

##### Recommendations

- Review and update Purchasing Procedure Letters (PPLs)
- Enhance the use of the Purchasing Administrative Lead Time (PALT) performance measure
- Increase City staff training on the purchasing processes
- Compare vendor/staff information
- Staff complete an annual conflict of interest/disclosure statement
- Pursue a system that automates purchasing activities and contract management

##### Management's Response

- Management has agreed to implement the recommendations.

<sup>1</sup> There are governance processes in practice with some, but not all, operating effectively.





## ENGAGEMENT SUMMARY REPORT

### APD-Vice and Narcotics Engagement

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

#### **BACKGROUND**

To protect the confidential nature of their operations, Internal Audit performs this annual engagement before submitting the financial statements to the City's Finance Department for inclusion in the City's annual audited financial statements. We assess the adequacy of operational controls that safeguard assets used in the prosecution of vice and narcotics criminal activity and review the accuracy of the division's financial information.

#### **SCOPE**

January 1 through December 31, 2018

#### **OBJECTIVES**

Assess the accuracy of the 2018 financial statements (January 1 through December 31).

Verify that financial records (electronic and manual) used for the financial statements are correct.

Review compliance with procedures currently in place for handling financial transactions including financial statement preparation, review of financial records, and cash handling procedures.

#### **CONCLUSIONS**

The 2018 financial statements are accurate.

The financial records used for the 2018 financial statements are correct.

Vice and Narcotics complied with their policies and procedures.

#### **KEY RECOMMENDATIONS AND RESPONSES**

##### **Recommendations**

Request and review access reader reports at a minimum of annually or whenever there is staff turnover.

##### **Management's Response**

We have reviewed the finding and agree with it. We will routinely check access to the building and remove access when necessary.





## ENGAGEMENT EXECUTIVE SUMMARY

### APD Property and Evidence Engagement

***This Executive Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

#### **BACKGROUND**

Internal Audit conducts this annual engagement to review controls that ensure the chain of custody is unbroken. It is a requirement for Aurora Police Department's Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation.

#### **SCOPE**

January 1, 2018 through December 31, 2018

#### **OBJECTIVES**

- Ensure compliance with CALEA Standard 84 – Property and Evidence Control.
  - Conduct an annual audit of property and evidence, in compliance with Appendix K. This audit is conducted by a supervisor not routinely or directly connected with control of property and evidence.
- Ensure the reliability and integrity of internal controls that ensure the chain of custody for property and evidence is not broken.

#### **CONCLUSIONS**

- Aurora Police Department Business Services Division – Property and Evidence Unit has complied with CALEA standard 84.1.6 and Appendix K.
- Adequate controls are in place to ensure the chain of custody is not broken.

#### **KEY RECOMMENDATIONS AND RESPONSE**

##### **Recommendations**

- Establish acceptable, yet challenging, ranges that will enable the unit to monitor progress and/or make operational changes to meet performance measures.

##### **Management's Response**

- The Property and Evidence Team will research the historical data and come up with the appropriate ranges to monitor this measure.

APD management and staff were supportive and responsive during the engagement.





## ENGAGEMENT SUMMARY REPORT

Citywide Energy Management  
Internal Audit Department

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

### BACKGROUND

An energy focused audit engagement commenced in late 2013; fieldwork ended in early 2014. Upon his hiring in May 2014, the new Internal Audit Manager reviewed the workpapers and the draft report and discovered several technical issues that required correction. The staff auditor assigned to the engagement retired from the City before the corrective work was completed. In the Internal Audit Manager's judgment, the fieldwork was incomplete and insufficient upon which to base an opinion. The Manager determined that it would be more cost effective to start a completely new engagement rather than try to correct the identified issues in the existing workpapers.

### SCOPE

For purposes of reviewing the accuracy of energy charges, the audit scope period will cover invoices paid between January 1, 2013 and October 31, 2015.

### OBJECTIVES

- Assess the effectiveness and efficiency of controls within the key business processes related to activating and deleting energy accounts, monitoring energy usage, and paying and recording energy related invoices
- Assess the potential benefits of developing a citywide energy management plan
- Ensure that energy charges (including taxes) to City are fair and accurate

### CONCLUSIONS

- Controls over the key business processes are neither effective nor efficient. Accounts Payable carries too large a burden related to the required tasks. Processes can be improved by making better use of the EnergyCAP software.
- An active, coordinated strategic energy management plan could fit well with the City efforts toward energy efficiency and sustainability.
- Due to the expertise and capabilities required, Internal Audit concluded that an outside consultant would be more effective and efficiently.

### KEY RECOMMENDATIONS AND RESPONSES

#### Recommendations

- Implement the EnergyCAP software citywide for monitoring energy usage. Evaluate the effectiveness of its invoice processing capabilities in relation to the existing processes and adjust the processes as appropriate.
- Establish a cross-departmental energy management team that brings together existing staff expertise from Planning and Public Works and staff from other City operations to develop a strategic energy management plan. Public Works Facilities Engineering staff could chair this group. Leverage City staff creativity in developing

#### Management's Response

- Public Works believes consolidating responsibility for managing City energy expenditures into Public Works and adding an FTE to Facilities Engineering to assist with the related tasks, addresses most, if not all, of the recommendations within this report.
- Additional staff would allow time for the existing Sustainability Engineer to develop a strategic energy management plan. Such an effort would likely involve use of a qualified consultant whose work would be managed and reviewed by the Sustainability Engineer. While staff from other departments would be consulted and included, Public Works feels

## Recommendations

and implementing energy efficiency projects, including creative funding solutions, to achieve targeted conservation goals.

- We recommend that the City work through the appropriate procurement channels to obtain a qualified consultant to analyze the rates charged to the City to ensure the charges are fair and accurate.

## Management's Response

this process would be better served with responsibility assigned to a single staff member and would not benefit from formation of a standing committee. Staff would prepare regular progress updates to Management Staff on this effort.

- Facilities Engineering Staff, specifically Sustainability Engineer, periodically monitors rates charged by Xcel and compares them to national rates. Additional staff as proposed would enable this staff member to complete this task on a regular basis. However, because the City has a franchise agreement with Xcel for utility service (gas and electric) as the sole provider to properties within City limits, unless the rates are significantly different from other agencies within the Metro Area, our only recourse would be to challenge the rates with the PUC or terminate our agreement with Xcel. If that were to happen, Facilities Engineering would work with Management Staff to develop a strategy to challenge the rates. Public Works feels expending funds on a consultant specifically to review rates would not be of benefit to the City. However, this task could be included with development of a strategic plan.

## SUMMARY MANAGEMENT RESPONSE TO THE REPORT

Public Works believes consolidating responsibility for managing City energy expenditures into Public Works and adding an FTE to Facilities Engineering to assist with the related tasks, addresses most, if not all, of the recommendations within this report.

Facilities Engineering staff is already working to refine the utility bill database that is uploaded to a software application, EnergyCAP, which allows efficient review of utility usage and can flag anomalies in the bills. A staff member within Facilities Engineering is already filling the role of Sustainability Engineer and currently monitors energy usage for some facilities using the EnergyCAP application. An additional staff member could enable Facilities Engineering to address all of the recommendations within this report.

The ability to harness our energy use data would allow us to become a more data driven operation, contribute significantly to our ability to better manage our energy costs, address billing anomalies, target more accurately potential projects to support energy conservation, and support the City's sustainability goals. While there is no guarantee, it is likely that energy savings could cover the cost of the new FTE. As an alternative to a FTE, a paid internship would accomplish many of the one-time tasks.





## OVERALL DISASTER PREPAREDNESS RECOMMENDATIONS FOLLOW-UP: SURVEY RESULTS AND PLAN REVIEW

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

### **BACKGROUND**

In 2017, Internal Audit (IA) completed an assessment of the City's overall disaster preparedness including planning and execution capabilities, adequacy of facilities, technology, and communication planning, and staff's response awareness. While there are many facets to disaster preparedness, the engagement focused on the collaborative efforts between City departments and the Office of Emergency Management (OEM) to prepare City staff to continue operations during an emergency event. IA's review included the departments' continuing operations plans (COOPs) and surveying City staff. IA concluded that the plans were outdated, some even 10 or more years old. We also found that many staff were unaware of their plan or not properly prepared to respond accordingly. We developed recommendations that the departments update their existing plans and work with OEM and Information Technology (IT) to ensure they adequately documented their plan annexes (sections), and the plans were feasible. City Management directed a rapid response to the engagement's findings and recommendations.

### **SCOPE**

April 1, 2017 – March 30, 2018.

*\*Noted: The initial engagement report was released on April 3, 2017.\**

### **OBJECTIVES**

- Assess the adequacy of the response to the initial engagement's findings and recommendations in accordance with City Management directives, which included assessing staff's awareness of their responsibilities and reviewing the departments' continuing operations plans.

### **CONCLUSIONS**

- Internal Audit noted slight improvements in awareness and preparedness at the manager/director level; however, supervisors/staff continue to show a low level of awareness. The lack of sufficiently documented plans from which to train staff is affecting the knowledge base.
- The implementation of the recommendations from the initial engagement is not yet satisfied. Most importantly, City departments have not yet satisfied the recommendation of complete, written continuing operations plans.

### **KEY RECOMMENDATIONS AND RESPONSES**

We developed the following recommendations based upon findings identified during this follow-up engagement. According to City Ordinance, OEM is the coordinating agency for all disaster planning and acts as the instrument through which the City Manager exercises authority and discharges disaster planning responsibilities. Disaster and emergency planning are a collaborative effort. As such, in the complete engagement report, Internal Audit noted the department, OEM, and City Management responsibilities accordingly.





## ENGAGEMENT SUMMARY REPORT

Change of Command Metro Gang Task Force  
Internal Audit Department

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

### BACKGROUND

The Aurora Police Department Metro Gang Task Force (MGTF) Lieutenant, through the Division Chief, requested a cash review due to the change of command in the MGTF on June 13, 2018. The MGTF is comprised of federal and local law enforcement agencies. Internal Audit has performed similar reviews for the APD Vice & Narcotics division.

### SCOPE

The procedures cover the change of command period between May 2018 and June 2018.

### OBJECTIVES

- Verify the accuracy of the cash balances on-hand at the time of the change of command.

### CONCLUSIONS

- Cash balances at the change of command were accurate; however, the financial practices employed did not ensure that MGTF assets were properly safeguarded.

### KEY RECOMMENDATIONS AND RESPONSES

#### Recommendations

- We recommend that the MGTF Commander ensure staff compliance with the existing policies and procedures. We further recommend that the Executive Board develop new policies and procedures related to their and Management's financial oversight responsibilities and guidance for the timely recording of financial transactions.
- We recommend that the MGTF commander reviews financial records and supporting documentation monthly and documents explanations for any unusual occurrences or late payments and that the Accounting Technician pays invoices timely, documents deviations from amounts due, and requests reimbursements in a timely manner.
- We recommend the MGTF Commander and Sergeants responsible for reviewing the vouchers and forms supporting officer transactions ensure that the officers have documented each field of the voucher or form completely and accurately.

#### Management's Response

- With the inception of the new task force, revised policies and procedures will be authored. These policies and procedures will provide clear financial and administrative guidelines regarding the duties and responsibilities of the supervisors, financial analyst, task force commander, and executive board.
- With the hiring of a new financial analyst these issues should be resolved. With the new checklist, proper oversight will occur and be the responsibility of the supervisors and task force commander.
- Based on previous responses, the new defined procedures, checklists, and the supervisory roles should eliminate these occurrences. Any errors will be dealt with through training and documentation. I have already spoken with the supervisors about this attention to detail and their responsibilities and accountability.

APD management and staff were supportive and responsive during the engagement.





## PUBLIC SAFETY COMMUNICATIONS CULTURE SURVEY REPORT

***This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.***

### **BACKGROUND**

Internal Audit informed the Aurora Police Department (APD) that we intended to conduct a culture survey in Public Safety Communications (PSC) as part of our 2019 audit plan. Due to the changes occurring in PSC, APD requested that we conduct a benchmarking survey in 2018 against which they will compare 2019 survey results to assess change progress. The survey questions fell within the following categories:

- Leadership
- Motivation
- Teamwork
- Communication
- Decision Making
- Goals
- Controls

### **SCOPE**

Our scope included all the PSC staff as of our survey date, October 18, 2018.

#### **OBJECTIVE**

- Establish a benchmark baseline for the state of the culture in Public Safety Communications (PSC).

#### **CONCLUSIONS**

- From the Staff results, the perception is that the department is more of a benevolent-authoritative system (System 2.) In this system, management uses rewards to encourage productivity but responsibility for all decisions reside at the top with little to no teamwork or communication.
- From the Supervisor/Management perspective, the data leans more towards the consultative system (System 3.) In this system, management may consult supervisors but supervisors do not feel responsible for accomplishing the organization's goals.

### **KEY RECOMMENDATION**

The Center is still in a transition period with the expected hiring of a permanent manager to occur in first quarter 2019. We believe that focusing on communication, teamwork, decision making, and trust (as shown in the Jamie Brower Communications Gap Analysis), will help the Center improve its culture. As these attributes build upon each other, it will be important for the Center to work progressively through each one.





## TAX AND LICENSING GENTAX POPULATION PROCEDURES

*This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.*

### BACKGROUND

Internal Audit completed the Tax and Licensing Review engagement for the post-conversion GenTax population. We conducted this engagement in response to a special request from Terri Velasquez, Finance Director.

### SCOPE

May 1, 2018 – September 30, 2018

#### OBJECTIVES

- Assess the effectiveness of key tax and licensing processes as they relate to establishing new business accounts.
- Verify the completeness of the current tax and licensing population within GenTax following the recent conversion.

#### CONCLUSIONS

- No exceptions noted. Procedures for establishing new business accounts are effective.
- No exceptions noted. Procedures for establishing new business accounts are effective.

### KEY RECOMMENDATIONS AND RESPONSES

Internal Audit had no formal recommendations for this engagement in regard to the system conversion and new account set-up; however, during the course of our audit work we observed some conditions that, in our opinion, may improve the security and operations of the T&L division. We offered these items for management discussion. Tax and Licensing management and staff were supportive and responsive during the engagement and have already taken steps to implement the items discussed.







## ENGAGEMENT SUMMARY REPORT

### Animal Shelter Live Release Review Engagement

*This Engagement Summary provides engagement highlights that should be interpreted within the context of the complete engagement report.*

#### BACKGROUND

City Management requested Internal Audit review the live release rates for the Animal Shelter. The Animal Shelter calculates the live release rate in accordance with the Asilomar Accords.

#### SCOPE

The engagement team:

- Met with management to confirm their desired engagement outcomes
- Mapped live release rate related processes to evaluate the internal control environment
- Identified and evaluated risks
- Reviewed the Animal shelter data and calculations

#### OBJECTIVES

Review and confirm the accuracy of the Live Release Rate

Determine compliance with established policies and procedures related to Shelter Data and the live release rate

Compare processes for shelter data and live release rates to best practices and identify any opportunities for improvement

#### CONCLUSIONS

The Live Release Rate is accurate as reported.

The Shelter complied with its policies and procedures related to the live release rate.

We believe that the Aurora Animal Shelter is effectively applying best practices.

#### KEY RECOMMENDATIONS AND RESPONSES

##### Recommendations

The Animal Shelter report additional performance information in addition to the Asilomar Live Release Rate to Management to provide a more holistic view of shelter operations.

##### Management's Response

We have identified the following additional performance information to be tracked on going: Length of stay, monthly intake numbers and types, monthly outcome numbers and types, monthly completed evaluations, monthly surgeries completed, quarterly vaccination clinic statistics-i.e. number of people served, animals vaccinated.

### **Recommendations**

For each use of Pre-euthanasia (sedation) solution and Fatal-Plus the Technician documents the initials of the technician and holder on the physical log books. The Logging Fatal Plus SOP should be updated to reflect this process.

Management creates an SOP that documents the Asilomar Accords as the guidance used for Live Release Rate calculations and that the SOP also addresses how to account for pregnant euthanized animals.

### **Management's Response**

Authorized staff will attend training for a new Euthanasia policy and SOP that will reflect that for each use of Pre-euthanasia (sedation) solution and Fatal-Plus the Euthanasia Technician will document the initials of the technician and holder on the physical log books. The Logging Fatal Plus SOP was updated on May 1, 2019 to reflect this practice.

The Shelter Supervisor along with the Shelter Veterinarian will create an SOP that documents the Asilomar Accords as the guidance used for Live Release Rate calculations. The SOP will also address how to account for pregnant euthanized animals.