MANAGEMENT AND FINANCE POLICY COMMITTEE (M&F)
MEETING
TUESDAY, June 23, 2020 1:00 PM,
WebEx Meeting
Access information provided to Internal Staff

Public Participant Dialing Instructions
Dial Access Number: 1-877-820-7831
Enter Participant Code: 254610#

Council Member Gruber, Chair
Council Member Marcano, Vice Chair
Council Member Gardner
Deputy City Manager Roberto Venegas
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 APRIL 28, 2020 DRAFT MINUTES**

2. **CONSENT ITEMS**
   - **Sales Tax Chart**
     Presenter: Greg Hays, Budget Officer (5 minutes)

3. **PROPOSED CHANGES TO METRO DISTRICT MODEL SERVICE PLAN**
   Presenter: Vinessa Irvin, Manager of Development Assistance (10 minutes)

4. **SANDCREEK METRO DISTRICT SERVICE PLAN AMENDMENT**
   Presenter: Vinessa Irvin, Manager of Development Assistance (10 minutes)

5. **KING RANCH METROPOLITAN DISTRICT NOS 1-5**
   Presenter: Cesarina Dancy, Development Project Manager (10)

6. **PUBLIC BANKING**
   Presenter: Hanosky Hernandez, Assistant Civil II City Attorney (10 minutes)

7. **LODGERS TAX EXEMPTION MODIFICATION**
   Presenter: Trevor Vaughn, Manager of Tax & Licensing (5 minutes)

8. **INVESTMENT ADVISORY COMMITTEE APPOINTMENT**
   Presenter: Andrew Jamison, Debt and Treasury Senior. Analyst (5 minutes)

9. **MISCELLANEOUS MATTERS FOR CONSIDERATION**
   - Next meeting is on July 28 at 1:00 pm, WebEx Meeting

Total projected meeting time: 55 minutes

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MANAGEMENT AND FINANCE POLICY COMMITTEE
WEBEX

Members Present: Council Member David Gruber – Chair, Council Member Marcano – Vice Chair, Council Member Gardner – Member

Others Present: R. Venegas, T. Velasquez, S. Ruger, G. Hays, M. Shannon, B. Fillinger, M. Lawson, N. Wishmeyer, V. Irvin, W. Sommer, J. Cox, H. Hernandez, S. Neumann, A. Jamison, D. Lathers, M. Clark, R. Peterson, R. Forrest, B. Rulla, M. Parnes, J. Schneebeck, J. Prosser, K. Smith, M. Witkiewiz, J. Tanaka, and T. Hoyle

INTRODUCTIONS AND MINUTES

March 24, 2020 minutes were approved.

CONSENT ITEMS

February of 2020 was 13.9 percent higher than February of 2019.

Greg Hays, Budget Manager stated that the Budget Office has been working with Colorado University's LEEDS School of Business to develop an accurate as possible forecast of the city's financial picture. Considering sales tax and other revenue information, this projection assumes four quarters of decline beginning in the second quarter of 2020 and starting to lessen in 2021. Based on these projections the city will be out of balance leading to an approximate $25 million deficit in 2020 and $30 million in 2021.

Outcome
The Committee thanked staff.

Follow-up Action
No follow-up needed.

AURORA CROSSROADS METRO DISTRICT

Summary of Issue and Discussion
The Aurora Crossroads Metropolitan District Nos. 1-3 have requested an amended and restated service plan be considered by the city.

The proposed development served by these districts is proposed as follows: Mixed Use with approximately ten percent (10%) residential development (non-single family detached), seventy-five percent (75%) commercial development and fifteen percent (15%) open space and rights-of-way areas. It is anticipated that formal submission of the Master Plan will occur in April 2020. Zoning for the project is already in place, MU-R.

The Districts have recently been approached by the Sisters of Charity of Leavenworth Health Systems, Inc. about constructing several Class A Medical Office Buildings in the Districts' commercial areas, and once those have been established and have a solid customer base, they wish to proceed with building a hospital. For this development to occur, adoption of the Proposed Service Plan is required. This is because the Initial Debt Limitation in the existing Service Plan prohibits the

issuance of Debt and the imposition of a mill levy to repay that Debt until such time that the Districts have in place an Approved Development Plan.

While the Districts are actively pursuing an Approved Development Plan with the City, approval of such a plan is not anticipated until later in the year. If the Districts were required to wait until the plan was approved the opportunity presented by the Sisters of Charity of Leavenworth Health Systems, Inc. would likely be lost. In order to proceed with the development of the Class A Medical Buildings and hospital, the Districts first need to issue Debt necessary to finance the spine infrastructure needed to serve the development. The Districts are therefore requesting a revision to the Initial Debt Limitation provision that would allow the issuance of Debt and the imposition of mill levies to repay that Debt between now and December 31, 2020 without the requirement of having an Approved Development Plan, as currently defined. Any future debt issuance beyond 12/31/2020 will require an approved development plan.

Does the Committee wish to move this item forward to City Council Study Session as proposed?

Council Member (CM) Gruber expressed concern that it was unusual for a solo Metro district to have three master plans. The three independent plans were a Data Center, a multi-family housing, and a nonprofit hospital. He asked about the mill levy and the financing of the debt.

Mark Witkiewicz, Westside Investment Partner, Inc stated it's likely that all the development around the hospital will be all commercial.

CM Gardener asked if the Sisters of Charity of Leavenworth (SCL) is a non-profit entity would the City receive any tax? M. Witkiewicz replied, no.

CM Gruber asked would they pay the levy since they're not taxed? M. Witkiewicz replied no. The hospital is simply an anchor the energy that the area needs to spur the surrounding development, but it won't financially benefit the district directly.

CM Gruber expressed concern and that it will be like the Children's hospital and the office building (Class A) on the southside of Colfax. The office building was absorbed and purchased by Children's hospital. The tax revenue and its impact to the Metro district was large. He didn't understand its financial model and repaying of the debt given the large amount of non-tax organizations that's within the Metro district.

M. Witkiewicz stated the financial model doesn't have the hospital to back the bonds but JP Morgan site is a known asset, and part of the Metro district. Once the hospital and the other development follows, we're confident that this will be a stable financial model. The metro district also includes the property with the oil and gas development.

CM Gruber said my primary concern is the Class A buildings and especially on a site that would be absorb by the hospital and are non-tax paying.

V. Irvin stated this is a Metro district and if they're not putting together a good financial deal the bonds will not be sold, and they will not be able to move forward. I know that's not the answer you

want however maybe they can send the financial projections information to us before it goes to Study Session so that you can feel more comfortable.

CM Gruber recommended that it moves forward but include more information on the financial part before it goes to Study Session.

Outcome
The Committee recommended that this item be forward to Study Session. Staff will include a financial model of the property.

Follow-up Action
Staff will forward this to Study Session, May 2020.

CHANGE TO CITY CODE SEC.2-66(f) DISQUALIFIED VENDOR OR CONTRACTOR
Considering recent events, staff is proposing to expand Sec. 2-667(f), *Disqualified vendor or contractor,* to include those firms who have attempted to influence a bid/proposal evaluation or award process by contacting City Council Members, City management and City staff other than in the Purchasing and Contracting division outside or apart from the regular purchasing process.

Does the Committee approve this change to the ordinance?

CM Gruber said the concern he has is that were trying to fix this at the wrong level and it's too broad. He agreed people who violate and try to influence the evaluation team after bid proposals are closed there should be consequence regardless who they are whether it's a council member or someone else. So, contractors shouldn't be talking to the evaluation team and neither should senior management or City Council.

CM Gardner agreed. However, what's being proposed is that anybody outside the City who may at some point have business would be restricted to contact City Council Members, City management or City staff and this may be a step going too far.

CM Gruber asked what's the point in time or start time a contractor can't speak to a Council Member, City Management or staff? Because every sales person in the world wants to influence in winning a bid whether it's shaping a proposal or putting their best foot forward. B. Fillinger replied its when the solicitation process starts. D. Lathers added, it's when the matter is put out to bid in Bidnet but it's not on every contract. It's only on those that have a valuative component or are subjective based bids therefore limited time on limited bids.

CM Gruber suggested that more information be added for clarification specifically when it starts with a bid value of x amount of dollars and requires an evaluation. Staff agreed that they will update the ordinance, and the revision will be sent to the Committee before it goes to Study Session.

Outcome
The Committee recommended that this item be brought back to Committee before going to Study Session. Staff will update the ordinance and the revision will be provided to the Committee before it goes to Study Session.

Follow-up Action
Staff will bring the revised ordinance to the Committee before taking it to Study Session.

2019 EXTERNAL AUDIT PRE-AUDIT LETTER
BKD, LLP, the city's external auditors, provide this pre-audit letter to communicate various matters related to the scope and timing of the 2019 financial statement audit, and compliance with requirements applicable to federal grant programs. BKD, LLP also provided an engagement letter dated November 25, 2019 that was presented at the January 28, 2020 Management & Finance Policy Committee meeting. The engagement letter is the contract for the upcoming audit and defines auditor and city management responsibilities as well as fees. The pre-audit letter communicates audit matters that are more appropriately communicated as the engagement begins.

The pre-audit letter is required auditor communication to the city's audit committee at the beginning of the engagement. The letter outlines audit risk areas and the corresponding audit approach to address those risks. The pre-audit letter also outlines areas that governance should be particularly aware of as it oversees the financial reporting process. Finally, the pre-audit letter discusses how the auditors address the risk of fraud.

CM Gardner asked, how long has the City been with BKD? N. Wishmeyer replied we started with them back in 2006. It was a three year plus two-year option contract, consequently we're on our third five-year contract with BKD. In the fall there will be another review that will be brought to you to determine whether we go another three years plus two or if we go out with an RFP.

Outcome
The Committee thanked staff.

Follow-up Action
No follow up is necessary as this item was informational only.

COVID-RELATED GRANT OPPORTUNITIES
Michael Lawson, Manager of Special Projects and Nancy Wishmeyer, Controller presented an overview on grant opportunities City staff are pursuing related to COVID 19 pandemic.

I. Expansion of Block and Entitlement Grants
Via CARES Act

CDBG-CV

- Allocation of **$1.73 million**
- Eligible for: Assistance for rent, mortgage, and utilities, emergency home maintenance and rehab, emergency public housing maintenance
- Meals and medicine delivery

- Hotels/motels for expanded treatment/isolation of patients
- **$916, 700 still available**
  - $812,400 spent (Respite Center hotel, biz loans)

ESG-CV

- Allocation of **$864K**
- Eligible for: Street outreach (urgent needs, equipping staff, transportation, and referrals)
- Rapid re-housing, homelessness prevention, shelter operations (supplies, furnishing, equipment and transportation)
- Administration
- **Total allocation still available**

Next Steps

- Convene citywide Recovery Committee to allocate CDBG and ESG funds to specific programs.

- Await distribution on future tranches of CDBG, ESG
  - CDBG Round 2: Additional $1 billion to states
  - CDBG Round 3: Additional $2 billion to states and local govts
  - ESG Round 2: Additional $3 billion to states and local govts

II. CARES Act

- **Coronavirus Emergency Supplemental Funding (CESF).**
  - *Available to APD to help generally respond to COVID-19; if awarded, may cover $579,000 in expenses.*

- **Payroll tax deferral program**
  - *City has ability to defer remaining 2020 payroll tax payments.*

- **Coronavirus Relief Fund. Widening eligibility for cities?**
  - *Aurora is currently not included in distribution*
  - *Lobbying congressional delegation*
  - *Staff in conversation with Adams, Arapahoe Counties*
    - *Adams willing to allocate grant to municipalities based on population. Aurora expecting receive about $3.7 million.*
    - *Arapahoe expressing willingness to allocate to cities based on population.*

III. FEMA grants

1. **Assistance for Firefighters Grant (COVID-19 supplemental).** Will cover costs of PPE for AFR.

2. **Public Assistance Grant**. Looking at eligible costs to be recovered through this program.

3. Staff is looking at reimbursement for APD, AFR, OEM overtime.

IV. Other opportunities

- **Smaller grants for City and community partners.**
  - **Help Colorado Now.** $25,000 to provide supplies and services directly benefitting vulnerable populations.
    - *Can cover items like hotel/motel costs for vulnerable individuals and families, youth programming, and support for seniors.*
  - Various federal foundation grants for Neighborhood Services, Library & Cultural Services.
- **Fifth stimulus bill to assist states, local governments?**

V. Aid from City directly to community

- **Aurora Economic Relief Loan and Grant Program ($1 million)**
  - *$500K in aid to be distributed to Aurora small businesses next week*
  - *Applications for second round of $500K being reviewed for funding*
  - *Sourced from Community Development, AURA funds (50/50)*
- **Involvement with Paycheck Protection Program.**
  - *Small Business Development Center staff is coming alongside local businesses to assist in applying for PPP*.
  - *New second appropriation of PPP funds of $310 billion approved by Congress last week***.**
- Staff is notifying community NPO partners about grant opportunities as they arise.

CM Gruber asked how many applications came in for the Aurora Economic Relief Loan and Grant Program? J. Prosser, Manager of Community Development replied there were a total of 1,095 applications; 798 for grants and 207 for loans.

CM Gruber requested for this to be included in the Council update that comes from Jim Twombly.

Outcome
The Committee thanked staff.

Follow-up Action
No follow up is necessary as this item was informational only.

2020 BALLOT QUESTION TO RETAIN PROPERTY TAX OVER TABOR LIMIT
At the March 2, 2020 Study Session, the City Council directed staff to initiate a ballot question requesting the City be allowed to retain 2020 property taxes collections in excess of the TABOR cap. The ballot question was one of nine revenue enhancement options considered by the Council at the Study Session.

The current projection assumes collections will be $3.3 million over the cap. The excess revenue will be refunded to taxpayers. The City can ask residents to forgo a refund in 2020 and retain the $3.3 million. A formal vote is required. In the same ballot question, the City can ask voters to *permanently* remove the TABOR cap. Voters similarly removed the sales tax TABOR cap in 2000.

Proposal for Use of Revenue

- Significant General Fund revenue shortfall in 2020 and 2021 due to COVID-19.

	2020 (proj.)	2021	2022	2023	2024
Shortfall	($25,544,560)	($30,737,852)	($24,583,617)	($23,273,610)	($23,514,626)

- Propose using $3.3 million in both years to backfill lost General Fund revenues.
- Equates to:
  - Annual salary and benefits for 44 FTEs.
  - Annual operating costs for two fire stations for a year.
  - Roughly half of annual operating costs for all library facilities.

The City can explore earmarking the revenue in 2022 and beyond.

If the committee does wish to advance this item to the full Council, the ballot question language must be considered at a Study Session no later than June 1, 2020; introduction at a formal Council meeting must come no later than July 6, 2020. The Council must approve adopting resolution placing the question on the ballot by July 22, 2020.

Does the committee wish to advance to the full Council the placement of a ballot question to remove the TABOR cap and therefore retain all property tax revenues in 2020 and beyond?

CM Gardner asked for confirmation if the cost to run a ballot was $150,000. R. Venegas replied that's correct, $150,000 is a general rule of thumb for any questions to run on a ballot. CM Gardner said my other question related to that, what does the City expect to spend for this ballot question to be successful? I have my doubt in how successful this can be because we all know due to TABOR and how the ballot must be written it doesn't favor nuance and explanation.

T. Velasquez stated we still have the money that was planned for a ballot question this fall though we probably looked at that as helping to balance the 2020 budget. We have $500,000 set aside for a ballot question. We don't necessarily have a process; but we did talk to legal about how successful other ballot measures have been in the past. Rachel Allen provided some information about the most successful ones on the Council Municipal League (CML) website were those that were tied to specific projects or services. With that being said, we could outline a process if Council is interested with us moving forward with this ballot question.

CM Marcano said he had a question similar to CM Gardner's. This is pretty short in timeframe so what kind of strategy would we be pursuing to educate folks on the importance of this. M. Lawson replied, it's something that we haven't really discussed in detail as a staff. We could discuss with our communications group a basic outline for getting the word out and educating folks on how the cap works. I'm not quite sure how quickly we could set up a full strategy; it would be a challenge.

T. Velasquez added some lessons were learned as the City went through the RFP process for the ballot question consultant earlier this year. Use of social media is one, outreach meetings to the community and ward meetings to educate on the topic are a possibility as well. These opportunities could be done via WebEx. We could have the opportunities to meet with Wards as well as we try to keep it low cost. The City would engage the community, so it understands the budgetary situation as well as general issues.

G. Hays stated that with this COVID-19 issue, the City may have a platform for requesting to keep the money. The fact that this $3.3 million really equates to about $12.00 a household on a $250,000 house. There's not much to gain on an individual household level from the refund of the money.

T. Velasquez stated and from a budgetary perspective the $3.3 million being on-going can have a significant impact on our services. The City has internally reviewed uses and that the $3.3 million is equal to about half of the Library's budget. The City subsidizes Recreation by about $7 million so using that money could assist there is a possibility as well. Without these funds there will be an impact to these services, and this would help.

CM Marcano said his second question was answered there, that being $12 per household. It's very important way to frame this kind of thing because with TABOR there is sticker shock in the first paragraph.

CM Gruber stated going back in history, the City hasn't been successful in winning a ballot initiative like this for many years. The Sports Park was the last one that we won. He added that a lot of the problem had to do with the City's lack of advertising and building a story first, which is why Council said last year that it would begin looking into an entire strategy and an entire campaign to bring an initiative forward. His concern is that once Council makes a decision to move it forward the City isn't allowed to advocate for it anymore. The individual council members can as politicians, but the City cannot. CM Gruber asked if the issue moves forward, is it from when this committee moves it to Study Session or Study Session moves it and makes the decision? What point of time does the rule apply that the City can no longer advocate for a ballot initiative? T. Velasquez replied, it is when the ballot question is approved by Council for placement on the ballot. H. Hernandez confirmed.

CM Gruber said so that means that Council can still talk about this. His personal view is that, having a general ballot initiative that says having the money go into the general fund will be difficult. The discussion about libraries or fire station is very relevant. How the City frames that is going to be difficult, but the fact is that the City is risking losing money and rolling in a $25 million shortfall per year. The $3 million will help, but the City is going to have to make hard decisions. He added he didn't think public safety has ever been sacrificed. However, libraries are at risk and rather important priorities but lower priorities when public safety are at risk. How the City structures the topic is going to be crucial. CM Gruber said that to give money to the general fund won't be very exciting to say,

that we're in a severe deficit and we're going to make hard decisions and libraries could be one of them. It's just going to be difficult.

The Chair asked the committee if they recommend earmarking the money and if so, what would they earmark it for?

CM Marcano stated he is happy to support earmarking. He would like to have that discussion with the full Council at a Study Session. He said if he were to pick something though, it is ensuring that we are still taking proactive steps to support public safety through a proactive lens. He added that earmarking the money for libraries for educational opportunities should be considered so folks don't lose that access. Homelessness services should be considered too.

CM Gruber stated that the marijuana tax was the primary tool for funding homelessness.

CM Gardner said, "I think in order to be more responsible having a specific plan in place with what to do with the money is a good idea. I think Aurora residents will respond better if they have something tangible to say, okay if I vote for this the $12 per household and this is what I'm voting for. I think that's more palatable than to say we're keeping $3.3 million of your money this year." He would be supportive of libraries specifically. The City could offset some of the potential deductions in that area or in Parks programs as well. He felt those are two service types are important for the City to offer.

Outcome
The Committee recommended that this item be forward to Study Session.

Follow-up Action
Staff will forward this to Study Session, May 18, 2020.

INVESTMENT PORTFOLIO AND CASH FLOW UPDATE

Mike Shannon, Debt and Treasury Manager stated that on a reoccurring basis, staff provides the M&F Committee informational updates on the status of the investment portfolio, along with an assessment of the City's cash position. Considering the recent turmoil from the Covid19 crisis, staff is providing an update on the City's cash position and investment portfolio. In early March, cash balances were spread across some different investment options (such as ColoTrust). However, in mid-March the Debt & Treasury Division consolidated all of the City's cash balances at Wells Fargo. Those balances are now over $60 million. Also, Wells is designated as one of 13 banks that are deemed "too big to fail" by the Congress, and as such are required to maintain higher capital and cash levels, which makes it a stronger financial institution. As the City faces uncertain revenues and expenses in this environment, the team will continue to grow cash balances by not-reinvesting maturing investments as was done in the past. The committee was supportive of this strategy.

Insight Investment, the City's Investment Advisor, provided a memo with an overview and update of the City's investment portfolio. Given the uncertainty of financial markets and the economic stress most economies and companies will be facing, staff will be monitoring closely these conditions. More downgrades from the rating agencies are likely.

One action for M&F is the acknowledgement of the Toyota bonds that mature in 2023. According to policy, since these bonds mature in more than 2 years and are now rated single A, we must report to M&F this situation. It is the recommendation of both staff and Insight Investment that the City should hold this position in Toyota.

Committee Members recognized that the City should hold the position concerning the Toyota bonds.

Mike Shannon next presented a liquidity overview of the pooled portfolio. Roughly $131 million in securities will mature for the remainder of 2020 at a steady pace of approximately $15 million per month. In addition, the portfolio holds $222 million of Government and Agency bonds which could readily be sold at a modest profit. For the years 2021 through 2024, bonds in the amounts of $158, $91, $132, and $34 million respectively mature. Next Mike reviewed the fund balances that comprise the pooled portfolio. The top four funds in millions are: Water - $193, CPF - $106, Wastewater - $82, and General Fund $77. In conclusion Mike noted Aurora has a high-quality portfolio with a very strong liquidity position.

The Committee remarked they were appreciative for the hard work of the Debt and Treasury Division in maintaining the City's cash flow and investment portfolio. And because of the steps that were taken, the City is in a good position.

Outcome
The Committee thanked staff.

Follow-up Action
No follow up is necessary as this item was informational only.

INTERNAL AUDIT Q1 REPORT
The M&F Committee acts as the Audit Committee for the City Council. The Office of the Internal Auditor provides quarterly progress reports to the Audit Committee. Progress reports include progress against scheduled audit engagements and information on outstanding audit recommendations. Internal Audit presents its quarterly progress report against the annual audit plan to the Audit Committee.

Wayne Sommer noted that he has been appointed by the City Manager as the Disaster Recovery Committee Manager under the city's disaster recovery plan.

Outcome
The Committee thanked staff.

Follow-up Action
No follow up is necessary as this item was informational only.

MISCELLANEOUS MATTERS FOR CONSIDERATION
Summary of Issue and Discussion

- The next meeting is on Tuesday, May 26, 2020 at 1:00 PM (WebEx).

THESE MINUTES WERE APPROVED AS SUBMITTED

_____ _____

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

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: Sales Tax Chart;
Item Initiator: Greg Hays
Staff Source: Greg Hays, Budget Officer
Deputy City Manager Signature: Roberto Venegas
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.)***

Members of the M&F 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 2020 was 12.6 percent lower than May of 2019.

QUESTIONS FOR Committee

Information only

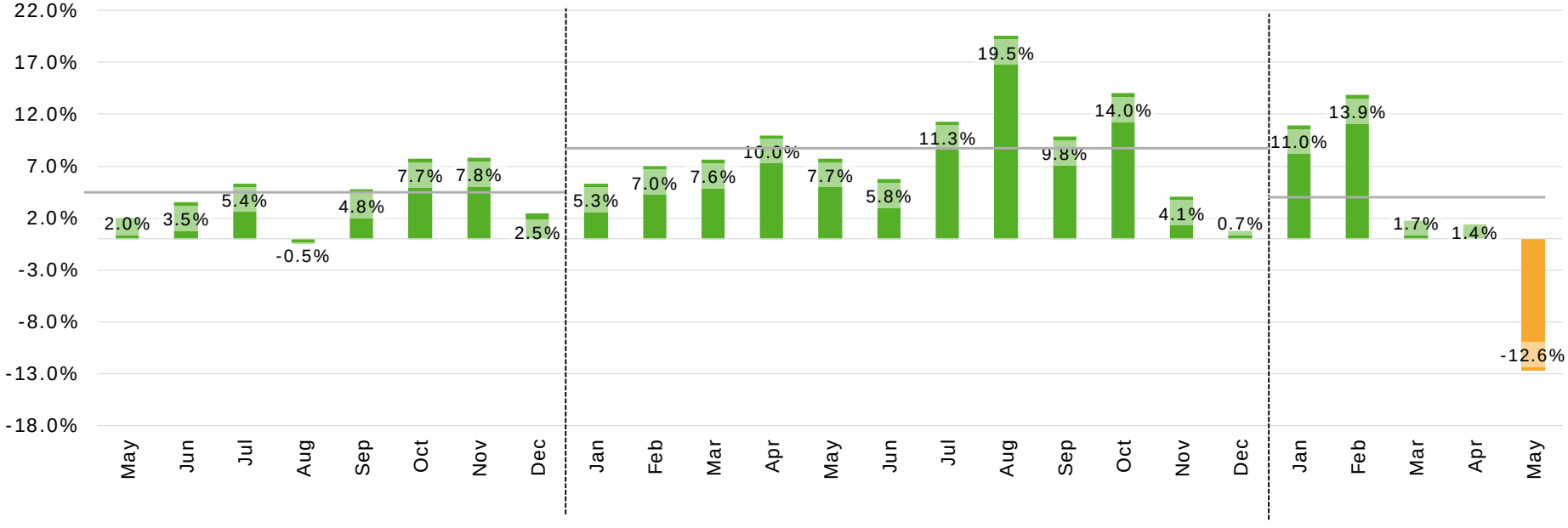
EXHIBITS ATTACHED:

Sales Tax Chart_May (FINAL).pdf

May 2020 Sales Tax Performance

Percent Change from Prior Year By Month

May YTD Variance to Budget: $692 (0.0%)
2019: $2.88M (3.5%)



2018
4.5%

2019
8.7%

2020
3.5%

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: Proposed changes to the Metro District Model Service Plan;
Item Initiator: Vinessa Irvin
Staff Source: Vinessa Irvin, Office of Development Assistance Manager
Deputy City Manager Signature: Jason Batchelor
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.)***

The first metro districts were formed within the City of Aurora during the 1980s. In 1989, the City enacted what eventually became Chapter 122 of the City Code and adopted its first Model Service Plan for metropolitan districts. In 2004, City Council significantly amended code to adopt guidance and requirements for Metropolitan Districts in the City of Aurora. The city's 2004 Model Service Plan, based on those requirements, remains largely unchanged to this day. It is characterized by the following basic features:

1. Maximum debt mill levy of 50 mills (Gallagher adjusted),
2. Maximum term for debt repayment of 40 years (residential)
3. Agreement to impose the Aurora Regional Improvements (ARI) mill levy.

Recently, there has been much attention on metro districts. As a result, several council members have inquired about additional education, transparency and protections/safeguards that the city may want to implement for metro districts within the city. Staff prepared an update for Council's information and consideration and received direction at the March 23rd Special Study Session.

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

Based on City Council feedback and requests discussed at the March Study Session, staff has prepared the following outline of service plan changes for Council consideration. This list also includes minor edits to language and a reorganization of some provisions to improve clarity of the document. The list is arranged with the corresponding Sections and page numbers from the redlined Service Plan document attached.

Proposed Service Plan Changes

Section II. Definitions

Agreed Upon Procedures Engagement

This is a new definition necessary for the addition of provision "L" in Section **VII. Financial Plan** (page 16).

Section VI. Regional Improvements

D. For Residential District

The last 10 years of the ARI mill levy imposition for Residential Districts changed to a specific mill levy.

E. Commercial District

Language removed regarding an average for the final years of the ARI mill levy imposition.

These proposed changes are staff-initiated. Currently, these final years of the ARI Mill Levy is stated as an average of the previous 10 years debt service mill levy. This is problematic for several reasons.

- Every district's debt service financing plan is different. Which means that under the current requirement, each district in an area will be paying a different ARI mill amount. This can create an unfair situation given that they will all benefit equally from the regional infrastructure they are funding with the ARI mill levy.
- This issue was also identified as a concern when the debt was being issued for the South Aurora Regional Infrastructure Authority (SARIA). The uncertainty of the expected funding for those last 10 years made creating the funding projections for the bond issuance difficult.

Therefore, the proposal is to remove the possible unfairness and uncertainty by setting a specified number of mills to be levied for the final years (page 11).

Section VII. Financial Plan

K. Districts Operating Costs

This is a new provision that has added language limiting the maximum O&M mill levy imposition to 35 mills. The limitation would be in place until the majority of board members are residents. This provision provides some protections until the residents are in control of the board and then allows the local government closest to the community to determine the level of services and amenities they wish to provide and increase the mills if they so desire.

L. Agreed Upon Procedures Examination

This is a new provision that has added language to include an examination of a district's past financial records at the time the district board is a resident controlled board. This language is general to allow the board to direct the examination based on specific concerns and cost considerations.

Section X. Disclosures and Meetings

A. Disclosure to Purchasers

Language has been added to require the disclosure form used by the districts to conform to the city's standard model disclosure form (Exhibit D).

B. Website

This is a new provision requiring districts to create and maintain a website for their community. A list of minimum requirements of information to be contained on the website is also within this provision. Included in this list is the requirement to post any and all candidate information, including any campaign funding information, that is required by the Secretary of State for candidates running for the district board.

C. Meetings

This is a new provision requiring district board meetings to be held within the district boundaries whenever possible and within the city limits when not possible within the district.

Service Plan Changes for Clarity

Section II. Definitions

ARI Mill Levy A, B, C & D

Simplified definition and moved the full explanation to Section **VI. Regional Improvements** for clarity (page 11-12).

Gallagher Amendment

This is a new definition to provide a more concise, consistent and clearly stated explanation of the allowed adjustments to the mill levies imposed (page 11,14 and 16).

CCR, Commercial District, CRS, Operations and Maintenance Mill Levy, Residential District

These definitions have been added for clarity as they were not included in the previous model.

Section V. Description of Proposed Powers, Improvements and Services

10. Total Debt Limitation

Moved and combined in **Section VII. Financial Plan** for consistency (page 13).

14. Bankruptcy

Portion moved to **Section VII. Financial Plan** and given a title F. Excessive Mill Levy Pledges (page 14).

Section VI. Regional Improvements

Last paragraph – Includes clarification that the debt limit identified for regional improvements (funded with the ARI mill levy), is not subject to the total debt issuance limitation for debt specific to the district obligations (page 12).

Section VII. Financial Plan

A. General
Includes language regarding allowed sources of debt funding moved from B. Total Debt Issuance for additional clarity (page 12).

B. Total Debt Issuance Limitation
Includes clarification that this limit does not include debt issued for ARI (page 13).

D. Maximum Debt Mill Levy
Includes language regarding maximum mill levy not including O&M from K. Districts Operating Costs for additional clarity (page 13).

Issues Not Included in Changes

There were a few issues raised by City Council and researched by staff that have not been included in these proposed changes at this time. They are as follows:

Maximum Debt Mill Levy Imposition Term
There was a request made to not allow City Council to change this term limit. In the past there have been districts that requested, and were approved, to change the service plan to extend the term for debt repayment past the 40-year limit included in the model service plan. Staff researched how to incorporate such a restriction. City Council has the discretion to change code and/or approve an ordinance to make such an exception to code for an individual district's service plan. It was determined that the only way to restrict Council's ability in this area would be to amend the City Charter, requiring a ballot question.

Restrictions to Eminent Domain Powers
A request was made to include restrictions to the districts eminent domain powers given to them in State Statute. The use of this tool by districts in the City of Aurora has only been necessary in a few instances. There have been no abuses documented. This is an area that the legislature has been discussing. Staff would recommend waiting to see what, if any, changes are made at the state level.

Process for Adoption

City code Chapter 122-30 provides that the city manager has the authority to amend the model service plan. Therefore, after City Council provides direction on these changes being proposed, there will be no formal action necessary. The changes will be incorporated and become the city's new model service plan for all new districts requesting formation.

Staff will be presenting, for formal Council action, an amendment to City Code Chapter 122 reflecting any changes to provisions in the service plan that are also included in city code.

QUESTIONS FOR Committee

Does the committee wish to move these proposed changes to the Metro District Model Service Plan as presented forward for consideration at City Council Study Session?

EXHIBITS ATTACHED:

2020 Revised Model Single District Single Service Plan.pdf

[CITY OF AURORA ~~2018~~ 2020MODEL SINGLE DISTRICT SINGLE SERVICE PLAN]

MODEL SERVICE PLAN
FOR

_____ METROPOLITAN DISTRICT

CITY OF AURORA, COLORADO

Prepared

by

[NAME OF PERSON OR ENTITY]
[ADDRESS]
[ADDRESS]

[DATE]

TABLE OF CONTENTS

LIST OF EXHIBITS

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Service Plan, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Service Plan. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.

The District is not being created to provide ongoing operations and maintenance services other than as specifically set forth in this Service Plan.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Service Plan.

The City's objective in approving the Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties and at a tax mill levy no higher than the Maximum Debt Mill Levy for commercial and residential properties, and/or repaid by Fees, as long as such Fees are not imposed upon or collected from Taxable Property owned or occupied by an End User for the purpose of creating a capital cost payment obligation as further described in Section V.A.11. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational activities are allowed, but only through an intergovernmental agreement with the City.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of

all Debt, and if the District has authorized operating functions under an intergovernmental agreement with the City, to retain only the power necessary to impose and collect taxes or Fees to pay for these costs.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Fees or from tax revenues collected from a mill levy which shall not exceed the Maximum Debt Mill Levy on commercial and residential properties and which shall not exceed the Maximum Debt Mill Levy Imposition Term on residential properties. It is the intent of this Service Plan to assure to the extent possible that no commercial or residential property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no property developed for a residential use bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District. With regard to Regional Improvements, this Service Plan also provides for the Districts to pay a portion of the cost of regional infrastructure as part of ensuring that development and those that benefit from development pay for the associated costs.

II. DEFINITIONS

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Agreed Upon Procedures Engagement: means an attestation engagement in which a certified public accountant performs specific procedures on subject matter and reports the findings without providing an opinion or conclusion. The subject matter may be financial or nonfinancial information. Because the needs of an engaging party vary, the nature, timing, and extent of the procedures may vary, as well.

Approved Development Plan: means a Framework Development Plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the Service Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time.

ARI or Regional Improvements: means Aurora Regional Improvements.

ARI Authority: means one or more Authorities established by an ARI Authority Establishment Agreement.

ARI Establishment Agreement: means an intergovernmental agreement establishing an ARI Authority which has, at minimum, Title 32 special districts from three (3) or more Approved Development Plan areas as parties to the Agreement.

ARI Master Plan: means one or more master plans adopted by an ARI Authority establishing Regional Improvements which will benefit the taxpayers and service users of

the District which constitute such ARI Authority, which master plan will change from time to time.

ARI Mill Levy: means the ~~following~~ mills to be imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI master plan pursuant to the provisions of Section VI below.~~:~~

~~A. For a district with property within its boundaries developed with any residential uses means the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; and (ii) shall be five (5) mills from the twenty-first (21st) year through the fortieth (40th) year or the date of repayment of the debt incurred for Public Improvements, other than Regional Improvements, which ever first occurs; and (iii) for an additional ten (10) years, the mill levy shall be equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of the debt incurred for Public Improvements other than Regional Improvements; and~~

~~B. For a district with property within its boundaries developed solely for commercial uses means the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; (ii) shall be one and one-half (1.5) mills from the twenty-first (21st)year through the date of repayment of debt incurred for Public Improvements, other than Regional Improvements; and (iii) for five (5) years thereafter, the mill levy shall be the lesser of twenty (20) mills or a mill levy equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of debt issued for Public Improvements, other than Regional Improvements; and~~

~~C. Any district may, pursuant to any intergovernmental agreement with the City, extend the term for application of the ARI Mill Levy beyond the years set forth in A and B above. The Maximum Mill Levy Imposition Term shall include the terms set forth in A and B above and any extension of the term as approved in an intergovernmental agreement as described herein.~~

~~D. All mills described in this ARI Mill Levy definition shall be subject to adjustment as follows: On or after January 1, 2004, if there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the one (1) mill levy described above may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither~~

~~diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.~~

Board: means the board of directors of the District.

Bond, Bonds or Debt: means bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy, and/or collect Fee revenue.

C.C.R.: means the Colorado Code of Regulations, as may be amended from time to time.

City: means the City of Aurora, Colorado.

City Code: means the City Code of the City of Aurora, Colorado.

City Council: means the City Council of the City of Aurora, Colorado.

Commercial District: means a District containing property classified for assessment as nonresidential. (NOTE: all districts which include or are expected to include any residential property must be defined as a Residential District and not a Commercial District).

C.R.S.: means the Colorado Revised Statutes, as the same may be amended from time to time.

District: means the _____ Metropolitan District.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Fees: means any fee imposed by the District for services, programs or facilities provided by the District, as described in Section V.A.11. below.

Financial Plan: means the Financial Plan described in Section VII which describes (i) how the Public Improvements are to be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

Gallagher Adjustment: means, if on or after the date of Service Plan approval, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut, or abatement, the Maximum Debt Mill Levy, the Operations and Maintenance Mill Levy and the ARI Mill Levy shall be increased or decreased to reflect such changes, so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted for changes occurring on or after the date of Service Plan approval are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Inclusion Area Boundaries: means the boundaries of the area described in the Inclusion Area Boundary Map.

Inclusion Area Boundary Map: means the map attached hereto as **Exhibit C-2**, describing the property proposed for inclusion within the District.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C-1**, describing the District's initial boundaries.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy on a particular property developed for residential uses as set forth in Section VII.D below.

Operations and Maintenance Mill Levy: means the mill levy the Districts project to impose for payment of administration, operations, and maintenance costs as set forth in the Financial Plan in Section VII below.

Project: means the development or property commonly referred to as _____.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act, except as specifically limited in Section V below to serve the future taxpayers and inhabitants of the Service Area as determined by the Board of the District.

Residential District: means a District containing property classified for assessment as residential. (NOTE: all districts which include or are expected to include any residential property must be defined as Residential Districts and not Commercial Districts).

Regional Improvements: means Public Improvements and facilities that benefit the Service Area and which are to be financed pursuant to Section VI below.

Service Area: means the property within the Initial District Boundary Map and the Inclusion Area Boundary Map.

Service Plan: means this service plan for the District approved by City Council.

Service Plan Amendment: means an amendment to the Service Plan approved by City Council in accordance with the City's ordinance and the applicable state law.

Special District Act: means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

State: means the State of Colorado.

Taxable Property: means real or personal property within the Service Area subject to ad valorem taxes imposed by the District.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately _____ (___)acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately _____ (___)acres. A legal description of the Initial District Boundaries and the Inclusion Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries is attached hereto as **Exhibit C-1**, and a map of the Inclusion Area Boundaries is attached hereto as **Exhibit C-2**. It is anticipated that the District's boundaries may change from time to time as it undergoes inclusions and exclusions pursuant to Section 32-1-401, et seq., C.R.S., and Section 32-1-501, et seq., C.R.S., subject to the limitations set forth in Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Service Area consists of approximately _____ (___) acres of _____ land. The current assessed valuation of the Service Area is $0.00 for purposes of this Service Plan and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District at build-out is estimated to be approximately _____ (___) people.

Approval of this Service Plan by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Service Plan or

any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Service Plan Amendment.

The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The Districts shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The Districts shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity, including, but not limited to street improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements), traffic and safety controls, retaining walls, park and recreation improvements and facilities, trails, open space, landscaping, drainage improvements (including detention and retention ponds, trickle channels, and other drainage facilities), irrigation system improvements (including wells, pumps, storage facilities, and distribution facilities), and all necessary equipment and appurtenances incident thereto. Any Fee imposed by the Districts for access to such park and recreation improvements shall not result in Non-District Aurora residents paying a user fee that is greater than, or otherwise disproportionate to, similar fees and taxes paid by residents of the Districts. However, the Districts shall be entitled to impose an administrative Fee as necessary to cover additional expenses associated with Non-District Aurora residents to ensure that such costs are not the responsibility of Districts residents. All such Fees shall be based upon the Districts' determination that such Fees do not exceed reasonable annual market fees for users of such facilities. Notwithstanding the foregoing, all parks and trails owned by the Districts shall be open to the general public and Non-District Aurora residents, subject to the rules and regulations of the Districts as adopted from time to time. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the Districts.

2. Fire Protection Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the City. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

3. Television Relay and Translation Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to an intergovernmental agreement with the City.

4. Golf Course Construction Limitation. Acknowledging that the City has financed public golf courses and desires to coordinate the construction of public golf courses in the City's boundaries, the District shall not be authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain a golf course unless such activity is pursuant to an intergovernmental agreement with the City.

5. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

6. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

> We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.
>
> We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Inclusion Limitation. The Districts shall not include within any of their boundaries any property outside the Service Area without the prior written consent of the City. The Districts shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the fee owner or owners of 100 percent of such property as provided in Section 32-1-401(1)(a), C.R.S.

8. Overlap Limitation. The District shall not consent to the organization of any other district organized under the Special District Act within the Service Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

9. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Fees used for the purpose of repayment of Debt.

10. ~~Total Debt Issuance Limitation. The District shall not issue Debt in excess of _____ Dollars ($_____) in the aggregate; provided, however, that any Debt issued by the Districts for ARI Regional Improvements shall not be included within this limitation and shall be subject to the limitations set forth in Section VI.~~

11.10. Fee Limitation. The District may impose and collect Fees as a source of revenue for repayment of debt, capital costs, and/or for operations and maintenance. No Fee related to the funding of costs of a capital nature shall be authorized to be imposed upon or collected from Taxable Property owned or occupied by an End User which has the effect, intentional or otherwise, of creating a capital cost payment obligation in any year on any Taxable Property owned or occupied by an End User. Notwithstanding any of the foregoing, the restrictions in this definition shall not apply to any Fee imposed upon or collected from Taxable Property for the purpose of funding operation and maintenance costs of the District.

12.11. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to specific ownership taxes which shall be distributed to and be a revenue source for the District without any limitation.

13.12. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City.

14.13. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

~~Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment.~~

15.14. Service Plan Amendment Requirement. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-134 above or in VII.B-~~G~~F. shall be deemed to be material modifications to this Service Plan and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the Service Area and is approximately _____ Dollars ($_____).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements incurred as a result of participation in the alternatives set forth in Section VI.A, B or C below.

The District shall impose the ARI Mill Levy and shall convey it as follows:

A. If the District has executed an ARI Authority Establishment Agreement and the City has been offered the opportunity to execute an ARI Authority Establishment Agreement, the terms of which provide for the City to appoint no less than thirty percent (30%) and no more than forty-nine percent (49%) of the Board members who will serve as the board of directors of the ARI Authority to be established by such ARI Authority Establishment Agreement, regardless as to whether the City approves the execution of such ARI Authority Establishment Agreement, the

revenue from the ARI Mill Levy shall be conveyed to the ARI Authority for the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements in the ARI Master Plan and for the operations of such ARI Authority; or

B. If the City and the District have executed an intergovernmental agreement then the revenue from the ARI Mill Levy shall be conveyed to the City for use in planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users and taxpayers of the District in accordance with such agreement; or

C. If neither Section VI.A nor VI.B above is applicable then the revenue shall be conveyed to the City and (i) the City shall place in a special account all revenues received from the ARI Mill Levy imposed in the Service Area under this Section VI and shall not expend such revenue until an intergovernmental agreement is executed between the District establishing the terms and conditions for the provision of the Regional Improvements; and (ii) if the intergovernmental agreement is not executed within two (2) years from the date of the approval of the Service Plan by the City and neither Section VI.A nor VI.B above have occurred within two (2) years from the date of the approval of the Service Plan by the City, then the revenue from the ARI Mill Levy shall be conveyed to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users or taxpayers of the District as prioritized and determined by the City.

~~As set forth in the definition of the ARI Mill Levy, the District may, pursuant to any intergovernmental agreement with the City, extend the terms for application of the ARI Mill Levy beyond the years set forth in Sections VI.A and VI. B above. The Maximum Mill Levy Imposition Term shall include the terms and any extension of such terms, as set forth in Sections A, B and C of the definition of the ARI Mill Levy.~~

The District shall impose the ARI Mill Levy as follows:

D. For a Residential District, the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; and (ii) shall be five (5) mills from the twenty-first (21st) year through the fortieth (40th) year or the date of repayment of the debt incurred for Public Improvements, other than Regional Improvements, which ever first occurs; and (iii) for an additional ten (10) years, the mill levy shall be _____mills, subject to the Gallagher Adjustment ; and

E. For a Commercial District, the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; (ii) shall be one and one-half

(1.5) mills from the twenty-first (21st)year through the date of repayment of debt incurred for Public Improvements, other than Regional Improvements; and (iii) for five (5) years thereafter, the mill levy shall be ~~the lesser of~~ twenty (20) mills~~ or a mill levy equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of debt issued for Public Improvements, other than Regional Improvements; and~~, subject to the Gallagher Adjustment; and

F. Any district may, pursuant to any intergovernmental agreement with the City, extend the term for application of the ARI Mill Levy beyond the years set forth in A and B above. The Maximum Mill Levy Imposition Term shall include the terms set forth in A and B above and any extension of the term as approved in an intergovernmental agreement as described herein.

~~All mills described in this ARI Mill Levy definition shall be subject to adjustment as follows: On or after January 1, 2004, if there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the one (1) mill levy described above may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.~~

The Regional Improvements shall be limited to the provision of the planning, design, acquisition, construction, installation, relocation and/or redevelopment of street and transportation related improvements as defined in the Special District Act and the administration and overhead costs incurred as a result of participation in the alternative set forth in Section VI.A, B or C set forth above, unless the City has agreed otherwise in writing; provided, however in no event shall the Regional Improvements include water or sanitary sewer improvements unless such improvements are necessary as a part of completing street and transportation related improvements. The District shall cease to be obligated to impose, collect and convey to the City the revenue from the ARI Mill Levy described in this Section VI at such time as the area within the District's boundaries is included within a different district organized under the Special District Act, or a General Improvement District organized under Section 31-25-601, et seq., C.R.S., or Business Improvement District organized under Section 31-25-1201, et seq., C.R.S., which other district has been organized to fund a part or all of the Regional Improvements.

The District shall have the authority to issue Debt for the Regional Improvements, in an amount not to exceed _____ Dollars ($_____) pursuant to agreements as described in VI.A, B or C above. Such limit is not subject to the Total Debt Issuance Limitation described in section VII below.

VII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Fees and other legally available revenues. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes and Fees to be imposed upon all Taxable Property within the District. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time.

B. Total Debt Issuance Limitation.

The total Debt that the District shall be permitted to issue shall not exceed _____ Dollars ($_____) (exclusive of Debt issued for Regional Improvements described in Section VI above) and shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. ~~All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes and Fees to be imposed upon all Taxable Property within the District. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time.~~

~~B.~~C. Maximum Voted Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities.

~~C.~~D. Maximum Debt Mill Levy.

The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be determined as follows:

1. For the portion of any aggregate District's Debt which exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VII.C.2 below; ~~provided that if, on or after January 1, 2004, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in~~

~~good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation~~ subject to the Gallagher Adjustment.

2. For the portion of any aggregate District's Debt which is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

3. For purposes of the foregoing, once Debt has been determined to be within Section VII.C.2 above, so that the District is entitled to pledge to its payment an unlimited ad valorem mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

The Maximum Debt Mill Levy shall not apply to the District's Operations and Maintenance Mill Levy for the provision of operation and maintenance services to the District's taxpayers and service users as set for in Section VII.K below.

~~D.~~E. Maximum Debt Mill Levy Imposition Term.

The District shall have the authority to impose the ARI Mill Levy for the terms as set forth in Section VI. Other than the ARI Mill Levy, the District shall not impose a levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) on any single property ~~developed for residential uses~~in a Residential District which exceeds forty (40) years after the year of the initial imposition of such mill levy unless a majority of the Board of Directors of the District are residents of the District and have voted in favor of a refunding of a part or all of the Debt and such refunding will result in a net present value savings as set forth in Section 11-56-101, C.R.S.; et seq.

F. Excessive Mill Levy Pledges

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be

an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment.

~~E.~~G. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service and for operations and maintenance. The District may also rely upon various other revenue sources authorized by law. At the District's discretion, these may include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(l), C.R.S., as amended from time to time. In no event shall the debt service mill levy in the District exceed the Maximum Debt Mill Levy or, for residential property within the District, the Maximum Debt Mill Levy Imposition Term, except pursuant to an intergovernmental agreement between the District and the City for Regional Improvements.

~~F.~~H. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

> By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

~~G.~~I. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

~~H.~~J. TABOR Compliance.

The District will comply with the provisions of TABOR. In the discretion of the Board, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by the District will remain under the control of the District's Board.

~~I.~~K. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be _____ Dollars ($_____), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The first year's operating budget is estimated to be _____ Dollars ($_____) which is anticipated to be derived from property taxes and other revenues.

~~The Maximum Debt Mill Levy for the repayment of Debt shall not apply to the District's ability to increase its~~ a mill levy for provision of operation and maintenance services to its taxpayers and service users. For a Residential District, the Operations and Maintenance Mill Levy shall not exceed thirty-five (35) mills, subject to the Gallagher Adjustment, unless a majority of the Board of Directors are residents of the District and have voted in favor of increasing the Operations and Maintenance Mill Levy.

L. Agreed Upon Procedures Examination.

For a Residential District, ~~a~~t such time that a majority of Board of Directors of the District are residents of the District, the District shall have engaged the services of a certified public accountant for an Agreed Upon Procedures Engagement. The Board of Directors, in its discretion, will set the scope and the procedures for the engagement.

VIII. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the Manager of the Office of Development Assistance of the City Manager's Office no later than August 1st of each year following the year in which the Order and Decree creating the District has been issued.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.

2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31 of the prior year.

3. Copies of the District's rules and regulations, if any as of December 31 of the prior year.

4. A summary of any litigation which involves the District Public Improvements as of December 31 of the prior year.

5. Status of the District's construction of the Public Improvements as of December 31 of the prior year.

6. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the prior year.

7. The assessed valuation of the District for the current year.

8. Current year budget including a description of the Public Improvements to be constructed in such year.

9. Audit of the District's financial statements, for the year ending December 31 of the previous year, prepared in accordance with generally accepted accounting principles or audit exemption, if applicable.

10. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

11. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

IX. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

X. DISCLOSURES AND MEETINGS~~TO PURCHASERS~~

~~X.~~A. Disclosure to Purchasers.

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District's authority to impose and collect rates, Fees, tolls and charges. The ~~form of~~ notice shall ~~be filed with the City prior to the initial issuance of the Debt of the District imposing the mill levy which is the subject of the Maximum Debt Mill Levy~~conform with the City's standard model disclosure attached hereto as Exhibit E as may be amended from time to time. The City shall be provided a

copy of the notice prior to the initial issuance of Debt of the District imposing the mill levy which is the subject of the Maximum Debt Mill Levy.

B. Website.

Prior to the initial issuance of Debt, the District shall create and maintain a website for access by the general public containing, at a minimum, the following information:

1. Contact information for principal business office

2. Names and positions of board members

3. Re-election status of board members

4. Board Meeting Agendas and Minutes

5. All Annual Reports

6. All financial statements

7. All audit reports

8. All budget reports

9. Postings for public Meetings

10. Any and all election filings for candidates to the Board of Directors that are provided to the Secretary of State pursuant to 8 CCR 1505-6.

C. Meetings.

All special and regular District meetings shall be open to the public and shall be held at a location within the District boundaries or, if a suitable meeting facility is not within the District boundaries, then within the City. If, due to matters of public health or safety an in-person meeting is impracticable, the meetings may be held virtually with participation via teleconference, webcast, video conference or other technological means. The District shall provide annual notice to all eligible electors of the District, in accordance with Section 32- 1-809, C.R.S. In addition, the District shall record a District public disclosure document and a map of the District boundaries with the Clerk and Recorder of each County in which District property is located, in accordance with Section 32-1-104.8, C.R.S. The District shall use reasonable efforts to ensure that copies of the annual notice, public disclosure document and map of the District boundaries are provided to potential purchasers of real property within the District as part of the seller's required property disclosures.

XI. INTERGOVERNMENTAL AGREEMENT

The form of the intergovernmental agreement required by the City Code, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit D**. The District shall approve the intergovernmental agreement in the form attached as **Exhibit D** at its first Board meeting after its organizational election. Failure of the District to execute the intergovernmental agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The City Council shall approve the intergovernmental agreement in the form attached as **Exhibit D** at the public hearing approving the Service Plan.

XII. CONCLUSION

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S., and Section 122-35 of the City Code, establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;

2. The existing service in the area to be served by the District is inadequate for present and projected needs;

3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries; and

4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

5. Adequate service is not, and will not be, available to the area through the City or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

6. The facility and service standards of the District are compatible with the facility and service standards of the City within which the special district is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.

7. The proposal is in substantial compliance with a comprehensive plan adopted pursuant to the City Code.

8. The proposal is in compliance with any duly adopted City, regional or state long-range water quality management plan for the area.

9. The creation of the District is in the best interests of the area proposed to be served.

EXHIBIT A

Legal Descriptions

EXHIBIT B

Aurora Vicinity Map

EXHIBIT C-1

Initial District Boundary Map

EXHIBIT C-2

Inclusion Area Boundary Map

EXHIBIT D

Disclosure to Purchasers

[_____] METROPOLITAN DISTRICT
DISCLOSURE TO PURCHASERS

This Disclosure to Purchasers has been prepared by [_____] Metropolitan District (the "**District**") to provide prospective property owners with general information regarding the District and its operations. This Disclosure to Purchasers is intended to provide an overview of pertinent information related to the District and does not purport to be comprehensive or definitive. You are encouraged to independently confirm the accuracy and completeness of all statements contained herein.

DISTRICT'S ORGANIZATION / SERVICE PLAN

The Property within the [_____] development is located within the boundaries of the District. The District is a quasi-municipal corporation and political subdivision of the State of Colorado organized in the City of Aurora. The District operates pursuant to its Service Plan, as approved by the City Council of the City of Aurora (the "**City**") on [_____] (the "**Service Plan**") and by the powers authorized by Section 32-1-1004, of the Colorado Revised Statutes (the "C.R.S.").

The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance certain water, sanitary sewer and storm sewer, street, and safety protection improvements and services as defined in the Service Plan.

The District's Service Plan, which can be amended from time to time, includes a description of the District's powers and authority. A copy of the District's Service Plan is available from the Division of Local Government in the State Department of Local Affairs (the "**Division**").

DISTRICT BOARD OF DIRECTORS

The District is governed by a five-member Board of Directors, who must be qualified as eligible electors of the District. The Board's regular meeting dates may be obtained from the District Manager, [_____]; (303) [_____] / District Counsel, [_____] _____; (303) [_____].

DEBT AUTHORIZATION

Pursuant to its Service Plan, the District has authority to issue up to [_____] Dollars ($[_____]) of debt to provide and pay for public infrastructure improvement costs.

Any debt issued by the District will be repaid through ad valorem property taxes, from a District imposed debt service mill levy on all taxable property of the District, together with any other legally available revenues of the District.

TAXES AND FEES IMPOSED ON PROPERTIES WITHIN THE DISTRICT

Ad Valorem Property Taxes

The District's primary source of revenue is from property taxes imposed on property within the District. Along with other taxing entities, the District certifies a mill levy by December 15th of each year which determines the taxes paid by each property owner in the following year. The District imposed a total combined Mill Levy of **[_____]** mills for tax collection year 20[____] (as described below). The total anticipated overlapping mill levy for the property within the District for tax collection year 20[____] is **[_____]** mills (inclusive of the District's Mill Levy), as described in the "Overlapping Mill Levy" section below.

Debt Service Mill Levy

The maximum debt service mill levy the District is permitted to impose under the Service Plan ("**Debt Mill Levy Cap**") for the portion of any aggregate District's Debt which exceeds [_____] percent ([____]%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be [_____] ([____]) mills less the number of mills necessary to pay unlimited mill levy Debt. The Debt Mill Levy Cap may be adjusted due to changes in the statutory or constitutional method of assessing property tax or in the assessment ratio. The purpose of such adjustment is to assure, to the extent possible, that the actual tax revenues generated by the mill levy are neither decreased nor increased, as shown in the example below.

Operations Mill Levy

In addition to imposing a debt service mill levy, the District is also authorized by the Service Plan to impose a separate mill levy to generate revenues for the provision of administrative, operations and maintenance services (the "**Operations and Maintenance Mill Levy**"). The amount of the Operations and Maintenance Mill Levy may be increased as necessary, separate and apart from the Debt Mill Levy Cap.

[*LANGUAGE BELOW IF DISTRICT OPERATES AS HOA – DELETE IF NOT APPLICABLE]

The District operates in place of an owners association for the [_____] to pay for the costs associated with covenant enforcement and design review services, as well as providing for the operation and maintenance of the [_____], with the imposition of the Operations and Maintenance Mill Levy, which was imposed at [____] mills for tax collection year 20[____]. The District's ability to increase its mill levy for provision of operation and maintenance services without an election is constrained by statutory and constitutional limits.

In addition, each [_____] will be subject to an additional fee of approximately $[____] per year per [_____], which fee is subject to amendment by the District Board of Directors from time to time, to cover the costs associated with [_____].

There are several benefits to the use of a metropolitan district as opposed to, or in cooperation with, an owners association, including, but not limited to the following:

B. Cost Efficiency. Metropolitan districts fund their operations from revenues generated from real property taxes while homeowner's associations assess dues and collect them from property owners. A metropolitan district can, therefore, operate more efficiently than an owners association as the collection of taxes is significantly more effective than separately billing individual homeowners, and dealing with the collection efforts.

C. Tax Deduction. Taxes paid to a metropolitan district are deductible from income taxes, in general, while owners' association dues are generally not.

D. Homeowner Savings. Out of pocket expenses for the homeowner are generally significantly less when paid through ad valorem tax as opposed to owners association dues.

E. Transparency. A metropolitan district is subject to various regulatory requirements that an owners association is not, such as annual reporting of budgets and audited financials; annual audits, or audit exemptions, are required, not just recommended as with an owners association.

THE FOLLOWING EXAMPLE IS PROVIDED SOLELY FOR THE PURPOSE OF ILLUSTRATION AND IS NOT TO BE INTERPRETED AS A REPRESENTATION OF ANY ACTUAL CURRENT OR FUTURE VALUE INCLUDING, BUT NOT LIMITED TO, ANY ACTUAL VALUE, ASSESSMENT RATIO, OR MILL LEVY.

District Property Tax Calculation Example-Reduction in Residential Assessment Ratio

Tax Collection Year	Actual Value (V)	Assessment Ratio (R)	Assessed Value (AV) [V x R = AV]	Mill Levy[1]/Rate[2] (M)	Amount of District Tax Due [AV x M]
(a) 20[____]	$[_____]	7.96%	$[_____]	[____]/[____]	$[_____]
(b) 20[____]	$[_____]	7.20%	$[_____]	[____]/[____]	$[_____]

[1] Based on a projected mill levy, not a representation of any actual current or future mill levy
[2] Each mill is equal to 1/1000th of a dollar

A. If in 20[____] the Actual Value of the Property is $[_____], and the Residential Assessment Ratio established by the State Legislature for that year is [____]%, the Assessed Value of the Property is $[_____] (i.e., $[_____] x [____]% = $[_____]). If the District certifies a combined debt and operations mill levy of [_____] mills, it would generate approximately $[_____] in revenue for the District.

B. If in 20[____] the Actual Value of the Property remains at $[_____], *but if the State Legislature should determine to change the Residential Assessment Ratio for that year to [____]%*, the Assessed Value would be $[_____] (i.e., $[_____] x [____]% = $[_____]). Therefore, the District would need to certify a [_____] mill levy in order to generate the same revenue as in 20[____].

Overlapping Mill Levies

In addition to the District's imposed mill levies for debt and operations as described above, the property located within the District is also subject to additional "overlapping" mill levies from additional taxing authorities. The overlapping mill levy **for tax collection year 20[____]**, for the property within the District, exclusive of the District's imposed mill levies was [_____]. Mill levies are certified in December of each year, and generally published by the County by the end of the first quarter. [Therefore, we are unable to provide more detailed information on the anticipated overlapping mill levy for 20[____] at this time.] The breakdown of the estimated overlapping mill levies is as follows:

Taxing Authority	**Levy**
[_____] School Dist 5 (20[____])	[____]
[_____]County (20[____])	[____]
City of [_____] (20[____])	[____]
Developmental Disability (20[____])	[____]
Urban Drainage & Flood (20[____])	[____]
Urban Drainage & Flood (S Platte) (20[____])	[____]
TOTAL OVERLAPPING MILL LEVY (20[____])	**[____]**
[_____] Metropolitan District (20[____])	[____]
TOTAL WITH DISTRICT MILL LEVY	**[____]**

Overlapping Mill Levy Property Tax Calculation Example

Tax Collection Year	**Actual Value (V)**	**Assessment Ratio (R)**	**Assessed Value (AV) [V x R = AV]**	**Mill Levy[1]/Rate[2] (M)**	**Amount of Total Property Tax Due [AV x M]**
(a) 20[____]	$[_____]	7.20%	$[_____]	[____]/[____]	$[_____]

[1] Based on a projected mill levy, not a representation of any actual current or future mill levy
[2] Each mill is equal to 1/1000th of a dollar

THE ABOVE EXAMPLE IS PROVIDED SOLELY FOR THE PURPOSE OF ILLUSTRATION AND IS NOT TO BE INTERPRETED AS A REPRESENTATION OF ANY ACTUAL CURRENT OR FUTURE VALUE INCLUDING, BUT NOT LIMITED TO, ANY ACTUAL VALUE, ASSESSMENT RATIO, OR MILL LEVY.

If in 20[____], all other overlapping entities maintain their 20[____] mill levies, the total mill levy with all overlapping entities for tax collection year 20[____] is anticipated to be [_____] mills (inclusive of the District's [_____] mill levy imposition). Note, as stated above, mill levies are certified in December of each year, therefore, we are unable to provide more detailed information regarding the 20[____] overlapping mill levies at this time.

Fees

In addition to property taxes, the District may also rely upon various other revenue sources authorized by law to offset the expenses of capital construction and district management, operations and maintenance. Pursuant to its Service Plan, the District has the power to assess fees, rates, tolls, penalties, or charges as provided in Title 32 of the Colorado Revised Statutes, as amended. [The District has adopted a Resolution imposing certain fees.] For a current fee schedule, please contact the District Manager at the contact information below.

DISTRICT BOUNDARIES

This Disclosure shall apply to the property within the boundaries of the District, which property is described on **Exhibit A** and **Exhibit B,** both attached hereto and incorporated herein by this reference.

CONTACT INFORMATION

Should you have any questions with regard to these matters, please contact:

District Manager:
[_____]
[_____]
[_____]
Phone: [_____]

Dated this [____] day of [_____], 20[____].

EXHIBIT 1~~A~~

Map of District Boundaries

EXHIBIT 2~~B~~

Legal Description of District Boundaries

EXHIBIT ~~D~~E

Intergovernmental Agreement between the District and Aurora

[SINGLE DISTRICT SINGLE SERVICE PLAN]

INTERGOVERNMENTAL AGREEMENT BETWEEN

THE CITY OF AURORA, COLORADO
AND
_____ METROPOLITAN DISTRICT

THIS AGREEMENT is made and entered into as of this ___ day of _____, _____, by and between the CITY OF AURORA, a home-rule municipal corporation of the State of Colorado ("City"), and _____ METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District's Service Plan approved by the City on _____ ("Service Plan"); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the City and the District, as required by the Aurora City Code; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Intergovernmental Agreement ("Agreement").

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The Districts shall dedicate the Public Improvements (as defined in the Service Plan) to the City or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The Districts shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity, including, but not limited to street improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements), traffic and safety controls, retaining walls, park and recreation improvements and facilities, trails, open space, landscaping, drainage improvements (including detention and retention ponds, trickle channels, and other drainage facilities), irrigation system improvements (including wells, pumps, storage facilities, and distribution facilities), and all necessary equipment and appurtenances incident thereto.

Any Fee imposed by the District for access to such park and recreation improvements shall not result in Non-District City residents paying a user fee that is greater than, or otherwise disproportionate to, similar fees and taxes paid by residents of the District. However, the District shall be entitled to impose an administrative fee as necessary to cover additional expenses associated with Non-District City residents to ensure that such costs are not the responsibility of District residents. All such Fees shall be based upon the District's determination that such Fees do not exceed reasonable annual market fee for users of such facilities. Notwithstanding the foregoing, all parks and trails owned by the Districts shall be open to the general public and Non-District City residents, subject to the rules and regulations of the Districts as adopted from time to time. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the Districts.

2. Fire Protection. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the City. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

3. Television Relay and Translation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to an intergovernmental agreement with the City.

4. Golf Course Construction. The District shall not be authorized to plan, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain a golf course unless such activity is pursuant to an intergovernmental agreement with the City.

5. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction and of those special districts that qualify as "interested parties" under Section 32-1-204(1), C.R.S., as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

6. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

> We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.
>
> We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-

exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Inclusion Limitation. The Districts shall not include within any of their boundaries any property outside the Service Area without the prior written consent of the City. The Districts shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the fee owner or owners of 100 percent of such property as provided in Section 32-1-401(1)(a), C.R.S.

8. Overlap Limitation. The District shall not consent to the organization of any other district organized under the Special District Act within the Service Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

9. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Service Plan), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

10. Total Debt Issuance. The District shall not issue Debt in excess of _____ Dollars ($_____).in the aggregate; provided, however, that any Debt issued by the Districts for ARI Regional Improvements shall not be included within this limitation and shall be subject to the limitations set forth in Section VI of the Service Plan.

11. Fee Limitation. The District may impose and collect Fees as a source of revenue for repayment of debt, capital costs, and/or for operations and maintenance. No Fee related to the funding of costs of a capital nature shall be authorized to be imposed upon or collected from Taxable Property owned or occupied by an End User which has the effect, intentional or otherwise, of creating a capital cost payment obligation in any year on any Taxable Property owned or occupied by an End User. Notwithstanding any of the foregoing, the restrictions in this definition shall not apply to any Fee imposed upon or collected from Taxable Property for the purpose of funding operation and maintenance costs of the District.

12. Debt Issuance Limitation. The District shall not be authorized to incur any indebtedness until such time as the District has: (a) approved and executed the IGA and approved the imposition of the Aurora Regional Improvement Mill Levy (as defined in the Service Plan) upon all taxable property located within the boundaries of the District; (b) created a website in accordance with Section X of the Service Plan.

13. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to

specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

14. Consolidation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City.

15. Bankruptcy. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term have been established under the authority of the City to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

~~(b)~~16. Excessive Mill Levy Pledges

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment.

~~16.~~17. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

~~17.~~18. Disclosure to Purchasers. The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District's authority to impose and collect rates, Fees, tolls and charges. The ~~form of~~ notice conform with the City's standard model disclosure attached as Exhibit E to the Service Plan as may be amended from time to time. ~~shall be filed with~~ T~~t~~he City shall be provided a copy of the notice prior to the initial issuance of the Debt of the District imposing the mill levy which is the subject of the Maximum Debt Mill Levy.

~~18.~~19. Service Plan Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-14 or VII.B-G of the Service Plan shall be deemed to be material

modifications to the Service Plan and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

~~19.~~20. Annual Report. The District shall be responsible for submitting an annual report to the Manager of the Office of Development Assistance of the City Manager's Office no later than August 1st of each year following the year in which the Order and Decree creating the District has been issued, pursuant to the City Code and containing the information set forth in Section VIII of the Service Plan.

~~20.~~21. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements incurred as a result of participation in the alternatives set forth in Section VI.A, B or C of the Service Plan.

The District shall impose the ARI Mill Levy and shall convey it as follows:

(a) If the District has executed an ARI Authority Establishment Agreement and the City has been offered the opportunity to execute an ARI Authority Establishment Agreement, the terms of which provide for the City to appoint no less than thirty percent (30%) and no more than forty-nine percent (49%) of the Board members who will serve as the board of directors of the ARI Authority to be established by such ARI Authority Establishment Agreement, regardless as to whether the City approves the execution of such ARI Authority Establishment Agreement, the revenue from the ARI Mill Levy shall be conveyed to the ARI Authority for the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements in the ARI Master Plan and for the operations of such ARI Authority; or

(b) If the City and the District have executed an intergovernmental agreement then the revenue from the ARI Mill Levy shall be conveyed to the City for use in planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users and taxpayers of the District in accordance with such agreement; or

(c) If neither Section VI.A nor VI.B of the Service Plan is applicable then the revenue shall be conveyed to the City and (i) the City shall place in a special account all revenues received from the ARI Mill Levy imposed in the Service Area under Section VI of the Service Plan and shall not expend such revenue until an intergovernmental agreement is executed between the District establishing the terms and conditions for the provision of the Regional Improvements; and (ii) if the intergovernmental agreement is not executed within two (2) years from the date of the approval of the Service Plan by the City and neither Section VI.A nor VI.B of the Service Plan above have occurred within two (2) years from the date of the approval of the Service Plan by the City, then the revenue from the ARI Mill Levy shall be conveyed to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users or taxpayers of the District as prioritized and determined by the City.

As set forth in the definition of the ARI Mill Levy, the District may, pursuant to any intergovernmental agreement with the City, extend the terms for application of the ARI Mill Levy beyond the years set forth in Sections VI.A and VI. B of the Service Plan. The Maximum Mill Levy Imposition Term shall include the terms and any extension of such terms, as set forth in Sections VI.D~~A~~, VI.E~~B~~ and VI.F~~C~~ of the ~~definition of the ARI Mill Levy~~Service Plan.

The Maximum Debt Mill Levy shall not apply to the District's Operations and Maintenance Mill Levy for the provision of operation and maintenance services to the District's taxpayers and service users.

The Regional Improvements shall be limited to the provision of the planning, design, acquisition, construction, installation, relocation and/or redevelopment of street and transportation related improvements as defined in the Special District Act and the administration and overhead costs incurred as a result of participation in the alternative set forth in Section VI.A, B or C of the Service Plan, unless the City has agreed otherwise in writing; provided, however in no event shall the Regional Improvements include water or sanitary sewer improvements unless such improvements are necessary as a part of completing street and transportation related improvements. The District shall cease to be obligated to impose, collect and convey to the City the revenue from the ARI Mill Levy described in Section VI of the Service Plan at such time as the area within the District's boundaries is included within a different district organized under the Special District Act, or a General Improvement District organized under Section 31-25-601, et seq., C.R.S., or Business Improvement District organized under Section 31-25-1201, et seq., C.R.S., which other district has been organized to fund a part or all of the Regional Improvements.

~~21.~~22. Maximum Debt Mill Levy. The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be determined as follows:

(a) For the portion of any aggregate District's Debt which exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VII.C.2 of the Service Plan~~; provided that if, on or after January 1, 2004, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.~~, subject to the Gallagher Adjustment.

(b) For the portion of any aggregate District's Debt which is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject

to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

(c) For purposes of the foregoing, once Debt has been determined to be within Section VII.C.2 of the Service Plan, so that the District is entitled to pledge to its payment an unlimited ad valorem mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

~~22.~~23. Maximum Debt Mill Levy Imposition Term. The District shall have the authority to impose the ARI Mill Levy for the terms as set forth in Section VI of the Service Plan. Other than the ARI Mill Levy, the District shall not impose a levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) on any single property developed for residential uses which exceeds forty (40) years after the year of the initial imposition of such mill levy unless a majority of the Board of Directors of the District are residents of the District and have voted in favor of a refunding of a part or all of the Debt and such refunding will result in a net present value savings as set forth in Section 11-56-101, C.R.S.; et seq.

~~23.~~24. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: _____ Metropolitan District

Attn:
Phone:
Fax:

To the City: City of Aurora
15151 E. Alameda Pkwy., 5th Floor
Aurora, CO 80012
Attn: Mike Hyman, City Attorney
Phone: (303) 739-7030
Fax: (303) 739-7042

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

~~24.~~25. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan.

~~25.~~26. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

~~26.~~27. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

~~27.~~28. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

~~28.~~29. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

~~29.~~30. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

~~30.~~31. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

~~31.~~32. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

~~32.~~33. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

~~33.~~34. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

~~34.~~35. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

[SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

_____ METROPOLITAN DISTRICT

By: _____
President

Attest:

_____
Secretary

CITY OF AURORA, COLORADO

By: _____
~~Stephen D. Hogan~~MIKE COFFMAN,
Mayor

ATTEST:

_____
STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:

_____
BRIAN J. RULLA, Assistant City Attorney

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: A Resolution to approve the Sixth Amendment to the Sand Creek Metropolitan District Service Plan.
Item Initiator: Vinessa Irvin
Staff Source: Vinessa Irvin, Office of Development Assistance Manager
Deputy City Manager Signature: Jason Batchelor
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.)***

The Sand Creek Metro District serves the Gateway Park development (see vicinity map attached). City Council approved the original Service Plan for the District in 1995.

Since it's formation, the District has completed the infrastructure to serve the development of approximately 80% of the 1200+ acre mixed use development.

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

The Sand Creek Metropolitan District is requesting Council approval of the Sixth Amendment of its Service Plan. The District has taken a measured approach over the years in their debt issuance strategy. This has included a conservative approach to the debt limits established in the District's Service Plan. Therefore, three of the previous amendments have been to request an increase in their debt limit.

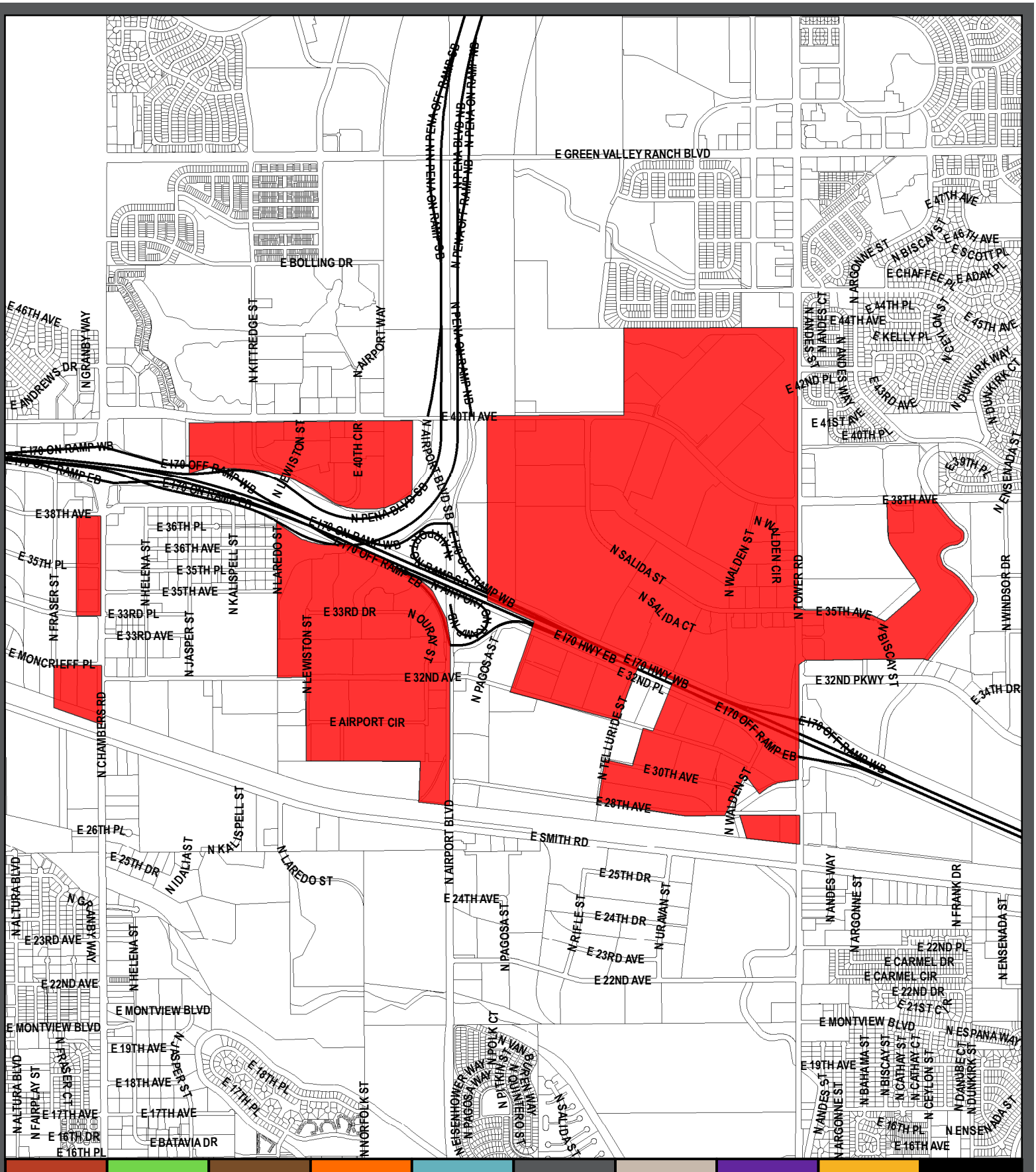
The current service plan, as amended by the fifth Amendment, designates the District's debt limit at $70,000,000, most of this debt has been issued and a portion has been repaid. The current outstanding amount of District debt is $59,070,000. This sixth amendment would increase their current debt limit of $70,000,000 to $105,000,000. This will provide sufficient funding capacity to complete the infrastructure necessary for the full build-out of the remaining developable acres of the project. The current assessed value of the development is in excess of $250,000,000.

A full explanation of the proposed financing strategy and a cash flow summary provided by the District are attached.

QUESTIONS FOR Committee
Does the Committee wish to move this Amendment request forward to Study Session for Council consideration?

EXHIBITS ATTACHED:

Cover Letter to COA - SCMD 6th Amend Service Plan.pdf
Sand Creek 2020 Cash Flow Summary Preliminary Numbers.pdf
Sand Creek MD Sixth Service Plan Amendment (May 29 2020).pdf
Sand Creek Metro District Map.pdf



Planning & Development Services

15151 E. Alameda Pkwy
Aurora CO 80012 USA
www.auroragov.org
303-739-7250
GIS@auroragov.org

Feet
0 950 1,900

City of Aurora, Colorado

2020 Sand Creek Metropolitan District

June 4, 2020

Aurora is Worth Discovering!

N W E S

Legend

Sand Creek Metro District

JURISDICTION

ADAMS COUNTY

SAND CREEK METROPOLITAN DISTRICT
100 St. Paul Street, Suite 300
Denver, Colorado 80206

May 28, 2020

VIA ELECTRONIC AND U.S. MAIL

Vinessa Irvin, Manager
Office of Development Assistance
City of Aurora
15151 E. Alameda Parkway
Aurora, Colorado 80012
virvin@auroragov.org

Re: Sixth Amendment to Service Plan of Sand Creek Metropolitan District

Dear Ms. Irvin:

As promised enclosed please find a draft of the aforementioned Sixth Amendment, a comparison of the same against the Fifth Amendment and a draft Resolution for City Council to consider.

The impetus for the submission is that the District is facing infrastructure needs as additional development pressures have arisen in recent months that are not abating notwithstanding the current climate. The District expects to issue $12,000,000 in new bonds by December of this year, and issue an additional $11,000,000 in 2026. Future projects will undoubtedly require additional funding. Under the current Service Plan as amended by the Fifth Amendment, the District's debt limit is $70,000,000, most or all of which has been issued, a portion of which has been repaid, and the current outstanding amount of District debt is $59,970,000. Thus, there is a need to change that limitation.

A pro forma prepared by RBC Capital Markets is enclosed showing the anticipated development and proposed financings assuming a 5% interest rate and a slight increase in the mill levy from the 18 mills certified in 2019 for 2020 collection, to an estimated 20 to 22 mills over the next ten years. Know, however, that no existing residential property will be impacted by this increase. Please also note that the current assessed value of the District stands at (at the time of the Fifth Amendment which increased the debt limit from $35,000,000 to its present $70,000,000, the assessed value was approximately $90,000,000.) The $70,000,000 debt limit is therefore approximately one-quarter of the District's current assessed value. An increase of the District's debt by $23,000,000 would leave the aggregate outstanding amount at slightly less than one-third of the current assessed value. According to the pro forma, and based upon on only projects under construction or approved, the District will add assessed value of $20,000,000 ($284,000,000, assuming that less than the current tax protests are upheld) that would keep the debt to assessed ratio at slightly less than thirty percent. Over 200 acres of vacant, developable land remains within the district to allow continued assessed value growth.

This is the fourth time that the District has had to request an increase in the debt limit within which it is allowed to operate financially. The reason that the District is back with a requested fourth

amendment to the cap is the fact that it has not overreached in the previous three requested amendments. It has only asked for and received increases in debt limits that it could responsibly demonstrate would be addressed financially with reasonable mill levies based on reasonably anticipated development projections. We have provided you with a financial plan indicating that the District intends to issue $23,000,000 in approximately the next five years to fund known projects, some of which are required by existing IGAs and other agreements with the City and DIA. It is likely that yet to be identified projects associated with the TOD lands will require funding beyond the programmed $23,000,000, and the District will almost certainly need to fund additional improvements through the end of this decade. The District believes that, given the strength of its financial position, given that the District has operated financially without issue for twenty-five years, and to avoid the necessity and expense of these rolling requests for more financial capacity, the Sixth Amendment asks for a cap on the amount of debt that may be issued of $105,000,000 equal to the increase approved in the Fifth Amendment. With such an increase the District would have the flexibility to react to financial needs under its own power when and as necessary and, as the District's Board of Directors of the District will always be populated by the owners of commercial property and business interests located within the District, the City may be assured that the District's financial activities will be well supervised.

The change in the maximum debt limit dollar amount is the only change from the Fifth Amendment. Going forward, the other limitations concerning the issuance of debt in the Service Plan would continue to apply, though many of them are benign given the District's financial condition; i.e. there is no longer any need for developer advances, reimbursement agreements or developer notes. In the interests of simplicity we see no need to draft them out unless you wish us to do so.

Thanks as always for your help, and I look forward to speaking further with you and your colleagues.

SAND CREEK METROPOLITAN DISTRICT

Mike Serra III, District Manager

Cc: Brian Rulla
Tom George

Sand Creek Metropolitan District
Additional New Money General Obligation Limited Tax Bonds for Near-Term Development
For Service Plan Amendment (6th Amendment)
Preliminary Additional New Money Bond Numbers @ 5.00% Interest Rate

Assess Year	Collect Year	Yr #	Prior Assessed Value	Additions/ Adjustments	AV % Chg	Biennial AV Chg	Current Assessed Value	Min D/S Mill Levy Needed	D/S Mill Levy	Mill Levy Revenue	S.O. Taxes @ 6.00%	Less: Collection Costs @ 2.00%	Total Revenue	Principal	Interest	Total D/S	DSRF	CAPI	Net D/S	Coverage Ratio
2019	2020	0	264,229,330			-	264,229,330	18.289	18.000	4,756,128	285,368	-100,830	4,940,666	2,515,000	2,505,075	5,020,075	-	-	5,020,075	0.98
2020	2021	1	264,229,330	-10,984,940	Current Protests	-	253,244,390	21.608	21.700	5,495,403	329,724	-116,503	5,708,625	2,665,000	3,019,500	5,684,500	-	-	5,684,500	1.00
2021	2022	2	253,244,390	11,500,000		-	264,744,390	20.680	20.800	5,506,683	330,401	-116,742	5,720,343	2,765,000	2,922,475	5,687,475	-	-	5,687,475	1.01
2022	2023	3	264,744,390	7,000,000		-	271,744,390	20.145	20.200	5,489,237	329,354	-116,372	5,702,219	2,865,000	2,821,813	5,686,813	-	-	5,686,813	1.00
2023	2024	4	271,744,390	5,000,000		-	276,744,390	19.765	19.900	5,507,213	330,433	-116,753	5,720,893	2,980,000	2,702,200	5,682,200	-	-	5,682,200	1.01
2024	2025	5	276,744,390	5,000,000		-	281,744,390	18.366	18.500	5,212,271	312,736	-110,500	5,414,507	3,105,000	2,583,463	5,688,463	-313,307	-	5,375,156	1.01
2025	2026	6	281,744,390		1.00%	2,817,444	284,561,834	20.490	20.600	5,861,974	351,718	-124,274	6,089,418	3,600,000	2,456,831	6,056,831	-	-	6,056,831	1.01
2026	2027	7	284,561,834			-	284,561,834	22.377	22.500	6,402,641	384,158	-135,736	6,651,064	3,755,000	2,859,706	6,614,706	-	-	6,614,706	1.01
2027	2028	8	284,561,834		1.00%	2,845,618	287,407,452	22.125	22.200	6,380,445	382,827	-135,265	6,628,007	3,905,000	2,700,575	6,605,575	-	-	6,605,575	1.00
2028	2029	9	287,407,452			-	287,407,452	22.145	22.200	6,380,445	382,827	-135,265	6,628,007	4,065,000	2,546,444	6,611,444	-	-	6,611,444	1.00
2029	2030	10	287,407,452		1.00%	2,874,075	290,281,527	21.953	22.100	6,415,222	384,913	-136,003	6,664,132	4,235,000	2,384,825	6,619,825	-	-	6,619,825	1.01
2030	2031	11	290,281,527			-	290,281,527	24.637	24.700	7,169,954	430,197	-152,003	7,448,148	5,220,000	2,209,000	7,429,000	-	-	7,429,000	1.00
2031	2032	12	290,281,527	-17,369,470	1.00%	2,902,815	275,814,872	20.125	20.200	5,571,460	334,288	-118,115	5,787,633	3,775,000	1,991,263	5,766,263	-	-	5,766,263	1.00
2032	2033	13	275,814,872	Residential		-	275,814,872	20.123	20.200	5,571,460	334,288	-118,115	5,787,633	3,955,000	1,810,450	5,765,450	-	-	5,765,450	1.00
2033	2034	14	275,814,872	Exclusion Debt	1.00%	2,758,149	278,573,021	19.925	20.000	5,571,460	334,288	-118,115	5,787,633	4,145,000	1,620,956	5,765,956	-	-	5,765,956	1.00
2034	2035	15	278,573,021	Paid-Off		-	278,573,021	19.930	20.000	5,571,460	334,288	-118,115	5,787,633	4,345,000	1,422,313	5,767,313	-	-	5,767,313	1.00
2035	2036	16	278,573,021		1.00%	2,785,730	281,358,751	19.721	19.800	5,570,903	334,254	-118,103	5,787,054	4,550,000	1,214,019	5,764,019	-	-	5,764,019	1.00
2036	2037	17	281,358,751			-	281,358,751	19.738	19.800	5,570,903	334,254	-118,103	5,787,054	4,775,000	993,850	5,768,850	-	-	5,768,850	1.00
2037	2038	18	281,358,751		1.00%	2,813,588	284,172,338	19.538	19.600	5,569,778	334,187	-118,079	5,785,885	5,005,000	762,725	5,767,725	-	-	5,767,725	1.00
2038	2039	19	284,172,338			-	284,172,338	19.531	19.600	5,569,778	334,187	-118,079	5,785,885	5,245,000	520,394	5,765,394	-	-	5,765,394	1.00
2039	2040	20	284,172,338		1.00%	2,841,723	287,014,062	18.714	18.800	5,395,864	323,752	-114,392	5,605,224	5,500,000	266,375	5,766,375	-186,693	-	5,579,682	1.00
2040	2041	21	287,014,062			-	287,014,062	-	-	-	-	-	-	-	-	-	-	-	-	NA
2041	2042	22	287,014,062		1.00%	2,870,141	289,884,202	-	-	-	-	-	-	-	-	-	-	-	-	NA
2042	2043	23	289,884,202			-	289,884,202	-	-	-	-	-	-	-	-	-	-	-	-	NA
2043	2044	24	289,884,202		1.00%	2,898,842	292,783,044	-	-	-	-	-	-	-	-	-	-	-	-	NA
2044	2045	25	292,783,044			-	292,783,044	-	-	-	-	-	-	-	-	-	-	-	-	NA
2045	2046	26	292,783,044		1.00%	2,927,830	295,710,875	-	-	-	-	-	-	-	-	-	-	-	-	NA
2046	2047	27	295,710,875			-	295,710,875	-	-	-	-	-	-	-	-	-	-	-	-	NA
2047	2048	28	295,710,875		1.00%	2,957,109	298,667,984	-	-	-	-	-	-	-	-	-	-	-	-	NA
2048	2049	29	298,667,984			-	298,667,984	-	-	-	-	-	-	-	-	-	-	-	-	NA
2049	2050	30	298,667,984		1.00%	2,986,680	301,654,664	-	-	-	-	-	-	-	-	-	-	-	-	NA
Total	**Total**			**145,590**		**37,279,744**				**120,540,685**	**7,232,441**	**-2,555,463**	**125,217,664**	**82,970,000**	**42,314,250**	**125,284,250**	**-500,000**	**-**	**124,784,250**	

Service Plan Debt Limits	
Current Service Plan Debt Limit	70,000,000
Less: Previously Issued	62,355,000
Remaining Balance Available (2018 Audit)	7,645,000
Near-Term Debt Needs (2020 & 2026)	**23,000,000**

Additional Bonds Needed for Near-Term Development			
Issued	Dec-20	Dec-26	Total
Amount	12,000,000	11,000,000	23,000,000
Interest Rate	5.00%	5.00%	
Final Maturity	Dec-40	Dec-40	

Assessed Value - 2019 for 2020 Collection	
Adams	198,265,620
Denver	48,594,240
Denver Debt (Res. Exclusion)	17,369,470
Total Assessed Value	**264,229,330**
Biennial AV Reappraisal Chg.	**1.00%**
Current D/S Mill Levy	**18.000**

New Development (Assessed Value) - Additional Bonding Needs					
Development Area	2020 New AV 2021 Collect	2021 New AV 2022 Collect	2022 New AV 2023 Collect	2023 New AV 2024 Collect	Total
Building 22	$4,000,000				$4,000,000
Building 23	$2,000,000				$2,000,000
Building 24	$500,000	$1,500,000			$2,000,000
Building 25	$1,000,000	$2,000,000			$3,000,000
Building 26		$1,000,000	$2,000,000		$3,000,000
Building 27			$1,000,000	$2,000,000	$3,000,000
Fairfield Hotel	$1,000,000	$1,000,000			$2,000,000
Four Points	$2,000,000	$1,000,000			$3,000,000
S Purse	$1,000,000				$1,000,000
McCandless		$500,000	$1,000,000		$1,500,000
Springhill Suites			$1,000,000	$3,000,000	$4,000,000
Total	**$11,500,000**	**$7,000,000**	**$5,000,000**	**$5,000,000**	**$28,500,000**

Sand Creek Metropolitan District
Additional New Money General Obligation Limited Tax Bonds for Near-Term Development
For Service Plan Amendment (6th Amendment)
Preliminary Additional New Money Bond Numbers @ 5.00% Interest Rate

	Total Existing GO Bonds					Total New Money GO Bonds					Total GO Bonds				
Year	**Principal**	**Interest**	**DSRF**	**CAPI**	**D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**D/S**
2020	2,515,000	2,505,075	-	-	5,020,075	-	-	-	-	-	2,515,000	2,505,075	-	-	5,020,075
2021	2,665,000	2,419,500	-	-	5,084,500	-	600,000	-	-	600,000	2,665,000	3,019,500	-	-	5,684,500
2022	2,765,000	2,322,475	-	-	5,087,475	-	600,000	-	-	600,000	2,765,000	2,922,475	-	-	5,687,475
2023	2,865,000	2,221,813	-	-	5,086,813	-	600,000	-	-	600,000	2,865,000	2,821,813	-	-	5,686,813
2024	2,980,000	2,102,200	-	-	5,082,200	-	600,000	-	-	600,000	2,980,000	2,702,200	-	-	5,682,200
2025	3,105,000	1,983,463	-313,307	-	4,775,156	-	600,000	-	-	600,000	3,105,000	2,583,463	-313,307	-	5,375,156
2026	3,600,000	1,856,831	-	-	5,456,831	-	600,000	-	-	600,000	3,600,000	2,456,831	-	-	6,056,831
2027	3,755,000	1,709,706	-	-	5,464,706	-	1,150,000	-	-	1,150,000	3,755,000	2,859,706	-	-	6,614,706
2028	3,905,000	1,550,575	-	-	5,455,575	-	1,150,000	-	-	1,150,000	3,905,000	2,700,575	-	-	6,605,575
2029	4,065,000	1,396,444	-	-	5,461,444	-	1,150,000	-	-	1,150,000	4,065,000	2,546,444	-	-	6,611,444
2030	4,235,000	1,234,825	-	-	5,469,825	-	1,150,000	-	-	1,150,000	4,235,000	2,384,825	-	-	6,619,825
2031	5,220,000	1,059,000	-	-	6,279,000	-	1,150,000	-	-	1,150,000	5,220,000	2,209,000	-	-	7,429,000
2032	1,690,000	841,263	-	-	2,531,263	2,085,000	1,150,000	-	-	3,235,000	3,775,000	1,991,263	-	-	5,766,263
2033	1,765,000	764,700	-	-	2,529,700	2,190,000	1,045,750	-	-	3,235,750	3,955,000	1,810,450	-	-	5,765,450
2034	1,845,000	684,706	-	-	2,529,706	2,300,000	936,250	-	-	3,236,250	4,145,000	1,620,956	-	-	5,765,956
2035	1,930,000	601,063	-	-	2,531,063	2,415,000	821,250	-	-	3,236,250	4,345,000	1,422,313	-	-	5,767,313
2036	2,015,000	513,519	-	-	2,528,519	2,535,000	700,500	-	-	3,235,500	4,550,000	1,214,019	-	-	5,764,019
2037	2,110,000	420,100	-	-	2,530,100	2,665,000	573,750	-	-	3,238,750	4,775,000	993,850	-	-	5,768,850
2038	2,210,000	322,225	-	-	2,532,225	2,795,000	440,500	-	-	3,235,500	5,005,000	762,725	-	-	5,767,725
2039	2,310,000	219,644	-	-	2,529,644	2,935,000	300,750	-	-	3,235,750	5,245,000	520,394	-	-	5,765,394
2040	2,420,000	112,375	-186,693	-	2,345,682	3,080,000	154,000	-	-	3,234,000	5,500,000	266,375	-186,693	-	5,579,682
2041	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2042	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2043	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2044	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2045	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2046	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2047	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2048	-	-	-	-	-	-	-	-	-		-	-	-	-	-
2049	-	-	-	-	-	-	-	-	-		-	-	-	-	-
2050	-	-	-	-	-	-	-	-	-		-	-	-	-	-
Total	**59,970,000**	**26,841,500**	**-500,000**	**-**	**86,311,500**	**23,000,000**	**15,472,750**	**-**	**-**	**38,472,750**	**82,970,000**	**42,314,250**	**-500,000**	**-**	**124,784,250**

Sand Creek Metropolitan District
Additional New Money General Obligation Limited Tax Bonds for Near-Term Development
For Service Plan Amendment (6th Amendment)
Preliminary Additional New Money Bond Numbers @ 5.00% Interest Rate

	Post-Exclusion $12MM 2020 New Money GO Bonds @ 5.00%					Post-Exclusion $11MM 2026 New Money GO Bonds @ 5.00%					Total $23MM Total New GO Bonds @ 5.00%				
Year	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**
2020	-	-	-	-	-					-	-	-	-	-	-
2021	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2022	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2023	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2024	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2025	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2026	-	600,000	-	-	600,000					-	-	600,000	-	-	600,000
2027	-	600,000	-	-	600,000	-	550,000			550,000	-	1,150,000	-	-	1,150,000
2028	-	600,000	-	-	600,000	-	550,000			550,000	-	1,150,000	-	-	1,150,000
2029	-	600,000	-	-	600,000	-	550,000			550,000	-	1,150,000	-	-	1,150,000
2030	-	600,000	-	-	600,000	-	550,000			550,000	-	1,150,000	-	-	1,150,000
2031	-	600,000	-	-	600,000	-	550,000			550,000	-	1,150,000	-	-	1,150,000
2032	1,090,000	600,000	-	-	1,690,000	995,000	550,000			1,545,000	2,085,000	1,150,000	-	-	3,235,000
2033	1,145,000	545,500	-	-	1,690,500	1,045,000	500,250			1,545,250	2,190,000	1,045,750	-	-	3,235,750
2034	1,200,000	488,250	-	-	1,688,250	1,100,000	448,000			1,548,000	2,300,000	936,250	-	-	3,236,250
2035	1,260,000	428,250	-	-	1,688,250	1,155,000	393,000			1,548,000	2,415,000	821,250	-	-	3,236,250
2036	1,325,000	365,250	-	-	1,690,250	1,210,000	335,250			1,545,250	2,535,000	700,500	-	-	3,235,500
2037	1,390,000	299,000	-	-	1,689,000	1,275,000	274,750			1,549,750	2,665,000	573,750	-	-	3,238,750
2038	1,455,000	229,500	-	-	1,684,500	1,340,000	211,000			1,551,000	2,795,000	440,500	-	-	3,235,500
2039	1,530,000	156,750	-	-	1,686,750	1,405,000	144,000			1,549,000	2,935,000	300,750	-	-	3,235,750
2040	1,605,000	80,250	-	-	1,685,250	1,475,000	73,750			1,548,750	3,080,000	154,000	-	-	3,234,000
2041			-	-	-					-	-	-	-	-	-
2042			-	-	-					-	-	-	-	-	-
2043			-	-	-					-	-	-	-	-	-
2044			-	-	-					-	-	-	-	-	-
2045			-	-	-					-	-	-	-	-	-
2046			-	-	-					-	-	-	-	-	-
2047			-	-	-					-	-	-	-	-	-
2048			-	-	-						-	-	-	-	-
2049			-	-	-						-	-	-	-	-
2050			-	-	-						-	-	-	-	-
Total	**12,000,000**	**9,792,750**	**-**	**-**	**21,792,750**	**11,000,000**	**5,680,000**	**-**	**-**	**16,680,000**	**23,000,000**	**15,472,750**	**-**	**-**	**38,472,750**

Sand Creek Metropolitan District
Additional New Money General Obligation Limited Tax Bonds for Near-Term Development
For Service Plan Amendment (6th Amendment)
Preliminary Additional New Money Bond Numbers @ 5.00% Interest Rate

	Pre-Exclusion Existing GO Bonds					Post-Exclusion Existing GO Bonds					Total Existing GO Bonds				
Year	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**	**Principal**	**Interest**	**DSRF**	**CAPI**	**Net D/S**
2020	2,080,000	1,087,338	-	-	3,167,338	435,000	1,417,738			1,852,738	2,515,000	2,505,075	-	-	5,020,075
2021	2,215,000	1,014,888	-	-	3,229,888	450,000	1,404,613			1,854,613	2,665,000	2,419,500	-	-	5,084,500
2022	2,300,000	931,438	-	-	3,231,438	465,000	1,391,038			1,856,038	2,765,000	2,322,475	-	-	5,087,475
2023	2,390,000	844,800	-	-	3,234,800	475,000	1,377,013			1,852,013	2,865,000	2,221,813	-	-	5,086,813
2024	2,485,000	743,813	-	-	3,228,813	495,000	1,358,388			1,853,388	2,980,000	2,102,200	-	-	5,082,200
2025	2,585,000	644,500	-313,307	-	2,916,193	520,000	1,338,963			1,858,963	3,105,000	1,983,463	-313,307	-	4,775,156
2026	1,880,000	538,244	-	-	2,418,244	1,720,000	1,318,588			3,038,588	3,600,000	1,856,831	-	-	5,456,831
2027	1,960,000	459,369	-	-	2,419,369	1,795,000	1,250,338			3,045,338	3,755,000	1,709,706	-	-	5,464,706
2028	2,025,000	374,013	-	-	2,399,013	1,880,000	1,176,563			3,056,563	3,905,000	1,550,575	-	-	5,455,575
2029	2,115,000	290,006	-	-	2,405,006	1,950,000	1,106,438			3,056,438	4,065,000	1,396,444	-	-	5,461,444
2030	2,205,000	202,250	-	-	2,407,250	2,030,000	1,032,575			3,062,575	4,235,000	1,234,825	-	-	5,469,825
2031	2,665,000	110,700	-	-	2,775,700	2,555,000	948,300			3,503,300	5,220,000	1,059,000	-	-	6,279,000
2032			-	-	-	1,690,000	841,263			2,531,263	1,690,000	841,263	-	-	2,531,263
2033			-	-	-	1,765,000	764,700			2,529,700	1,765,000	764,700	-	-	2,529,700
2034			-	-	-	1,845,000	684,706			2,529,706	1,845,000	684,706	-	-	2,529,706
2035			-	-	-	1,930,000	601,063			2,531,063	1,930,000	601,063	-	-	2,531,063
2036			-	-	-	2,015,000	513,519			2,528,519	2,015,000	513,519	-	-	2,528,519
2037			-	-	-	2,110,000	420,100			2,530,100	2,110,000	420,100	-	-	2,530,100
2038			-	-	-	2,210,000	322,225			2,532,225	2,210,000	322,225	-	-	2,532,225
2039			-	-	-	2,310,000	219,644			2,529,644	2,310,000	219,644	-	-	2,529,644
2040			-	-	-	2,420,000	112,375	-186,693		2,345,682	2,420,000	112,375	-186,693	-	2,345,682
2041			-	-	-					-	-	-	-	-	-
2042			-	-	-					-	-	-	-	-	-
2043			-	-	-					-	-	-	-	-	-
2044			-	-	-					-	-	-	-	-	-
2045			-	-	-					-	-	-	-	-	-
2046			-	-	-					-	-	-	-	-	-
2047			-	-	-					-	-	-	-	-	-
2048			-	-	-						-	-	-	-	-
2049			-	-	-						-	-	-	-	-
2050			-	-	-						-	-	-	-	-
Total	**26,905,000**	**7,241,356**	**-313,307**	**-**	**33,833,049**	**33,065,000**	**19,600,144**	**-186,693**	**-**	**52,478,451**	**59,970,000**	**26,841,500**	**-500,000**	**-**	**86,311,500**

SAND CREEK METROPOLITAN DISTRICT
In the City of Aurora,
Adams County, Colorado

SIXTH AMENDMENT TO SERVICE PLAN

1. INTRODUCTION

The service plan for the Sand Creek Metropolitan District ("District") was approved by the City Council on August 28, 1995, and the District was organized by Order of the District Court in and for Adams County on November 20, 1995. The main purpose of the District is to finance public improvements for the benefit of the taxpayers of the District and the City.

2. FIRST AMENDMENT

The service plan for the District was amended by the District on February 14, 1996 to change the name of the District from the Gateway Park Metropolitan District to the Sand Creek Metropolitan District.

3. SECOND AMENDMENT

The service plan for the District was amended by the District on December 23, 1996 to reflect the most current policies of the City of Aurora concerning the appropriate restrictions on the ability of special districts to issue general obligation debt and to provide the District with an enhanced ability to execute the original service plan.

4. THIRD AMENDMENT

The service plan for the District was amended by the District on February 26, 1998 to increase the District's total debt limit from $10 million to $25 million and to change the boundaries of the District.

5. FOURTH AMENDMENT

The service plan for the District was amended by the District on October 16, 2000 to increase the District's total debt limit from $25 million to $39 million, and to delete and add certain property to the District.

6. FIFTH AMENDMENT

The service plan for the District was amended by the District on November 22, 2004 to increase the District's total debt limit from $39 million to $70 million, in order to facilitate the completion of the infrastructure necessary to serve the development within the District and delete certain details regarding the District's financings.

7. SIXTH AMENDMENT

The Board of Directors of the District has determined it to be in the best interests of the District to further amend its service plan in order to increase the District's total debt limit from $70 million to $105 million in order to facilitate the completion of the infrastructure necessary to serve the development within the District, to wit:

The second sentence of **Article V. FINANCIAL PLAN – Debt Limitation**, as set forth in the Fifth Amendment, is hereby amended as follows: "The total Debt that the District shall be permitted to issue shall not exceed $105,000,000 and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of its financial plan and phased to serve development as it occurs."

Article XVII. DEBT LIMIT, is hereby amended as follows: "The District may not issue general obligation debt in excess of $105,000,000 without further amending this service plan in accordance with Colorado law."

8. RATIONALE.

The impetus for this Sixth Amendment is that the District is facing infrastructure needs as additional, significant development pressures have arisen in recent months that are not abating notwithstanding the current pandemic climate. The District expects to issue $12,000,000 in new bonds by December of this year, and issue an additional $11,000,000 in 2026. These issues will in part fund projects that are required by existing IGAs and other agreements with the City and DIA. Other future projects will undoubtedly require additional funding. Under the current Service Plan as amended by the Fifth Amendment, the District's debt limit is $70,000,000, most or all of which has been issued. Thus, there is a need to add additional authorization. No debt will be issued to reimburse expenditures made by the developer prior to the date of this Amendment.

The District's current assessed value is $264,229,330. Even if the District were to issue all $105,000,000 in authorized debt today the District's ratio of debt to assessed value would be less than 40% and thus serviceable with a mill levy that is less than the Maximum Mill Levy.

No debt will be issued to reimburse expenditures made by the developer prior to the date of this Amendment.

Except as modified herein, the terms and conditions of the service plan, as amended, shall continue in full force and effect.

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: Consideration to APPROVE A RESOLUTION for the City Council of the City of Aurora, Colorado, approving the Service Plan for the King Ranch Metropolitan District Nos 1-5 and authorizing the execution of an Intergovernmental Agreement between the City and the District.
Item Initiator: Vinessa Irvin
Staff Source: Vinessa Irvin, Manager, Office of Development Assistance
Deputy City Manager Signature: Jason Batchelor
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 2004, the City adopted a model service plan for Title 32 Metropolitan Districts with the intent that any proposed service plan for a metropolitan district will be compliant with the model. The model service plan provides the following key features: 1. Maximum debt mill levy of 50 mills (Gallagher adjusted) 2. Maximum term for debt repayment of 40 years (for residential districts) 3. Agreement to impose the Aurora Regional Improvements (ARI) mill levy.

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

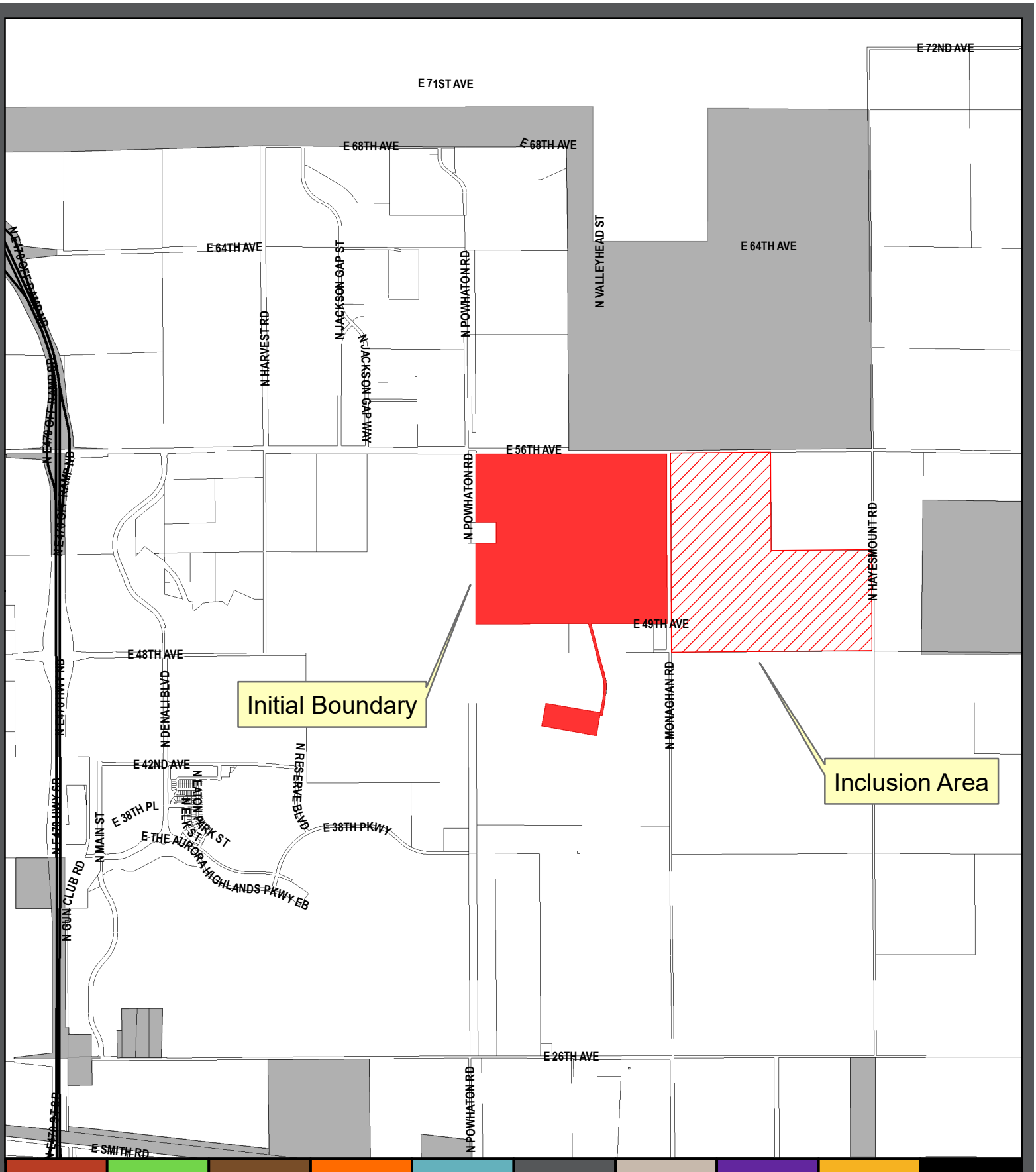
A request for the formation of new districts, King Ranch Metropolitan Districts, has been submitted for the November 2020 election cycle. Staff has had conversation with counsel for the Metropolitan District regarding the forthcoming proposed updates to the city's model service plan and they are agreeable to adopt the new model at the time of formation. The property is currently vacant and is located generally southwest and southeast of 56th Avenue and Monaghan Road (see attached Vicinity Map). The districts will service a mixed-use commercial development. There are no residential uses planned for the districts. The service area (initial and inclusion areas) is 1004 acres in size.

QUESTIONS FOR Committee

Does the Committee wish to move this item on to City Council Study Session?

EXHIBITS ATTACHED:

King Ranch Transmittal Letter.pdf
Vicinity Map Kings Ranch Metro District Nos 1-5.pdf



Planning & Development Services

15151 E. Alameda Pkwy
Aurora CO 80012 USA
www.auroragov.org
303-739-7250
GIS@auroragov.org

Feet
0 1,650 3,300

City of Aurora, Colorado

2020 Kings Ranch Metropolitan District Nos 1-5

June 8, 2020

Aurora is Worth Discovering!

N W E S

Legend

- Kings Ranch Metro District Inclusion Area
- Initial Boundary

JURISDICTION

- ADAMS COUNTY

June 8, 2020

City of Aurora
Office of Development Assistance
Attn: Cesarina Dancy
15151 E. Alameda Parkway, Suite 5200
Aurora, CO 80012

RE: King Ranch Metropolitan District Nos. 1-5 Model Service Plan Submittal

Dear Ms. Dancy:

Enclosed for review by the City of Aurora (the "**Aurora**") is the proposed Service Plan (the "**Proposed Service Plan**") for King Ranch Metropolitan District Nos. 1-5 (the "**Districts**"). Contact information for the relevant parties is as follows:

Legal Counsel

Blair M. Dickhoner, Esq.
WHITE BEAR ANKELE TANAKA & WALDRON
2154 E. Commons Avenue, Suite 2000
Centennial, CO 80122
(303) 858-1800
bdickhoner@wbapc.com

Petitioner/Property Owner

Summit Investment, Inc.
Attn: Jeffrey Kirkendall
1895 Pony Express Drive, Ste. 3013
Parker, CO 80134
(303) 918-5475
jeff.castlepines@gmail.com

The Proposed Service Plan is being submitted as a single service plan for the yet to be organized Districts. The Districts will service a mixed use development consisting of commercial property (the "**Project**"). There will be no residential development served by the Districts. It is the petitioner's understanding that Aurora does not consider it feasible or practicable to provide the services or facilities necessary to support the Project. There are currently no other governmental entities located in the immediate vicinity of the Districts that have either the ability or desire to undertake the design, financing, and construction of the public improvements needed for the Project. Formation of the Districts is necessary in order that the public improvements be provided in the most efficient and economical manner possible. The Petitioner met with the Aurora Planning Department on January 2, 2020 to discuss the current status and future development plans for the Project. At the request of the City, Petitioner is proceeding with a Framework Development Plan for the Project.

In compliance with Aurora City Code Sec. 122-26 – 122-36, the Proposed Service Plan

complies with the form and content of Aurora's current model service plan and the Proposed Service Plan is an exact copy of the appropriate Aurora model service plan and any and all changes from the model are clearly identified in tracked changes.

The debt limits reported in Section V.A.10 (Total Debt Issuance Limitation) and VII.A (Financial Plan – General) do include any debt associated with regional improvements as described in the last sentence of VI.C.

Name of Metro District	Public Improvements	Debt Limit	Debt Limit Includes ARI?	ARI Debt Limit	Total Debt Capacity	Organizing and Operating Reimbursement	1st Year Operating and Maintenance
(Location in Service Plan)	V.B	V.A.10	Transmittal Letter	VI.C	Calculate	VII.I	VII.I
Metropolitan District Nos. 1-5	$150,000,000	$200,000,000	Yes	$200,000,000	$200,000,000	$250,000	$100,000

Should you have any questions or concerns regarding this letter or the Proposed Service Plan, please do not hesitate to contact me at your earliest convenience.

Sincerely,

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

Blair M. Dickhoner, Esq.

cc: Vinessa Irvin, via electronic mail
Mark Geyer, via electronic mail

Enclosure

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: Public Banking
Item Initiator: Hanosky Hernandez Perez
Staff Source: Hanosky Hernandez Perez
Deputy City Manager Signature: Roberto Venegas
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.)***

At the January 28, 2020 Management and Finance Policy Committee meeting Public Banking was discussed and a request for a legal opinion was made.

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

This item is to discuss that legal opinion.

QUESTIONS FOR Committee

N/A

EXHIBITS ATTACHED:

0 OLLS Legal Opinion 10-18-19 Legality of Public Banks under Colo Constitution.pdf
1 OLLS Addendum - RMPBI Legal Memo, Public Banks are Legal under Colo Constitution.pdf
2020 Memorandum to Terri Velasquez Regarding Proposed Public Bank.pdf
A Public Bank for Aurora 2020.pptx
Email Legal Memoranda Re Public Banking Issues.pdf
Public Banking Additional Considerations 4 3 2020.pdf
Re_ Legal Memoranda Re Public Banking Issues.pdf

KUTAKROCK

MEMORANDUM

TO: TERRI VELASQUEZ, FINANCE DIRECTOR, CITY OF AURORA, COLORADO

FROM: DANIEL C. LYNCH, ESQ.

DATE: FEBRUARY 19, 2020

RE: PROPOSED PUBLIC BANK

Facts

It has been suggested that the City of Aurora (the "City") organize a "public bank" which would take deposits of City and other customers' money and make loans to underserved businesses or members of the community. You have inquired whether we believe the City has the legal authority to initiate such a project, and whether as proposed it would violate legal or constitutional restrictions. The following is a high-level, general discussion of those issues; if it is decided to pursue the idea additional research and analysis will be necessary.

It is my belief that the City probably would have the authority under its Charter to enter into such an arrangement, but that (1) there is some potential that in so doing it may run afoul of the lending of credit and joint ownership prohibitions in the Colorado Constitution and (2) the proposal raises public policy concerns, including whether a City-controlled organization should be competing with the private sector; whether the deposit of City funds in such an institution is a prudent and lawful investment of City money and whether a local financial institution formed primarily for social policy purposes would require substantial subsidies to have the same chance of success as a financial institution formed solely for the purpose of making a profit. In addition there may be questions concerning the degree of control the City Council would have over the management and affairs of the bank and whether the City would be willing to bear the cost and delay likely to be necessary to organize the bank and possibly to defend it against potential legal challenges. It is possible that a better and more efficient approach might be to form an alliance with one or more existing banks operating in the City, under which particular forms of lending would receive public incentives.

What Would be Required to Create a Public Bank?

For purposes of this memorandum I will give a single example, of the creation of a State-chartered Bank, which I think is probably representative of the kinds of things that would be required for various kinds of savings or banking institutions. The formation of a State-chartered bank is initiated by not less than five individual incorporators who file a proposed charter/articles of incorporation with the State Banking Commissioner. Each incorporator is required to subscribe for stock with a par value not less than 1% of the minimum capital and paid in surplus required for the bank. C.R.S. Section 11-103-301. The Commissioner's staff would review the proposed charter and provide comments. When the comments were responded to the Commissioner would schedule a public hearing at which the service area, business plan, capitalization and other aspects of the proposed institution would be considered. Following the hearing the Commissioner may issue the charter. The process would require several months at minimum.

A State bank would be subject to minimum capitalization requirements, which would effectively mean that funds for the bank could not come solely from depositors, and that as a result shareholders would need to invest their funds. Shareholders are liable for the obligations of the bank and State bank stock is subject to assessments upon the shareholders if the Commissioner determines that the bank's capitalization is inadequate. C.R.S. Section 11-103-203. In the City's case, a threshold question would be whether it would be possible to be the sole shareholder or whether it would be necessary to bring in other investors.

It seems to be inherent in the concept of the public bank that it would serve underserved segments of the community. This could mean various things: low and moderate income mortgage lending, "microlending" to small business, first-time borrower lending or other forms of socially-purposed finance. Programs of that kind incur costs that are difficult to recover from customers if the social purpose of the program is to be achieved, so they typically require subsidies in the form of government funding, tax incentives, or lower than market interest rates paid to depositors. Presumably, to make the bank work as intended, the City would need to provide financial support by accepting a limited return on deposits of City funds, investing in the bank's stock, buying down the interest rates on loans made by the bank, or possibly just subsidizing its operating and reserve requirements.

Is the Proposed Undertaking Authorized to the City?

As a home rule municipality, the City operates under a charter which functions only as a limitation on its powers, which are otherwise virtually unlimited in matters of local concern or mixed State and local concern as to which the general assembly has not legislated. The charter does not contain any direct prohibition on the City being involved in a banking business. State law provides limitations on the deposit or investment of public funds, but those limitations include an exception for the investment policies of home rule municipalities. C.R.S. Section 24-75-601.1(3)(b). Accordingly, it appears that it would be permissible for the City to deposit funds in a local, socially-purposed bank, provided that the bank itself complied with the provisions of C.R.S. Section 24-75-603 and the Public Deposit Protection Act, C.R.S. Section 11-10.5-101 et seq.

Does it Violate Constitutional or Other Restrictions?

Article XI, Section 2 of the Colorado constitution contains a general prohibition on ownership of stock of private corporations or joint ownership with the private sector, as well as the lending of public credit for private ventures. The Colorado supreme court has recognized that there is a public purpose exception to the lending of credit prohibition, for example in the case of economic incentives give to businesses creating new employment, etc., but the joint ownership prohibition has only been construed in a limited number of cases and does not have a general public purpose exception. It is possible that this might mean that the City could not be a shareholder of the bank if the bank also had private sector shareholders. Also the very ownership of stock in the bank could be considered to indirectly put the City's credit behind the bank, so at a minimum the program would have to be supported by strong public purpose findings. Finally, the deposit of City funds at below market interest rates, if employed to support the bank, would raise its own questions of public purpose, prudent investment management, etc.

Might there be Other Ways of Advancing the Same Objectives?

As I see it, there are enough questions about the City going into the banking business that it may make sense to consider whether there are other ways of accomplishing some or all of the desired results.

The cost, risk and continuing administrative oversight requirements of an investment in a bank would be very substantial and the achievement of the desired result is subject to a lot of uncertainties. A simpler alternative might be to explore whether it would be possible to cooperate with banks doing business in the City to provide them with economic incentives including direct payments, tax relief, agreements to purchase underperforming loans, and other support for targeted forms of lending, financial education, beginners' account programs, or funding for purchases of mortgage insurance or other forms of commercial loan guarantees. Such an approach would allow the City to avoid the costs and risks of sponsoring a startup financial institution but still encourage existing financial institutions to apply their resources in a socially beneficial manner.

cc: Daniel L. Brotzman, Esq.
Hanosky Hernandez Perez, Esq.

DATE: April 3, 2020

TO: Jim Twombly, City Manager

THROUGH: Roberto Venegas, Deputy City Manager

FROM: Terri Velasquez, Finance Director

RE: Public Banking Additional Considerations

BACKGROUND:
The City has received a legal opinion with regard to establishing a Public Bank. This legal opinion does not discuss some of the following considerations that should be contemplated before pursuing a Public Bank.

Bank Litigation:
It is anticipated that the Banking Industry will challenge the formation of a Public Bank. Staff estimates litigation costs could be in the millions based on the need for expertise in this type of litigation, and the City of Aurora attorneys would not be subject matter experts in Public Banking or Public Banking litigation.

Required Funding for Banking Operations:
As with any new operation there will be one-time capital required to fund facilities and furniture, fixtures, and equipment, etc. and ongoing operating costs. Staff anticipate capital costs of approximately $5 million, and ongoing operating costs of approximately $3 million.

Required Funding for Banking Deposits:
The estimated funding needed to fund the banking deposit requirements is approximately $200 million. The City of Aurora does not have funds available of $200 million even if all funds available for all funds were utilized and a funding mechanism would need to be identified. There will be also assets that needed to be pledged, at the discretion of the State Banking Commission, on behalf of the Bank to secure the Bank's success beyond the $200 million already discussed.

Federal Deposit Insurance Corporation (FDIC):
The estimated cost for FDIC insurance coverage is approximately $30,000 annually.

TABOR:
An election may be required to provide funding for the banking operation seed funding. This election would be a TABOR election.

C: Dan Brotzman, City Attorney
Hanosky Hernandez, Assistant City Attorney

From: Hernandez Perez, Hans
To: Velasquez, Terri
Subject: Re: Legal Memoranda Re Public Banking Issues
Date: Thursday, May 07, 2020 7:54:21 AM

Hi Terri,

I have reviewed the information sent by the Rocky Mountain Public Banking Institute ("RMPBI"). The information is extensive and it will be very time consuming to answer each single category of legal analysis that was presented. Nonetheless, I think it will be useful to discuss a few areas of concerns that I have noticed and give you my thoughts on this.

The documents contain one legal opinion and one addendum that seems to complement a prior opinion that was not given to us. The legal opinion comes from the Office of Legislative Legal Services ("OLLS"). The "Addendum" comes from the RMPBI. I make this distinction because RMPBI is seeking to establish public banks and their analysis tends to favor heavily the legality of such a move. On the other hand, the legal opinion from the OLLS is more cautious and recommends that the general assembly approves local jurisdictions to form their own banks.

In general, I noticed that both opinions address relevant issues regarding the formation of a bank under current state law. However, I noticed that all legal analysis we have received and reviewed so far do not include any relevant information as to what would be the obligations of the bank under Federal law. We know for example that to be a public depository the bank must be a member of the Federal Reserve, FDIC or have at least 102% of deposits backed by assets. There is no discussions on any opinion of the interrelation between the public owned bank and the Federal system. This in my view is an area that requires a lot more research that was have been provided to us so far. For example, the lending activities of the bank will be regulated by Federal law, i.e. Fair Collections Practice Act, Credit Reporting Act, Fair Lending, etc.

We have been discussing a "public bank" and the legal framework to do this, but neither legal analysis explains to what extent this "public bank" can operate. There are banks that are created with the intention of providing specific services. The less services the banks provides the less profitable it is. For example, Credit Suisse is a bank with limited offers in the USA mostly dedicated to wealth and investment management but this is catering to high net individuals which makes the bank operations profitable. The opinions do discuss some of the limitations that the "public bank" will have and those limitations truly equal less revenue. I found lacking that there no discussions as to what happens to the loans given out by the bank. Will they be securitized and sold? Will the bank operate as an underwriter etc. All this raises issues with respect to the interaction between State law and Federal law and how the proposed bank will navigate those waters. A bank that is not designed to be profitable may not be able to obtain FDIC insurance. I see a tension between State law not prohibiting the city to create the bank and how that bank will actually be inserted in the stream of commerce, and the requirements under Federal law even when the bank would presumably be state chartered.

Lastly, nowhere do any of the legal opinions truly discuss, under current regulations, who can be the incorporators? Who can walk into the Colorado Banking Commission and say "Hello, I am here to apply to form a bank on behalf of the City of Aurora." The Addendum discusses the possibility of using city employees to do so, but as with other projects we have discussed

before, this raises very difficult Federal and State tax questions, employment and compensation, and legal responsibilities for those employees. It will be an insurmountable liability for the city. Those incorporators have to pledge assets to the bank. Employees cannot do this. This is the reason why the OLLS recommends the general assembly to clarify how can a city form a bank. It seems that the process in place today is for private individuals not for instrumentalities of the state like the city is.

These are my impressions and the most important issues I could think of after reading all the documents. If this idea prospers a lot more I believe we may have to create a research team to go over all of the aspects of creating a bank or hire a law firm to do so for us. At the end, I believe that the State may be able to create a public bank under current state law, but for cities there should be legislation authorizing it, and specifying how can cities engage in the formation process, where they can find the assets and establishing the parameters for the public bank to operate.

Hopefully this adds value to this issue.

Hans

Hanosky Hernandez
Assistant City Attorney
City of Aurora Civil Division
15151 E Alameda Pkwy
Suite 5300
Aurora CO 80012
303-739-7030

From: Velasquez, Terri <tvelasqu@auroragov.org>
Sent: Tuesday, May 5, 2020 9:33 AM
To: Hernandez Perez, Hans <hhernand@auroragov.org>
Cc: Shannon, Mike <mshannon@auroragov.org>
Subject: Re: Legal Memoranda Re Public Banking Issues

Sounds good Hans. Thank you

> On May 5, 2020, at 9:32 AM, Hernandez Perez, Hans <hhernand@auroragov.org> wrote:

Hi Terri,

I finished yesterday reading everything. Give me a couple of days and I will organize my thoughts and reply back. I will probably just give you my "areas of concern" and go from there. It will be very time consuming answering every single thing they explain in the opinion and the addendum. At the end of the day, even if everything legally falls into place the economic issues are major on this one.

Take care. Hans

Hanosky Hernandez
Assistant City Attorney
City of Aurora Civil Division
15151 E Alameda Pkwy
Suite 5300
Aurora CO 80012
303-739-7030

From: Velasquez, Terri <tvelasqu@auroragov.org>
Sent: Monday, May 4, 2020 9:02 PM
To: Hernandez Perez, Hans <hhernand@auroragov.org>
Cc: Shannon, Mike <mshannon@auroragov.org>
Subject: Fwd: Legal Memoranda Re Public Banking Issues

Hans, have you had a chance to review their legal memo? Can you provide a written response for Jim and all?

Thank you, Terri

Begin forwarded message:

> **From:** "Velasquez, Terri" <tvelasqu@auroragov.org>
> **Date:** April 21, 2020 at 1:24:00 PM MDT
> **To:** "Twombly, James" <jtwombly@auroragov.org>
> **Cc:** "Hernandez Perez, Hans" <hhernand@auroragov.org>,

From: Earl Staelin <estaelin@comcast.net>
Sent: Tuesday, April 7, 2020 3:15 PM
To: Twombly, James <jtwombly@auroragov.org>; Marcano, Juan <jmarcano@auroragov.org>; Coombs, Alison <acoombs@auroragov.org>
Cc: 'Alexander Tsoucatos' <atsoucatos@yahoo.com>; 'Sang Kim' <sangwkim74@gmail.com>
Subject: Legal Memoranda Re Public Banking Issues

Dear Jim, Juan, and Alison,

Here is the Legal Opinion from the Office of Legislative Legal Services, their follow-up email regarding city and county public banks, and the Legal Memorandum by our Rocky Mountain Public Banking Institute that OLLS attached as an Addendum to their opinion. The latter covers a significantly broader range of legal and some practical question that arise in setting up a public bank, such as collateral requirements, FDIC, etc. Please forward to Ms. Velasquez, your City Attorney and anyone else you'd like to have review it.

We like Jim's suggestion of another call in a few weeks after Mr. Brotzman has had a chance to review these and respond.

Thanks very much for your time and interest.

Earl

LEGAL OPINION

TO: Representative Jonathan Singer

FROM: Office of Legislative Legal Services

DATE: October 18, 2019

SUBJECT: Creation of a state banking entity[1]

Legal Question

Would a statute that creates a state banking entity violate Colorado's constitution?

Short Answer

Probably not. The potentially applicable constitutional provisions do not appear to prohibit the creation of a state banking entity by statute. Given the general assembly's plenary authority and the presumption of constitutionality of duly enacted legislation, it is unlikely that the general assembly would need to obtain voter approval to amend the constitution to create a state banking entity.

[1]This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the general assembly. OLLS legal memoranda do not represent an official legal position of the general assembly or the State of Colorado and do not bind the members of the general assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the general assembly, OLLS legal memoranda generally resolve doubts about whether the general assembly has authority to enact a particular piece of legislation in favor of the general assembly's plenary power.

Discussion

1. The question relates to a proposal to create a state banking entity.

The creation of a state banking entity is not a new concept. Indeed, publicly owned banks have a long history:

> State-owned banks were common in the United States during the nineteenth century, and have been proposed in response to various economic and financial crises in the twentieth and early twenty-first centuries. However, the only U.S. state with an existing publicly owned bank is North Dakota. . . .
> During the Great Depression, Oregon voted on a referendum to create a state-owned bank. At least six states[2] explored starting a state-owned bank during the 1970s.[3]

Further, since 2010, state lawmakers in "at least 16 states have introduced bills either to study the issue or to create a state bank or investment trust."[4] Note that on September 20, 2019, California's legislature enacted a statute, AB 857,[5] which authorized local government-owned banks. A somewhat similar bill to authorize a state bank was converted by amendment to create a task force to study the issue, but the bill has not been enacted.[6]

A bank is an entity that accepts deposits and uses the deposits to make, purchase, or guarantee loans.[7] As described in the legal memorandum that accompanied your request,[8] the question presented relates to a bank that is wholly owned and operated[9]

[2] Including Colorado, according to *The Bank of North Dakota: A model for Massachusetts and other states?*, Yolanda K. Kodrzycki and Tal Elmatad; New England Public Policy Center, Research Report 11-2, p. 21, note 3 (May 2011), http://media.wickedlocal.com/patriotledger/documents/pdfs/fed-report.pdf (accessed on 9/26/19). If there was a Colorado legislative measure that proposed the creation of a state banking entity, this office could not locate it, so it is unknown whether a statutory or constitutional amendment was proposed.

[3] *Id.*, pp. 3 and 6.

[4] *Are State-Owned Banks a Viable Option?*, Heather Morton, NCSL LegisBrief, November/December 2011, Vol. 19, No. 45, p. 2.

[5] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB857

[6] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB528

[7] *See The Bank of North Dakota: A model for Massachusetts and other states?*, *supra* note 2, p. 5.

[8] The memorandum is attached as an addendum.

[9] A "public bank as we envision it would be wholly owned and controlled by the government entity that established it . . . . " Addendum, p. 17.

by an enterprise that is exempt from article X, section 20 of the Colorado constitution (the "Taxpayer Bill of Rights" or "TABOR") as a government-owned business[10] for the following purposes:

- To accept deposits [11] from and make loans[12] to public or private persons;
- That is subject to regulation as any other state-chartered bank;[13] and
- For the public purposes of, among others, creating new jobs, increasing employment, providing necessary services for the community, and increasing the tax base.[14]

This memorandum presumes that operating a bank is a valid "business" under TABOR for purposes of establishing a government-owned enterprise. Consequently, so long as the legislation creating a state banking entity otherwise complies with TABOR (i.e., the entity can issue revenue bonds and receives less than 10% of its "annual revenue in grants from all Colorado state and local governments combined"),[15] the state banking entity would be exempt from TABOR as an enterprise. Accordingly, this memorandum does not further analyze the compliance of an enabling statute for a state banking entity with TABOR.

The critical elements of this proposal that this memorandum will examine for compliance with potentially applicable constitutional requirements are making loans and accepting deposits.

[10] "Establishing a public bank as a TABOR enterprise in compliance with Article X, section 20 (2)(b) of the TABOR Amendment would exempt the bank from the TABOR restrictions on revenue and expenditures." Addendum, p. 3.

[11] A "public bank must be an eligible depository under Colorado law". Addendum, p. 4.

[12] A "public bank has its own source of income in the form of interest on loans that it makes." Addendum, p. 23.

[13] "We have assumed for purposes of this memorandum that a public bank owned by the state or local government would be regulated by the State Division of Banking and Banking Board under applicable laws and regulations." Addendum, p. 27.

[14] "A public bank's loans to private businesses . . . would be made for public purposes, such as [to] create new jobs, increase employment, provide necessary services for the community, increase the tax base, and the like." Addendum, p. 17.

[15] Colo. Const. Art. 10 §20 (2)(d): "'Enterprise' means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined."

2. The general assembly's plenary authority and attendant presumption of constitutionality favor its ability to create a state banking entity by bill.

The Colorado Supreme Court has repeatedly held that the general assembly's power is plenary and is limited only by express or implied provisions of the constitution.[16] The general assembly may therefore enact any law not expressly or inferentially prohibited by the Colorado or United States constitutions.[17]

The Colorado Supreme Court has held that there is a heavy presumption of constitutionality of enacted statutes and that the presumption of a statute's constitutionality can be overcome only if it is shown that the enactment is unconstitutional beyond a reasonable doubt.[18]

No Colorado constitutional provision explicitly prohibits the creation of a state banking entity. Several provisions might apply but have not been applied specifically to a state banking entity.

3. A public entity may constitutionally make loans.

The general assembly has created numerous state entities that administer loan programs. *See, e.g.*, the Colorado Water Resources and Power Development Authority;[19] and the Colorado Housing and Finance Authority (CHAFA),[20] both of which are political subdivisions of the state that are authorized to make loans.[21] These and other authorities are listed in section 24-77-102 (15), C.R.S., as "special purpose authorities," the revenues of which are excluded from the calculation of state fiscal year spending for purposes of section 20 (7)(a) of TABOR. *See also* the Colorado

[16] *People v. Y.D.M.*, 197 Colo. 403, 593 P.2d 1356 (1979).

[17] *People v. Y.D.M.*, *supra*; *Denver Milk Producers v. International Broth. of Teamsters*, 183 P.2d 529, 116 Colo. 389 (Colo. 1947).

[18] *Colorado Ass'n of Pub. Employees v. Board of Regents of the Univ. of Colo.*, 804 P.2d 138, 142 (Colo. 1990).

[19] Created in § 37-95-104 (1), C.R.S., as a "body corporate and a political subdivision of the state".

[20] Created in § 29-4-704 (1), C.R.S., as a "body corporate and a political subdivision of the state".

[21] The Colorado Water Resources and Power Development Authority administers two revolving fund loan programs: The water pollution control revolving fund, § 37-95-107.6, C.R.S., and the drinking water revolving fund, § 37-95-107.8, C.R.S. The authority makes loans from these two funds to governmental agencies and, in the case of the drinking water revolving fund, also to private nonprofit entities, and credits loan repayments to the respective funds to be used for new loans. The Colorado Housing and Finance Authority may make and purchase housing facility loans to "sponsors" (i.e., qualifying individuals, low- and moderate-income families, and legal entities) pursuant to § 29-4-710 (1)(a)(I), C.R.S.

Water Conservation Board,[22] which makes loans from the Colorado water conservation board construction fund[23] to public and private persons for use in water projects.

The ability of these entities to make loans has apparently not been challenged, and there is no Colorado constitutional provision that explicitly limits state entities' ability to make loans. Indeed, in at least two instances, the state constitution explicitly authorizes state entities to make loans.[24] Therefore, enacting a statute to give a state banking entity the ability to make loans would apparently not violate the constitution.

4. The acceptance of deposits by a state banking entity does not violate the constitutional prohibitions on the state contracting for debt by loan or pledging its credit.

With certain listed exceptions that do not apply here, article XI, section 3 of the Colorado Constitution prohibits the state from contracting "any debt by loan in any form . . . ." When a bank accepts deposits, the depositor may be viewed as loaning the money in the depository account to the bank. The account holder becomes a creditor of the bank; the bank becomes a debtor of the depositor. As a consequence, a depository account holder has a contractual right to the return of the holder's principal (and in most instances the interest) held in the depository account. If the general assembly were to create a state banking entity, this depository arrangement could be construed as a prohibited contract for "debt by loan."

However, a case relating to the constitutional validity of a statute that authorized CHAFA to issue revenue bonds construed this constitutional prohibition fairly narrowly. The Colorado Supreme Court held that "one legislature, in effect, must obligate a future legislature to appropriate funds to discharge the debt created by the first legislature"[25] for prohibited debt to be created. The court reasoned that the

[22] Created in § 37-60-102, C.R.S., as a state agency.

[23] Created in § 37-60-121 (1)(a), C.R.S.

[24] Colo. Const. art. IX, § 3 ("In order to assist public schools in the state in providing necessary buildings, land, and equipment, the general assembly may adopt laws establishing the terms and conditions upon which the state treasurer may . . . make loans [from the public school fund] to school districts."); Colo. Const. Art. XI, § 2a ("The general assembly may by law provide for a student loan program to assist students enrolled in educational institutions."). The general assembly has enacted § 22-2-125, C.R.S., to authorize loans from the public school fund and article 3.1 of title 23, C.R.S., to create the student loan division in the department of higher education as a TABOR enterprise and to direct the division to, among other purposes, guarantee student loans and purchase defaulted student loans.

[25] *In re Interrogatories by Colo. State Senate*, 566 P.2d 350, 355 (Colo. 1977).

purpose of article XI, section 3 of the Colorado Constitution is "to prevent the pledging of [state] revenues of future years."[26] The court therefore held that the statute authorizing CHAFA's bonds was constitutional, noting that the statute:

> does not create a "debt" within the meaning of section 3 because it does not create an obligation "that requires revenue from a tax otherwise available for general purposes to meet it."[27]

As noted above, this memorandum presumes that a state banking entity would be created as a TABOR enterprise, which must receive less than 10% of its annual revenue in grants from all Colorado state and local governments combined. The enacting statute would presumably not give the state banking entity any right to future appropriations to satisfy its debts or pay its operating expenses. Under this arrangement, the state banking entity would not have an enforceable right to future appropriations to satisfy any debts created by its depository accounts. Accordingly, debt prohibited by article XI, section 3 of the Colorado Constitution would not be created.

Similarly, article XI, section 1 of the Colorado Constitution prohibits the state from lending or pledging its credit, directly or indirectly, in any manner to any person. The CHAFA case discussed above also construed this provision, stating that its purpose was "to prohibit mingling of public funds with private funds."[28] As outlined in the following excerpt from the case, the court found that the bill authorizing CHAFA revenue bonds did not violate article XI, section 1:

> Does the appropriation provided for by House Bill No. 1247 constitute the lending or pledging of the state's credit within the meaning of and in violation of section 1 of article XI of the state constitution?
> The appropriation does not constitute a pledge of the state's credit in violation of section 1, article XI, of the Colorado Constitution. First, since no debt is created, there is no lending of credit. When no debt or obligation of the state is created, the state cannot be said to have lent its credit in violation of article XI, section 1.
> Second, the appropriation does not fall within the policy of section 1, which is, according to *McNichols v. City and County of Denver,* 101 Colo. 316, 74 P.2d 99 (1937), to prohibit mingling of public funds with private funds. The Authority is

[26] *Id.* (citations omitted).

[27] *Id.* (citations omitted).

[28] *Id.* at 356.

> not a "private" corporation but, as noted, is a body corporate and a political subdivision of the state.
> Third, the prohibition is inapplicable because the appropriation furthers a valid public purpose. The legislative declaration . . . emphasizes that it was compelled to establish the authority to meet critical needs in the areas of low and middle-income housing and to conserve scarce energy resources being consumed in inadequately designed and constructed housing.[29]

As concluded above, a depository account does not create debt; "since no debt is created, there is no lending of credit."[30] Similarly, a state banking entity would not be a private corporation, so the creation of such an entity would "not fall within the policy of section 1"[31] because there would be no mingling of public and private funds. Finally, a state banking entity would be created to promote the public purposes of, among others, creating new jobs, increasing employment, providing necessary services for the community, and increasing the tax base.[32] Because these appear to be valid public purposes, there is no violation of article XI, section 1 of the Colorado Constitution.[33]

Conclusion

The potentially applicable constitutional provisions do not appear to prohibit the creation of a state banking entity by statute. Given the general assembly's plenary authority and the presumption of constitutionality of duly enacted legislation, the general assembly would probably not need to refer a concurrent resolution to a vote of the people to create a state banking entity.

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[29] *Id.* (citations omitted).

[30] *Id.*

[31] *Id.*

[32] *See supra*, note 14.

[33] *See* the cases cited in the CHAFA case for the proposition that a valid public purpose insulates a statute from an argument that it violates Article XI, § 1: *McNichols v. City and County of Denver*, 131 Colo. 246, 280 P.2d 1096 (1955) (upholding the distribution of a retirement fund to the retirees as a valid exercise of the legislative power for a definite public purpose); *California Housing Finance Agency v. Elliott*, 17 Cal. 3d 575, 551 P.2d 1193 (CA 1976); *Minnesota Housing Finance Agency v. Hatfield*, 297 Minn. 155, 210 N.W.2d 298 (Minn. 1973); *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275 (Tenn. 1974); *State ex rel. West Virginia Housing Development Fund v. Waterhouse*, 158 W. Va. 196, 212 S.E.2d 724 (WV 1974).

ADDENDUM

DO THE CONSTITUTION AND STATUTES OF COLORADO ALLOW THE STATE AND LOCAL GOVERNMENTS TO ESTABLISH AND OPERATE PUBLIC BANKS?

LEGAL MEMORANDUM*

July 25, 2019

For purposes of this memorandum we shall define a public bank as a bank owned and operated by government. A few years ago, the Colorado Legislative Council and Office of Legislative Legal Services ("LC-OLLS"), in their Review and Comments memoranda in response to several successive ballot initiatives proposing a state-owned public bank, raised reasonable questions as to whether the Colorado constitution or statutes prohibit the establishment of public banks. The Review and Comment memos were prepared in compliance with Colorado statute C.R.S. 1-40-105(1). Consistent with the statutory duties of LC-OLLS, their memos did not include any legal memoranda, legal opinions, or legal research on the points they raise, but they did cite specific sections of the Constitution and statutes whose language would or might appear to raise questions as to the legality of public banks.

This memorandum provides legal research on each of the issues raised by LC-OLLS as well as a few other relevant legal issues, with a goal of determining whether the Colorado constitution and statutes currently allow the establishment of public banks. We encourage a thorough evaluation of our research to accurately assess the present state of Colorado law on each of these issues.

The correct answers to these questions will enable us to determine whether any constitutional amendments or statutory revisions are necessary or would be helpful to facilitate the establishment of successful public banks in Colorado.

Conclusion: In our opinion the Colorado constitution does not prohibit the state or any political subdivision from having its own public bank or banks. As we will show, the purpose of the constitutional provisions in question was to deal with problems quite different from public banks and how they are operated. Further, we conclude that a reasonable argument can be made that home rule cities and towns already have the right to establish their own public banks, and that the legislature could authorize home rule counties to establish their own public banks. However, we believe state legislation would be useful to clearly authorize home rule cities, towns, and counties to establish their own public banks, and to allow the state and local governments to obtain a state bank charter under state law.

The sections of the Colorado constitution and statutes that have been cited as possibly raising questions about the legality of public banks are listed here with our opinion on the matter. The research and analysis for our opinion follows in the body of this memorandum.

A. Colorado Constitution

1. The constitution imposes restrictions upon a government lending its credit to another and upon investing in or entering joint ventures with private companies: Article XI, sections 1 and 2.

Article XI, section 1 of the constitution prohibits the state and political subdivisions from lending their credit to a private person or company, unless such measure is for a public purpose. A public bank would not violate that section because lending one's credit is not the same as lending money, and if lending one's credit, i.e. guaranteeing the loan of another, is done for a public purpose, it is not prohibited.

Article XI, section 2 prohibits the state and political subdivisions from making grants or donations to a private company, or entering a joint venture with a private company, unless such measure is for a public purpose. A public bank would not be making grants or donations to private companies, and any loans to private companies or parties would be for a public purpose.

2. The constitution's Article XI restrictions on government debt: Article XI, sections 3, 4, and 6.

Article XI, section 3 prohibits the state from borrowing by loan or in any other form, except for certain limited purposes, namely erect buildings for state use.

Article XI, section 4 prohibits the state from borrowing money unless an irrepealable tax is passed to ensure full repayment.

Article XI, section 6 prohibits political subdivisions of the state from contracting general obligation debt by loan unless an irrepealable tax is passed to pay the loan in full, except for home rule communities whose charters don't require a vote of the people for such purpose.

Sections 3, 4, and 6 of Article XI, do not prohibit public banks, although as we will show, they may have some effect on the ability of the state or a political subdivision to borrow from its own public bank when needed or to borrow money for large projects.

3. TABOR Restrictions on government debt: Article XX, section 20 (4)(b).

Article X, section 20 (4)(b) of the constitution's TABOR Amendment prohibits the state or political subdivision from contracting multiple-fiscal year direct or indirect debt without adequate present cash reserves pledged irrevocably and held for all payments. A public bank

operated as an "enterprise" would be exempt from that provision because the term "district" which means the state or a political subdivision as defined in Article X, §20 2(b), expressly excludes enterprises.

4. **The TABOR Amendment's restrictions on revenue and expenditures of the state and political subdivisions, which are defined as "districts," would not apply to a public bank provided it is operated as a self-sustaining enterprise.**

Establishing a public bank as a TABOR enterprise in compliance with Article X, section 20 (2)(b) of the TABOR Amendment would exempt the bank from the TABOR restrictions on revenue and expenditures.

5. The constitution may allow home rule cities and towns in Colorado to establish their own public banks.

Colorado constitution Article XX, sections 1, 4, 5, and 6 - Home Rule for Cities and Towns - authorizes home rule cities and towns to pass laws that don't conflict with state laws of statewide concern, which would appear to permit public banks.

6. Can home rule counties in Colorado establish their own banks?

Colorado constitution Article XIV, §16 (4) provides that state statutes may grant home rule counties any powers that are not prohibited or limited by charter or the constitution. Therefore, the state legislature could authorize home rule counties to establish their own public banks.

B. Colorado Statutes

1. Can a public bank obtain a charter as an LLC in Colorado?

C.R.S. § 11-102-104 (5.5) (a) provides that a limited liability company (LLC) as defined in CRS §7-80-102 may apply for and obtain a Colorado bank charter.

C.R.S. §7-80-203 provides that one or more persons may form an LLC and the persons need not be individuals.

C.R.S. § 7-80-204 (d) (III): An LLC's articles of organization must provide that it has at least one member.

Neither the Colorado constitution nor state legislation contains a restriction on a home rule city or town owning and operating an LLC.

2. Can a public bank obtain a charter as a banking corporation in Colorado?

C.R.S. §11-103-301 provides that five or more individuals as incorporators may apply for a charter as a bank in Colorado, each having paid in cash for 1% or more in par value of the capital and paid in surplus of the bank. Perhaps the state or local government could use that provision through its employees, although at best it would be awkward.

3. A public bank must be an eligible depository under Colorado law. Can a public bank of the state or of a local government meet these provisions?

C.R.S. §11-10.5-106 states that a bank must be a member of the FDIC in order to be an eligible depository for public funds, which are defined as deposits from a governmental unit such as the state, city, town, or county.

C.R.S. § 11-10.5-107 provides that a bank must have 102% collateral for its deposits of public funds.

C.R.S. §24-75-603 provides that it is lawful for cities, counties, and banks to place deposits in certain depositories, including those with 102% collateral for its deposits.

C.R.S. § 11-103-304 provides that when the banking board grants a charter it shall make it contingent upon the bank applying for membership in the Federal Reserve or the F.D.I.C.

Discussion and Analysis

A. Constitutional Provisions.

I. Article XI, §1, which prohibits the state and political subdivisions from lending their credit to another party does not prohibit them from lending money or operating a bank.

Article XI, Section 1 of the Colorado Constitution, "Pledging Credit of State, County, City, Town or School District Forbidden," reads as follows:

> Neither the state, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of, any person, company or corporation, public or private, for any amount, or for any purpose whatever; or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state. (emphasis added) (effective August 1, 1876, see L. 1877, p. 60.)

First, we will examine the section to determine the plain meaning of the words and whether they appear to prohibit a city from lending money to any person or corporation, public or private. Then we will briefly look at the origin and history of this provision and similar provisions enacted in some 45 states. Finally, we will examine Colorado cases to see how they

interpret this section and whether they provide any authority for concluding that the section prohibits the city from operating a bank or lending money.

1. Plain meaning of words in section. A careful reading of the entire section reveals that it does not mention the word "money" or "lending of money," nor does it expressly or impliedly prohibit the state or any political subdivision from lending "money". It only states that the city cannot "lend or pledge" its "credit or faith" directly or indirectly, to another person, company or corporation, public or private, or become responsible for the debt or obligation of another person. The verbs "lend" and "pledge" have as their objects the nouns "credit" and "faith".

So we need to ask what it means to "lend or pledge" one's "credit or faith" to another. *Merriam Webster* online provides a definition of the word "lend" that appears to fit this context as follows: "to make (something) available to (someone or something)." Using this meaning, the section prohibits the city from making its credit available to another person, company, or corporation, public or private.

We next consider the definition of the word "credit". The first online definition of "credit" that comes up in a Google search appears to apply to this situation:

noun: credit
1. the ability of a customer to obtain goods or services before payment, based on the trust that payment will be made in the future.

In order to make its credit available to another, the state, city, or county would need to guarantee a loan, or co-sign a loan to another party, or perhaps agree to indemnify another party against a loss caused by the party to whom the credit is loaned or pledged.

When a government entity guarantees a loan, the lender is relying upon the "loaned" credit of that entity instead of solely upon the credit of the borrower. The term "lend one's credit" or "pledge one's credit or faith" would thus appear to apply to a situation where a city (or other governmental unit) uses its good credit, that is, its ability to obtain a loan, to enable another person to obtain a loan or other benefit, such as by guaranteeing payment of a loan made to that person.

2. The origin and history of state constitutional prohibitions against lending a government's credit to private parties shows they do not prohibit lending money or banking.

The problems addressed by Colorado's constitution Article XI, §1 and 2 were the subject of an A.L.R. report. At 152 A.L.R. 495 it was stated:

> Early in the nineteenth century it seems to have been the general practice of states to encourage the building of railroads by permitting the state or a subdivision thereof to purchase stock in railroad corporations, to issue bonds or lend credit in aid of railroads, or to make outright donations to them. However, due to the large

> number of insolvencies of railroads, caused by frauds or economic conditions, states and subdivisions thereof found themselves largely indebted, and were themselves occasionally insolvent because of large investments in such enterprises. Therefore, a reversal of policy set in. As early as 1851 Ohio adopted a constitution containing a provision prohibiting stock subscriptions or other forms of aid to corporations. In the ensuing twenty-five years most of the other states adopted similar provisions, either prohibiting aid altogether or requiring a vote of the people before a subscription to stock or other sort of aid could be made or extended. At present, at least thirty-eight states have such constitutional provisions, and several have statutory provisions on the subject.

A later updated summary of the early 19th century origin of state constitutional prohibitions against lending the credit of the state or its political subdivisions to private parties or investing in enterprises jointly with private parties is found in the article: "State Constitutional Provisions Prohibiting the Loaning of Credit to Private Enterprise--A Suggested Analysis," 41 *U. Colo. L. Rev.* 135-151 (1969), by Arthur P. Roy. As a result of the failure of such investments, especially in private railroads, 45 states, including Colorado, as of that time had enacted provisions to prevent states and cities from lending their credit to private corporations, such as by guaranteeing such obligations, and from engaging in joint ventures with private corporations. (See list of states at 136-137)

When the State of Colorado was created in 1876, it included the protection against lending the state's or a political subdivision's credit in its Constitution as Article XI, section 1, and its protection against engaging in joint enterprises with private corporations in Article XI, section 2. Section 1 has remained unchanged ever since. Colorado's provision is comparable to those in other states although it is broader in scope and its restrictions are more specific.

These types of restrictions generated "considerable litigation challenging programs which effectuate a partnership between public and private capital... the vast majority" of which involved municipal corporations (Roy, *supra*, at 135). The author stated:

> From this historical background, it is evident that the purpose of this provision was to protect the property tax base from debts resulting from private mismanagement by preventing private speculation with public funds (p. 138).

The author goes on to cite numerous cases decided in Colorado and other states, all of which reflect a common purpose to prevent government from lending its credit to private enterprises, except when done for a public purpose. The Colorado cases clearly distinguish between lending money to a private party and lending one's credit to a private party.

3. Federal due process underlies these state constitutional lending and aid restrictions.

In 1874 the U.S. Supreme Court in *Citizens' Savings & Loan Association v. Topeka*, 87 U.S. 655, 659 (1874) declared that there can be no lawful taxation which is not for a public purpose.

In *Green v. Frazier*, 253 U.S. 233 (1920) the U.S. Supreme Court applied the principle declared in *Topeka* to the states, whereby when government money is used in connection with a private project or party it must be used for a public purpose:

> Before the adoption of the Fourteenth Amendment this power (taxation) of the State was unrestrained by any federal authority. That Amendment introduced a new limitation upon state power into the Federal Constitution. The States were forbidden to deprive persons of life, liberty and property without due process of law....

The due process of law clause contains no specific limitation upon the right of taxation in the States, but it has come to be settled that the authority of the States to tax does not include the right to impose taxes for merely private purposes. 253 U.S. at 238.

During the 19th century, a number of states had publicly-owned banks. The drafters of the Colorado Constitution and other state constitutions could easily have added language to prohibit a state or political subdivision from operating a bank or from lending money. The fact that they did not do so makes it apparent that they did not intend to prohibit states from operating banks or from joint ventures with private companies, to which an exception has been established by case law when the operation is undertaken to achieve a public purpose.

4. Colorado Case Law. Numerous Colorado cases have interpreted Article I, section 1. These cases make clear that the prohibition applies only to the lending of the city's "credit" to another party. It prohibits the state and political subdivisions from guaranteeing or co-signing a loan made to a third party. None of the cases suggests that the section might prohibit the entity from operating a bank or lending money to another party.

In *Mayor v. Shattuck*, 34 P. 947 (Colo. 1893) the Supreme Court clearly follows this interpretation of Article XI, §1 as follows: "This section is to be construed as prohibiting a town, or city by its own voluntary corporate act from pledging its credit to, or becoming responsible for, any debt, contract, or liability, in aid of a *third party*."

In the case *Bd. of County Comm'rs v. Humes*, 356 P.2d 910, 910 (Colo. 1960) the Colorado Supreme Court held that a county may not be a guarantor and that Article XI, section 1 of the constitution prevents the county from standing in the position of a guarantor for the debts of an individual.

In *Witcher v. Canon City*, 716 P.2d 445, 448 (Colo. 1986) the Colorado Supreme Court held that "there was no pledge by the City of its credit" and thus the prohibition against lending its credit was not violated. The Court held:

> Here, the contractual obligation to third parties for the construction of the improvements to the Royal Gorge Bridge is solely that of the Company and not the City. Although the City is participating in the modernization by allocating to the project a portion of the tax and toll revenue generated by it, this does not constitute an unconstitutional pledge of the City's credit to the Company. (716 P.2d at 454)

This case also confirms that the prohibition is directed against using the city's credit to aid a third party and is not violated when the sole obligation is that of a private company.

In the case *In re Colorado State Senate etc.*, 566 P.2d 350, 356 (Colo. 1977) the Supreme Court held: "When no debt or obligation of the state is created, the state cannot be said to have lent its credit in violation of article XI, section 1." The Court also held that a proposed appropriation did not violate this section. In that case a proposed house bill appropriation was to be deposited in a capital reserve fund to secure obligations of the housing finance authority. The Court held that the appropriation did not constitute a pledge of the state's credit in violation of this section. Moreover, in the case the housing finance authority is the lender. The housing finance authority is one of a number of examples of the state or a political subdivision of Colorado lending money, with no suggestion that such lending violates Article XI, section 1, which only prohibits lending the "credit" of the state or political subdivision, not the lending of "money".

In *Bradfield v. City of Pueblo*, 354 P.2d 612, 618 (Colo. 1960) the Court held: "The bonds here are those of the City. Art. IX, Sec. 1, cannot be so construed as to keep the state or any subdivision thereof from pledging its own credit for its own debts or obligations as may be permitted by law...." Thus, a city-owned bank could "lend its credit" to guarantee a loan made to the city.

5. The case law of other jurisdictions supports this interpretation.

In Utah, a government entity may make direct loans and not be a lender of credit; it would, however, be a lender of credit if it were guarantor of another's debts. Thus, the lending of state funds is not "lending of credit." *Utah Tech. Fin. Corp. v. Wilkinson*, 723 P.2d 406, 412 (Utah 1986). This was from a challenge to an act that allowed UTFC, a state-run entity, to make direct loans to small businesses, with a public purpose of small business development.

In Wyoming, if a city's credit is not itself put at risk, then there is no constitutional prohibition. "This does not prohibit a city from aiding or benefiting a corporation, if its credit is not involved." *Uhls v. State ex rel. City of Cheyenne*, 429 P.2d 74, 83 (Wyo. 1967).

Similarly, in Michigan, the purpose of the constitutional prohibition against the lending of credit by the state is "to ascertain that the state, which generally cannot borrow, does not accumulate unauthorized debts by guaranteeing the debts of others." M.C.L.A. Const. Art. 9, § 18; *Wayne Cty. Bd. of Comm'rs v. Wayne Cty. Airport Auth.*, 253 Mich. App. 144, 658 N.W.2d 804 (2002). Note that Michigan's constitutional prohibition against lending of credit contains a specific caveat within the clause: The Michigan Constitution provides that "[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution." Const. 1963, art. 9, § 18. And again, in Utah, lending of credit is prohibited by the state constitution if the state acts as a surety or guarantor of another's debts. *Healthcare Servs. Grp., Inc. v. Utah Dep't of Health*, 2002 UT 5, 40 P.3d 591.

The threshold might be whether there is a "binding obligation" on the government entity. Thus, Utah again: "If the legislation requires future appropriations to defray the obligations of the Agency it would be invalid as lending the state's credit, but where, as here, it merely allows future appropriations without requiring such, it creates no binding obligation upon the state and therefore does not result in a debt of the state or the lending of the state's credit." *Utah Housing Finance Authority v. Smart*, 561 P.2d 1052, 1056 (1977).

In conclusion, the plain meaning of the words in Article XI, section 1, the original purpose and history of the section, and Colorado case law make clear that the prohibition against lending or pledging the credit of a city, i.e. its ability to pay its obligations, to another person or entity applies solely to cases in which the city guarantees or otherwise assumes the obligation of another party. There is no indication that it would prohibit a city from lending money to third parties or to itself or from operating a public bank.

II. Article XI, §1 permits the city to "lend its credit" to another for a public purpose.

As shown below, Colorado has relaxed the requirement of Article XI §2 of its Constitution to permit a city to give aid to a corporation or company or enter a joint venture with a corporation or company provided it fulfills a "public purpose." In the law review article discussed above, Mr. Roy states:

"It is not uncommon for a court to rule that the credit lending provisions do not prohibit aid to state agencies such as port authorities, housing authorities, etc., but most such cases turn more on public purpose than the nature of the recipient. Based on the narrowly defined purposes of the credit lending provisions, aid to governmental units,

where a direct benefit is realized by the assisting governmental unit, should be outside the credit lending prohibitions." (41 U. Colo. L. Rev. 135 at 149-150) *Orbison v. Welsh*, 179 N.E.2d 727 (Indiana 1962) (the funds to repay the bonds of the Indiana Port Commission were to come from revenue of the Commission, a separate entity from the state and did not obligate the state. Therefore, they did not violate the constitutional provision against the state contracting a debt).

The Bank of North Dakota (BND) regularly lends its credit to private community banks through guarantees of loans it makes jointly with community banks, and also through letters of credit to back such loans. These actions facilitate the loans and help achieve a lower interest rate. Such practice has made North Dakota's community banks stronger and reduced the risk of default on such loans. Evidence of the benefits of such guarantees to the state of North Dakota is abundant: for many years the state has had no bank failures. It also has had the lowest unemployment rate, one of the lowest home foreclosure rates, and the lowest credit card default and student loan default rates in the country. It has by far the highest number of community banks per capita. Further, the BND has achieved an average 18% return on equity over the past 16 years.

Assuming home rule cities and counties or the state of Colorado were to establish public banks with a structure and practices comparable to the BND, a solid case can be made that lending their credit by guaranteeing loans or providing letters of credit to local private community banks would provide substantial public benefit to their local communities by strengthening the ability of the community banks to make loans to small and medium sized business, agriculture, student loans, loans for education, affordable housing, clean energy, health services in underserved areas, environmental cleanup, and other public purposes. By lending its credit to these banks with loan guarantees, and lending a little more in an economic decline, the BND prevented any recession from occurring in 2008 and after. A public bank would thereby create many well-paying jobs and a strong and stable local economy, just as the BND has done in North Dakota for the past 100 years. Additional sources of public benefit are that a state, city, or county public bank, like the BND, after approval of the loan by a private community bank, would review the loan applicant's credit worthiness and the nature and terms of the loan before agreeing to back the loan, thus creating a second level of review for greater protection. Therefore, many compelling grounds exist for the Colorado courts to find a "public purpose" exception to the prohibition on the state, city, or other political subdivision lending its credit to a private business or person through its own public bank.

Other jurisdictions support the public purpose exception. In these lines of case law, a policy is buffered from constitutional criticism regarding the lending of credit *at the point that such an act is identified with a "valid," "strong," or otherwise qualified public purpose.* Because

of this, it should be emphasized that there is strong precedent to allow government entities to function, essentially, as lenders and as guarantors of loans.

Both constitutional prohibitions—against the lending of credit and against "gifting"—are put aside if the policy serves a public purpose. See, e.g., *State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 75 (Mo. 1975) ("Even if the activities of the Authority, in receipt and disposition of funds, were to be construed as a 'lending of credit' or 'grant of public money,' the same would not be proscribed by §§23 and 25 of Art. VI of the Missouri Constitution in view of the obvious 'public purpose.").

Similarly, in Utah, a "Housing Finance Agency Act" served a public purpose "to alleviate an actual and existing problem having significant affect (sic) upon the public health, safety, and welfare." *Utah Hous. Fin. Agency v. Smart*, 561 P.2d 1052, 1054 (Utah 1977). This public purpose construal was sufficient to rebuff a constitutional challenge based on the Finance Authority essentially acting as a bank in lending money to private entities. The Act permitted the Agency to obtain funds from notes and bonds (essentially the capitalization of its banking capacity) and then to make those funds "available on a low interest basis for the financing of the purchase, construction, or rehabilitation of housing for low and moderate income persons." 561 P.2d at 1053. The court wrote:

> The Agency may adopt a number of techniques for making its funds available. It may make direct loans through qualified mortgage lenders to individuals for purchase, construction, or rehabilitation of housing. It may create a housing rehabilitation fund for direct loans for rehabilitation of low and moderate income housing. It may make loans to local housing authorities for purchase or construction of low and moderate income housing. It may purchase loans from qualified mortgage lenders, providing that the funds paid the lender by the Agency will be used by the lender to make low interest mortgages to low and moderate income persons as defined by the Agency. *Id.* at 1053.

The court pointed out that "[m]any states with similar statutes have held that a public purpose is served by similar provisions for low income housing acts." *Id.* (citing *California Housing Finance Agency v. Elliott*, 551 P.2d 1193 (Cal. 1976); *Rich v. State of Georgia,* 227 S.E.2d 761 (Ga. 1976); *In re Constitutionality of ORS 456.720 v. Smith,* 537 P.2d 542 (Or. 1975); *West v. Tennessee Housing Dev. Agency,* 512 S.W.2d 275 (Tenn. 1974); *Vermont Home Mortgage Credit Agency v. Montpelier National Bank*, 262 A.2d 445 (Vt. 1970)). Nearly all such housing acts call for government entities to function as lending authorities.

Construed broadly: Beyond just the lending of credit, "public purpose" is also to be broadly construed in most jurisdictions in general, and broad construal appears to be the

consensus of legal scholars. *Dannheiser v. City of Henderson*, 4 S.W.3d 542, 546–47 (Ky. 1999) "Other municipal text writers have correctly stated that 'public purpose' should be broadly construed to comport with the changing conditions of modern life." (citing Eugene McQuillen, *The Law of Municipal Corporations*, § 39.19).

Similar expressions of the breadth of public purpose doctrine may be found in New Hampshire, *Opinion of Justices*, 288 A.2d 697 (N.H. 1972); Kansas, *Duckworth v. City of Kansas City*, 758 P.2d 201 (Kansas 1988); Oklahoma, *Burkhardt v. City of Enid*, 771 P.2d 608 (Okla.1989); Oregon, *Carruthers v. Port of Astoria*, 438 P.2d 725 (Or. 1968); South Dakota, *Clem v. City of Yankton*, 160 N.W.2d 125 (S.D.1968); Florida, *Linscott v. Orange County Industrial Development Authority*, 443 So.2d 97 (Fla. 1983); Delaware, *In re Opinion of Justices*, 177 A.2d 205 (Del.1962); Connecticut, *Roan v. Connecticut Industrial Building Comm.*, 189 A.2d 399 (Conn. 1963); *Wilson v. Connecticut Product Development Corp.*, 355 A.2d 72 (Conn. 1974); and Nebraska, *Chase v. County of Douglas*, 241 N.W.2d 334 (1976).

"If an act serves a public purpose it will not be inconsistent with constitutional prohibition against the lending of credit or the appropriating of money by a municipality to any person notwithstanding the fact that the proceeds or profit may inure as a result of the act to a private individual." *Fraternal Order of Firemen of Wilmington, Del., Inc. v. Shaw*, 196 A.2d 734 (Del. 1963).

Reasonable construction is sufficient; strict scrutiny is not required. Finally, it is important to note that reasonable construction is sufficient: a court will not strictly evaluate whether the policy meets its intended public purpose goal. The Kentucky example shows how public purpose exceptions are not strictly scrutinized: "the City must only prove that the development bears a reasonable or sufficient relationship to the purpose of economic growth. As long as there is a sufficient relation to the accomplishment of a legitimate public purpose, there is no necessity for the courts to interfere with the determination of public purpose." *Dannheiser*, 4 S.W. 3d at 548.

Public welfare: The Ohio Const. art. VIII, § 6 provides in part:

No law shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association." (emphasis added)

The Ohio Supreme Court, in *State ex rel. Tomino v.* Brown, 549 N.E.2d 505, 508 (Ohio 1989), considered the constitutionality of an ordinance that called for the construction of subsidized housing for individuals and thus involved the *lending of the credit* of the city to enable the purchasers to buy the houses. The Respondent, Director of Finance for the city of Cleveland

had refused to approve the certificates for payment, contending that the transaction may violate the above provision of the constitution as an unlawful lending of the city's credit in aid of private parties. The Court granted a writ of mandamus to compel the issuance of the certificates, holding as follows: "We find that there will be a lending of the city's credit to purchasers of the units. However, since this lending of credit is for a public welfare purpose, and not a business purpose, it is not prohibited by Section 6 of Article VIII."

Risk under public control. In the state of Washington, if risk to taxpayers remains under public control in the execution of lending for a public purpose, there is no constitutional violation concerning the state's credit. *Washington State Hous. Fin. Comm'n v. O'Brien*, 671 P.2d 247, 251 (Wash. 1983). The Supreme Court stated:

Relief of unemployment is a valid public purpose even if the state incurs indebtedness. *Hayes v. State Prop. & Bldgs. Comm'n*, 731 S.W.2d 797, 800 (Ky. 1987) (citing *Industrial Development Authority v. Eastern Kentucky Regional Planning Com.*, 332 S.W.2d 274, 277-78 (Ky. 1960).

Environmental quality: Environmental improvement loans in Missouri did not violate constitutional prohibition against lending of credit. "Even if the activities of the Authority, in receipt and disposition of funds, were to be construed as a 'lending of credit' or 'grant of public money,' the same would not be proscribed by §§ 23 and 25 of Art. VI of the Missouri Constitution in view of the obvious 'public purpose.'" *State ex rel. Danforth v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 75 (Mo. 1975). Environmental quality is a public concern. *Annbar Associates v. West Side Development Corp.*, 397 S.W.2d 635 (Mo. banc 1965).

If for the Benefit of the State: Both Virginia and Kentucky courts have reasoned that when the underlying purpose of a government transaction involving a financial obligation is to benefit the State, *even when the state incurs debt as a result*, the constitutional prohibition against lending the State's credit is not violated. See *Almond v. Day*, 91 S.E.2d 660, 667 (Va. 1956) "Merely because the State incurs an indebtedness or expends its funds for its benefit and others may incidentally profit thereby does not bring the transaction within the letter or the spirit of the 'credit clause' prohibition."

Public Purpose is Always Changing: Public purpose is constantly changing. *Laret Inv. Co. v. Dickmann,* 134 S.W.2d 65, 68 (Mo. 1939):

To be guided solely by whether a given activity had, at some previous time, been recognized as a public purpose would make the law static. Such a standard would compel us to retain in the law, as appropriate for public expenditure, activities which have ceased to be of public concern; and would prevent us from adopting new public functions regardless of how essential to the public welfare they may have become by reason of

changed conditions." *State v. Land Clearance for Redevelopment Auth.*, 270 S.W.2d 44 at 50 (Mo. *en banc* 1954).

Public Purpose, "Donations and Grants," and Public Bank Below-Market Interest Rates: On its face, a public bank *lends* money; this lending comes with an intrinsic or definitional expectation; the loan has legitimate components: principal, interest, and collateral, the promise to repay it, and to pledge collateral to secure repayment. The purpose, on the other hand, of the constitutional prohibition against donations and grants, is "to prohibit the state or a political subdivision from transferring public funds to a private company or corporation *without receiving any consideration in return.*" *City & Cty. of Denver v. Qwest Corp.*, 18 P.3d 748, 758 (Colo. 2001) (emphasis added) (citing *City of Aurora v. Pub. Utils. Comm'n*, 785 P.2d 1280, 1288 (Colo. 1990); *Lord v. City & County of Denver*, 143 P. 284 (Colo. 1914) (holding that an agreement by the City and County of Denver to aid a railroad company in connection with the construction of the Moffat Tunnel violated Article XI, section 2); *Colo. Cent. R.R. Co. v. Lea*, 5 Colo. 192 (1879) (invalidating agreement under which Boulder County planned to transfer 2,000 shares of stock to a railroad upon the railroad's completion of an extension of its line to Cheyenne, Wyoming)). *See also Northlake Marine Works, Inc. v. City of Seattle*, 857 P.2d 283 (Wash. App. 1993) ("In order to determine whether gift has occurred in violation of constitutional prohibition against gifts of public property and lending of credit, it is necessary to find that property has been transferred with donative intent and without consideration; if donative intent cannot be proven, adequacy of consideration will not be closely scrutinized, but assessed for legal sufficiency") (citing West's RCWA Const. Art. 8, § 7).

Absent the public purpose exception, there is a scenario where a public bank might be thought to be subject to the constitutional prohibition on donations and grants. This objection would stem from the public bank's ability to lend at below-prevailing-rate interest. A public bank that lends at an interest rate that is "below market value" may arguably be subject to the charge of making a "donation or grant in aid." Fair market value is a common test or threshold for the conferral of a "donation or grant in aid." See *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374, 1383-84 (Colo. 1980) (citing *Chitwood v. City and County of Denver*, 201 P.2d 605, 608 (Colo. 1948).

But the public purpose exemption justifies policies like a public bank lending at lower interest rates than the private banking norms of the moment. Even if the actions of a government entity result in a monetary benefit being conferred upon a private entity, Art. XI sec. 2 does not bar such conferral if it is associated with action that furthers a valid public purpose. *City & Cty. of Denver v. Qwest Corp.*, 18 P.3d 748, 758 (Colo. 2001).

One example that Colorado courts see as being compatible with a public purpose are urban renewal projects, which Colorado sees as serving such a "strong public purpose." See *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374, 1383-1384 (Colo. 1980) (no violation of Colo. Const. Art. XI, §2; citing *Pillar of Fire v. DURA*, 509 P.2d 1250 (Colo. 1973).

Therefore, even if a bank's lending function is not enough to resist charges that a public bank is a government entity conveying a gift, grant, or donation (where such a charge would stem from public bank's ability to lend at extremely low interest), the public purpose exception allows such conferring of benefit to a private entity in the furtherance of a strong public purpose—like urban economic development.

II. Article XI, §2 Prohibition Against Donations, Grants, or Joint Ownership

1. Article XI, § 2, "No Aid to Corporations - No Joint Ownership by State, County, City, Town, Or School District," reads as follows:

> Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private, in or out of the state, except as to such ownership as may accrue to the state by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the state, or to any county, city, town, township, or school district, or to either or any of them, jointly with any person, company, or corporation, by forfeiture or sale of real estate for nonpayment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties, or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested. Nothing in this section shall be construed to prohibit any city or town from becoming a subscriber or shareholder in any corporation or company, public or private, or a joint owner with any person, company, or corporation, public or private, in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town. (emphasis added) (Colo. Const. Art. XI, Section 2) (emphasis added)

The above section contains several prohibitions and an express authorization for energy purposes, which we will evaluate as to whether they either prohibit or allow a home rule city or county to own and operate a corporation or LLC chartered as a bank in Colorado. We will discuss these provisions one at a time.

Clarifying the terms "public" and "private." At the outset of this memorandum we defined a "public" bank as a bank owned and operated by government. However, as commonly used in regard to a corporation, "public" refers to a corporation or company whose stock or certificates of ownership are sold publicly to any would-be buyer on the stock market or other

public market, as opposed to a "private" sale of stock to someone known to or approved by the seller. As used in the above Article XI, §2, the term "public" refers to stock or interests sold publicly on the stock market or other public market, and not to government ownership, and the term "private" refers to a company whose stock or ownership interests are not sold to the public on a stock market or similar public venue. Thus, as correctly understood, Article XI, §2 prohibits government investment in non-government owned businesses. Thus, for example, Article XI, §2 does not prohibit a city from owning and controlling 100% of a bank, i.e. a "public bank" as defined herein. To avoid confusion, when we use the terms "public" and "private" herein we will make clear which definition of those words we are using.

Prohibition on donations and grants: Article XI, section 2 prohibits the state, city, county, town, township, or school district from making a donation or grant to a private person, corporation, or company. Because a borrower must pay back the principal and any interest, an ordinary loan by a bank is not a grant or donation. Therefore, this language clearly would not prevent a city from lending money or operating a bank.

Prohibition of stock ownership, or joint ownership with a privately-owned corporation or company: Using the term "public" as clarified above, Article XI, §2 prohibits the state, and political subdivisions from subscribing to or owning interests in a privately owned corporation, and from joint ownership with such entity, "except as to such ownership as may accrue to the state" in a variety of specified circumstances, each of which involves a public benefit conferred upon or received by the government, such as by force of law, or when a governmental unit is the passive recipient of the private interest. Article XI, §2 does not appear to prohibit a governmental entity from owning and controlling 100% of a corporation or company because with such ownership it would not own any interest in a privately-owned corporation.

Public purpose exception. Furthermore, Colorado case law eventually established that conferring a benefit upon a private corporation is not prohibited as long as the project is for a "public purpose." *In re Interrogatory Propounded by Governor Roy Romer*, 814 P. 2d 875, 882 (Colo. 1991). In that case, although the bill in question did not specifically mention United Airlines, it was clear that the bill if passed would facilitate the construction of a maintenance facility for airplanes that all parties acknowledged would benefit United Airlines and presumably enable it to stay in Denver. However, the bill also would create many new jobs at substantial pay, and thus give a boost to the Colorado economy. The Supreme Court of Colorado held that despite the benefit to a major airline corporation, the bill served a "public purpose" and thus did not violate Art. XI, § 2 of the Constitution. The court relied upon a long line of Colorado cases in which private corporations or parties were benefited by legislation, but which the Court upheld as constitutional because it served a public purpose.

The court in *Romer* stated: "At first this prohibition of aid to corporations, absent consideration, was strictly enforced," citing *The Colorado Central R.R. v. Lea,* 5 Colo. 192 (1879) in which the court declared null and void a donation of 2,000 shares of stock belonging to Boulder County, to the Colorado Central Railroad Company. The Court in *Romer* then stated: "Notwithstanding the apparent absolute prohibition of article XI, section 2, a 'public purpose' exception has evolved," citing *McNichols v. City & County of Denver*, 280 P.2d 1096 (1955), which upheld an ordinance establishing a retirement program for city employees based upon the plan's "public purpose". 814 P. 2d at 882.

Legislation is presumed to be constitutional, and won't be declared unconstitutional unless established beyond a reasonable doubt. In *Romer* the Court further followed long-standing precedent by holding that "A bill that has been enacted by the General Assembly is 'presumed to be constitutional and cannot be declared unconstitutional unless that conclusion is established beyond a reasonable doubt.'" 814 P.2d at 883.

Thus, Article XI, §2 does not prohibit legislation that benefits a private corporation or company provided that the legislation serves a "public purpose." Therefore, the state, a city, or county may "become a subscriber to, or shareholder in" a "corporation or company or a joint owner" with a "company, or corporation" provided it is for a public purpose. Actually, the state, cities, and counties legally and regularly invest in the stocks of many different companies, typically a small percentage of the company's total stock and a limited percentage of the government's total investments, with no right of control over the company, under state statutes and municipal charters or ordinances that authorize such investments and prescribes rules and limits on such investments. However, a public bank as we envision it would be wholly owned and controlled by the government entity that established it and would not contravene this section. A public bank's loans to private businesses would not involve the bank in becoming shareholder or subscriber in a corporation or company, and they would be made for public purposes, such as create new jobs, increase employment, provide necessary services for the community, increase the tax base, and the like.

We have reviewed numerous court decisions above involving public projects that were objected to as unconstitutional on the ground that they involved lending the government's credit to private companies or that they aided private companies. Those court decisions approved the projects in part on the ground that any lending of credit or aid to private companies was predominantly to serve a public purpose. The standard of review does not require close scrutiny and the cases show that a measure will be approved as long as it appears reasonably related to a public purpose. A public bank would naturally be lending money for similar public purposes---affordable housing, home loans to promote home ownership, infrastructure to serve the community and support the economy, loans to strengthen small businesses and increase employment, construction of hospitals and provision of health care to underserved areas,

sustainable agriculture, student loans, educational facilities, lending to support clean energy, and much more. Studies show that major banks do not lend much to small and medium sized businesses, even though small and medium size businesses are where most new jobs are created. Public banks fulfill a valuable public purpose by creating a new source of income without raising taxes. It seems incongruous at best, and highly irresponsible at worst, to assume that we as citizens cannot control and direct our own money in the public interest through establishing public banks, but must turn it over to private parties who have no obligation to the public interest, and whose goal will be to maximize their own profit.

Public banking and public control of money have a well-established history. Attached hereto is a summary describing many successful public banks in America, past and present.

Because a city, county or the state may own an investment in the form of a small percentage of stock of a company, one might ask why, since it is not prohibited, it wouldn't be lawful for such government to own 100% of the stock of a company, assuming it had control of the company in order to ensure that it focuses totally upon serving public purposes and needs.

As explained above, the problem that was addressed in Article I, §§1 and 2 of the Colorado constitution in 1876 was that during westward expansion in the early 1800s many cities were investing money in private railroads whose operations were speculative and risky. Many such railroad and related investments failed, especially in the wake of repeated recessions, such as 1837, and the cities' investments failed with them. Roy, *supra* at 136. As also stated, forty-five states, including Colorado, adopted constitutional provisions prohibiting the lending of credit and investing in private corporate ventures. *Ibid.* The railroad corporations' primary focus was to maximize profit for their shareholders, leading them to take unreasonable risks. In contrast, a corporation or company wholly owned by a city would have as its primary goal to serve the interests of the taxpayers and citizens of the city.

In fact, the most important distinguishing factor between a public bank and a private bank is that a public bank's charter and mission is to serve the citizens and needs of a community, whereas a private bank's goal is to maximize profit for its shareholders. As a result, we saw how the major Wall Street banks took unreasonable risks and engaged in fraudulent and reckless lending to maximize profit. When the economy started to fail, the major banks all reduced their lending and thus contributed to the Great Recession--the worst collapse of the U.S. economy since the Great Depression. In contrast, the Bank of North Dakota, committed to the community, increased its lending modestly in 2008 in partnership with North Dakota's local community banks to offset the decline and as a result achieved record prosperity in 2008 and each year thereafter. North Dakota was the only state not to suffer a serious economic recession in 2008 and after.

Below we discuss whether Article XI, section 2 allows a home rule city or other home rule governmental entity, under the broad authority granted to home rule communities by Article XX §6, to own 100% of a corporation or limited liability company (LLC) that is established to serve public purposes.

Because the purpose of Article XI §2 is to prevent the state or political subdivision from risking its financial condition on investments or joint ventures with private companies, a legislative measure to establish a state owned public bank or to authorize cities, towns, and counties to established public banks whereby the state or political subdivision would own 100% of an LLC and the LLC apples for a charter under Colorado banking law to serve public purposes would not violate Article XI §2.

(2) Article XI, section 2 specifically authorizes cities and towns to own an interest in a private banking company in order to operate an electric utility.

As quoted above, the second sentence of Article XI, §2 reads as follows:

> Nothing in this section shall be construed to prohibit any city or town from becoming a subscriber or shareholder in any corporation or company, public or private, or a joint owner with any person, company, or corporation, public or private, in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town. (emphasis added) (Colo. Const. Art. XI, Section 2)

This section would appear to authorize any city or town to own and operate a public bank "in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town." Such authorizing language appears sufficient to permit such public bank to lend money to a city in order to facilitate the acquisition of ownership of its electric utility and to operate it, or to finance the conversion from fossil fuels to solar, wind, or other sustainable source of energy. The language of the provision expressly authorizes becoming a "subscriber" in "any...company, public or private" in order to "effect the development of energy...." A limited liability company is a "company" and a city would be a "subscriber" if it purchased 100% interest in an LLC to be chartered and operated as a public bank under Colorado law for the purpose of owning and operating its own electric utility or for funding production, transmission, and distribution of energy by others. Because no publicly owned banks have ever been established in Colorado, no case law exists on the issue. However, the language of the constitutional provision

is clear and appears to leave little if any doubt that a city or town could establish a public bank for any purposes related to energy production, transmission, and distribution for its inhabitants.

(3) Would Article XI section 2 prohibit the state and local governments from depositing their money in major Wall Street banks?

Recent developments make this a question worth asking. After the repeal of the Glass-Steagall Act in 1999, the major banks are now allowed to combine their traditionally conservative bank lending operations with their investment banking activities, which often involve taking major risks. The repeal exposes depositors to significant additional risks, such as speculative investments, mortgage backed securities, derivatives, and credit default swaps, such as those that brought down our economy in 2008. The F.D.I.C. only has enough assets to meet a small fraction of the deposits of its customers in the event of another major economic collapse. Many experts say that another bubble is currently being created in real estate, and that the economy is likely to crash again. The Dodd-Frank Act of 2010, enacted as a result of the 2008 crash, provides that if a bank becomes insolvent, it has the right to execute a "bail-in", whereby it may help itself by taking a percentage of each depositor's deposits, say 10%, to restore the bank's solvency.

Because the risk of a bank's failure is now arguably greater than it used to be due to the repeal of Glass-Steagall and the fact that a government's deposits are at greater risk due to the new "bail-in" procedure authorized by Dodd-Frank, a government that places its deposits in a private bank might be deemed to have violated the restriction in Article XI, section 2 that states a government may not invest in private corporations or risk its assets in private ventures. While the government might argue that it did so to serve a public purpose, the availability of a viable alternative of placing a government's deposits in its own public bank and avoiding the substantial risks and adds costs involved in placing its deposits shows the "public purpose" argument would no longer hold for continuing to place its deposits in the "too big to fail" Wall Street banks.

Fiduciary duty of government officials. Scholars in the field of government ethics assert that state, city, and county elected and appointed public officials owe a fiduciary duty to their citizens with regard to the officials' handling of the public's money. e.g. Markkula Center for Applied Ethics at the University of Santa Clara; http://harvardlawreview.org/2013/01/translating-fiduciary-principles-into-public-law/ Now that public officials are aware or should be aware, in the exercise of reasonable care, that they have available an alternative and superior way to manage their assets and finances by establishing public banks, it can rightfully be asserted that it would be a breach of their public officials' fiduciary duty to their citizens to continue to place and risk their deposits in the major banks. Thus, public officials should act responsibly to promptly take the steps necessary to establish their own public banks, including investigating the means of doing so, such as preparing a business plan to create such banks and maximize their effectiveness.

By continuing to place their deposits in major Wall Street banks, the government foregoes the advantages of depositing its liquid assets in its own bank, and thereby of substantially increasing lending in the local community, of borrowing from its own bank at reduced or no interest, of avoiding excessive fees for banking services, and of having a major new source of income without raising taxes. Without a public bank, a government must tax its people in order to repay the bonds required to fund its operations. A public bank would not pay commissions and fees for making loans, would have low overhead, such as no advertising, no tellers or ATM machines, no exorbitant salaries or bonuses for its officers, no dividends, and no branches, and would not make speculative investments or loans. By foregoing all those advantages of public banks and incurring all of the above disadvantages of depositing in major Wall Street banks, it is hard to escape the conclusion that government officials are breaching the public's trust.

3. Article XI, §3, which prohibits the state from contracting debt, does not prevent the state from owning and operating a public bank.

Article XI, §3 of the Colorado constitution "Public Debt of State – Limitations" reads as follows:

> The state shall not contract any debt by loan in any form, except to provide for casual deficiencies of revenue, erect public buildings for the use of the state, suppress insurrection, defend the state, or, in time of war, assist in defending the United States; and the amount of debt contracted in any one year to provide for deficiencies of revenue shall not exceed one-fourth of a mill on each dollar of valuation of taxable property within the state, and the aggregate amount of such debt shall not at any time exceed three-fourths of a mill on each dollar of said valuation, until the valuation shall equal one hundred millions of dollars, and thereafter such debt shall not exceed one hundred thousand dollars; and the debt incurred in any one year for erection of public buildings shall not exceed one-half mill on each dollar of said valuation; and the aggregate amount of such debt shall never at any time exceed the sum of fifty thousand dollars (except as provided in section 5 of this article), and in all cases the valuation in this section mentioned shall be that of the assessment last preceding the creation of said debt (emphasis added).

The above section provides that the state of Colorado cannot borrow money unless taxes are passed concurrently to pay it back. Banks, including public banks, sometimes need to borrow money in order to have the necessary deposits to cover checks drawn on the bank, or to provide reserves to cover new loans, or for other purposes. However, if the bank is a separate entity from

the state, particularly if it is operated as a TABOR enterprise, it should not be prohibited from borrowing as long as it is clear that the state is not obligated to repay such loans and has not guaranteed repayment. In addition, the state's deposits in the bank will be backed up by the bank, which is a debtor as to the state's deposits. As a separate entity from the state, the bank's backing of the state's deposits will not involve borrowing by the state.

In addition, proponents' plans for public banks in Colorado call for them to be created as "TABOR enterprises." The banks can then pay back loans out of the interest income it earns on loans and not have to rely upon the government for repayment. Further, a TABOR enterprise is authorized to issue revenue bonds, which could provide a source of income to repay a loan without the state being directly involved. Finally, we contemplate that the bank's deposits will be backed up by 102% collateral through a letter of credit from the Federal Home Loan Bank. That method of protecting deposits also does not require the state to borrow any money. Thus, a public bank will not require the state to borrow money or to violate Article XI, section 3.

3. Article XI, §4, which prohibits the state from contracting debt, does not prohibit the state from owning and operating a public bank.

Article XI, §4, Law Creating Debt, provides as follows:

> In no case shall any debt above mentioned in this article be created except by a law which shall be irrepealable, until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purposes to which the funds so raised shall be applied, and provide for the levy of a tax sufficient to pay the interest on and extinguish the principal of such debt within the time limited by such law for the payment thereof, which in the case of debts contracted for the erection of public buildings and supplying deficiencies of revenue shall not be less than ten nor more than fifteen years, and the funds arising from the collection of any such tax shall not be applied to any other purpose than that provided in the law levying the same, and when the debt thereby created shall be paid or discharged, such tax shall cease and the balance, if any, to the credit of the fund shall immediately be placed to the credit of the general fund of the state.

The term "debt above mentioned in this Article" in the first line of the section just quoted refers to Article XI, section 3, which only concerns debt incurred by the state. Therefore, section 4 means that any debt contracted by the state requires an irrepealable tax measure to pay for it. If a public bank is set up as an independent arm of government, the same arguments that were made in the preceding section with regard to Article XI, §3 should apply. Thus, the state or political

subdivision involved would not be incurring debt. Any debt created by the bank would be paid out of the income or revenue from the bank.

3. Article XI, §6, which prohibits political subdivisions of the state from borrowing without enacting a tax to pay it, does not prevent the operation of a public bank.

Article XI, §6, Local Government Debt, provides: "(1) No political subdivision of the state shall contract any general obligation debt by loan in any form" (except by adopting a legislative measure that ensures payment of the debt in full). It also provides that a vote of the people is required to approve any debt unless the charter of a home rule city, county, or town states that voter approval is not required. Debts of home rule communities to supply water are exempted from this section.

Article XI, §6 applies essentially the same conditions to ensure repayment of local government debt that Article XI, §§3 and 4 apply to debt incurred by the state, that is, the requirement for a tax measure, either through legislation or ballot measure. Again, if the public bank is established as an independent government entity and as a TABOR enterprise, the bank will be able to incur debt without the local government being responsible for the debt. Therefore, no tax measure will be required to be approved by the local government or by vote of the people. The public bank, as a TABOR enterprise, can borrow without the need for any new taxes because a public bank has its own source of income in the form of interest on loans that it makes.

As stated above, the TABOR Amendment, Article X, Section 20 of the Colorado constitution, provides that a self-sustaining enterprise is exempt from TABOR restrictions on revenue and expenditures, as long as it complies each year with section 2(d) of TABOR.

A number of Colorado communities, such as the city of Boulder in 1996, have "de-Bruced," that is, made those cities exempt from TABOR restrictions on revenue and expenditures by a vote of the people. Therefore, those cities may not need to establish a public bank as a "TABOR enterprise."

However, for cities and counties that have not de-Bruced, and for the state of Colorado, which has not de-Bruced, it is strongly recommended that any public bank be established as a "TABOR enterprise", as defined in section 2(d) of Article X, Section 20 of the Colorado Constitution, i.e. the TABOR Amendment.

Section 2(d) of TABOR defines the term "enterprise" as:

"a government owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined."

Each part of the definition must be met each year to qualify as a TABOR Enterprise for the following year, in which case the enterprise is exempt from TABOR income and expenditure limits. A self-sustaining, well-run public bank should easily be able to meet the "under 10%" of annual revenue requirement each year. Nonetheless, it might want to set aside a portion of its income annually to build up a moderate sized rainy-day fund in the event the bank should ever suffer an annual loss. It could then use a portion of the fund to help cover the loss so as to ensure that less than 10% of its income comes from state government for the year involved. This positive assessment is supported by the fact that the Bank of North Dakota has achieved an average return on equity of 18% over the last 16 years. The other requirements that must be met each year to be a TABOR enterprise--publicly owned and authorized to issue revenue bonds should not be an issue because the enabling legislation would expressly provide that the bank be publicly owned and operated, and would authorize it to issue its own revenue bonds. TABOR section 2(d) does not require that the enterprise actually issue revenue bonds. However, revenue bonds would be one effective way to either create or expand the lending power of the bank. The high profitability of professionally managed public banks would ensure that the revenue bonds would be timely repaid. Thus, compliance with the TABOR enterprise requirements to ensure that the bank's income and expenditures would be exempt from TABOR limits could be readily achieved, year after year.

4. Article X, §20 (4)(b) of the TABOR Amendment, which prohibits the state and local governments from multi-year borrowing would not apply to a public bank operating as a TABOR enterprise.

Article X, §20 (4)(b) of TABOR prohibits any "district", that is, the state and any local government, from creating "multiple-fiscal year" debt, except to refinance existing bonds at a lower interest rate or to add new employees to existing pension plans, unless the government has "voter approval in advance" and the government has "adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years."

Section 2(b) of TABOR defines "district" as "the state or any local government, excluding enterprises." Therefore, by definition a public bank established as an "enterprise" is expressly excluded from the operation of subsection 4(b) and would not be subject to the restriction on multi-year borrowing.

7. Are the home rule provisions of Articles XX and XIV of the Colorado constitution broad enough to allow rule cities and counties to establish their own banks?

Article XX, section 6, Home Rule for Cities and Towns authorizes home rule cities and towns to pass laws that don't conflict with state laws of statewide concern. Article XIV, section 16 (1) provides that counties may also adopt home rule.

Home Rule Cities and Counties in Colorado May Own and Operate Their Own Banks

We have not found any provision of the Colorado constitution or legislation specifically mentioning or authorizing the establishment of a city-owned or other public bank. However, Article XX of the Colorado Constitution, grants home-rule powers to cities and towns operating under its provisions. CO. CONST. Art. 20 § 6. Section 6 provides very broad authority to home rule cities. It states that home rule cities:

> always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.
>
> Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.
>
> ...
>
> (S)uch city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:
>
> ...
>
> e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement
>
> ...
>
> g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;
>
> ...
>
> It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers

shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters. (emphasis added)

CO. CONST. Art. 20 Section 1 further provides that a home rule city "shall own, possess, and hold all property, real and personal," and

> "may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided."

Thus, under Article XX, sections 1, 4, 5, and 6 home rule municipalities have very broad authority to create or amend their charters to govern local and municipal matters, including managing money and assets. As an example, the City of Englewood, in Section 3 of its home rule charter, further provides:

> "The City shall have all powers, functions, rights, and privileges in the operation of a municipality, except those powers, functions, rights, and privileges expressly forbidden to Home Rule municipal corporations and cities by the Constitution or the Statutes of the State of Colorado."

In examining the scope of home rule authority, Colorado courts have generally upheld the rule that home rule municipalities have the authority to govern local matters. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 165 (Colo. 2008). Specific actions listed in Sections 1 through 6 of Art. XX were not intended to be an "enumeration of powers conferred, but simply the expression of a few of the more prominent powers municipal corporations are frequently granted." *Id.* Consequently, courts have concluded that the Section 6 language establishes that home rule cities have plenary power over local and municipal matters. *Id.* at 166.

While our review of municipal ordinance cases has not yielded any Colorado court decision on the establishment of a city-owned bank, the courts have generally validated a wide variety of ordinances based on the Section 6 language. Similar to *Telluride*, while the establishment of a bank is not explicitly listed as a home rule power, Section 6's "all powers" language will likely be broad enough to cover such an ordinance. In addition, we have not found any Colorado statutes expressly forbidding the creation of such bank. Accordingly, we conclude home rule cities in Colorado already have the authority to establish a city-owned bank. In *Schaefer v. City and County of Denver* the Colorado Supreme Court stated:

> The ordinance qualifies a separate and distinct group of people who are not eligible to contract a state-sanctioned marriage to receive health and dental insurance benefits from the City. Therefore, the ordinance does not adversely impact the integrity and importance of the institution of marriage.
>
> We conclude that the state has not asserted any general or particularized interest in the compensation or group health and dental benefits provided to employees of municipalities in general, and home rule cities in particular. We, therefore, conclude, consistent with Colorado Springs Fire Fighters v. Colorado Springs, supra, that the power to grant group health insurance benefits to spousal equivalents is a matter of local concern subject only to the limitations imposed by the city charter. *Schaefer v. City and County of Denver* 973 P.2d 717, 721 (Colo. 1998)

2. We have assumed for purposes of this memorandum that a public bank owned by the state or local government would be regulated by the State Division of Banking and Banking Board under applicable laws and regulations. The Colorado legislature has provided for the uniform regulation of Colorado banks. Thus, it appears probable that if a city-owned bank attempted significant variations of its operation from the provisions of state legislation that might adversely affect its financial integrity, they would likely be preempted by the state statutes governing banking in Colorado.

II. The legality and operation of public banks under Colorado statutes

A. Can a public bank obtain a charter as an LLC in Colorado?

Several statutes in Colorado establish procedures that might be used by state and local governments to create a public bank.

C.R.S. § 11-102-104 (5.5) (a) provides that a limited liability company (LLC) as defined in CRS §7-80-102 may apply for and obtain a bank charter. The definition of an LLC in CRS § 7-80-102 would not preclude a public entity from applying for and obtaining a charter.

C.R.S. §7-80-203 provides that one or more persons may form an LLC and the person need not be an individual. Therefore, an entity such a government could form an LLC and might be the only person to form the LLC.

C.R.S. § 7-80-204 (d) (III) provides that an LLC's articles of organization must provide that it has at least one member. It would be a simple matter for the state, a city, or county, to so provide in its articles of organization.

As discussed above, the Colorado constitution does not prohibit but appears to allow a home rule city to own and operate an LLC on the ground that it is "necessary" to achieve the public purposes of the government, so as to better handle its money, create a stronger, more stable economy, and generate new income without raising taxes.

Despite the foregoing analysis, we believe it would make more sense for the state to pass legislation to directly enable cities, towns, and counties, to apply for a charter to create their own public banks, rather than go through the procedure of establishing an LLC or banking corporation under existing statutes.

4. A bank must be an eligible depository under Colorado law

C.R.S. §11-10.5-106 provides that to be an eligible depository for public funds a bank must be a member of the FDIC.

C.R.S. § 11-10.5-107 A bank must have 102% collateral for its deposits

C.R.S. §24-75-603 It is lawful for cities, counties, and banks to place deposits in certain depositories, including those with 102% collateral

C.R.S. § 11-103-304 When the banking board grants a charter it shall make it contingent upon the bank applying for membership in the Federal Reserve or the F.D.I.C.

Would a chartered public bank in Colorado be required to join the Federal Reserve or FDIC?

A number of Colorado statutes bear on the above question. C.R.S. §11-10.5-104 provides that in order to hold public funds, a bank must be designated by the Colorado banking board as a public depository. C.R.S. §11-10.5-106 (2) provides that to be designated as an eligible depository the deposits of the bank must be insured or guaranteed by federal deposit insurance. C.R.S. § 11-10.5-107 (5) provides that to be an eligible depository of public funds, any such depository shall pledge collateral having a market value in excess of one hundred two percent of the aggregate uninsured public deposits. C.R.S. § 11-103-304 provides that when the banking board grants a de novo application for a banking charter, it shall make the approval contingent upon the bank making a bona fide application either to the Federal Reserve or to the Federal Deposit Insurance Corporation. C.R.S. § 24-75-603 (1) provides that it is lawful for the state or any political subdivision of the state and any bank operating under Colorado law to deposit its funds in any bank that is a member of the F.D.I.C. to the extent the deposit is insured by the F.D.I.C. or "is secured by a pledge of eligible collateral as required by statute," (i.e. 102% collateral). Finally, C.R.S. § 24-75-603 (2) provides that security for deposits of public funds shall not be required to the extent the deposits are insured by the F.D.I.C.

When reading these provisions together, it might appear that any bank, including a state or local public bank, must have federal deposit insurance, and thus be a member of the F.D.I.C. However, C.R.S. § 24-75-603 (1) provides that it would not need to be a member of the F.D.I.C. if it receives a pledge of collateral of more than 102% of its deposits. Conversely, C.R.S. § 24-75-603 (2) says it would not need to meet the 102% collateral requirement to the extent its deposits are insured by the F.D.I.C. Thus, as long as its deposits are backed by 102% collateral a bank need not join or be insured by the F.D.I.C. This interpretation is supported by the fact that C.R.S. § 11-103-304 provides that when the banking board grants a charter it shall make it contingent upon the bank either applying for membership in the Federal Reserve or in the F.D.I.C. This interpretation further makes sense because as long as a bank's deposits are fully insured or guaranteed, it should not need to have them also insured or guaranteed by another means or agency.

One practical means of providing 102% collateral for public deposits would be to request the Federal Home Loan Bank for a letter of credit for such purpose. This would require applying to the Federal Home Loan Bank in Topeka, Kansas, which serves Colorado. The letter of credit might be simpler and less costly than having the public bank supply the collateral itself.

CONCLUSION

We have shown above that the Colorado constitution, in particular, Article XI, §§ 1 and 2, under Article XI, §§3, 4, and 6, and under Article X §20 (TABOR) does not prohibit public banks, particularly when operated as TABOR enterprises or by the state or

cities that have de-Bruced. Further, under the broad home rule provisions of Colorado it appears that public banks may already be legal for cities and towns, and that state legislation could authorize home rule counties to establish public banks. Further, it may be argued that the constitution Article XI, section 2 authorizes cities and towns to establish public banks in order to support the production, transmission, and distribution of energy. While it appears that the state, cities, towns, and counties might be able to establish public banks as an LLC or, less clearly, as a banking corporation, it would make sense to pass legislation to authorize cities, towns, and counties to apply for a charter directly under in their own name. It may be reasonably argued that the state and its political subdivisions have a fiduciary duty to authorize and establish public banks in order to best manage their respective assets and to avoid the substantially increased risks entailed by the current practice of placing their liquid assets in major private banks whose primary goal is to maximize their own shareholders' profits rather than the good of the community.

Respectfully submitted,

Earl H. Staelin, Attorney at Law
Rocky Mountain Public Banking Institute

*Earl H. Staelin is a licensed Colorado attorney and chair of the Rocky Mountain Public Banking Institute. His law degree is from the University of Michigan. He received valuable research and drafting assistance from Matthew Stannard, a licensed attorney in Wyoming, graduate of the University of Wyoming School of Law; former board member and chief communications officer of the Public Banking Institute; and former policy director for Commonomics, a nonprofit that supports public banking, and particularly postal "banks" such as the U.S. Postal Service operated from 1911 to 1967.

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Appendix

Public banking and public control of money have a well-established history.

Public banking and public control of money have a well-established history. Some of those who question the idea of public banks have suggested that banking is a private business and that it is not appropriate for government to be in the "business" of banking. We believe such statements violate common sense and misrepresent history, which shows that public banks in America and elsewhere have a long and honorable history.

Public banks in the world today. Today, about 25% of the world's banks are publicly owned. The countries that have public banks have had faster growing economies and stronger and more stable economies---for example Germany, Switzerland, Costa Rica, South Korea, Japan, Taiwan, and China. (Ellen Brown, *The Public Bank Solution* (2013)

America's Mostly Positive History of Public Banks and Public Currency. Our country originated from government lending and publicly issued currency, which created a high level of prosperity during the colonial era. From 1723 to 1764 the 13 American colonial governments were each able to lend money and to print their own currency, and thus establish strong economies, which Ben Franklin described as the most prosperous in the world at the time. As Franklin later wrote, when those powers were taken away by the British Parliament in 1764, over Franklin's strenuous objection, the colonies rapidly fell into widespread unemployment and poverty, which he said was the real cause of the Revolution, and not taxes such as on tea. Some of the colonies, such as Pennsylvania, managed such lending very well, while others did not manage them as well and problems developed. Proper governance and management are key essentials to successful operation of any bank.

The Continental Dollar and the American Revolution. The Continental Congress printed money in order to fund the Revolutionary War and thereby enabled the colonists to defeat the British, who at the time had the most powerful army in the world. At the end of the war, hyperinflation occurred, which was later discovered to have been caused primarily by British counterfeiting, speculating and short-selling the American "continental" dollar.

The First and Second Banks of the United States. The First Bank of the United States (1791-1811) and the Second Bank of the United States (1817-1936) were each about 80% privately owned and controlled, and only 20% owned by government, and thus cannot be truly called "public banks." The private owners included a significant proportion of foreign investors. As a result of president Andrew Jackson's vigorous opposition to the Second Bank, it was not renewed and closed in 1836.

The 19th Century Public Banks. In the first half of the 19th century, a number of states had publicly owned banks. Some were operated very successfully, but others were not well-governed. Some failed due to faulty governance and some were probably closed due to opposition from large banks. All were eventually discontinued. Some of them demonstrated that public banks can be highly successful.

The Direct Printing of Currency (Greenbacks) to Fund the Civil War. Lincoln was the only president under whom a major quantity of currency ($450 million) was issued by the U.S. Government. This was authorized by and under Article I, §8 (5) of the constitution. This action avoided the need to borrow from the New York banks, which had offered to lend to the government at 24-36% interest. The money was issued as "greenbacks" and funded 40% of the Civil War.

The Reconstruction Finance Corporation. From 1933-1945, the Reconstruction Finance Corporation functioned like a bank by lending $35 billion into the U.S. economy, which played an important role in overcoming the Great Depression and in funding World War II. It was operated without the slightest hint of scandal. It continued its operations thereafter, gradually tapering off its lending, and was unwisely closed in 1957.

The Bank of North Dakota. Finally, the success of the 100 year-old Bank of North Dakota, described above, is a further example of a highly successful and honorably managed public bank that has accomplished a great deal of good for the citizens of North Dakota.

Bank2 – the Second Public Bank in the United States. Bank2, founded in Oklahoma City in 2002, is a public bank owned by the Chickasaw Indian Nation. It has grown from $7.5 million in assets at its startup to $135 million in assets today. It has often been rated a 4-Star Bank by Bauer Financial, and was rated in the top 15% of all banks in the U.S. for 2016 by Seifried & Brew LLC. Bank2 was also recognized by the ABA Banking Journal as the #1 and #3 community bank in the nation in 2009 and 2010 respectively. https://bank2.bank/who-we-are

The Major Banks Have Performed Far Worse than Public Banks. These many current and past examples of public banks, of which we could readily supply more, show that the attempt of opponents of public banks to claim that they "won't work", or are "risky", or cannot be competently managed, is without foundation and solidly refuted by the facts. Furthermore, the main opponents of public banks represent major banks that engaged in risky investments, mismanagement, fraudulent transactions and investments resulting in several hundred $ billion in fines, and whose irresponsible conduct collapsed our economy in the 2008 Great Recession. They also have caused the failure of many private community banks which they then bought up for pennies on the dollar. Then they demanded and received massive bailouts at taxpayers' expense, and rewarded their managers for their irresponsible behavior with golden parachutes.

Since the 2008 crash the largest U.S. banks have received some $16 trillion in "quantitative easing", designed to encourage them to lend into the economy to restore it, but they instead spent the money on themselves to take their bad investments off their books. Finally, their behavior is again creating a bubble economy that may collapse, and they are pushing to roll back the very legislation enacted in the wake of the 2008 crash that was designed to reduce the chances of another such crash. These banks' warnings about public banks should be taken with a grain of salt.

Money is a public utility. Money ought to be considered a utility, like water, energy, or transportation, because everyone needs it to survive and thrive. Therefore, as Aristotle and Ben Franklin contended, and as Article I, §8 of the U.S. Constitution authorizes, money should be subject to public management. In that way, it can be harnessed to create strong and stable economies, rather than turned entirely over to private banks to maximize their own profit, which all too often works to the detriment of the public interest, as we saw with the Great Recession.

Banks create new money. Banks actually create new money when they make loans, money that did not exist before. (Bank of England, *Quarterly Bulletin*, Q1, 2014). When our state, cities, and counties put all our money as deposits in privately owned banks, then those banks create all of the money and collect all of the interest on our money, money that ought to belong to all of us, the citizens, and that should be loaned and used in our own communities, and not elsewhere solely for private bankers' profit while placing our economy at risk.

Public Banking - for the good of the people of Aurora, Colorado

A brief overview of public banking in 2020

Why should Aurora consider Public Banking?

- To provide substantial economic support for the current financial crisis and during any financial downturn
- To allow the City of Aurora to finance projects that benefit the community but are severely underfunded, such as infrastructure, affordable housing, in part to redress consequences of a long history of racially discriminatory redlining, small business including entrepreneurs, broadband
- To prevent our tax dollars from supporting private for-profit prisons, derivatives, and other questionable endeavors

How public banking supports the people of North Dakota

- The Bank of North Dakota, established in 1919, is the nation's only public bank
- BND made the nation's first federally insured student loan in 1967. Today, BND still offers some of the lowest student loan rates in the country
- The Bank's profits are utilized in three ways: contribute to the General Fund, replenish BND's operating capital, and mission-driven loan programs
- The Bank's first transfer to the state's general fund was in 1945 for $1,725. Since then, more than $1 billion has been transferred from bank profits back to the state General Fund and to support special programs

Source – 2018 BND Annual Report

How BND supports the community during severe financial downturns

- BND provided an immediate moratorium on loan payments and rapid funding for recovery after the 1997 Red River flood in Grand Forks. As a result they lost only 3% of the residents in the flooded areas, unlike East Grand Forks, MN across the river, where 17% of their residents in the flooded areas had to move away.
- During the Great Recession of 2008, North Dakota was the only state to avoid recession because it increased lending modestly in partnership with private community banks to offset the decline. In contrast the big private banks elsewhere decreased lending, triggering recession.
- On March 24, 2020 BND announced its student loan borrowers could **defer payments for 6 months** due to the COVID-19 pandemic – decisive action to protect its citizens from financial consequences of the pandemic

Public banking as a tool to finance community development

- BND partners with local community bank to provide financing to the areas of greatest need. This includes infrastructure, student loans at lower interest, residential mortgages for underserved rural communities, and loan programs to support new farmers and ranchers
- Cities like Aurora generally have access to funds that could be used to capitalize their own public banks. The public bank could then extend credit for local purposes, cut the cost of infrastructure projects by nearly half, increase affordable housing, and provide new revenue for the city without raising taxes

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, AMENDING ARTICLE IV OF SECTION 130 RELATING TO THE MODIFICATION OF THE EXEMPTION FOR LONG TERM LODGING
Item Initiator: Trevor Vaughn, Manager of Tax and Licensing
Staff Source: Trevor Vaughn, Manager of Tax and Licensing
Deputy City Manager Signature: Roberto Venegas
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.)***

The concept of this modification was presented to City Council on March 2nd and a majority requested that it be brought forward for additional consideration.

The item was presented at the May meeting of the Business Advisory Board which supported the item with a unanimous vote of the members that were present.

Visit Aurora is not providing an official statement but Bruce Dalton, President and CEO indicated that he is supportive of the changes to the tax exemption.

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

As a result of report from the Office of the State Auditor on State tax expenditures, an interim legislative committee recommended a modification to the State's exemption for long term lodging. This modification was adopted by the legislature through house bill 20-1020 which was signed by the governor on March 20th and will be effective January 1, 2021.

Lodger's tax or sales tax on lodging is intended to apply to short term lodging. Stays longer than 30 days with a written agreement are exempt from this tax as they are residential stays and not short-term lodging. The state and city tax codes define a person to include corporations and other non-natural persons.

This has resulted in a situation for business entities that lease a room for longer than 30 days receiving the exemption as if it was a residential stay even when the people staying in the room may be different each night. The State determined this was not the original intent of the exemption. House bill 20-1020 redefines the exemption to only apply to natural persons. A business entity may still claim the exemption if it is leasing the room for a single person for longer than 30 days.

For the same reasons the state identified that the exemption is not serving its purpose when it is taken by non-natural persons, the city may consider making the same adjustment to the lodger's tax code. This will also allow for simplification with the state application of taxes. This change would result in an estimated $240,000 in additional lodger's tax revenue each year.

QUESTIONS FOR Committee

Does the committee wish to forward an ordinance modifying the exemption to City Council study session?

EXHIBITS ATTACHED:

2020 Lodging tax exemption modification.doc
2020a_1020_signed.pdf
Revenue diversification option 4.pdf

ORDINANCE NO. 2020-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, AMENDING ARTICLE IV OF SECTION 130 RELATING TO THE MODIFICATION OF THE EXEMPTION FOR LONG TERM LODGING

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, under Article XX Section 6 the Colorado Constitution, the City has authority over local taxation matters; and

WHEREAS, the lodgers tax exemption for long-term lodging exempts stays of thirty days or more; and

WHEREAS, the exemption does not state whether it can be claimed in the case where the lodgings are paid for by the same payer for at least 30 days, but multiple persons stay in the lodging during that period of time and none of those persons stay for longer than 30 days. The Finance Department has allowed the exemption to be claimed in this circumstance. However, this application of the long-term lodging exemption expands the use of the exemption beyond its presumed original purpose of providing equal tax treatment for persons who enter into residential leases of 30 days or more and persons who stay for more than 30 days in lodgings that are typically used for short-term stays; and

WHEREAS, the City believes that this is more in line with the original intent of the exemption and will streamline the tax treatment with the state with the passage of house bill 2020-1020.

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

Section 1. The content of Article IV, of Section 130 is hereby amended as follows.

Sec. 130-364. Exemptions.

(1) All sales to any ~~person~~ NATURAL PERSON who is, in fact, a resident of, and who enters into or has entered into, a written agreement for occupancy of a room or rooms, or other accommodations in any hotel, apartment hotel, lodging house, motor hotel, guest house, bed and breakfast residence, guest ranch, mobile home, auto camp, trailer court, or trailer park in the city for a period of at least 30 consecutive days.

Section 2. Nothwistanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall take effect on January 1, 2020.

Section 3. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 4. 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 _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this _____ day of _____, 2020.

_____
MIKE COFFMAN, Mayor

ATTEST:

_____
STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:

_____
HANOSKY HERNANDEZ,
Assistant City Attorney

HOUSE BILL 20-1020

BY REPRESENTATIVE(S) Snyder and Benavidez, Herod, Melton;
also SENATOR(S) Moreno, Gonzales, Hansen, Lee, Rodriguez, Winter.

CONCERNING THE RESTRICTION OF THE STATE SALES TAX EXEMPTION FOR LONG-TERM LODGING.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) The sales tax exemption for long-term lodging exempts stays of thirty days or more at hotels, apartment hotels, lodging houses, motor hotels, guesthouses, guest ranches, trailer coaches, mobile homes, auto camps, or trailer courts and parks from the state sales tax on lodgings.

(b) This sales tax exemption has remained largely unchanged since it was enacted in 1959.

(c) The exemption does not state whether it can be claimed in the case where the lodgings are paid for by the same payer for at least 30 days, but multiple persons stay in the lodging during that period of time and none

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.

of those persons stay for longer than 30 days. The department of revenue has allowed the exemption to be claimed in this circumsance. However, this application of the long-term lodging exemption expands the use of the exemption beyond its presumed original purpose of providing equal tax treatment for persons who enter into residential leases of 30 days or more and persons who stay for more than 30 days in lodgings that are typically used for short-term stays.

(d) The department of revenue does not collect data specifically for the long-term lodging exemption.

(2) Therefore, it is the intent of the general assembly to simplify the collection and administration of taxes for the state of Colorado and to relieve taxpayers' confusion and vendors' administrative burdens by repealing tax expenditures that are not meeting their original purpose and which are not tracked by the department of revenue.

SECTION 2. In Colorado Revised Statutes, 39-26-704, **amend** (3) as follows:

39-26-704. Miscellaneous sales tax exemptions - governmental entities - hotel residents - schools - exchange of property. (3) (a) There shall be exempt from taxation under the provisions of part 1 of this article ***26*** all sales and purchases of commodities and services under the provisions of section 39-26-102 (11) to any ~~occupant~~ NATURAL PERSON who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year.

(b) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ON OR AFTER JANUARY 1, 2021, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE 26, ALL SALES AND PURCHASES OF COMMODITIES AND SERVICES UNDER THE PROVISIONS OF SECTION 39-26-102 (11) TO ANY OCCUPANT WHO IS A PERMANENT RESIDENT OF ANY HOTEL, APARTMENT HOTEL, LODGING HOUSE, MOTOR HOTEL, GUESTHOUSE, GUEST RANCH, TRAILER COACH, MOBILE HOME, AUTO CAMP, OR TRAILER COURT OR PARK AND WHO ENTERS INTO OR HAS

ENTERED INTO A WRITTEN AGREEMENT FOR OCCUPANCY OF A ROOM OR ACCOMMODATIONS FOR A PERIOD OF AT LEAST THIRTY CONSECUTIVE DAYS DURING THE CALENDAR YEAR OR PRECEDING CALENDAR YEAR SHALL BE EXEMPT FROM THE SALES OR USE TAX OF SUCH LOCAL GOVERNMENT OR POLITICAL SUBDIVISION, UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY SUBJECTS SUCH SALE TO ITS SALES OR USE TAX FOR THE APPLICABLE PERIOD AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR USE TAX ORDINANCE OR RESOLUTION OR SUBSEQUENT AMENDMENT THERETO.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to sales taxes levied on or after January 1, 2021.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED March 20, 2020 at 12:51 pm
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

4. Modification of lodger's tax exemption

Revenue category	New or existing revenue	Difficulty to implement	New revenue generated (annually)
Tax-related	**Existing** (remove lodger's tax exemption)	City Council approval required	**~$240,000**

Description

House bill 20-1020 proposed at the state originated from an interim committee and would limit lodger's tax exemptions on stays of 30+ nights to "natural persons." Currently the exemption is provided to "Persons" which is defined to include corporations. Adjusting the definition in the exemption would essentially remove the ability for businesses (usually airlines) to claim the exemption. This change would make the exemption more consistent with its original intent to provide an exemption for residential stays.

If the bill passes, the City could follow the state and remove the exemption with approval from the Council.

Barriers and other considerations

No legal concerns anticipated. Legal challenges may be possible.

By ordinance, a portion of lodger's tax is allocated to Visit Aurora, this can be modified via ordinance.

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Management and Finance Policy Committee
Agenda Item Commentary

Item Title: Formal appointment of Gregory T. King to the Aurora Investment Advisory Committee
Item Initiator: Andrew Jamison, Debt, Treasury & Investments Analyst
Staff Source: Terri Velasquez, Director of Finance
Deputy City Manager Signature: Roberto Venegas
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.)***

Long-serving committee member Bob Gibson retired From the City & County of Denver in May, and has resigned from the Committee. Bob and staff recommend Gregory T. King, CIO of the City & County of Denver to fill the vacancy.

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

The City's investment policy provides that the Investment Advisory Committee shall be composed of several non-staff volunteers having investment experience who provide expertise and insight on market conditions, investing, and sound policy and practice. A council member serving on the M&F Committee is also invited. Staff members include the Finance Director, a City Manager appointee (Currently Roberto Venegas), the Debt and Treasury Manager, City Attorney, Controller, and a representative from Internal Audit.

Volunteer nominees are solicited by staff. The Finance Director recommends nominees to the Management and Finance Committee, which makes the final selection. These volunteers provide valuable advice and feedback and are not afraid to ask difficult questions of staff. Volunteers are appointed for staggered three-year terms and may be re-appointed.

As the Chief Investment Officer for the City & County of Denver, Gregory T. King is an ideal candidate for the Investment Advisory committee. In 2019, Gregory attended several meetings as a guest and provided

excellent input. His professional bio is attached. Finance staff recommends the appointment of this volunteer.

QUESTIONS FOR Committee
Does the Committee wish to appoint this volunteer to the IAC for a three-year term?

This item ends at the M&F Committee.

EXHIBITS ATTACHED:

Gregory_King_2020_Bio.pdf

GREGORY T. KING

Serving as the Chief Investment Officer for the City & County of Denver, Mr. King is tasked with designing, directing, and implementing management processes for five agency portfolios, totaling $6 billion of City assets. He also carries out credit analysis for all current and future issuers included in managed portfolios, along with management of the annual budget projections for portfolio income estimates.

Prior to joining the City, Greg was a Senior Analyst at Curian Capital, LLC where he actively managed a $2 billion tactical portfolio. He has also served as a Senior Analyst with Transamerica Asset Management and Berkshire Hills Bancorp.

As a Brockport University alumni originally from upstate New York, and more than ten years of diversified financial services experience in the private sector, Greg discovered that working with public entities is more closely aligned with his philosophical ideology.