

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

**TUESDAY, July 28, 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 JUNE 23, 2020 DRAFT MINUTES**

**2. CONSENT ITEMS**

- **Sales Tax Chart**

Presenter: Greg Hays, Budget Officer (5 minutes)

**3. COLORADO INTERNATIONAL CENTER (CIC) SERVICE PLAN AMENDMENTS**

Presenter: Vinessa Irvin, Manager of Development Assistance (5 minutes)

**4. 2019 AUDIT RESULTS AND COMPREHENSIVE ANNUAL FINANCIAL REPORT**

Presenter: Nancy Wishmeyer, Controller (10 minutes)

**5. GERP UPDATE**

Presenter: Steve Shanks, Pension Plan Administrator, General Employees' Retirement Plan  
Terri Velasquez, Director of Finance (10 minutes)

**6. GERP ORDINANCE**

Presenter: Steve Shanks, Pension Plan Administrator, General Employees' Retirement Plan  
Terri Velasquez, Director of Finance (10 minutes)

**7. DRAFT POLICE HYBRID PENSION PLAN DOCUMENT**

Presenter: Cindy Birley, Davis, Graham, Stubbs, LLP  
Joel Stewart, Milliman  
Jared Martin, Innovest, Inc.  
Terri Velasquez, Director of Finance (25 minutes)

**8. HAZARD PAY**

Presenter: Jacob Bergeron, Labor Relations Officer  
Michael Lawson, Manager of Special Projects  
Nancy Wishmeyer, Controller (10 minutes)

**9. FINANCIAL POLICIES REGARDING USE OF FUNDS AVAILABLE**

Presenter: Greg Hays, Budget Officer (5 minutes)

**10. INTERNAL AUDIT Q2 REPORT**

Presenter: Wayne Sommer, Manager of Internal Audit (10 minutes)

**11. MISCELLANEOUS MATTERS FOR CONSIDERATION**

- Next meeting is on August 25 at 1:00 pm, WebEx Meeting

*Total projected meeting time: 90 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: Council Member Coombs, T. Velasquez, S. Ruger, G. Hays, V. Irvin, T. Vaughn, A. Jamison, C. Dancy, D. Hudson, R. Peters, H. Hernandez, B. Rulla, T. George, T. Wendelin, and T. Hoyle

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**INTRODUCTIONS AND MINUTES**

May 26, 2020 minutes were approved.

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**CONSENT ITEMS**

May of 2020 was 12.6 percent lower than May of 2019.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

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**PROPOSED CHANGES TO THE METRO DISTRICT MODEL SERVICE PLAN**

Summary of Issue and Discussion

Vinessa Irvin, Manager of Development Assistance, gave a presentation on the proposed service plan changes. She stated 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 23<sup>rd</sup> Special Study Session. 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.

Council Member (CM) Gardner asked, on the website disclosure are you saying candidates will be subject to the state campaign finance limits or they just have to report them. V. Irvin replied, they're already required to abide by the state requirements concerning campaigns and candidate requirements. What this requires is more transparency for the residents, as a question was raised by a council member regarding a situation where district board elections had been infused with outside money. This then allows transparency for those local board elections. We're not asking them to post anything over and above what is being posted on the Secretary of State website. CM Gardner said I'm fine with that piece but I'm trying to understand what they're currently subject to. Does then your office track compliance, or how does that work? V. Irvin replied no, we would not track compliance this would be up to the individual metro districts as they are their own government, they would abide by the service plan requirements and would post on their website what has been filed with the Secretary of State. CM Gardner stated he had a couple more questions, but he would work offline with committee and staff.

CM Gruber stated he liked the changes. There's more transparency and it clarifies and mandates how it will be presented so people will be able to find it. He proposed that staff work with CM Gardner on his questions and send the latest draft changes to the Committee before it goes to Study Session. Staff agreed.

CM Marcano stated that he also agrees with CM Gruber. He likes the direction its going and thinks the disclosure portion will be very useful. He suggested with the communication portion of the website have some sort of newsletter a signup or portal so people could receive as opposed to having to go on the website. He asked about the enforcing of election requirements and if that falls under the Secretary of State office because its reported through TRACER. V. Irvin replied, yes. He asked if the timing of the elections is controlled through State Statue or is that something different in the service plan that we didn't get a chance to look at. V. Irvin said the timing of the election is determined at the state level through statue. I don't think we can change that with the service plan.

Outcome

The Committee recommended that this item be forward to Study Session. Staff will send the latest draft changes to the Management Finance Committee before it goes to Study Session.

Follow-up Action

Staff will forward this to Study Session, July 20, 2020

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**SANDCREEK METRO DISTRICT SERVICE PLAN AMENDMENT**

Vinessa Irvin, Manager of Development Assistance, gave an overview and stated the Sand Creek Metro District serves the Gateway Park development. City Council approved the original Service Plan for the District in 1995. Since the formation, the District has completed the infrastructure to serve the development of approximately 80% of the 1200+ acre mixed use development.

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.

No questions were asked. The Committee recommended it moves forward.

Outcome

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

Follow-up Action

Staff will forward this to Study Session, July 20, 2020

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**KING RANCH METROPOLITAN DISTRICT NOS 1-5**

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.

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. 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.

CM Marcano stated he has some tension regarding the timeliness because of not knowing what the plan will be. I know it's not a residential development, but do we know at least what the general idea is going to be? V. Irvin replied, all that we know at this point is there is some mixed-use commercial however, it can be requested that additional information be sent to the Committee before it goes to Study Session. Committee agreed.

#### Outcome

The Committee recommended that this item be forward to Study Session. Staff will request for additional information to be sent to the Committee before it goes to Study Session.

#### Follow-up Action

Staff will forward this to Study Session July 20, 2020.

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### **PUBLIC BANKING**

At the January 28, 2020 Management and Finance Policy Committee meeting Public Banking was discussed and a request for a legal opinion was made. This item is to discuss that legal opinion.

CM Marcano thanked staff for dedicating their time and resources to study this. He asked Hans to go over the memo and the communication he had with Kutak Rock to get the rest of the Committee up to speed.

Hans Hernandez Perez, Assistant Civil II City Attorney stated this ideal was presented to several people such as me, an outside attorney, Rocky Mountain Public Bank institute and the state general assembly's legal office. You have fortunately legal opinions which expand from yes you can all the way down to no I don't think you can at a local level. I don't have a preference one way or another. It's about the professional opinion as to whether this is something that can be done at a local level. So, I don't really have an answer for you because the opinions vary. We don't have a clear statutory definition that says this is how you can do this if you are a public entity. I contacted the state commission and they came back that they would study the issue. They did not have an answer on hand, and these are the people to go to get banking charters. The opinion from Kutak and Rock was yes you may form it, and you may not able to operate it in regular sense and you may be challenged. The state general assembly said it's possible you could do it, but we would like clear statutory authority to do it. So, I don't have an answer unfortunately the subject is so intricate that we really don't have an answer. Lawyers can get together and agree and say yes you can. I can tell you why I think perhaps a local jurisdiction may not be able to do it and it's because we're a creature of the state and we have limit of powers. Kutak and Rock think that those powers extend to creating a bank. I think probably now because what a bank is, is a tool of interest to consumers. So, this is where we are and so even if I'm wrong and I'll admit that I'm wrong and Kutak and Rock is right, and you go ahead and form a bank but there's still questions about to what extent the bank can operate legally speaking. Because our statue prohibited competition with the private industry for banking and we don't have that clear statutory or constitute power to say we can go ahead and engage in this. I do believe members of the Committee at the state level of the 10<sup>th</sup> amendment and subject to the commerce clause limitations the state can form their own bank. You could have a State of Colorado bank. I don't see any problem at the state level but at the local level we can't agree, and we are all

over the place. So in the agenda backup are all the opinions and all the information that we were able to research as well as a fascinating topic it was not a waste of time it was really wonderful but it's one of those things that I do not have a yes or no answer for you. So, I'll open it up to you for questions.

CM Gardner stated he had several questions however let's not worry about the legality piece. I know the attorney doesn't want me to say that. What about the financial part of it in terms of what would be needed to capitalize the bank operating expenses? What information do you have on that?

T. Velasquez stated in the packet there's a memo that pertains to the financial impacts. It is mainly on the funding of the operation however a lot of it was preliminary estimates and not a lot on facts because there isn't a lot about Public Banking known. So, with that there's been some discussions of an amount of \$200 million discussed as being required in banking deposits to begin a Public Bank. Budget did an analysis and the City doesn't have those funds available. So that leaves you with the question how you will come up with the funding for a Public Bank. There are other considerations such as the banking operations assuming you have a physical presence and anticipate potential building costs of around \$5 million and operating costs approximately \$3 million. Again, these are high level estimates and beyond that is FDIC coverage that we're estimating it around \$30,000 a year. There probably would be litigation because of the competition with private banks therefore trying to anticipate that dollar amount I don't know a dollar amount to set aside in reserves for that but I do think that potential exists and should be mentioned and it could be in the millions. And the last piece included in this was Tabor. I think there may be a requirement for a Tabor election for any type of funding. In some of the conversations I've had with the folks that are involved in this on other ideas on how to fund the Public Bank. They talked about using pension funds and that doesn't work because our pension funds are in a trust. They talked about utilizing operation funds and that doesn't work because our obligations with rate payers and taxpayers. So, I think if this is pursued a lot more due diligence would be required and there needs to be a lot more understanding of what those dollar amounts are, and the risk involved. CM Gardner stated he was curious on how the \$200 million came about. T. Velasquez replied the \$200 million came from the Public Banking Institute of Colorado. We've had some conversation with the City Manager and that was their initial thought. Again, we haven't put a lot of effort in trying to look at what that really would look like or what the true requirements would be. We just took it at face value. Some of the other costs I received was from an individual that serves on a credit union board and I asked questions regarding their capital and operating costs. I know that's different, but this was the closest that I could come to in providing that data.

CM Gardner said I guess I'm not sure what were really being asked to do with it. T. Velasquez replied I think initially it was a request for a presentation and an overview and that's where we're at. I know the other piece of this was that there was another request receive in this process was could we fund it with some CBDG money or other funds to fund the bank. I reached out to housing community development department. They're not aware of any use of funds in that fashion to start a public bank. My understanding the request is can we do this and is it even an option. Hans you reached out to the banking commission and I think that's still under review.

H. Hernandez Perez replied that's correct. I did review the process and it appears to me that its design for individuals to walk in there, pledge as is and do all these things and then form the bank. It doesn't have as an example the issues what I've seen with having a public entity going in there is who will be the incorporators and who could be those individuals that can go on behalf of the city and apply for the bank. So, if the City Council designates the City Manager. I'm not sure the City Manager could be an

actual incorporator because that person must pledge assets and he doesn't have any assets to pledge as it would be city money. It will be a third party really at that point. And I don't see a process there. And the banking commission only sent me an email saying sorry we will have to research this. So, they didn't have an answer on the top of their head to say this is what you need to do fill out this application.

CM Gardner said that was my next question. Who owns the bank who's the shareholder whether it's for profit or not there's still someone who or group of people who are the shareholders are the owners and I guess I'm not understanding how the ownership structure would even work? H. Hernandez Perez said you are correct that's trouble with respect to Tabor that Terri mentioned. We have to two issues there if the city owns the bank directly we will have to probably have to go to the voters and say did you authorize us to put the money here and then detach all the revenues of the bank from Tabor's restrictions. If we create an enterprise to go away from Tabor you cannot receive more than 10% of grants of money etc. from the city. So that enterprise will have to raise its own capital funds to create necessary money to go ahead and form the bank and start operating the bank. But from the get-go you would have a bank coming out with debt because if you must raise capital you have to keep something in exchange like shares or money. CM Gardner agreed.

CM Gardner said my other question is on the insurance piece. I don't know if you looked at this but there's some banks that allow or credit unions to operate using only private insurance. In other words, they don't have to have FDIC or ? insurance. However, Colorado is not one of those states you have to be insured by FDIC or either UNCA. My understanding on how a Public Bank works it would not be eligible for either of those insurance structures in fact it would either be the City or the state depending upon who the owner was, I guess. H. Hernandez Perez replied I did. And there's couple options you have, a capital pledge or an access pledge but if you take money from the government you must be FDIC insured, or you have to have 102% of the amount that's being deposited as a backup or a pledge for those assets. So if you looked at the structure of the bank of North Dakota, number one you have a sovereign structure as its owned by the state which is a sovereign under the 10<sup>th</sup> amendment and they backup that bank with taxing power of the state which we cannot do under Tabor. And they back it up with the general fund of this Tabor of North Dakota which we cannot do under Tabor either. But even if we were able to do those are two things at the state level so they are like a sovereign under the US Constitution, so they get to do that with the limitations on the commerce clause they can't make commerce there difficult so things like that. Therefore, I did look at that and it will either require a large amount of money or go and get the insurance.

CM Marcano said I just want to reiterate thanks to staff for doing all of this. I kind of feel like we're really wrestling with the two questions. Number one, can we do this and number two, should we do this. Number one, is basically still unclear and number two, I don't know if it's worth exploring what a feasible structure would look like. So, without the assurance of number one as a definitive answer, I'm hearing we need to wait back to hear from the Charter commission to see if they will entertain this. And then there's more questions that we need answered for example what CM Gardner brought up in terms of what kind of insurance would we need to carry. I think the capitalization question also is still valid as well. In summary I think we need more information back from the state and we need still need action at the state legislature level for a clear path getting charter and clarifying these other potential legal hurdles that are a great concern. So again, I want to remind folks that I think there's commentary in here about the primary purpose being for social good. That's definitely one and I think the other purpose is finding a way to raise revenue for the city so we can address things like our \$20 million-dollar shortfall for streets maintenance and things like that and not having to go to the voters for a tax

hike. So, I think it's incumbent on us to explore and maybe an unorthodox solution to see if there's a way where we can generate some public good out of this. I want to thank the Committee for taking the time to review this and staff for all the work that you put in.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

Staff will notify the Committee when a response from the banking commission is received.

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### **LODGERS TAX EXEMPTION MODIFICATION**

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.

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.

CM Gruber asked do we know what Denver does. T. Vaughn stated Denver treats it the same way as we do today. I will tell you that some of the staff has taken an interest in modifying the exemption with the changes as well. CM Gruber said my concern obviously if we do this then folks will move out of Aurora hotels and will go on Tower, so we get hit twice. The hotels lose the revenue that comes from the people and we lose the tax revenue. Is there a way to coordinate with Denver on this? It would be good if we all did at the same time otherwise were going to chase away our customers

and simply increase their revenue. T. Vaughn replied, I don't know how we ensure were coordinated unless we get some assurance at high levels.

CM Gruber stated I would like this item to come back to the Committee with an analysis on what it does for specific businesses and what Aurora rates are compared to what Denver is charging with the hotels on Tower Road. If this looks like we are cheaper and brings us up to equivalent numbers, then this is no brainer and let's move forward. However, if this drives our numbers up far above what Denver is charging and we chase all of these people out of our hotels then in a very bad time we hurt the hotels opposed to helping the city and I don't think we're trying to do either.

The Committee agreed.

#### Outcome

Committee recommended that this item return to the Management Finance Committee.

#### Follow-up Action

Staff will bring the item back to the next Management Finance Committee.

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### **INVESTMENT ADVISORY COMMITTEE APPOINTMENT**

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.

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.

It was unanimous that Gregory T. King is appointed to the Investment Advisory Committee.

#### Outcome

The Committee thanked staff. Committee recommended that Gregory King is appointed to the Investment Advisory Committee.

Follow-up Action

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

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**MISCELLANEOUS MATTERS FOR CONSIDERATION**

Summary of Issue and Discussion

- The next meeting is on Tuesday, July 28, 2020 at 1:00 PM (WebEx).

THESE MINUTES WERE APPROVED AS SUBMITTED

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

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## Management and Finance Policy Committee Agenda Item Commentary

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

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

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

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

Members of the 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. June of 2020 was 0.1 percent higher than June of 2019.

### **QUESTIONS FOR Committee**

Information only

### **EXHIBITS ATTACHED:**

Sales Tax Chart\_June (FINAL).pdf

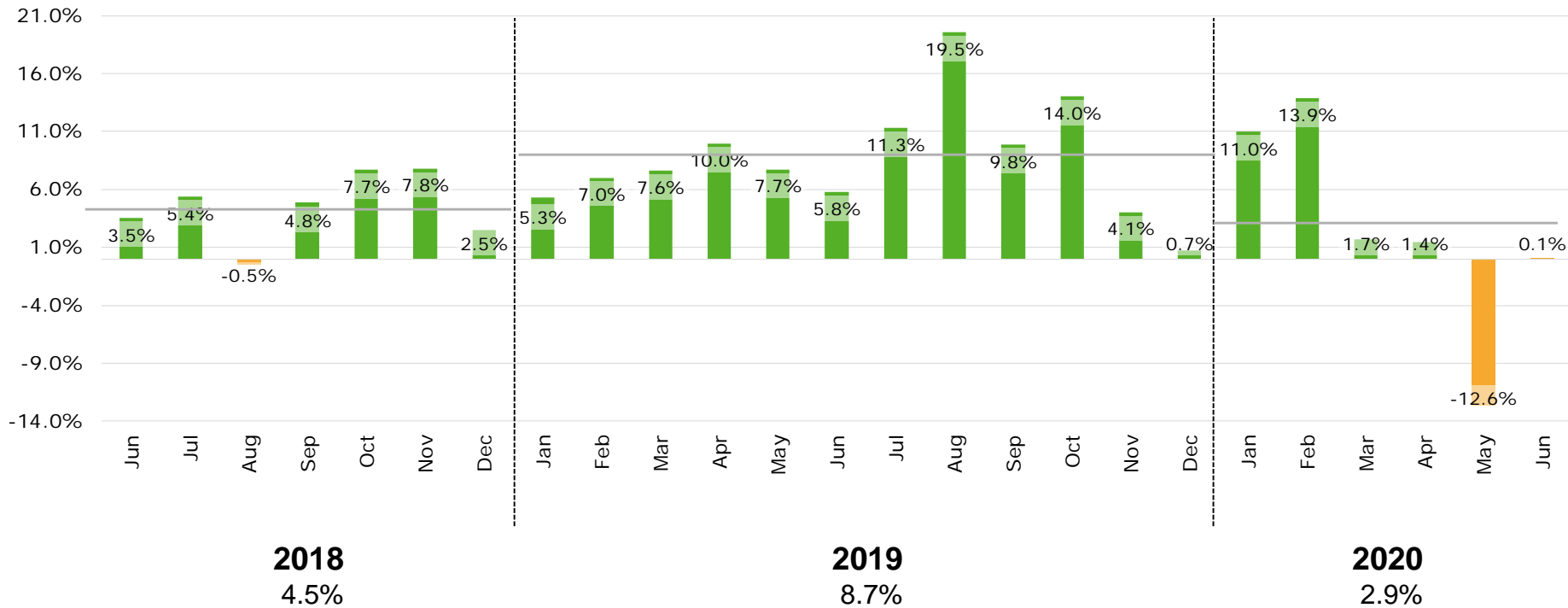


# June 2020 Sales Tax Performance



## Percent Change from Prior Year By Month

June YTD Variance to  
 Budget: **-\$99,700 (0.1%)**  
 2019: \$2.89M (2.9%)



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Colorado International Center (CIC) Metro District Service Plan Amendments
<b>Item Initiator:</b> Vinessa Irvin
<b>Staff Source:</b> Vinessa Irvin, Office of Development Assistance
<b>Deputy City Manager Signature:</b> Jason Batchelor
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

In 2019, City Council approved several requests from Metro Districts located along 64<sup>th</sup> Avenue to make a modification to their service plans to impose 5 mills for Aurora Regional Improvements (ARI) starting in year one instead of 1 mill as provided in the city's model service plan.

These districts have collaborated and formed a Transportation Authority to fund improvements benefitting several development projects to fund the improvement of 64<sup>th</sup> Avenue along their boundaries. The property owners determined that the imposition of the ARI mills required by the city's model service plan is not sufficient to provide the bonding capacity necessary for these improvements, therefore their request to increase to 5 mills.

Among these districts approved for this modification last year were the Colorado International Center (CIC) Metropolitan Districts 10-11.

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

The city recently received a request from the Colorado International Center (CIC) Metropolitan Districts, the districts that serve the HighPoint at DIA development project (see attached). The request was to amend the service plans of CIC Metro District Nos. 6-9 and 11 as follows:

- Increase the Aurora Regional Improvement (ARI) mill levy from 1 mill to 5 mills starting in year one. This change is for Metro Districts 6-9 only and is reflected exactly as it was modified in the CIC Metro Districts 10-11 previously;
  
- Expand the Inclusion Area (replace Exhibit C-2) to encompass the additional acreage in the northeastern corner of the project, known as the BOWIP parcel that was annexed into the city in 2019 (see attached project map). This proposed amendment is for Metro Districts 6-9 and 11.

These changes are being requested to ensure there is sufficient funding for the 64<sup>th</sup> improvements being proposed. It was determined that contributions from these additional districts may be necessary. In addition, the BOWIP parcel, part of the original group of districts anticipated to be part of the Authority, has not been able to complete the statutorily required actions to organize due to limitations imposed during the COVID pandemic. Therefore, by expanding the inclusion area of the existing districts to encompass this property, the contributions from the BOWIP parcel can still be realized.

**QUESTIONS FOR Committee**

Does the committee wish to move these items forward to Study Session for consideration as proposed?

**EXHIBITS ATTACHED:**

Transmittal Letter - SP Amendment submittal to Aurora - CIC MD Nos. 10 and 11 (7.20.2020) (00808266x9C7A0).PDF

July 20, 2020

**VIA EMAIL**

Ms. Cesarina Dancy  
Project Manager  
City of Aurora  
Office of Development Assistance  
15151 E. Alameda Pkwy., Suite 5200  
Aurora, CO 80012-1553

Re: Transmittal of First Amendment to Modified Service Plans for Colorado International Center Metropolitan District Nos. 6, 7, 8 and 9 and Second Amendment to Modified Service Plan for Colorado International Center Metropolitan District No. 11 (collectively, the “**Service Plan Amendments**”)

Dear Ms. Dancy:

Please be advised as follows relative to the attached Service Plan Amendments:

1. We are proposing First Amendments (collectively, the “**First Amendments**”) to the Modified Service Plans of each of Colorado International Center Metropolitan District Nos. 6, 7, 8 and 9. The First Amendments are limited to the following modifications:

(a) A modification to the definition of “**ARI Mill Levy**” definition to recognize the potential participation in the 64<sup>th</sup> Avenue Improvements (as defined in the First Amendments). Specifically, the ARI Mill Levy has been modified based on discussions with the City regarding the financing and completion of 64<sup>th</sup> Avenue Improvements and the definition is consistent with proposals presented to the City for financing and completion of the 64<sup>th</sup> Avenue Improvements and the modification is identical to the modifications made for the Colorado International Center Metropolitan District No. 10 and 11 in August of 2019;

(b) A replacement / restatement of Exhibit C-2 to the current Service Plans to expand the Inclusion Area to encompass the BOWIP property in the Northeast corner of the project. As you know, separate Service Plans for the BOWIP property were approved by the City in November of 2019. Organization of the BOWIP Metropolitan District Nos. 1 and 2 (the “**BOWIP Districts**”) was anticipated in May of 2020. However, as a result of limitations imposed during the COVID pandemic in March 2020, we were unable to hold the requisite court hearings and implement the subsequent statutorily required actions relative to organization of the BOWIP Districts for the May 2020 election cycle. As a result, the earliest the BOWIP District may be organized is November 2020. In order to ensure that financings relative to the 64<sup>th</sup> Avenue Improvements may proceed in advance of this date, and to create a consistent Inclusion Area Boundary as between all districts in the project area, we are requesting that the current

Inclusion Area Boundary be expanded to include and allow for extension to areas included within the BOWIP Districts' service. For reference, a preliminary map of the anticipated, updated CIC Districts and BOWIP Districts boundaries is attached hereto for your reference. Though this map is preliminary and subject to change, it summarizes the potential boundary changes relative to the Colorado International Center Metropolitan Districts and the BOWIP Districts.

2. Additionally, we are proposing a Second Amendment (the “**Second Amendment**”) to the Modified Service Plan of Colorado International Center Metropolitan District Nos. 11 solely to replace / restate Exhibit C-2 to the current Service Plans to expand the Inclusion Area to encompass the BOWIP property in the Northeast corner of the project, as discussed and for the purposes set forth in 1 (b), above. A First Amendment to the District No. 11 Service Plan was processed and approved by the City in November of 2019 to address the modification to the ARI Mill Levy, so that portion of the modification is complete for District No. 11.

3. Pursuant to the Formal Submittal instructions, we are including a clean copy of the proposed First Amendment in pdf and word format.

4. Contact Information:

(a) Districts' Counsel:

Megan Becher  
McGeady Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Phone: (303) 592-4380  
Fax: (303) 592-4385  
Email: [mbecher@specialdistrictlaw.com](mailto:mbecher@specialdistrictlaw.com)

(b) Petitioner/Owner/Developer:

Colorado International Center MD Nos. 6, 7, 8, 9 and 11  
Attn: Megan Becher  
McGeady Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Phone: (303) 592-4380  
Fax: (303) 592-4385  
Email: [mbecher@specialdistrictlaw.com](mailto:mbecher@specialdistrictlaw.com)

Should you have any questions or need any further information to process this service plan, please do not hesitate to contact me.

Very truly yours,

MCGEADY BECHER P.C.

*Megan Becher*

Megan Becher

Enclosures

cc: Kevin Smith

**FIRST AMENDMENT TO**

**MODIFIED**

**SERVICE PLAN**

**FOR**

**COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 6**

**CITY OF AURORA, COLORADO**

**PREPARED**

**BY**

**MCGEADY BECHER P.C.**  
**450 E. 17TH AVENUE, SUITE 400**  
**DENVER, CO 80203-1254**

Approved: \_\_\_\_\_, 2020

\_\_\_\_\_  
Initials



1. INTRODUCTION.

On August 30, 2004, the City Council of the City of Aurora, Colorado (the “City”) approved a Service Plan (the “**2004 Service Plan**”) for the Colorado International Center Metropolitan District No. 6 (the “**District**”). The District was organized on January 18, 2005, by recordation of an Order and Decree in the office of the Adams County Clerk and Recorder. Subsequently, on August 14, 2006, the City approved a Modified Service Plan for the District (the “**Modified Service Plan**”) which replaced and superseded the 2004 Service Plan. This First Amendment to the Modified Service Plan (“**First Amendment**”) is intended to be read in conjunction with the Modified Service Plan.

The City, in conjunction with landowners in the Service Area of the District, has determined regional improvements are necessary along 64<sup>th</sup> Avenue from E-470 to Jackson Gap (“**Project**”) and financing of these improvements is needed to complete the Project. The City and the District identified the most efficient structure for coordinating such financing is through the use of revenues generated by the ARI Mill Levy to assist in financing the Project. It has further been determined that a modification to the amount of the ARI Mill Levy is appropriate to support the Project and related financing. The Board of Directors of the District has determined the Project will benefit the property owners and taxpayers within the District and that it is in the best interest of the District to amend the Modified Service Plan in order to modify and increase the ARI Mill Levy to allow the District to contribute to the financing of the Project and to modify the Inclusion Area Boundaries and Inclusion Area Boundary Map to encompass additional property that will benefit from the Project.

The Modified Service Plan may be modified in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado. This First Amendment is submitted in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado and pursuant to Section 32-1-101, et. seq., C.R.S., as amended. This First Amendment is limited to the modifications specifically described below.

2. AMENDMENT.

A. All capitalized terms used, but not otherwise defined herein, shall have the same meanings as set forth in the Modified Service Plan.

B. Article II. definition of “ARI Mill Levy” is hereby amended to include the following language prior to Section A:

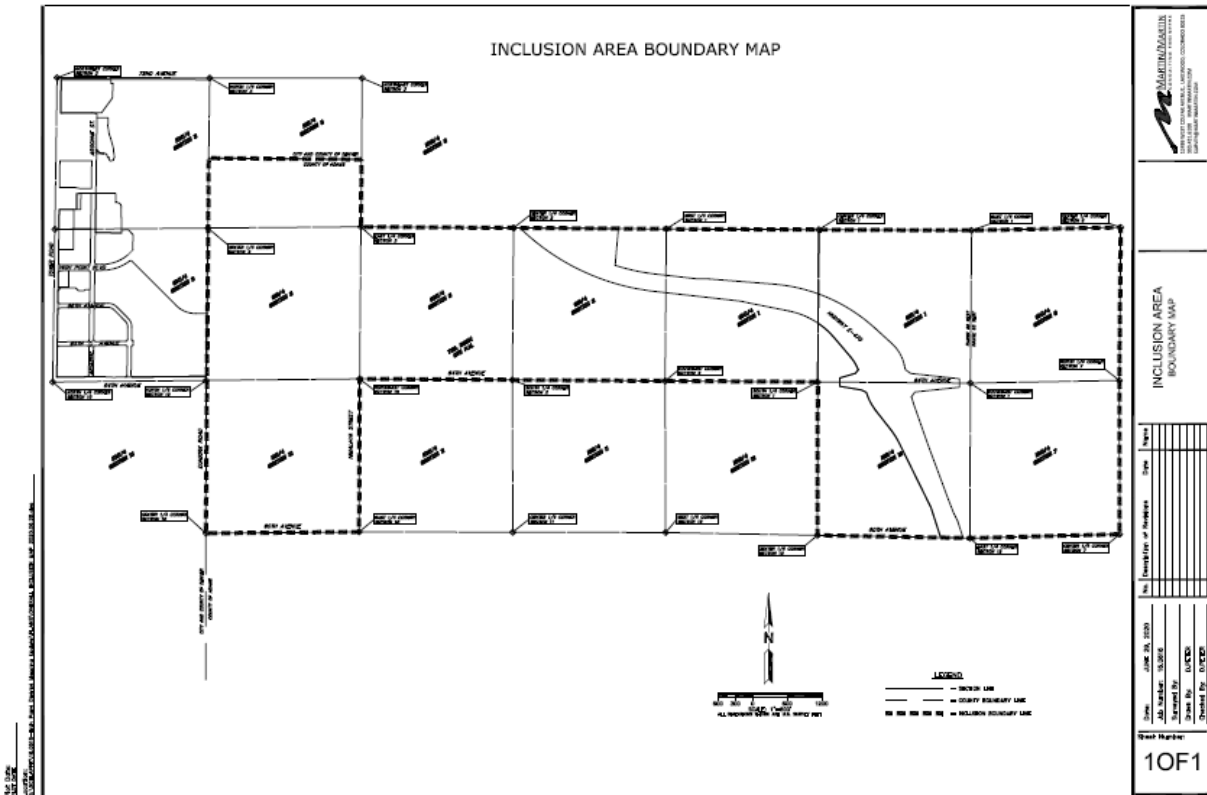
“ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the First Amendment, then, the following: . . .

A. . . .”

C. Exhibit C-2 appended to the Modified Service Plan is hereby deleted in its entirety and replaced with the map attached hereto as **Exhibit 1**. The map attached to this First Amendment as **Exhibit 1** shall be deemed the Inclusion Area Boundary Map evidencing the Inclusion Area Boundaries.

D. All language in the Modified Service Plan, not amended by this First Amendment, shall remain in effect as written.

# EXHIBIT 1 INCLUSION AREA BOUNDARY MAP



**FIRST AMENDMENT TO  
MODIFIED  
SERVICE PLAN  
FOR  
COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 7**

**CITY OF AURORA, COLORADO**

**PREPARED**

**BY**

**MCGEADY BECHER P.C.  
450 E. 17TH AVENUE, SUITE 400  
DENVER, CO 80203-1254**

Approved: \_\_\_\_\_, 2020

\_\_\_\_\_  
Initials

1. INTRODUCTION.

On August 30, 2004, the City Council of the City of Aurora, Colorado (the “City”) approved a Service Plan (the “**2004 Service Plan**”) for the Colorado International Center Metropolitan District No. 7 (the “**District**”). The District was organized on January 18, 2005, by recordation of an Order and Decree in the office of the Adams County Clerk and Recorder. Subsequently, on August 14, 2006, the City approved a Modified Service Plan for the District (the “**Modified Service Plan**”) which replaced and superseded the 2004 Service Plan. This First Amendment to the Modified Service Plan (“**First Amendment**”) is intended to be read in conjunction with the Modified Service Plan.

The City, in conjunction with landowners in the Service Area of the District, has determined regional improvements are necessary along 64<sup>th</sup> Avenue from E-470 to Jackson Gap (“**Project**”) and financing of these improvements is needed to complete the Project. The City and the District identified the most efficient structure for coordinating such financing is through the use of revenues generated by the ARI Mill Levy to assist in financing the Project. It has further been determined that a modification to the amount of the ARI Mill Levy is appropriate to support the Project and related financing. The Board of Directors of the District has determined the Project will benefit the property owners and taxpayers within the District and that it is in the best interest of the District to amend the Modified Service Plan in order to modify and increase the ARI Mill Levy to allow the District to contribute to the financing of the Project and to modify the Inclusion Area Boundaries and Inclusion Area Boundary Map to encompass additional property that will benefit from the Project.

The Modified Service Plan may be modified in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado. This First Amendment is submitted in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado and pursuant to Section 32-1-101, et. seq., C.R.S., as amended. This First Amendment is limited to the modifications specifically described below.

2. AMENDMENT.

A. All capitalized terms used, but not otherwise defined herein, shall have the same meanings as set forth in the Modified Service Plan.

B. Article II. definition of “ARI Mill Levy” is hereby amended to include the following language prior to Section A:

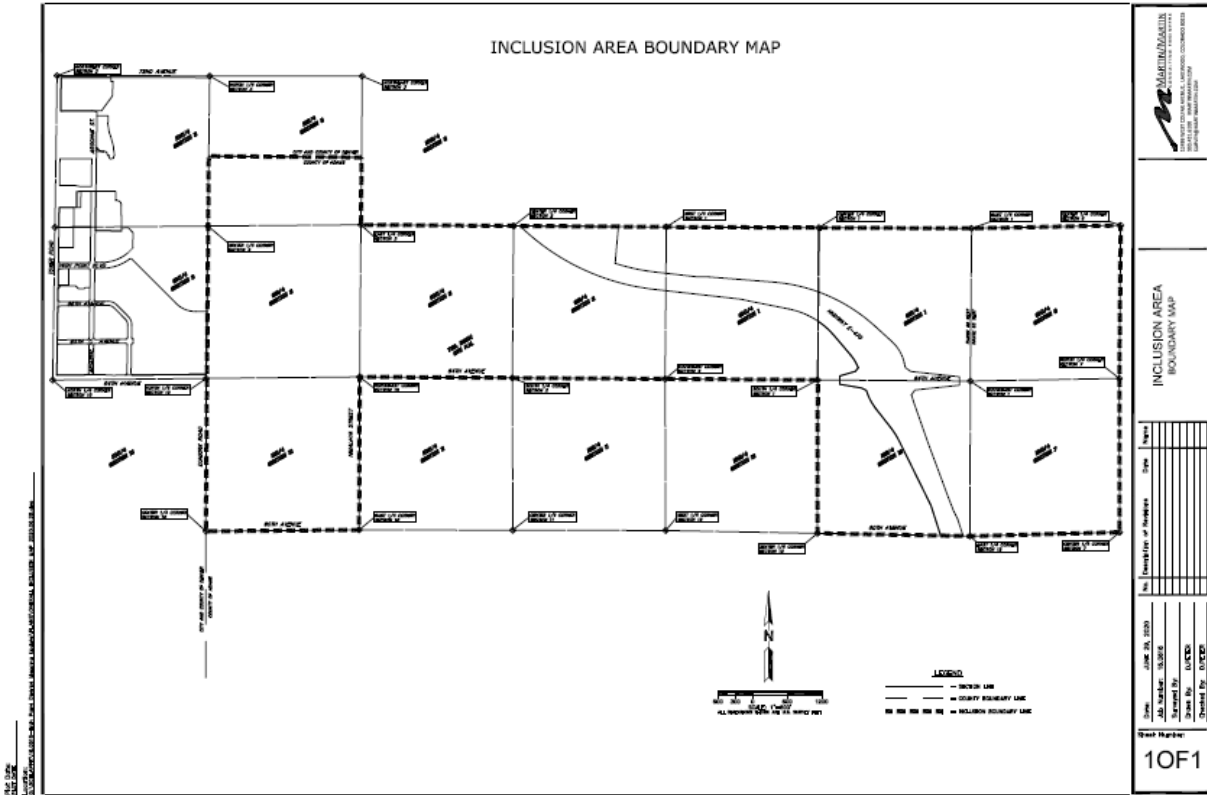
“ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the First Amendment, then, the following: . . .

A. . . .”

C. Exhibit C-2 appended to the Modified Service Plan is hereby deleted in its entirety and replaced with the map attached hereto as **Exhibit 1**. The map attached to this First Amendment as **Exhibit 1** shall be deemed the Inclusion Area Boundary Map evidencing the Inclusion Area Boundaries.

D. All language in the Modified Service Plan, not amended by this First Amendment, shall remain in effect as written.

# EXHIBIT 1 INCLUSION AREA BOUNDARY MAP



**FIRST AMENDMENT TO**  
**MODIFIED**  
**SERVICE PLAN**  
**FOR**  
**COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 8**

**CITY OF AURORA, COLORADO**

**PREPARED**

**BY**

**MCGEADY BECHER P.C.**  
**450 E. 17TH AVENUE, SUITE 400**  
**DENVER, CO 80203-1254**

Approved: \_\_\_\_\_, 2020

\_\_\_\_\_  
Initials



1. INTRODUCTION.

On August 30, 2004, the City Council of the City of Aurora, Colorado (the “City”) approved a Service Plan (the “**2004 Service Plan**”) for the Colorado International Center Metropolitan District No. 8 (the “**District**”). The District was organized on January 18, 2005, by recordation of an Order and Decree in the office of the Adams County Clerk and Recorder. Subsequently, on August 14, 2006, the City approved a Modified Service Plan for the District (the “**Modified Service Plan**”) which replaced and superseded the 2004 Service Plan. This First Amendment to the Modified Service Plan (“**First Amendment**”) is intended to be read in conjunction with the Modified Service Plan.

The City, in conjunction with landowners in the Service Area of the District, has determined regional improvements are necessary along 64<sup>th</sup> Avenue from E-470 to Jackson Gap (“**Project**”) and financing of these improvements is needed to complete the Project. The City and the District identified the most efficient structure for coordinating such financing is through the use of revenues generated by the ARI Mill Levy to assist in financing the Project. It has further been determined that a modification to the amount of the ARI Mill Levy is appropriate to support the Project and related financing. The Board of Directors of the District has determined the Project will benefit the property owners and taxpayers within the District and that it is in the best interest of the District to amend the Modified Service Plan in order to modify and increase the ARI Mill Levy to allow the District to contribute to the financing of the Project and to modify the Inclusion Area Boundaries and Inclusion Area Boundary Map to encompass additional property that will benefit from the Project.

The Modified Service Plan may be modified in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado. This First Amendment is submitted in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado and pursuant to Section 32-1-101, et. seq., C.R.S., as amended. This First Amendment is limited to the modifications specifically described below.

2. AMENDMENT.

A. All capitalized terms used, but not otherwise defined herein, shall have the same meanings as set forth in the Modified Service Plan.

B. Article II. definition of “ARI Mill Levy” is hereby amended to include the following language prior to Section A:

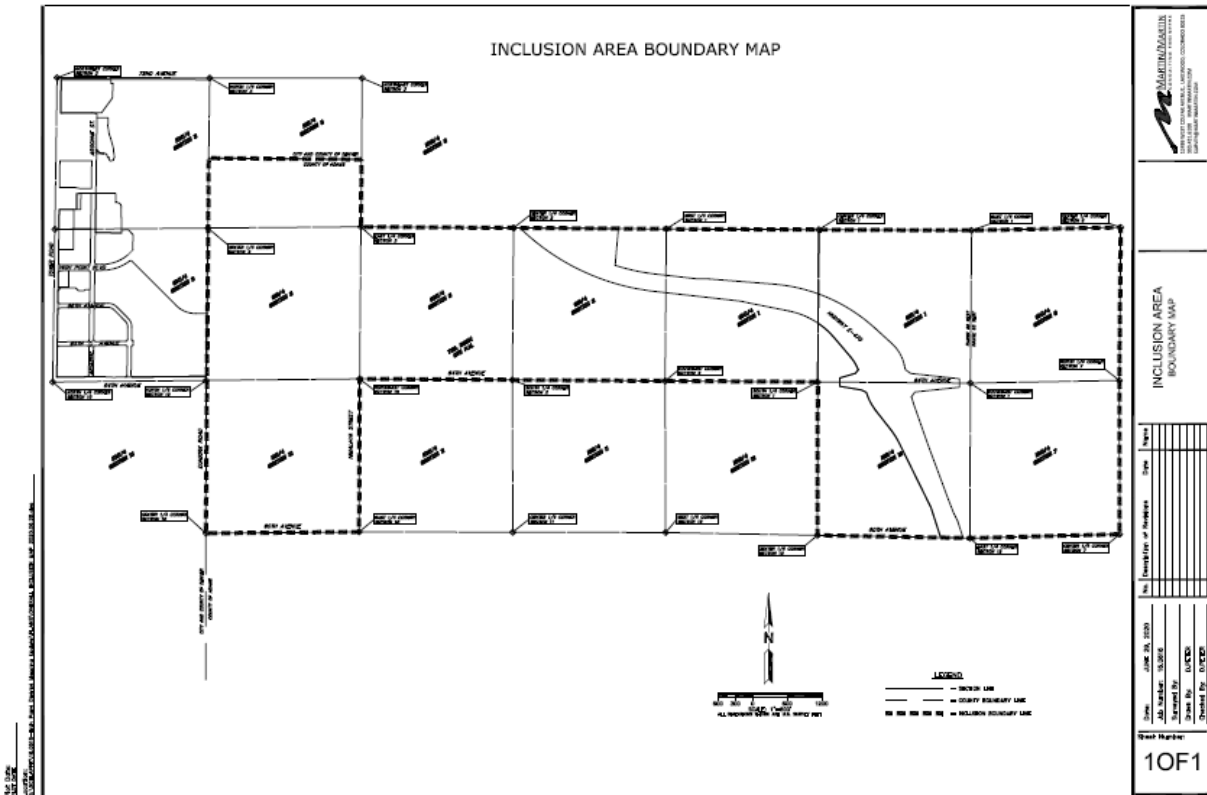
“ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the First Amendment, then, the following: . . .

A. . . .”

C. Exhibit C-2 appended to the Modified Service Plan is hereby deleted in its entirety and replaced with the map attached hereto as **Exhibit 1**. The map attached to this First Amendment as **Exhibit 1** shall be deemed the Inclusion Area Boundary Map evidencing the Inclusion Area Boundaries.

D. All language in the Modified Service Plan, not amended by this First Amendment, shall remain in effect as written.

## EXHIBIT 1 INCLUSION AREA BOUNDARY MAP



**FIRST AMENDMENT TO**

**MODIFIED**

**SERVICE PLAN**

**FOR**

**COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 9**

**CITY OF AURORA, COLORADO**

**PREPARED**

**BY**

**MCGEADY BECHER P.C.**  
**450 E. 17TH AVENUE, SUITE 400**  
**DENVER, CO 80203-1254**

Approved: \_\_\_\_\_, 2020

\_\_\_\_\_  
Initials

1. INTRODUCTION.

On August 30, 2004, the City Council of the City of Aurora, Colorado (the “City”) approved a Service Plan (the “**2004 Service Plan**”) for the Colorado International Center Metropolitan District No. 9 (the “**District**”). The District was organized on January 18, 2005, by recordation of an Order and Decree in the office of the Adams County Clerk and Recorder. Subsequently, on August 14, 2006, the City approved a Modified Service Plan for the District (the “**Modified Service Plan**”) which replaced and superseded the 2004 Service Plan. This First Amendment to the Modified Service Plan (“**First Amendment**”) is intended to be read in conjunction with the Modified Service Plan.

The City, in conjunction with landowners in the Service Area of the District, has determined regional improvements are necessary along 64<sup>th</sup> Avenue from E-470 to Jackson Gap (“**Project**”) and financing of these improvements is needed to complete the Project. The City and the District identified the most efficient structure for coordinating such financing is through the use of revenues generated by the ARI Mill Levy to assist in financing the Project. It has further been determined that a modification to the amount of the ARI Mill Levy is appropriate to support the Project and related financing. The Board of Directors of the District has determined the Project will benefit the property owners and taxpayers within the District and that it is in the best interest of the District to amend the Modified Service Plan in order to modify and increase the ARI Mill Levy to allow the District to contribute to the financing of the Project and to modify the Inclusion Area Boundaries and Inclusion Area Boundary Map to encompass additional property that will benefit from the Project.

The Modified Service Plan may be modified in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado. This First Amendment is submitted in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado and pursuant to Section 32-1-101, et. seq., C.R.S., as amended. This First Amendment is limited to the modifications specifically described below.

2. AMENDMENT.

A. All capitalized terms used, but not otherwise defined herein, shall have the same meanings as set forth in the Modified Service Plan.

B. Article II. definition of “ARI Mill Levy” is hereby amended to include the following language prior to Section A:

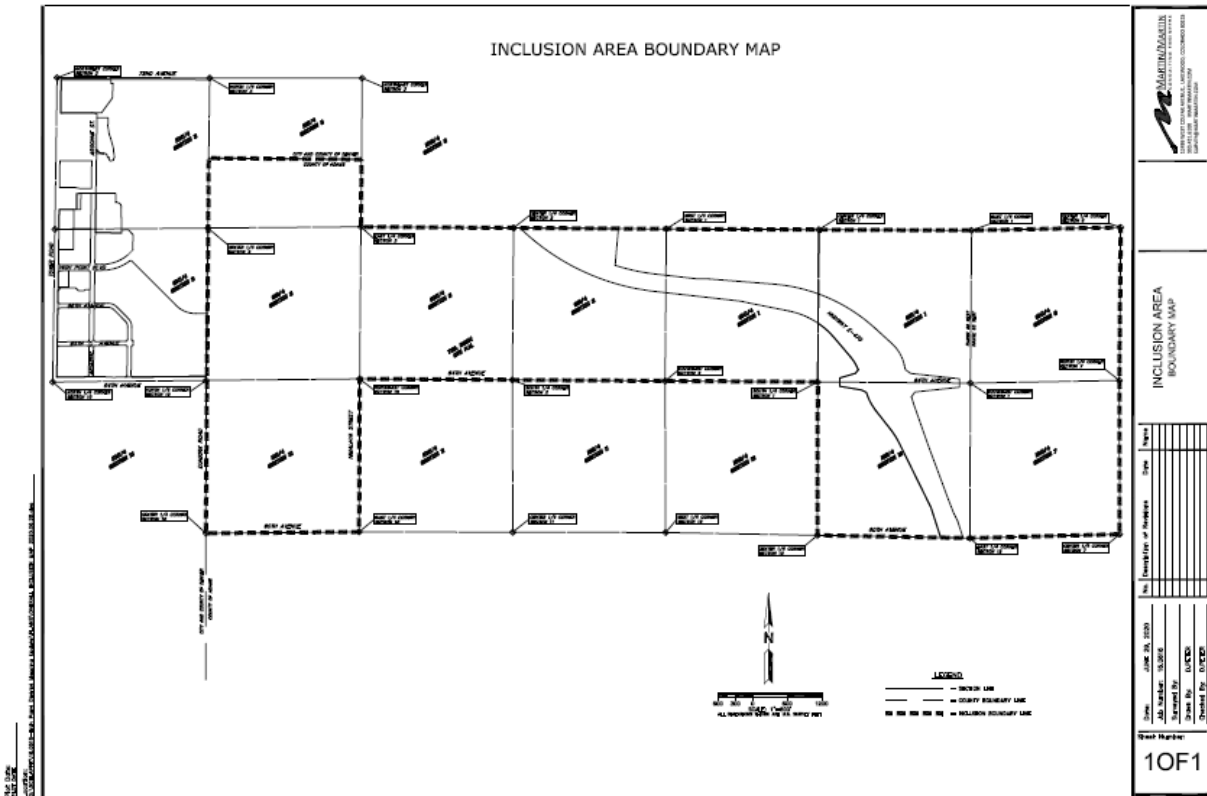
“ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the First Amendment, then, the following: . . .

A. . . .”

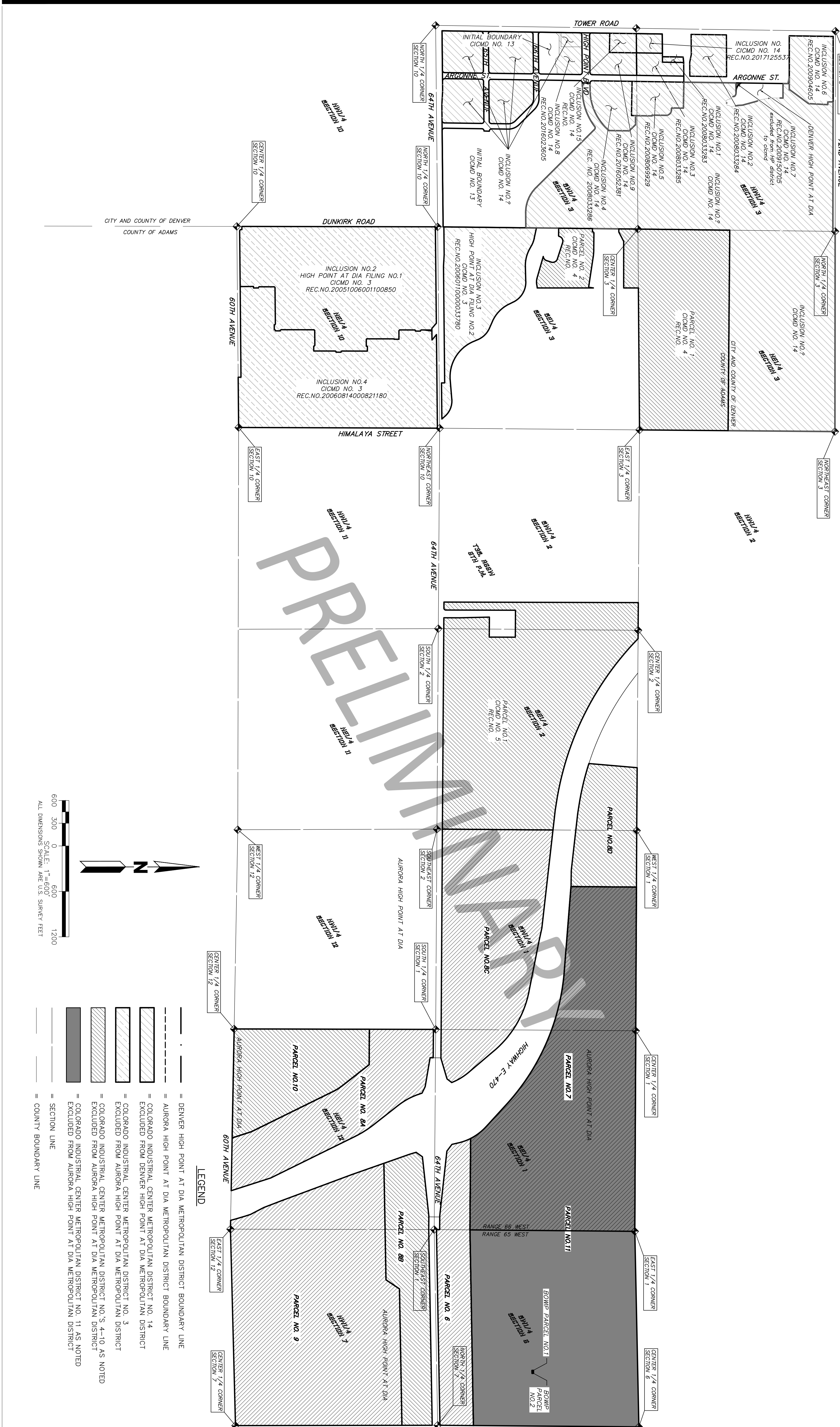
C. Exhibit C-2 appended to the Modified Service Plan is hereby deleted in its entirety and replaced with the map attached hereto as **Exhibit 1**. The map attached to this First Amendment as **Exhibit 1** shall be deemed the Inclusion Area Boundary Map evidencing the Inclusion Area Boundaries.

D. All language in the Modified Service Plan, not amended by this First Amendment, shall remain in effect as written.

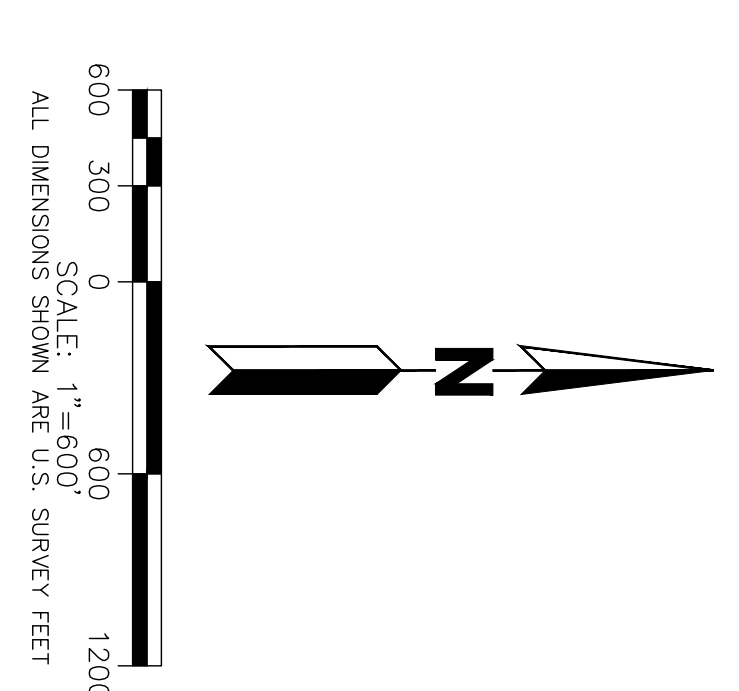
# EXHIBIT 1 INCLUSION AREA BOUNDARY MAP



**METROPOLITAN DISTRICT MAP**  
**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT**  
**DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT**  
**COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO'S. 3 THROUGH 11, 13 AND 14**



PRELIMINARY



- LEGEND**
- DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT BOUNDARY LINE
  - AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT BOUNDARY LINE
  - COLORADO INDUSTRIAL CENTER METROPOLITAN DISTRICT NO. 14 EXCLUDED FROM DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT
  - COLORADO INDUSTRIAL CENTER METROPOLITAN DISTRICT NO. 3 EXCLUDED FROM AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
  - COLORADO INDUSTRIAL CENTER METROPOLITAN DISTRICT NO. 4-10 AS NOTED
  - COLORADO INDUSTRIAL CENTER METROPOLITAN DISTRICT NO. 11 AS NOTED
  - EXCLUDED FROM AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
  - SECTION LINE
  - COUNTY BOUNDARY LINE

<b>10F1</b>	Date: JULY 20, 2020	No. Description of Revisions	Date	Name
Job Number: 16.0616	<b>METROPOLITAN DISTRICTS MAP</b>			
Surveyed By:				
Drawn By: D.PETER				
Checked By: D.PETER				
Sheet Number:	12499 WEST COLFAX AVENUE, LAKEWOOD, COLORADO 80215 303.431.6100 MARTINMARTIN.COM SURVEY@MARTINMARTIN.COM			



**SECOND AMENDMENT TO**

**MODIFIED**

**SERVICE PLAN**

**FOR**

**COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 11**

**CITY OF AURORA, COLORADO**

**PREPARED**

**BY**

**MCGEADY BECHER P.C.**  
**450 E. 17TH AVENUE, SUITE 400**  
**DENVER, CO 80203-1254**

Approved: \_\_\_\_\_, 2020

\_\_\_\_\_  
Initials

1. INTRODUCTION.

On August 30, 2004, the City Council of the City of Aurora, Colorado (the “City”) approved a Service Plan (the “**2004 Service Plan**”) for the Colorado International Center Metropolitan District No. 11 (the “**District**”). The District was organized on January 18, 2005, by recordation of an Order and Decree in the office of the Adams County Clerk and Recorder. Subsequently, on August 14, 2006, the City approved a Modified Service Plan for the District (the “**2006 Service Plan**”) which replaced and superseded the 2004 Service Plan, which 2006 Service Plan was amended pursuant to a First Amendment approved by the City on August 5, 2019 (“**First Amendment**” and, with the 2006 Service Plan, the “**Modified Service Plan**”). This Second Amendment to the Modified Service Plan (“**Second Amendment**”) is intended to be read in conjunction with the Modified Service Plan.

The City, in conjunction with landowners in the Service Area of the District, has determined regional improvements are necessary along 64<sup>th</sup> Avenue from E-470 to Jackson Gap (“**Project**”) and financing of these improvements is needed to complete the Project. The City and the District identified the most efficient structure for coordinating such financing is through the use of revenues generated by the ARI Mill Levy to assist in financing the Project. The First Amendment increased the ARI Mill Levy to allow the District to contribute to the financing of the Project. The Board of Directors of the District has determined it is in the best interests of the District to further amend the Modified Service Plan by this Second Amendment to modify the Inclusion Area Boundaries and Inclusion Area Boundary Map to encompass additional property that will benefit from the Project.

The Modified Service Plan may be modified in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado. This Second Amendment is submitted in accordance with Section 122-36 of the City Code of the City of Aurora, Colorado and pursuant to Section 32-1-101, et. seq., C.R.S., as amended. This Second Amendment is limited to the modifications specifically described below.

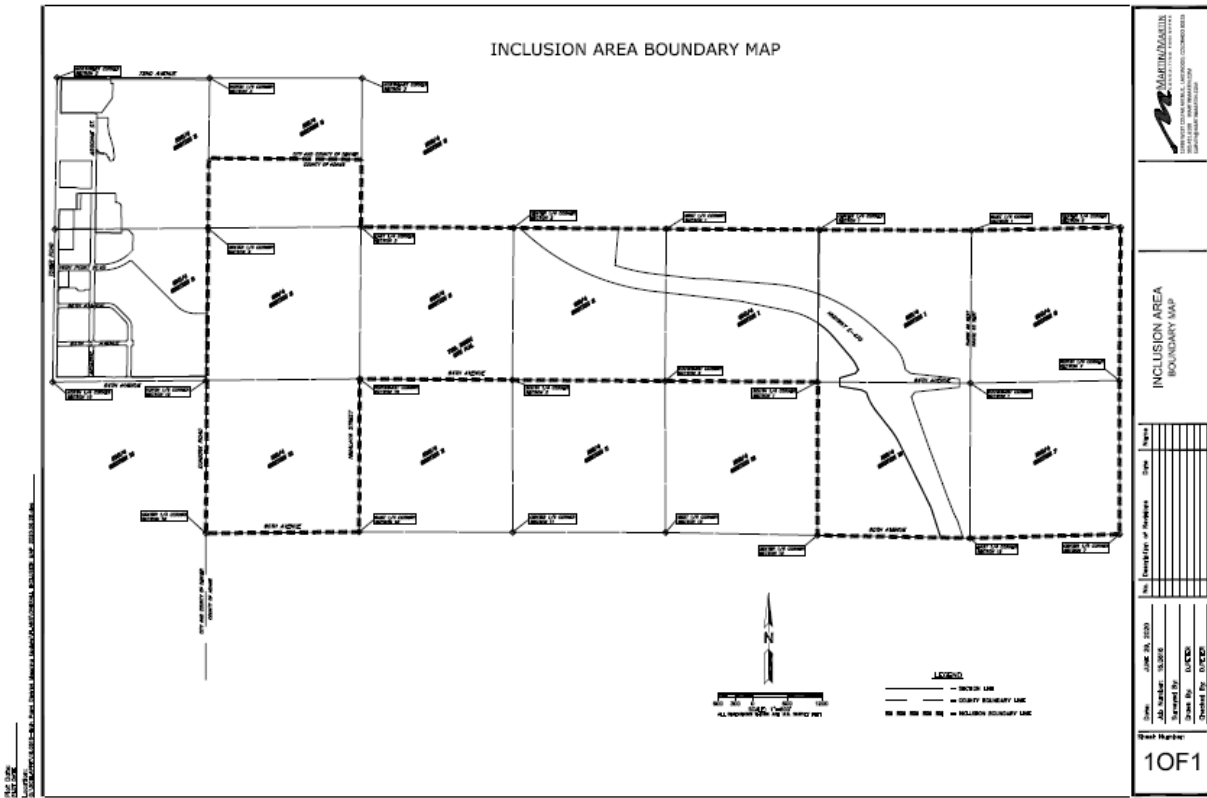
2. AMENDMENT.

A. All capitalized terms used, but not otherwise defined herein, shall have the same meanings as set forth in the Modified Service Plan.

B. Exhibit C-2 appended to the 2006 Service Plan is hereby deleted in its entirety and replaced with the map attached hereto as **Exhibit 1**. The map attached to this Second Amendment as **Exhibit 1** shall be deemed the Inclusion Area Boundary Map evidencing the Inclusion Area Boundaries.

C. All language in the Modified Service Plan, not amended by this Second Amendment, shall remain in effect as written.

# EXHIBIT 1 INCLUSION AREA BOUNDARY MAP



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> 2019 Audit Results and Comprehensive Annual Financial Report
<b>Item Initiator:</b> Nancy Wishmeyer
<b>Staff Source:</b> Nancy Wishmeyer, Controller
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b> BKD, LLP
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

The 2019 Comprehensive Annual Financial Report (CAFR) received an unmodified, or "clean" opinion from the auditors. The attached 2019 Single Audit of federal grants also received a clean, unmodified opinion. The 2018 CAFR received the GFOA Certificate of Achievement for Excellence in Financial Reporting. In the opinion of staff and the auditors, the 2019 CAFR also qualifies for the national GFOA award. A link to the 2019 CAFR and the 2019 Single Audit has been placed on the city's internet. The BKD, LLP Board Report is required auditor communication to the Management and Finance Committee (the audit committee). This report provides an overall review of the audit and brings attention to control issues or any reportable items encountered by the auditors during the course of the audit. Detail schedules of unrecorded audit adjustments and a copy of the representation letter provided by management to the auditors are also included in this report. Additionally, attached to this agenda item is a summary of the 2019 audit recommendations and responses of city management. Also attached is the Corrective Action Plan for the Single Audit finding.

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

The city's audited 2019 financial statement have been finalized. Items to be presented include results of the audit and the upcoming 2020 audit.

### **QUESTIONS FOR Committee**

Information Only

### **EXHIBITS ATTACHED:**

2019 Audit Recommendations.pdf  
City of Aurora 2019 Corrective Action Plan to BKD.pdf  
City of Aurora Board Report 123119 - unprotected.pdf  
City of Aurora Single Audit Report 123119 - unprotected.pdf

**CITY OF AURORA, COLORADO**  
**Implementation of 2019 Single Audit and Management Letter Comments**

<u><b>Audit Recommendation</b></u>	<u><b>Responsible Department</b></u>	<u><b>Status/ Estimated Completion Date</b></u>	<u><b>Planned Action</b></u>
<p><b>Single Audit 2019-001 Financial Statement Control Significant Deficiency – Information Technology – Access and Operations.</b> The City does not have a complete set of IT policies and procedures, some IT program components are decentralized across multiple operating units, and the City does not have a formal plan to provide for ongoing computer operations. Recommend the City develop, publish and operationalize a complete set of IT policies and procedures and communicate them to all applicable employees. City should also enforce consistent application of the account management policy. Further the City should develop a formal plan to ensure ongoing security governance.</p>	<p>Information Technology</p>	<p>Q2 2021</p>	<p>Management agrees with the finding. The City has begun to update, operationalize, and publish its previously developed IT policies as a complete set and will communicate the policies and procedures to all applicable employees on a routine basis. Although current organizational structure does not allow Information Security Office (ISO) to have control over physical access, the ISA will continue to work with Facilities to address any findings. Mitigation plans are currently under development to address the items that are within IT Department authority. These plans will require monetary and staff investment as well as extensive changes to business process. IT will also identify systems where we cannot effect change and include recommendations for mitigation.</p>
<p><b>Management Letter Deficiency 1 - Accounting for the Sale of Assets held for Resale.</b> The Fanfare sale was incorrectly treated as a sale of capital asset rather than a sale of fund asset. An adjusting entry was required to correct this transaction. The City should implement a process to identify unique and significant transactions that occur within the year and review related accounting guidance to help ensure proper CAFR reporting.</p>	<p>Finance Department</p>	<p>Implemented</p>	<p>Management agrees with the finding. While the City did have a process in place to discuss significant and unique transactions and this particular transaction was discussed during interim field work, specific entries to the financial system and their effect on reporting in the CAFR were not discussed. In the future, the City will research the guidance and prepare entries to review with the auditors during interim field work in order to help ensure proper accounting treatment.</p>

<u><b>Audit Recommendation</b></u>	<u><b>Responsible Department</b></u>	<u><b>Status/ Estimated Completion Date</b></u>	<u><b>Planned Action</b></u>
<p><b>Management Letter Deficiency 2 - Pension Reporting.</b> Deferred outflows and deferred inflows of resources arising from differences in projected and actual pension investment earnings in different measurement periods must be reported as net. The City initially reported these items as gross. The City should add notes to the year-end procedures to help ensure the deferrals relating to the differences between projected and actual pension investment earnings are reported net.</p>	<p>Finance Department</p>	<p>Implemented</p>	<p>Management agrees with the finding. Accounting staff will add notes to the year-end procedures to help ensure deferrals relating to the differences between projected and actual pension investment earnings are reported net.</p>

<p><b>Management Letter Other Matters 1 – Future Accounting Pronouncements.</b> Future pronouncements include GASB Statement No. 84, <i>Fiduciary Activities</i>, GASB Statement No. 87, <i>Leases</i>, GASB Statement No. 88, <i>Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements</i>, GASB Statement No. 91, <i>Conduit Debt Obligations</i>, and GASB Statement No. 95, <i>Postponement of Effective dates of Certain Authoritative Guidance</i>.</p>	<p>Finance Department</p>	<p>N/A</p>	<p>Management appreciates the information provided regarding these upcoming accounting standards. Accounting staff is aware of the upcoming changes and will work with the external auditors to ensure all financial statement impacts have been addressed.</p>
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Controller's Office  
15151 E. Alameda Parkway, Ste. 5700  
Aurora, Colorado 80012  
303.739.7055

## CORRECTIVE ACTION PLAN

Report Issued June 22, 2020

### FISCAL YEAR OF FINDING:

2019

### AUDITOR FINDING:

**Single Audit 2019-001 Information Technology – Access and Operations.** Information technology general controls require that the information technology system is fully documented and managed appropriately to protect the City's financial and other data. Standard industry guidelines were utilized to assess the City's information technology systems as it relates to access management and redundancy, recover and backup. During the Information Technology Control Design review, we noted that the City does not have a complete set of IT policies and procedures, some IT program components are decentralized across multiple operating units, and the City does not have a formal plan to provide for ongoing computer operations. We recommend that the City develop, publish and operationalize a complete set of IT policies and procedures to strengthen its internal control over logical and physical access. Communication of these policies and procedures is needed to all applicable employees to ensure processes are followed during periods of turnover. The City should also ensure that appropriate management oversight is in place to enforce consistent application of the account management policy to mitigate specific information security problems noted in the confidential finding. Further, the City should develop a formal plan to update security governance as necessary to mitigate specific problems noted in the confidential finding.

### CITY OF AURORA PLANNED ACTION:

Management agrees with the finding. The City has begun to update, operationalize, and publish its previously developed IT policies as a complete set and will communicate the policies and procedures to all applicable employees on a routine basis. Although, current organizational structure does not allow Information Security Office (ISO) to have control over physical access, the ISO will continue to work with Facilities to address any findings. Mitigation plans are currently under development, with an estimated completion by Q2 2021 to address the items in the confidential finding that are within IT Department authority. These plans will require monetary and staff investment as well as extensive changes to business process. IT will also identify systems where we cannot effect change and include recommendations for mitigation.

### CITY OF AURORA RESPONSIBLE PARTY:

Scott Newman, Interim Chief Information & Digital Officer

### COMPLETION DATE:

Q2 2021



# City of Aurora, Colorado

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

June 19, 2020

Results of the 2019 financial statement audit, internal  
control matters and other required communications.

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**Appendices**

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

June 19, 2020

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

Dear Honorable Mayor and Members of City Council:

We have completed our audit of the financial statements of the City of Aurora, Colorado (the City) as of and for the year ended December 31, 2019. This report includes communications required under auditing standards generally accepted in the United States of America as well as other matters.

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

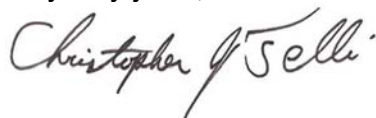
- Express opinions on the December 31, 2019 financial statements and supplementary information of the City
- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
- Report on Compliance for Each Major Federal Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance
- Issue communications required under auditing standards generally accepted in the United States of America to assist the City Council in overseeing management's financial reporting and disclosure process

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


\* \* \* \* \*

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

Very truly yours,



Christopher J. Telli, CPA  
Partner



Marcella D. Ardan, CPA  
Managing Director

## Summary of Our Audit Approach and Results

### Our Approach

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

### Areas of Audit Emphasis

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

Opinion Unit	Risk Area	Results
All	➤ Management override of controls.	➤ No matters are reportable.
All	➤ Revenue recognition.	➤ No matters are reportable.
All	➤ Implementation of new accounting standards: GASB 84, <i>Fiduciary Activities</i> and GASB 88, <i>Certain Disclosures Related to Debt including Direct Borrowings and Direct Placements</i> .	➤ Due to COVID-19 and the issuance of GASB 95, <i>Postponement of the Effective Dates of Certain Authoritative Guidance</i> , management deferred the implementation of these standards to 2020.
Governmental and Business-type Activities, water, sewer, and other aggregate funds.	➤ Debt.	➤ No matters are reportable.
Governmental and Business-type Activities, water, sewer, and other aggregate funds.	➤ Capital assets.	➤ No matters are reportable.
Single Audit	➤ Compliance with requirements described in the U.S. Office of Management and Budget, <i>Compliance Supplement</i> for major federal programs.	➤ No matters are reportable.

## Significant Estimates

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

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

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

## Opinions

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

We have issued unmodified opinions as to whether the financial statements of the City, as of and for the year ended December 31, 2019, are fairly presented, in all material respects.

## Requirements Under the Uniform Guidance

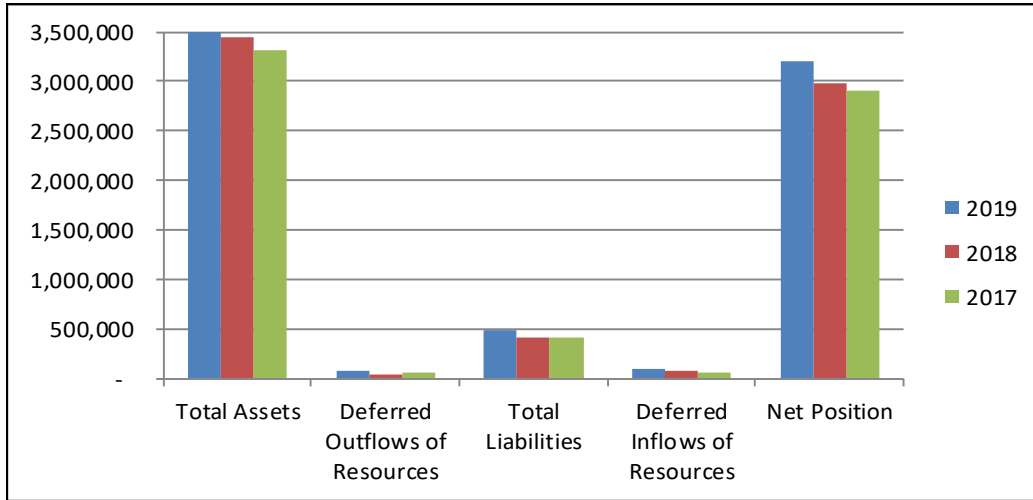
Our audit included reporting on major federal programs and includes:

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

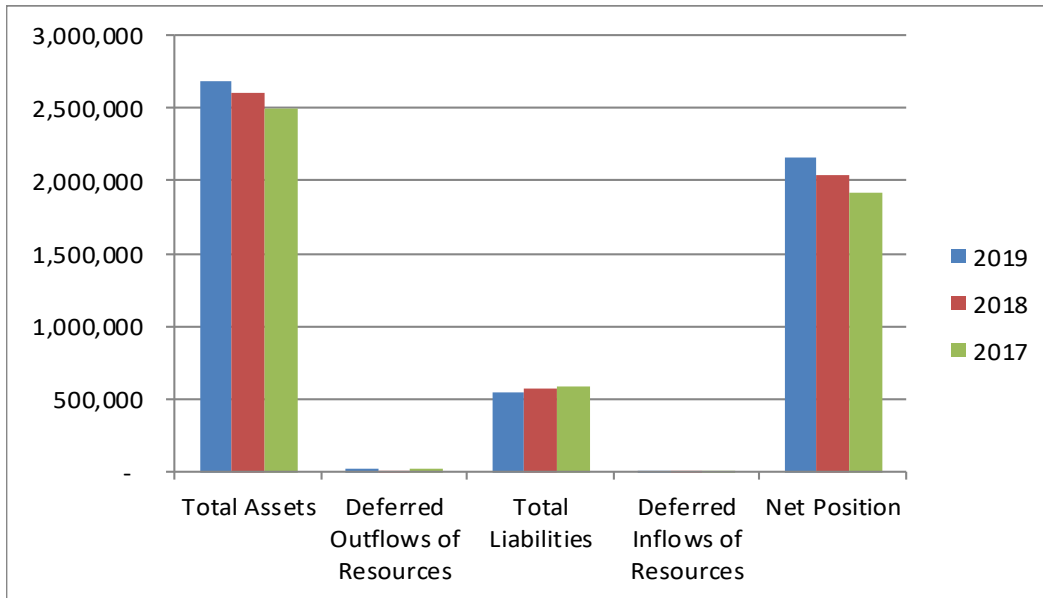
**Statement of Net Position as of December 31**

(in thousands)

**Governmental Activities**

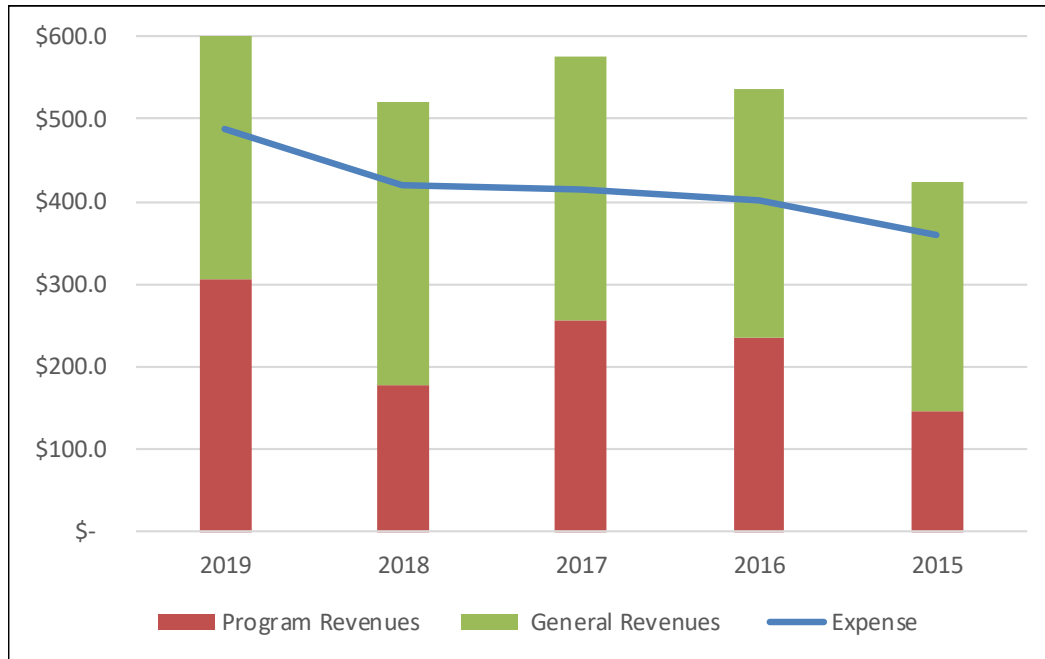


**Business-type Activities**



**Expenses and Program Revenues – Governmental Activities**

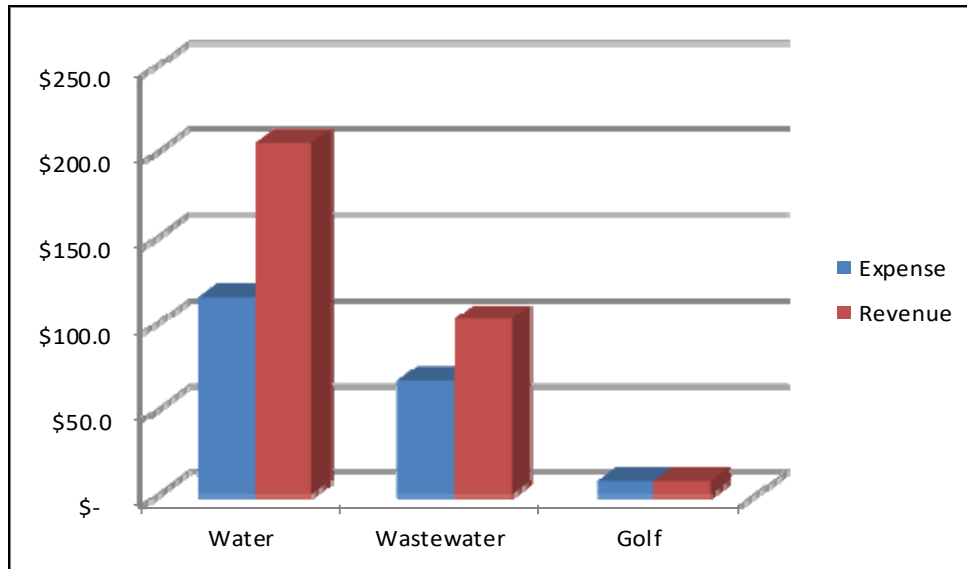
(in millions)



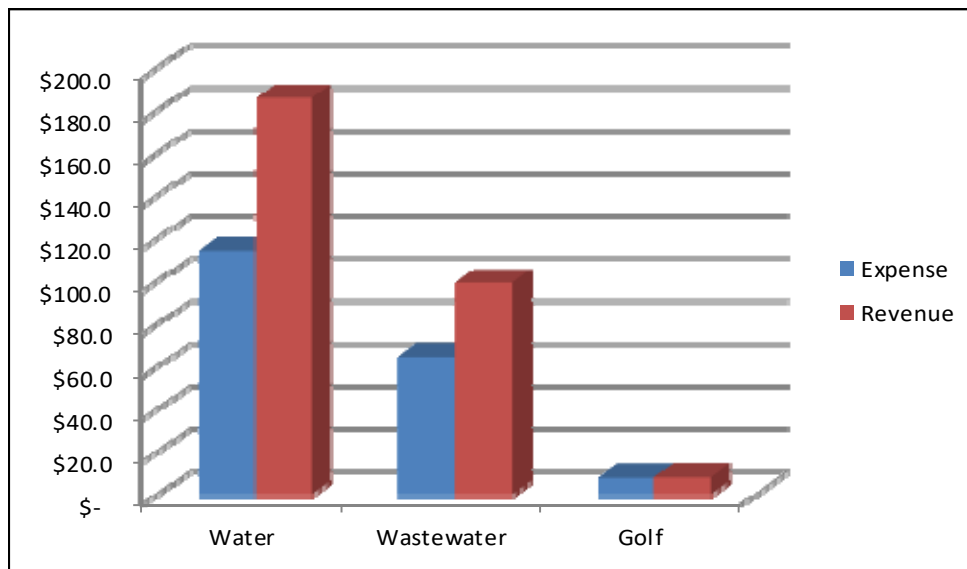


**Expenses and Program Revenues – Business-type Activities**  
(in millions)

**2019**

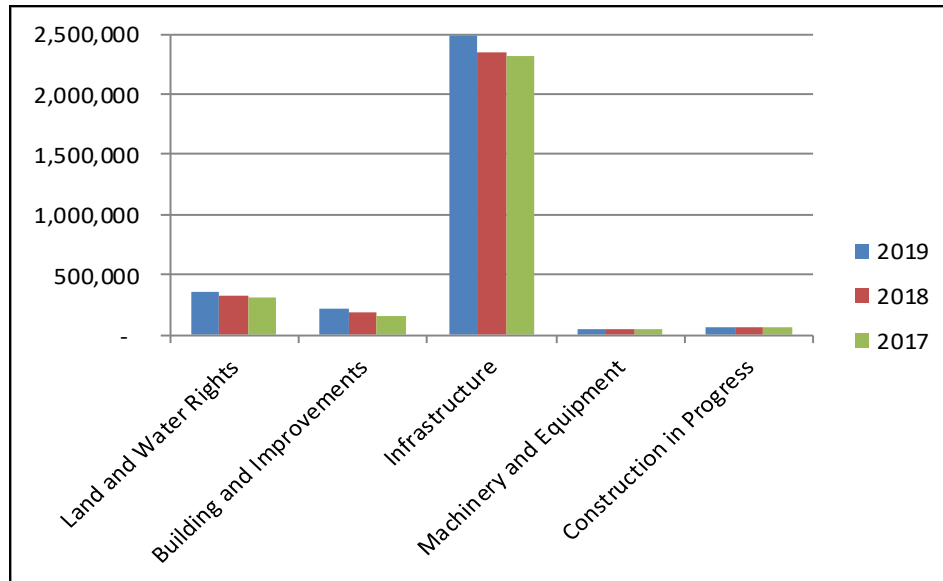
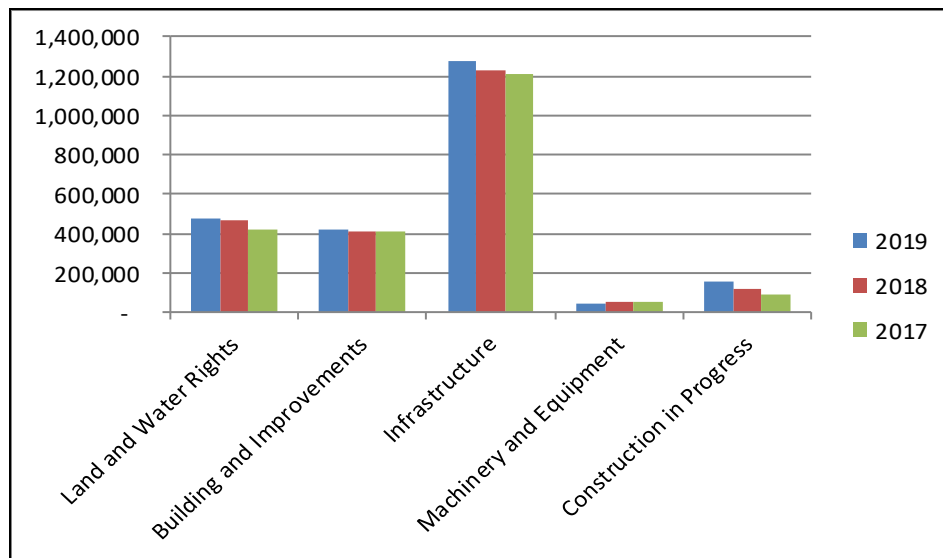


**2018**



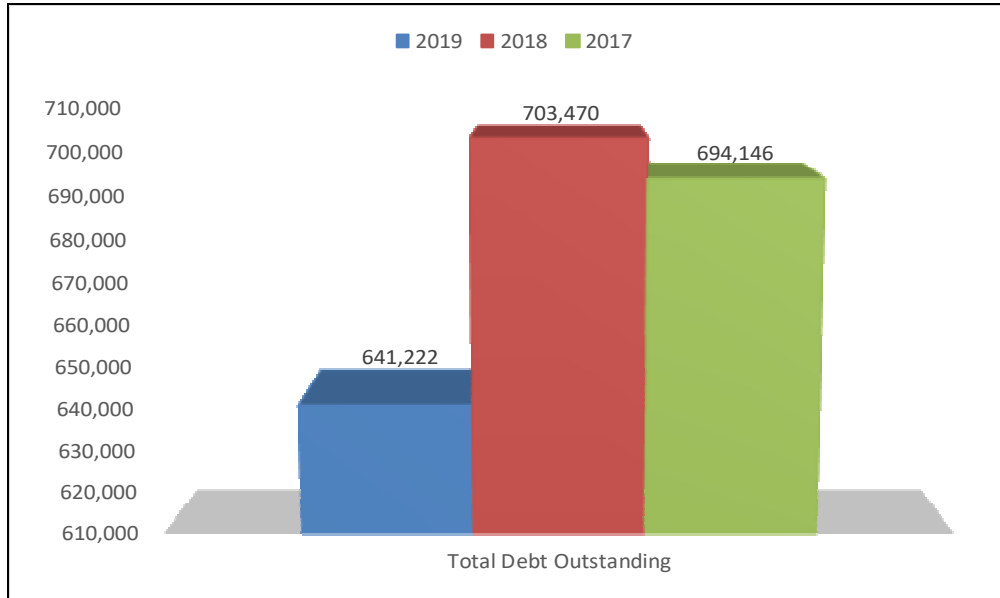
**Capital Assets – Net of Accumulated Depreciation**

(in thousands)

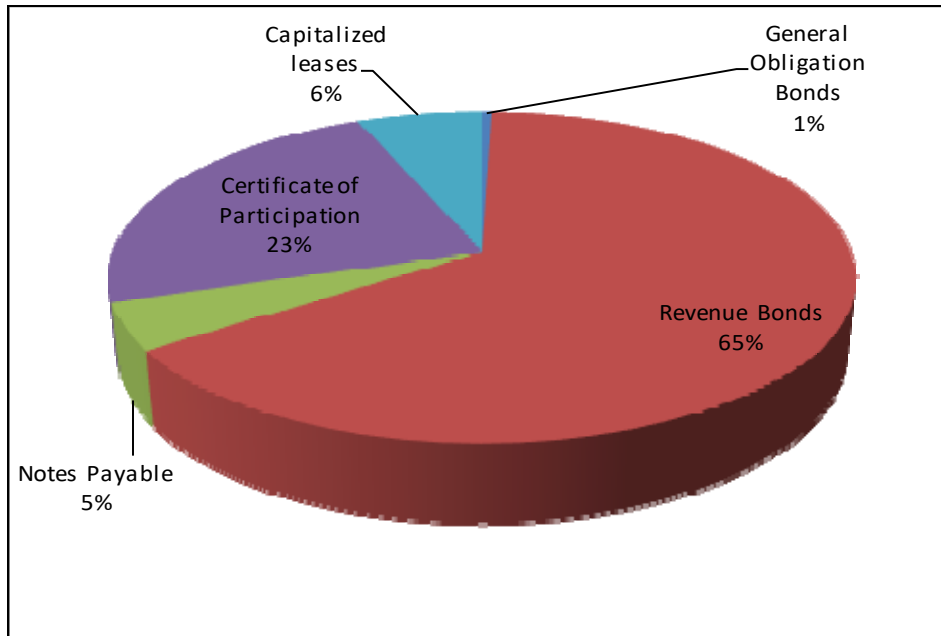
**Governmental Activities****Business-type Activities**

**Outstanding Debt as of December 31**

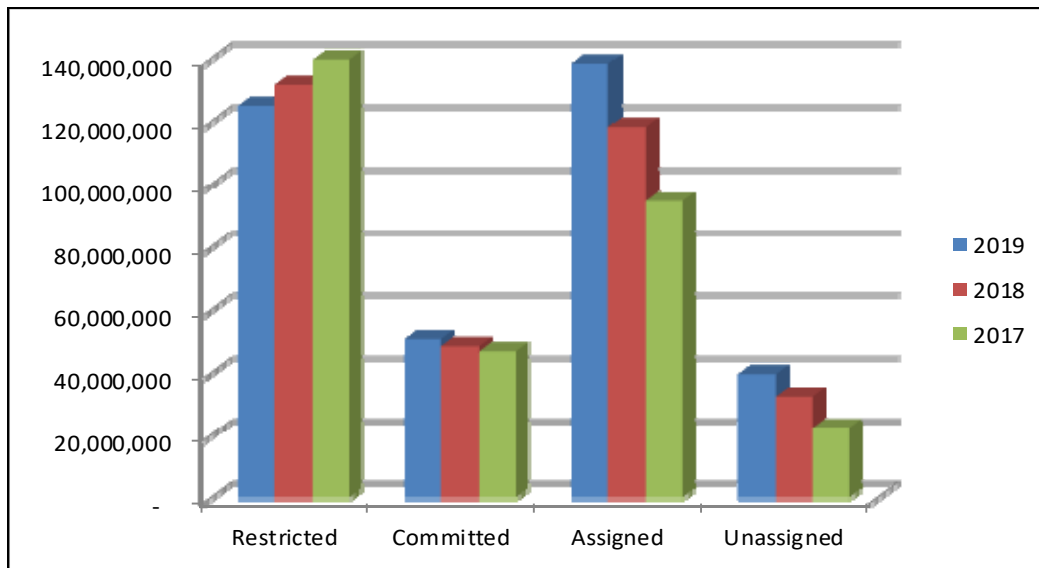
(in thousands)



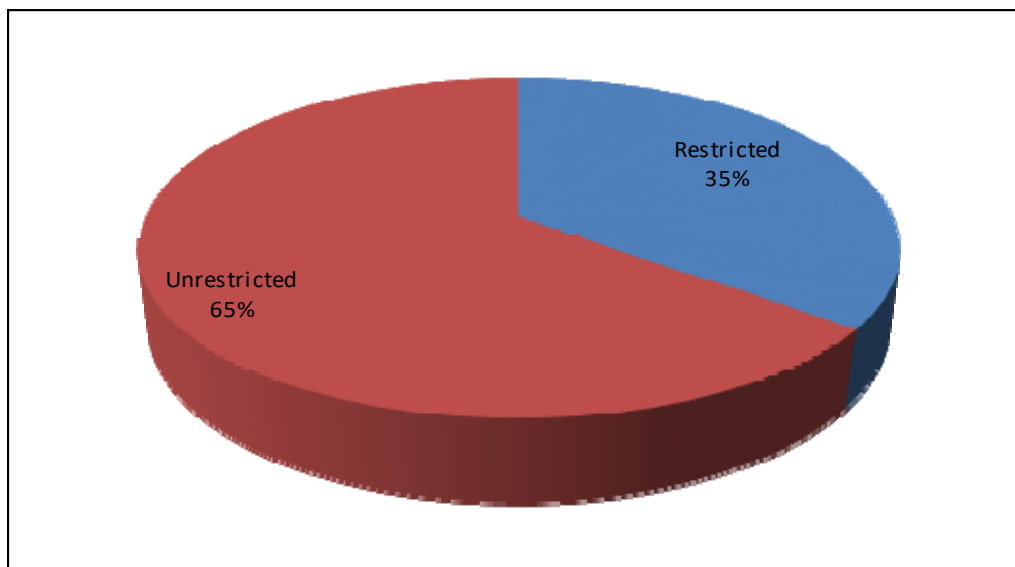
**Outstanding Debt by Type as of December 31, 2019:**



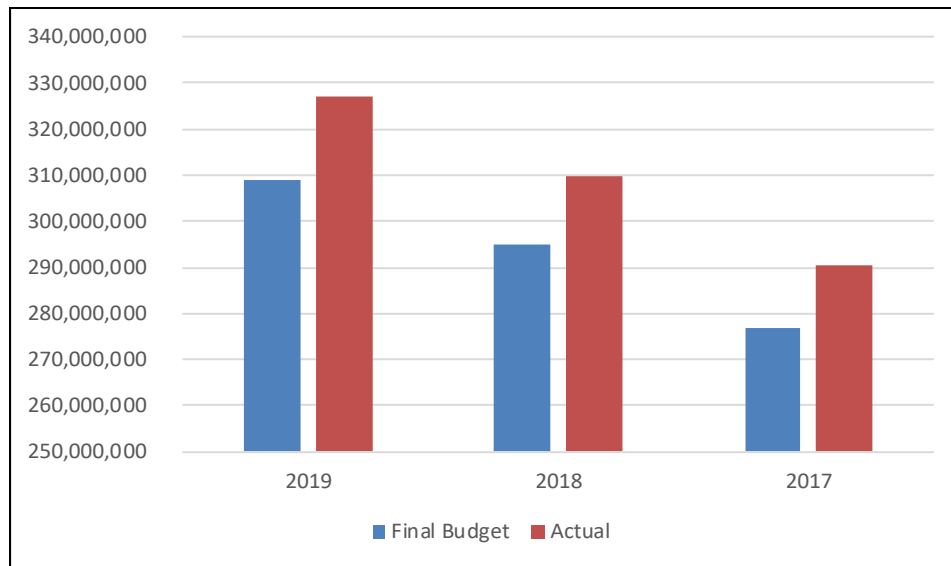
**Total Governmental Funds Fund Balances Break-out**



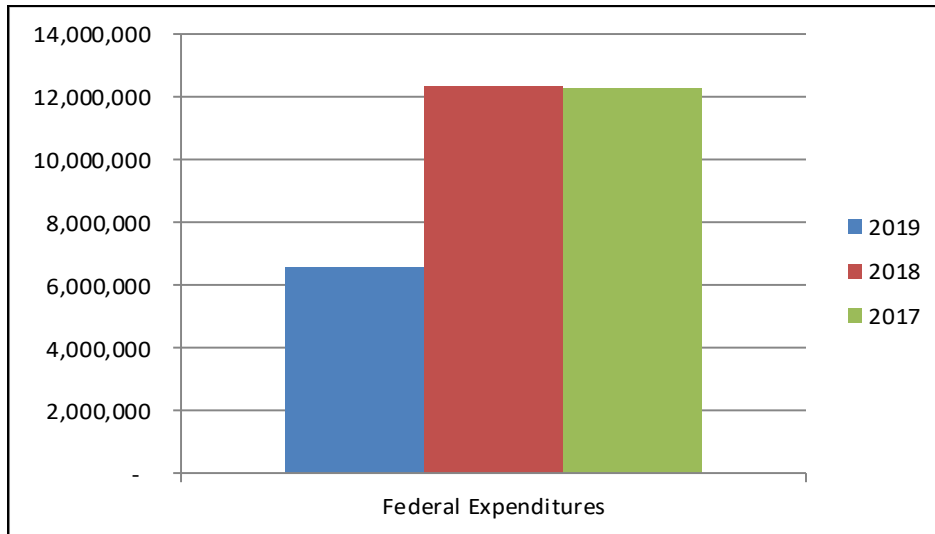
**Restricted vs Unrestricted Fund Balances as of December 31, 2019:**



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

### Single Audit Results



	2019	2018	2017
<b>Number of Major Programs</b>	➤ One	➤ One	➤ Two
<b>Programs Audited</b>	➤ CDBG – Entitlement Grants Cluster	➤ Highway Planning and Construction Cluster	➤ Highway Planning and Construction Cluster ➤ HOME Investment Partnerships Program
<b>Number of Findings</b>	➤ One	➤ Two	➤ Zero
<b>Classification of Findings</b>	<p><b>Financial Statement Findings</b></p> <ul style="list-style-type: none"> <li>➤ Significant Deficiency – Information Technology – Access and Operations</li> </ul> <p><b>Federal Award Findings</b></p> <ul style="list-style-type: none"> <li>➤ None</li> </ul>	<p><b>Financial Statement Findings</b></p> <ul style="list-style-type: none"> <li>➤ Significant Deficiency – Information Technology – Access and Operations</li> <li>➤ Significant Deficiency – Accounting for donated roads</li> </ul> <p><b>Federal Award Findings</b></p> <ul style="list-style-type: none"> <li>➤ None</li> </ul>	<p><b>Financial Statement Findings</b></p> <ul style="list-style-type: none"> <li>➤ None</li> </ul> <p><b>Federal Award Findings</b></p> <ul style="list-style-type: none"> <li>➤ None</li> </ul>

**Required Communications – Financial Statement Audit**

Area	2019 Comments	2018 Comments
<p><b>Significant Accounting Policies</b></p>	<ul style="list-style-type: none"> <li>➤ The City’s significant accounting policies are described in Note 1 of the audited financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>➤ The City’s significant accounting policies are described in Note 1 of the audited financial statements.</li> </ul>
<p><b>Alternative Accounting Treatments</b></p> <p>We had discussions with management regarding alternative accounting treatments within accounting principles generally accepted in the United States of America for policies and practices for material items, including recognition, measurement and disclosure considerations related to the accounting for specific transactions as well as general accounting policies.</p>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>
<p><b>Financial Statement Disclosures</b></p> <p>The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures.</p>	<ul style="list-style-type: none"> <li>➤ Subsequent events.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Adoption of accounting principles.</li> <li>➤ Other Postemployment Benefits (OPEB).</li> <li>➤ Subsequent events.</li> </ul>

Area	2019 Comments	2018 Comments
<p><b>Audit Adjustments</b></p> <p>During the course of any audit, an auditor may propose adjustments to financial statement amounts. Management evaluates our proposals and records those adjustments which, in its judgment, are required to prevent the financial statements from being materially misstated.</p> <p>Some adjustments proposed were not recorded because their aggregate effect is not currently material; however, they involve areas in which adjustments in the future could be material, individually or in the aggregate.</p>	<p><u>Proposed Audit Adjustments Recorded</u></p> <p>Entry to correct how the sale of the Fanfare property held for resale is reported in fund and citywide financials.</p> <p><u>Proposed Audit Adjustments Not Recorded</u></p> <p>Entries to adjust accounts payable that were improperly excluded.</p> <p>Entry to show effect of impact to estimate on the allowance reserve held on the repayment of notes receivable in gifts and grants fund if underlying assumptions were updated to consider recent economic conditions and the impact to these loans.</p> <p>See attached passed adjustment schedules.</p>	<p><u>Proposed Audit Adjustments Recorded</u></p> <p>Entry to record subsequent benefit payments relating to OPEB.</p> <p><u>Proposed Audit Adjustments Not Recorded</u></p> <p>Entries to adjust accounts payable that were improperly excluded; entry to show impacting of correcting prior year error related to the recording of donated roads.</p> <p>See attached passed adjustment schedules.</p>
<p><b>Auditor’s Judgments About the Quality of the City’s Accounting Policies</b></p> <p>During the course of the audit, we made the following observations regarding the City’s application of accounting principles.</p>	<p>➔ Adoption of Governmental Accounting Standards Board Statement No. 95, <i>Postponement of the Effective Dates of Certain Authoritative Guidance</i>.</p>	<p>➔ Adoptions of Governmental Accounting Standards Board Statement (GASB) No. 75, <i>Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions</i> and No. 89, <i>Accounting for Interest Costs Incurred before the End of a Construction Period</i>.</p>
<p><b>Disagreements with Management</b></p> <p>The following matters involved disagreements which if not satisfactorily resolved would have caused a modified auditor’s opinion on the financial statements.</p>	<p>➔ No matters are reportable.</p>	<p>➔ No matters are reportable.</p>





2019 Audit Results

Area	2019 Comments	2018 Comments
<p><b>Consultation with Other Accountants</b></p> <p>During the audit, we became aware that management had consulted with other accountants about the following audit or accounting issues.</p>	<p>The Havana Business Improvement District is audited by Simmons &amp; Wheeler P.C. The Parkside City Centre Business Improvement District is audited by Wipfli. We placed reliance on the audit of the financial statements of these entities as of December 31, 2019, and for the year then ended.</p>	<p>The Havana Business Improvement District (BID) is audited by Simmons &amp; Wheeler P.C. We placed reliance on the audit of the financial statements of BID as of December 31, 2018, and for the year then ended.</p>
<p><b>Significant Issues Discussed with Management</b></p> <p><u>Prior to Retention</u></p> <p>During our discussion with management prior to our engagement, the following issues regarding application of accounting principles or auditing standards were discussed.</p> <p><u>During the Audit Process</u></p> <p>During the audit process, the following issues were discussed or were the subject of correspondence with management.</p>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li>   <li>➤ Assets acquired for resale.</li> <li>➤ Debt prepayment and refunding calculations.</li> <li>➤ Delay of GASB standard adoption that were originally planned.</li> <li>➤ Impact of COVID-19, subsequent event disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li>   <li>➤ Assets acquired for resale.</li> <li>➤ OPEB calculations and disclosures.</li> <li>➤ GASB 68 calculations and disclosures.</li> </ul>
<p><b>Difficulties Encountered in Performing the Audit</b></p> <p>Our audit requires cooperative effort between management and the audit team. During our audit, we found significant difficulties in working effectively on the following matters.</p>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul>

Area	2019 Comments	2018 Comments
<p><b>Other Material Communications</b></p> <p>Listed are other material communications between management and us related to the audit.</p>	<ul style="list-style-type: none"> <li>➤ Oral communication to management regarding other deficiencies.</li> <li>➤ Management representation letter (attached).</li> <li>➤ Required communication and management letter on SCFD audits (see separately issued letter).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Oral communication to management regarding other deficiencies.</li> <li>➤ Management representation letter (attached).</li> <li>➤ Required communication and management letter on SCFD audits (see separately issued letter).</li> </ul>

### Financial Statement and Single Audit Management Letter Comments

Area	2019	2018
<p><b>Number of Management Letter Comments</b></p>	<ul style="list-style-type: none"> <li>➤ Three</li> </ul>	<ul style="list-style-type: none"> <li>➤ Two</li> </ul>
<p><b>Classification of Management Letter Comments</b></p>	<p><u>Financial Statement Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ <u>Significant Deficiency:</u> Information Technology – Access and Operations.</li> </ul> <p>See separately issued single audit report for written findings related to the above significant deficiency.</p> <ul style="list-style-type: none"> <li>➤ <u>Deficiency:</u> Accounting for sale of assets held for resale.</li> <li>➤ <u>Deficiency:</u> Pension Reporting.</li> </ul> <p>See next pages for elaboration on deficiencies noted above.</p> <p><u>Compliance Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul> <p><u>Other Matters</u></p> <ul style="list-style-type: none"> <li>➤ Accounting Pronouncements Requiring Future Adoption.</li> </ul>	<p><u>Financial Statement Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ <u>Significant Deficiency:</u> Information Technology – Access and Operations.</li> <li>➤ <u>Significant Deficiency:</u> Accounting for donated roads.</li> </ul> <p>See separately issued single audit report for written findings related to the above significant deficiencies.</p> <p><u>Compliance Control Deficiency</u></p> <ul style="list-style-type: none"> <li>➤ No matters are reportable.</li> </ul> <p><u>Other Matters</u></p> <ul style="list-style-type: none"> <li>➤ Accounting Pronouncements Requiring Future Adoption.</li> </ul>

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## Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements of the City of Aurora, Colorado (the City) as of and for the year ended December 31, 2019 in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified a certain deficiency in internal control that we consider to be a deficiency.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented or detected and corrected on a timely basis.

A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

We observed the following matters that we consider to be deficiencies.

### Deficiencies

#### *Sale of Fund Asset*

The sale of the Fanfare asset held for resale was treated similarly to how the sale of a capital asset is typically treated rather than a sale of a fund asset. The accounting rules differ as the asset held for sale is accounted in the fund financial statements. The proceeds should not be reported as an other financing source. Instead the gain on sale should be reported as a revenue in the fund financials and as a gain on the sale of asset at citywide. An adjusting journal entry was required to correct this transaction. BKD recommends management implement a process of identifying unique and significant transactions that occur within the year and reviewing related accounting guidance to help ensure the correct reporting in the CAFR.

*Pension Reporting*

GASB 68, *Accounting and Financial Reporting for Pensions* requires that the deferred outflows of resources and deferred inflows of resources arising from differences between projected and actual pension plan investment earnings in different measurement periods be aggregated and reported as a net deferred outflow of resources or a deferred inflow of resources. All other deferred outflows of resources or deferred inflows of resources related to pensions should be reported gross. We noted that the City initially reported these items gross in its CAFR rather than net. We recommend notes be added to the year-end procedures to help ensure the deferrals relating to the differences between projected and actual pension plan investment earnings are reported net.

## Accounting Pronouncements Requiring Future Adoption

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

Subsequent to the issuance of GASB 95, GASB 84 is effective for the City's December 31, 2020 financial statements.

\* \* \* \* \*

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

GASB 87 is effective for the City's December 31, 2022 financial statements, with earlier application encouraged. Governments will be allowed to transition using the facts and circumstances in place at the time of adoption, rather than retroactive to the time each lease was begun.

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

GASB 88 is effective for the City's December 31, 2020 financial statements.

\* \* \* \* \*

GASB Statement No. 91, *Conduit Debt Obligations* (GASB 91): GASB 91 provides a single method of reporting conduit debt obligations by issuers and eliminates diversity in practice associated with commitments extended by issuers, arrangements associated with conduit debt obligations, and related note disclosures. This Statement clarifies the existing definition of a conduit debt obligation; establishes that a conduit debt obligation is not a liability of the issuer; establishes standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improves required note disclosures.

GASB 91 is effective for the City's December 31, 2022 financial statements.

\* \* \* \* \*

GASB Statement No. 95, *Postponement of Effective dates of Certain Authoritative Guidance* (GASB 95): In response to the challenges arising from COVID-19, on May 7, 2020 GASB approved GASB 95. GASB approved an 18-month postponement for Statement 87, *Leases*. All statements and implementation guides with a current effective date of reporting periods beginning after June 15, 2018, and later have a one-year postponement. This change is effective immediately. Early application is still encouraged. The new effective dates are listed below:

- Statement 83—reporting periods beginning after June 15, 2019
- Statement 84 and Implementation Guide 2019-2—reporting periods beginning after December 15, 2019
- Statement 87 and Implementation Guide 2019-3—fiscal years beginning after June 15, 2021, and all reporting periods thereafter
- Statement 88—reporting periods beginning after June 15, 2019
- Statement 89—reporting periods beginning after December 15, 2020
- Statement 90—reporting periods beginning after December 15, 2019
- Statement 91—reporting periods beginning after December 15, 2021
- Statement 92, paragraphs 6 and 7—fiscal years beginning after June 15, 2021
- Statement 92, paragraphs 8, 9 and 12—reporting periods beginning after June 15, 2021
- Statement 92, paragraph 10—government acquisitions occurring in reporting periods beginning after June 15, 2021



## 2019 Audit Results

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- Statement 93, paragraphs 13 and 14—fiscal years beginning after June 15, 2021, and all reporting periods thereafter
- Implementation Guide 2017-3, Questions 4.484 and 4.491—the first reporting period in which the measurement date of the (collective) net OPEB liability is on or after June 15, 2019
- Implementation Guide 2017-3, Questions 4.85, 4.103, 4.108, 4.109, 4.225, 4.239, 4.244, 4.245 and 5.1–5.4—actuarial valuations as of December 15, 2018, or later
- Implementation Guide 2018-1—reporting periods beginning after June 15, 2019
- Implementation Guide 2019-1—reporting periods beginning after June 15, 2020

GASB also has an Emergency Toolbox available to help stakeholders quickly identify the GASB’s authoritative guidance that could be relevant to the current circumstances.

\* \* \* \* \*

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

*BKD, LLP*

June 19, 2020

# City of Aurora, Colorado

## ATTACHMENT

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

### General Fund

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	188,687,037		188,687,037	
Total Liabilities & Deferred Inflows	(65,864,146)	(827,488)	(66,691,634)	1.26%
Total Fund Balance	(122,822,891)	827,488	(121,995,403)	-0.67%
Revenues	(380,831,576)		(380,831,576)	
Expenditures	305,456,574	351,370	305,807,944	0.12%
Change in Fund Balance	(9,603,693)	351,370	(9,252,323)	-3.66%

# City of Aurora, Colorado

## ATTACHMENT

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

### AURA General Fund

#### QUANTITATIVE ANALYSIS

	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	66,908,234		66,908,234	
Total Liabilities & Deferred Inflows	(41,889,973)		(41,889,973)	
Total Fund Balance	(25,018,261)		(25,018,261)	
Revenues	(46,769,659)		(46,769,659)	
Expenditures	41,927,007		41,927,007	
Change in Fund Balance	(5,374,021)		(5,374,021)	

#### Misstatements within Notes to the Financial Statements

- 1 GASB 34 requires that a budgetary comparison schedule be included for the general fund and each major special revenue fund that has a legally adopted budget. The City reports the AURA general fund as a major special revenue fund; however, a budgetary schedule is not presented as budgets for the City's component units are not required to be and are not legally adopted by the City. Per C.R.S. these entities may be subject to the State's budgetary requirements, which require a budget to be legally adopted.



**SCHEDULE OF UNCORRECTED MISSTATEMENTS (NOTES TO THE FINANCIAL STATEMENTS)**

Uncorrected and/or Omitted Disclosure (Include Guidance Reference)	Misstatement Type	Quantitative Amount(s)	Relevant Financial Statement Line(s)
1 GASB 34 requires that a budgetary comparison schedule be included for the general fund and each major special revenue fund that has a legally adopted budget. The City reports the AURA general fund as a major special revenue fund; however, a budgetary schedule is not presented as budgets for the City's component units are not required to be and are not legally adopted by the City. Per C.R.S. these entities may be subject to the State's budgetary requirements, which require a budget to be legally adopted.	Omitted	Entire budget schedule	Required Supplementary Information - Budgetary Comparison Schedule

# City of Aurora, Colorado

## ATTACHMENT

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

### ARF

#### QUANTITATIVE ANALYSIS

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	Before Misstatements	Misstatements	Subsequent to Misstatements	% Change
Total Assets & Deferred Outflows	841,353,154	733,172	842,086,326	0.09%
Total Liabilities & Deferred Inflows	(74,328,249)	(971,385)	(75,299,634)	1.31%
Total Fund Balance	(767,024,905)	238,213	(766,786,692)	-0.03%
Revenues	(256,849,990)		(256,849,990)	
Expenditures	247,236,100	(419,019)	246,817,081	-0.17%
Change in Fund Balance	(81,569,011)	(419,019)	(81,988,030)	0.51%



15151 E. Alameda Parkway, Ste. 5700  
Aurora, Colorado 80012  
303.739.7010

June 19, 2020

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

We are providing this letter in connection with your audit of our financial statements as of and for the year ended December 31, 2019 and your audit of our compliance with requirements applicable to each of our major federal awards programs as of and for the year ended December 31, 2019. We confirm that we are responsible for the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, operations and compliance, and preventing and detecting fraud.

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

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

1. We have fulfilled our responsibilities, as set out in the terms of our engagement letter dated November 25, 2019, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.
2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

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

11. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America. We understand that the term related party refers to an affiliate; management, and members of their immediate families, component units; and any other party with which the entity may deal if it can significantly influence, or be influenced by, the management or operating policies of the other. The term affiliate refers to a party that directly or indirectly controls, or is controlled by, or is under common control with us.
12. Except as reflected in the financial statements, there are no:
  - (a) Plans or intentions that may materially affect carrying values or classifications of assets and liabilities.
  - (b) Material transactions omitted or improperly recorded in the financial statements.
  - (c) Material gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.
  - (d) Events occurring subsequent to the statement of net position/balance sheet date through the date of this letter requiring adjustment or disclosure in the financial statements.
  - (e) Agreements to purchase assets previously sold.
  - (f) Restrictions on cash balances or compensating balance agreements.
  - (g) Guarantees, whether written or oral, under which the City is contingently liable.
13. We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws and regulations whose effects should be considered when preparing financial statements.
14. We have no reason to believe the City owes any penalties or payments under the Employer Shared Responsibility Provisions of the Patient Protection and Affordable Care Act nor have we received any correspondence from the IRS or other agencies indicating such payments may be due.
15. We have disclosed to you all known actual or possible litigation and claims whose effects should be considered when preparing the financial statements. The effects of all known actual or possible litigation and claims have been accounted for and

disclosed in accordance with accounting principles generally accepted in the United States of America.

16. Adequate provisions and allowances have been accrued for any material losses from:
  - (a) Uncollectible receivables.
  - (b) Reducing obsolete or excess inventories to estimated net realizable value.
  - (c) Sales/service commitments, including those unable to be fulfilled.
  - (d) Purchase commitments in excess of normal requirements or above prevailing market prices.
17. Except as disclosed in the financial statements, we have:
  - (a) Satisfactory title to all recorded assets, and they are not subject to any liens, pledges or other encumbrances.
  - (b) Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.
18. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.
19. We have reviewed GASB No. 49, *Accounting and Financial Reporting for Pollution Remediation Obligations*, and have determined that the City does not have any environmental liabilities nor have any obligating events occurred that would require us to record a liability, except for as related to the Highway 30 Landfill Facility.
20. We adopted GASB No. 95 *Postponement of the Effective Dates of Certain Authoritative Guidance* which allowed us to postpone the adoption of GASB No. 83, *Certain Asset Retirement Obligations*, GASB No. 84, *Fiduciary Activities* and GASB No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, which were originally required to be implemented by the City for the year ended December 31, 2019.
21. We have notified you of any instances of noncompliance with applicable disclosure requirements of the SEC Rule 15c2-12 and applicable state laws.

22. With regard to deposit and investment activities:
  - (a) All deposit and investment transactions have been made in accordance with legal and contractual requirements.
  - (b) Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.
  - (c) We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.
  
23. With respect to any nonattest services you have provided us during the year, including assistance with formatting, printing and binding the City's single audit reports and the SCFD reports and completion of the auditee portion of the Form SF-SAC (Data Collection Form) through the Federal Audit Clearinghouse:
  - (a) We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.
  - (b) We have established and monitored the performance of the nonattest services to ensure that they meet our objectives.
  - (c) We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.
  - (d) We have evaluated the adequacy of the services performed and any findings that resulted.
  
24. We acknowledge that we are responsible for compliance with applicable laws, regulations and provisions of contracts and grant agreements.
  
25. We have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that have a direct and material effect on the determination of amounts in our financial statements or other financial data significant to the audit objectives.
  
26. We have identified and disclosed to you any violations or possible violations of laws, regulations and provisions of contracts and grant agreements whose effects should be considered for recognition and/or disclosure in the financial statements or for your reporting on noncompliance.
  
27. We have taken or will take timely and appropriate steps to remedy any fraud, abuse, illegal acts or violations of provisions of contracts or grant agreements that you or other auditors report.

28. We have a process to track the status of audit findings and recommendations.
29. We have identified to you any previous financial audits, attestation engagements, performance audits or other studies related to the objectives of your audit and the corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other studies.
30. We have provided our views on any findings, conclusions and recommendations, as well as our planned corrective actions with respect thereto, to you for inclusion in the findings and recommendations referred to in your report on internal control over financial reporting and on compliance and other matters based on your audit of the financial statements performed in accordance with *Government Auditing Standards*.
31. With regard to federal awards programs:
  - (a) We have identified in the schedule of expenditures of federal awards all assistance provided (either directly or passed through other entities) by federal agencies in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, commodities, insurance, direct appropriations or in any other form.
  - (b) We have identified the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Compliance Supplement* regarding activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; equipment and real property management; matching, level of effort, earmarking; period of performance of federal funds; procurement and suspension and debarment; program income; reporting; subrecipient monitoring; and special tests and provisions that are applicable to each of our federal awards programs. We have identified to you our interpretation of any applicable compliance requirements subject to varying interpretations.
  - (c) We are responsible for complying, and have complied, with the requirements of Uniform Guidance.
  - (d) We are responsible to understand and comply with the requirements of federal statutes, regulations and the terms and conditions of federal awards related to each of our federal awards programs and have disclosed to you any and all instances of noncompliance with those requirements occurring during the period of your audit or subsequent thereto to the date of this letter of which we are aware. Except for any instances of noncompliance we have disclosed to you, we believe the City has complied with all applicable compliance requirements.



- (e) We are responsible for establishing and maintaining effective internal control over compliance to provide reasonable assurance we have administered each of our federal awards programs in compliance with federal statutes, regulations and the terms and conditions of the federal awards.
- (f) We have made available to you all federal awards (including amendments, if any) and any other correspondence or documentation relevant to each of our federal awards programs and to our compliance with applicable requirements of those programs.
- (g) The information presented in federal awards program financial reports and claims for advances and reimbursements is supported by the books and records from which our financial statements have been prepared.
- (h) The costs charged to federal awards are in accordance with applicable cost principles.
- (i) The reports provided to you related to federal awards programs are true copies of reports submitted or electronically transmitted to the federal awarding agency, the applicable payment system or pass-through entity in the case of a subrecipient.
- (j) Amounts claimed or used for matching were determined in accordance with Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) regarding cost principles.
- (k) We have monitored any subrecipients to determine that they have expended federal awards in accordance with federal statutes, regulations and the terms and conditions of the subaward and have met the audit and other requirements of the Uniform Guidance.
- (l) We have taken appropriate corrective action on a timely basis after receipt of any subrecipient's auditor's report that identified findings and questioned costs pertaining to federal awards programs passed through to the subrecipient by us.
- (m) We have considered the results of any subrecipient's audits received and made any necessary adjustments to our books and records.
- (n) We do not believe any of the revolving loan programs operated by the City in the Community Development Block Grants Program, the HOME Investment Partnerships Program and the Brownfields Grant Programs contain continuing compliance requirements other than

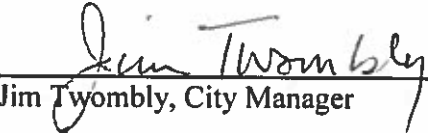
continued loan repayments and thus deem it proper to exclude the outstanding loan balances, other than new loans executed during the year, from the Schedule of Expenditures of Federal Awards.

- (o) We have disclosed to you any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the applicable compliance requirements for each of our federal awards programs, including any communications received from the end of the period of your audit through the date of this letter.
  - (p) We have identified to you any previous compliance audits, attestation engagements and internal or external monitoring related to the objectives of your compliance audit, including findings received and corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other monitoring.
  - (q) Except as described in the schedule of findings and questioned costs, we are in agreement with the findings contained therein and our views regarding any disagreements with such findings are consistent, as of the date of this letter, with the description thereof in that schedule.
  - (r) We are responsible for taking corrective action on any audit findings and have developed a corrective action plan that meets the requirements of Uniform Guidance.
  - (s) The summary schedule of prior audit findings correctly states the status of all audit findings of the prior audit's schedule of findings and questioned costs and any uncorrected open findings included in the prior audit's summary schedule of prior audit findings as of the date of this letter.
  - (t) The reporting package does not contain any protected personally identifiable information.
32. The financial statements disclose all significant estimates and material concentrations known to us. Significant estimates are estimates at the statement of net position/balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets for which events could occur which would significantly disrupt normal finances within the next year. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
33. The fair values of financial and nonfinancial assets and liabilities, if any, recognized in the financial statements or disclosed in the notes thereto are

reasonable estimates based on the methods and assumptions used. The methods and significant assumptions used result in measurements of fair value appropriate for financial statement recognition and disclosure purposes and have been applied consistently from period to period, taking into account any changes in circumstances. The significant assumptions appropriately reflect market participant assumptions.

34. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis, budgetary comparisons, pension and other postemployment benefit information, has been prepared and is measured and presented in conformity with the applicable GASB pronouncements, and we acknowledge our responsibility for the information. The information contained therein is based on all facts, decisions and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. We believe the significant assumptions underlying the measurement and/or presentation of the information are reasonable and appropriate. There has been no change from the preceding period in the methods of measurement and presentation.
35. With regard to supplementary information:
  - (a) We acknowledge our responsibility for the presentation of the supplementary information in accordance with the applicable criteria.
  - (b) We believe the supplementary information is fairly presented, both in form and content, in accordance with the applicable criteria.
  - (c) The methods of measurement and presentation of the supplementary information are unchanged from those used in the prior period.
  - (d) We believe the significant assumptions or interpretations underlying the measurement and/or presentation of the supplementary information are reasonable and appropriate.
  - (e) If the supplementary information is not presented with the audited financial statements, we acknowledge we will make the audited financial statements readily available to intended users of the supplementary information no later than the date such information and the related auditor's report are issued.
36. Due care has been exercised in the preparation of the Introductory and Statistical and Other Schedules Sections of the comprehensive annual financial report and we are unaware of any information in those sections that is materially inconsistent with the information reported in the basic financial statements.
37. We acknowledge the current economic volatility presents difficult circumstances and challenges for the governmental industry. Governmental entities are facing

declines in the fair values of investments and other assets, declines in the volume of business, constraints on liquidity and difficulty obtaining financing. We understand the values of the assets and liabilities recorded in the financial statements could change rapidly, resulting in material future adjustments to asset values, allowances for accounts and notes receivable, net realizable value of inventory, etc. that could negatively impact the City's ability to meet debt covenants or maintain sufficient liquidity. We acknowledge that you have no responsibility for future changes caused by the current economic environment and the resulting impact on the City's financial statements. Further, management and the Board are solely responsible for all aspects of managing the City, including questioning the quality and valuation of investments, inventory and other assets, reviewing allowances for uncollectible amounts and evaluating capital needs and liquidity plans.

  
\_\_\_\_\_  
Jim Twombly, City Manager

  
\_\_\_\_\_  
Terri Velasquez, Director of Finance

  
\_\_\_\_\_  
Nancy Wishmeyer, Controller

# **City of Aurora, Colorado**

Single Audit Report

Year Ended December 31, 2019

**City of Aurora, Colorado**  
**Single Audit Report**  
**December 31, 2019**

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**City of Aurora, Colorado**  
**Schedule of Expenditures of Federal Awards**  
**Year Ended December 31, 2019**

Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b><u>Department of Agriculture</u></b>				
Passed through from the Colorado Department of Public Health and Environment:				
Child and Adult Care Food Program	10.558	11 FLA 13568	\$ 11,624	\$ -
Child and Adult Care Food Program	10.558	11 FLA 13568	65,406	-
Total 10.558			<u>77,030</u>	<u>-</u>
<b><u>Child Nutrition Cluster</u></b>				
Passed through from the Colorado Department of Education:				
Summer Food Service Program for Children	10.559	4559	65,683	-
Total Child Nutrition Cluster and 10.559			<u>65,683</u>	<u>-</u>
<b>Total Department of Agriculture</b>			<u>142,713</u>	<u>-</u>
<b><u>Department of Commerce</u></b>				
Direct payments:				
<b><u>Economic Development Cluster</u></b>				
Economic Adjustment Assistance	11.307	N/A	170,943	-
Total Economic Development Cluster and 11.307			<u>170,943</u>	<u>-</u>
<b>Total Department of Commerce</b>			<u>170,943</u>	<u>-</u>
<b><u>Department of Housing and Urban Development</u></b>				
Passed through from the Colorado Housing and Finance Authority:				
Housing Counseling Assistance Program	14.169	HC190841001	16,554	-
Total 14.169			<u>16,554</u>	<u>-</u>
Direct payments:				
<b><u>CDBG - Entitlement Grant Cluster</u></b>				
Community Development Block Grants/ Entitlement	14.218	N/A	2,450,603	74,301
Total CDBG - Entitlement Grant Cluster and 14.218			<u>2,450,603</u>	<u>74,301</u>
Emergency Solutions Grant Program	14.231	N/A	320,153	298,421
Total 14.231			<u>320,153</u>	<u>298,421</u>
Home Investment Partnerships Program	14.239	N/A	440,419	30,916
Total 14.239			<u>440,419</u>	<u>30,916</u>
<b>Total Department of Housing and Urban</b>			<u>3,227,729</u>	<u>403,638</u>

**City of Aurora, Colorado**  
**Schedule of Expenditures of Federal Awards (continued)**  
**Year Ended December 31, 2019**

Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b><u>Department of Justice</u></b>				
Passed through from the City of Colorado Springs, Colorado:				
Missing Children's Assistance (Colorado Internet Crimes Against Children) (FY 2018)	16.543	2018-MC-FX-K027	19,389	-
Total 16.543			<u>19,389</u>	<u>-</u>
Passed through from the Colorado Division of Criminal Justice:				
Project Safe Neighborhoods (FY2018)	16.609	2018-GP-19-1001	39,432	-
Total 16.609			<u>39,432</u>	<u>-</u>
Direct payments:				
Edward Byrne Memorial Justice Assistance Grant Program (FY2016)	16.738	N/A	5,054	170
Edward Byrne Memorial Justice Assistance Grant Program (FY2017)	16.738	N/A	72,786	15,028
Edward Byrne Memorial Justice Assistance Grant Program (FY2018)	16.738	N/A	117,904	3,247
Passed through from the Colorado Division of Criminal Justice:				
Edward Byrne Memorial Justice Assistance Grant Program (Emergency Funds MGTf)	16.738	2016-DJ-18-05-59-1	22,092	-
Edward Byrne Memorial Justice Assistance Grant Program (Emergency Funds MGTf)	16.738	2017-DJ-18-01-20-1	70,231	-
Total 16.738			<u>288,067</u>	<u>18,445</u>
Direct payments:				
Criminal and Juvenile Justice and Mental Health Collaboration Program	16.745	N/A	176,293	64,586
Total 16.745			<u>176,293</u>	<u>64,586</u>
Equitable Sharing Program (Seizures-Federal)	16.922	N/A	346,404	-
Equitable Sharing Program (MGTF Seizures-Federal)	16.922	N/A	24,213	-
Total 16.922			<u>370,617</u>	<u>-</u>
<b>Total Department of Justice</b>			<b><u>893,798</u></b>	<b><u>83,031</u></b>



**City of Aurora, Colorado**  
**Schedule of Expenditures of Federal Awards (continued)**  
**Year Ended December 31, 2019**

Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b>Department of Transportation</b>				
<b>Highway Planning and Construction Cluster</b>				
Passed through from the Colorado Department of Transportation:				
Highway Planning and Construction (Signal System Upgrade)	20.205	M055-048	107,826	-
Highway Planning and Construction (Travel Time Monitoring Grant)	20.205	M055-047	77,240	-
Highway Planning and Construction (Tollgate Extension IGA G21086 TIP Grant)	20.205	M055-040	180,003	-
Highway Planning and Construction (Tollgate Extension IGA G21199 TIP Grant)	20.205	M055-043	(298,868)	-
Passed through from the Regional Air Quality Council:				
Highway Planning and Construction (Charge Ahead Colorado)	20.205	1235	18,000	-
Highway Planning and Construction (Charge Ahead Colorado)	20.205	1236	12,520	-
Total Highway Planning and Construction Cluster and 20.205			96,721	-
<b>Highway Safety Cluster</b>				
Passed through from the Colorado Department of Transportation:				
State and Community Highway Safety (2019 Seatbelt Compliance Campaign)	20.600	411017441	74,959	-
State and Community Highway Safety Cluster (2019 Aurora PD Distracted Driver Campaign)	20.600	411017609	43,132	-
State and Community Highway Safety Cluster (2019 Pedestrian Education and Safety Campaign)	20.600	411017608	47,813	-
State and Community Highway Safety Cluster (2019 Aurora Speed Campaign)	20.600	411017327	33,418	-
State and Community Highway Safety Cluster (2020 Distracted Drivers)	20.600	411021242	5,894	-
State and Community Highway Safety Cluster (2020 CDOT Pedestrians Education and Safety Campaign)	20.600	411021251	13,085	-
State and Community Highway Safety Cluster (2020 CDOT Speed Enforcement)	20.600	411021294	4,733	-
Total 20.600			223,034	-
National Priority Safety Program (2019 DUI Enforcement)	20.616	19NHTSA405D.1111	158,303	-
National Priority Safety Program (2020 DUI Enforcement)	20.616	431005438	12,784	-
National Priority Safety Program (2019 Seatbelt Enforcement)	20.616	411021353	11,497	-
Total 20.616			182,584	-
Total Highway Safety Cluster			405,618	-
<b>Total Department of Transportation</b>			<b>502,339</b>	<b>-</b>

**City of Aurora, Colorado**  
**Schedule of Expenditures of Federal Awards (continued)**  
**Year Ended December 31, 2019**

Federal Grantor/Pass-through Grantor/ Program or Cluster Title	Federal CFDA Number	Pass-through Entity Identifying Number	Federal Expenditures	Amount Paid to Subrecipient
<b><u>Small Business Administration</u></b>				
Passed through from the Colorado Office of Economic Development and International Trade:				
Small Business Development Centers (Host)	59.037	CTGGI 2019 2789	163,000	-
Total 59.037			<u>163,000</u>	<u>-</u>
<b>Total Small Business Administration</b>			<b><u>163,000</u></b>	<b><u>-</u></b>
<b><u>Department of Health and Human Services</u></b>				
Passed through from the Colorado Department of Public Health and Environment:				
State Physical Activity and Nutrition (SPAN) Program	93.439	8002583941	4,253	-
Total 93.439			<u>4,253</u>	<u>-</u>
<b>Total US Department of Health and Human</b>			<b><u>4,253</u></b>	<b><u>-</u></b>
<b><u>Office of National Drug Control Policy</u></b>				
Passed through from Rocky Mountain High Intensity Drug Trafficking Area:				
High Intensity Drug Trafficking Areas Program (Intelligence)	95.001	G18RM0002A	199,090	-
High Intensity Drug Trafficking Areas Program (Intelligence)	95.001	G19RM0002A	90,887	-
High Intensity Drug Trafficking Areas Program (FY2018 MGTF)	95.001	G18RM0002A	70,568	-
High Intensity Drug Trafficking Areas Program (FY2019 MGTF)	95.001	G19RM0002A	358,014	-
Total 95.001			<u>718,559</u>	<u>-</u>
<b>Total Office of National Drug Control Policy</b>			<b><u>718,559</u></b>	<b><u>-</u></b>
<b><u>Department of Homeland Security</u></b>				
Passed through from the West Metro Fire Protection District: National Urban Search and Rescue (US&R) Response System				
	97.025	79370	402	-
Total 97.025			<u>402</u>	<u>-</u>
Direct payments:				
Staffing for Adequate Fire and Emergency Response (SAFER)	97.083	N/A	653,649	-
Total 97.038			<u>653,649</u>	<u>-</u>
Passed through from the Colorado Department of Public Safety Division of Homeland Security and Emergency Management:				
Emergency Management Performance Grants (19 CO LEMS grant)	97.042	19EM-20-61	92,000	-
Total 97.042			<u>92,000</u>	<u>-</u>
<b>Total Department of Homeland Security</b>			<b><u>746,051</u></b>	<b><u>-</u></b>
<b>Total Federal Awards</b>			<b><u>\$ 6,569,385</u></b>	<b><u>\$ 486,669</u></b>

**City of Aurora, Colorado**  
**Notes to Schedule of Expenditures of Federal Awards**  
**Year Ended December 31, 2019**

**(1) Basis of Presentation**

The accompanying Schedule of Expenditures of Federal Awards (the Schedule) includes the federal grant activity of the primary government of the City of Aurora, Colorado (the City). The City's reporting entity is defined in Note 1 in the City's basic financial statements for the year ended December 31, 2019.

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

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

The City's summary of significant accounting policies is presented in Note 1 to the City's basic financial statements for the year ended December 31, 2019. Governmental fund and proprietary funds account for the City's federal grant activity. Expenditures reported on the Schedule are recognized on either the accrual basis of accounting or the modified accrual basis of accounting, depending on the basis of accounting used by the respective fund for which the activity is reported. Such expenditures are recognized following, as applicable, the cost principles in OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, or the cost principles contained in Uniform Guidance wherein certain types of expenditures are not allowable or are limited as to reimbursement. Therefore, some amounts presented in the Schedule may differ from amounts presented in, or used in the preparation of, the basic financial statements or reports to federal agencies. Negative amounts shown on the Schedule represent adjustments or credits made in the normal course of business to amounts reported as expenditures in prior periods. The City has elected not to use the 10 percent de minimis indirect cost rate allowed under the Uniform Guidance.

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

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

**City of Aurora, Colorado**  
**Notes to Schedule of Expenditures of Federal Awards**  
**Year Ended December 31, 2019**

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

The City has certain revolving loan funds, which were originally financed with federal financial assistance through the Community Development Block Grants Program, the HOME Investment Partnerships Program and the Brownfields Grant Program. The outstanding balances of these loan funds at December 31, 2019 were \$3,604,780 for the Community Development Block Grants Program, \$13,800,016 for the HOME Investment Partnerships Program, and \$999,955 for the Brownfields Grant Program. Since there are no continuing compliance requirements other than required loan payments, the outstanding loan balances have not been included in the Schedule. New loans made during the year under these programs are included in the Schedule.

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

The City has certain revolving loan funds reported under CFDA 11.307, which were originally financed from the Department of Commerce, Economic Development Administration through the City's Gifts and Grants Fund. There were no loans outstanding as of December 31, 2019 and \$170,935 in funds available to lend. There were \$8.00 in administrative costs for 2019. There are no City match requirements.

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

**Independent Auditor's Report**

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

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund and the aggregate remaining fund information of the City of Aurora, Colorado (the City), as of and for the year ended December 31, 2019, and the related notes to the financial statements, which collectively comprise the City's basic financial statements, and have issued our report thereon dated June 19, 2020, which contained a reference to the report of other auditors. The financial statements of the Havana Business Improvement District and the Parkside City Centre Business Improvement District, component units included in the financial statements of the aggregate discretely presented component units, were not audited in accordance with *Government Auditing Standards*, and accordingly, this report does not include reporting on internal control over financial reporting or instances of reportable noncompliance associated with the Havana Business Improvement District and the Parkside City Centre Business Improvement District.

***Internal Control Over Financial Reporting***

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

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

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

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies, and therefore, material weaknesses or significant deficiencies may exist that have not been identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We did identify certain deficiencies in internal control, described in the accompanying schedule of findings and questioned costs as item 2019-001, that we consider to be a significant deficiency.

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

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

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

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

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

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

*BKD, LLP*

Denver, Colorado  
June 19, 2020

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

**Independent Auditor's Report**

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

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

We have audited City of Aurora's (the City) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on the City's major federal program for the year ended December 31, 2019. The City's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

***Management's Responsibility***

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

***Auditor's Responsibility***

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

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

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

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

In our opinion, the City complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on its major federal program for the year ended December 31, 2019.

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

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

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

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

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



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

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

We have audited the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund and the aggregate remaining fund information of the City as of and for the year ended December 31, 2019, and the related notes to the financial statements, which collectively comprise the City's basic financial statements. We issued our report thereon dated June 19, 2020 which contained unmodified opinions on those financial statements and referenced the report of other auditors. Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the basic financial statements as a whole.

*BKD, LLP*

Denver, Colorado  
June 19, 2020

**City of Aurora, Colorado**  
**Schedule of Findings and Questioned Costs**  
**Year Ended December 31, 2019**

**Section I – Summary of Auditor’s Results**

*Financial Statements*

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

*Federal Awards*

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

CFDA Number	Name of Federal Program or Cluster
	CDBG - Entitlement Grant Cluster

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

**City of Aurora, Colorado**  
**Schedule of Findings and Questioned Costs (continued)**  
**Year Ended December 31, 2019**

**Section II – Financial Statement Findings**

**Reference  
Number**

**Finding**

**2019-001 Finding: Information Technology - Access and Operations**

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

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

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

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

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

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

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

**City of Aurora, Colorado**  
**Schedule of Findings and Questioned Costs (continued)**  
**Year Ended December 31, 2019**

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

<b>Reference Number</b>	<b>Finding</b>
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No matters are reportable.

# City of Aurora, Colorado

## Status of Prior Audit Findings

### Year Ended December 31, 2019

Reference Number	Summary of Finding	Status
<b>2018-001</b>	<i>Information Technology - Access and Operations</i> - The city should develop, publish, and operationalize a complete set of IT policies to strengthen its internal control over logical and physical access. The city should also ensure that appropriate management oversight is in place to enforce consistent application of the account management policy to mitigate specific information security problems noted in the confidential finding. Further, the City should develop a formal plan for ensuring ongoing computer operations to mitigate specific problems noted in the confidential finding.	Not implemented. See finding 2019-001 and separate auditee document for additional details relating to this finding.
<b>2018-002</b>	<i>Accounting for donated roads</i> - The City should add checks and balances to its processes for recording donated roads to help ensure all inputs determining the acquisition value are properly updated. In addition, we recommend that the City develop policies and procedures to reconcile donated roads reported in the capital asset system to roads reported and tracked by the State of Colorado.	Implemented. See separate auditee document for detail of corrective action taken.

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> GERP Update
<b>Item Initiator:</b> Terri Velasquez
<b>Staff Source:</b> Terri Velasquez, Finance Director
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b> Steve Shanks, GERP Administrator
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

This item is to provide an update to the Management and Finance Policy Committee regarding the General Employee Retirement Pension Plan (GERP).

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

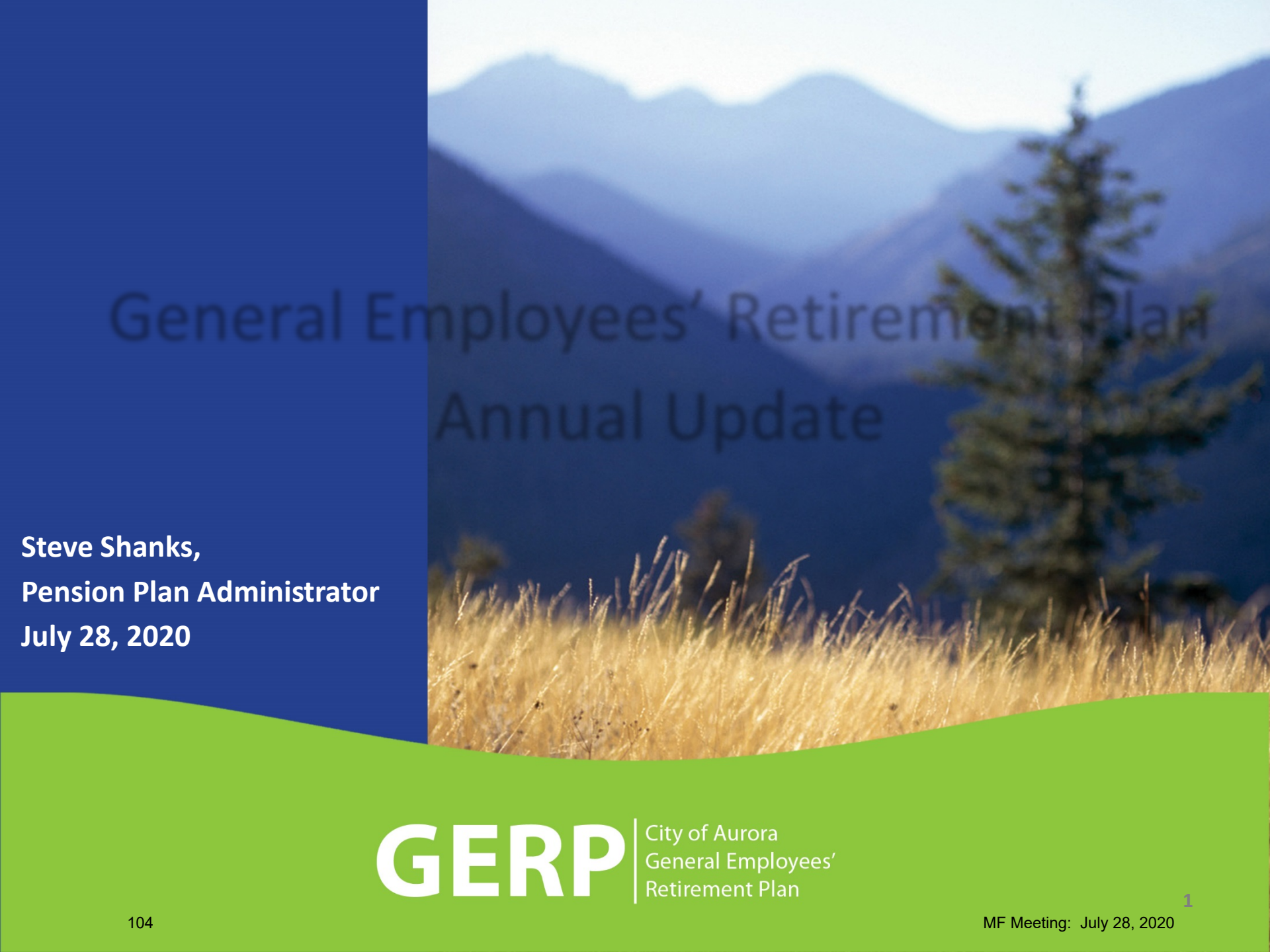
Steve Shanks, GERP Plan Administrator, will present to the Committee an overview of the plan and the funding progress of GERP.

### **QUESTIONS FOR Committee**

N/A Informational.

### **EXHIBITS ATTACHED:**

GERP MF Committee 7-28-2020.pptx



# General Employees' Retirement Plan Annual Update

**Steve Shanks,  
Pension Plan Administrator  
July 28, 2020**

**GERP** | City of Aurora  
General Employees'  
Retirement Plan



# GERP Basics

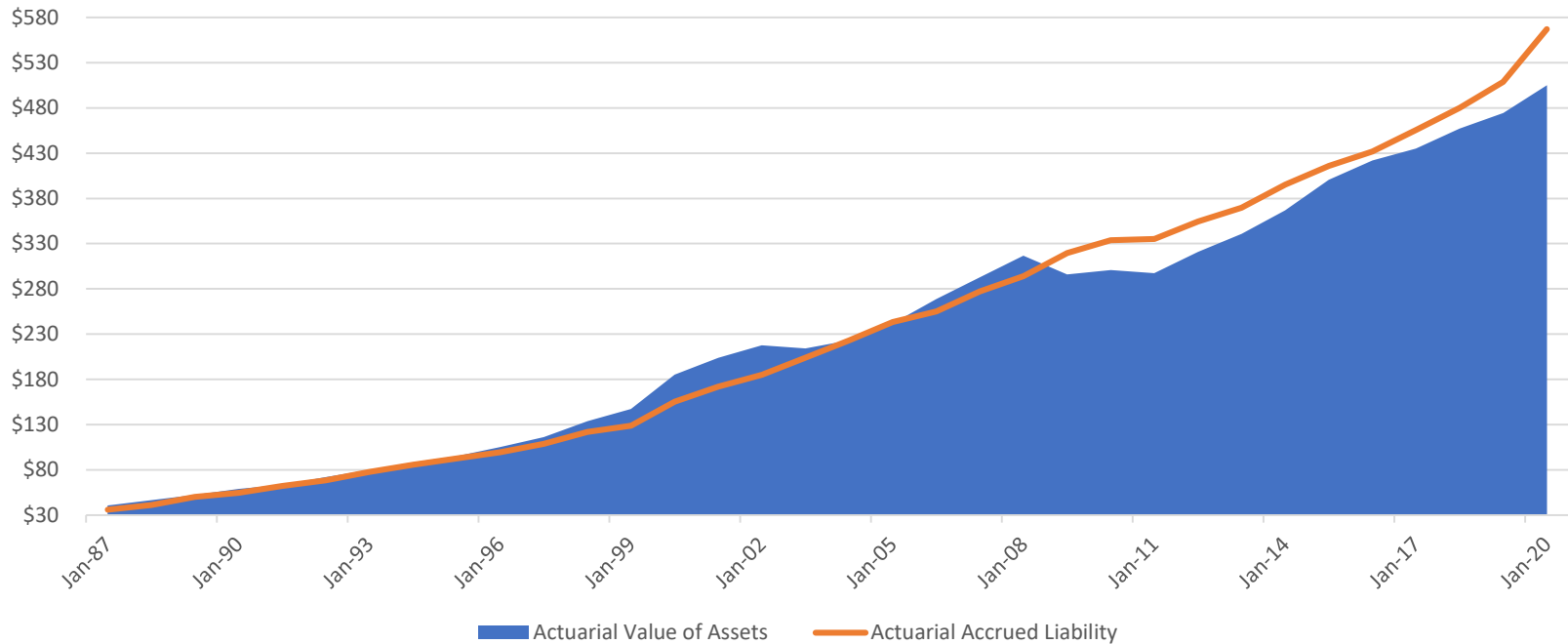
- Created in 1967 for the exclusive benefit of employees of the City and their beneficiaries
- Covers general employees which excludes fire, police and elected officials
- A defined benefit plan designed to provide a steady monthly income in retirement
- Managed by seven voting trustees with input from four non-voting representatives of the City

# GERP Snapshot

	<u>1/1/2020</u>	<u>1/1/2019</u>	<u>Change</u>
<u>Actuarial Value Plan net assets:</u>	\$504,806,469	\$474,289,088	\$30,517,381
<u>Unfunded liability:</u>	\$62,199,637	\$34,628,169	\$27,571,468
<u>Actuarial funded ratio:</u> (actuarial value assets ÷ actuarial liability)	89.0%	93.2%	(4.2%)
Actual contribution rate	14.0%	14.0%	0.0%
Required contribution rate	<u>15.3%</u>	<u>13.5%</u>	<u>(1.8%)</u>
Difference	(1.3%)	.5%	(1.8%)

**During 2019 GERP commissioned an experience study which resulted in longer lives assumptions and a decrease in the assumed rate of return. These assumption changes added \$36 million to the unfunded liability.**

## Actuarial Value of Assets Compared to Actuarial Accrued Liability in Millions



As of January 1, 2019

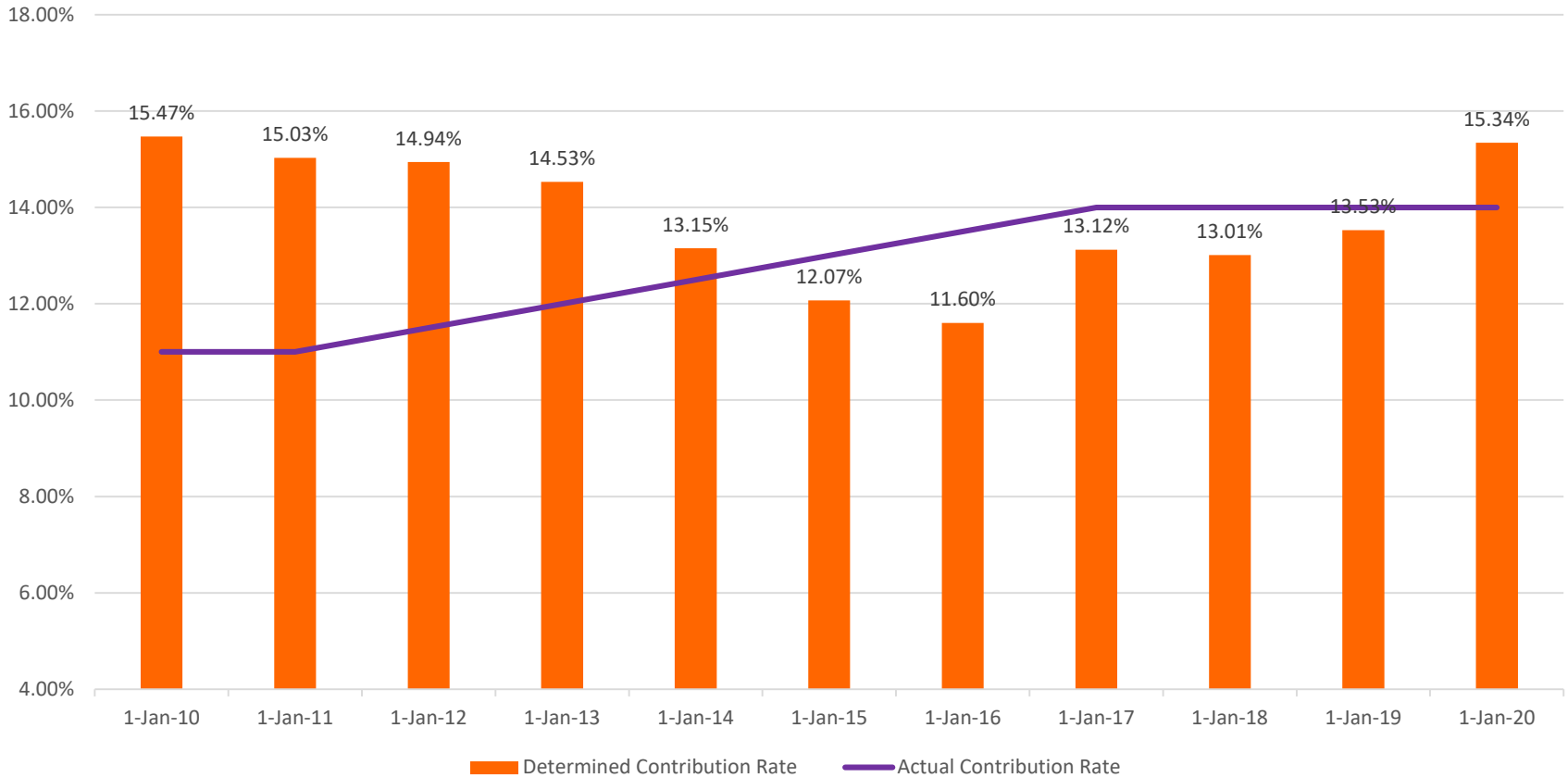
Actuarial Value of Assets: \$504,806,469

Actuarial Value of Liabilities: \$567,006,106

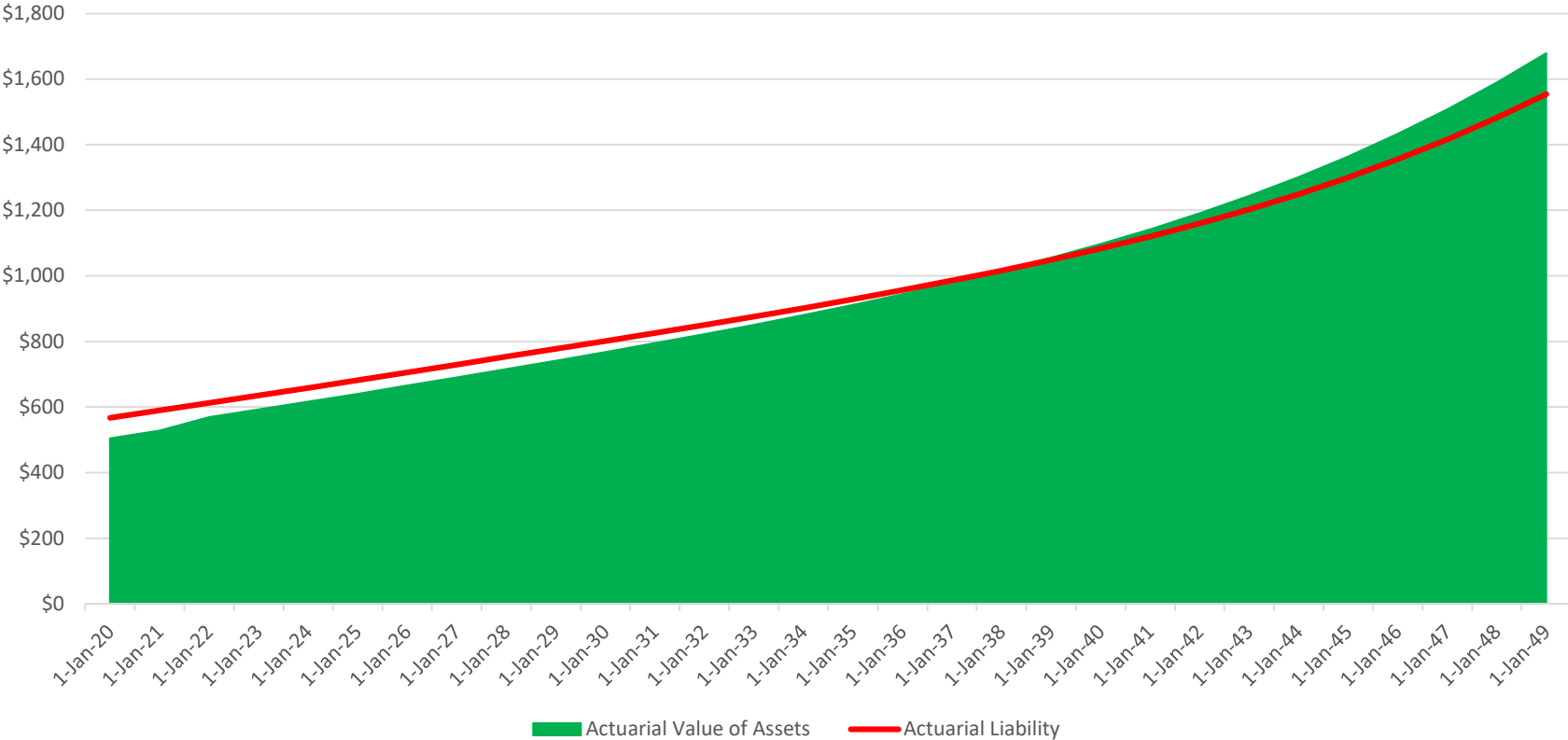
Actuarial Value of Assets Funded Ratio: 89%

# Actual Contribution Rate Dipped Below Actuarial Determined Contribution Rate

Contribution Rate History



### Projection of Actuarial Asset Value to Actuarial Liability (in millions)



**Under current actuarial assumptions, GERP is projected to be 100% funded by the end of 2038**

# Change in Total Actuarial Liability

- Actuarial assumptions changes
  - Retirees are living longer, so new mortality tables were adopted
    - 4.5% increase, or \$23 million
  - Investment return expectation was lowered from 7.25% to 7.00%
    - 0.8% increase, or \$4 million
  - Expectation of retirees taking lump sum was lowered to 0%
    - 1.9% increase, or \$10 million
- Other actuarial changes affecting the liability
  - More employees retiring than expected
    - 0.4% increase, or \$2 million
  - GERP's investments performed above actuarial assumed rate
    - 1.7% decrease, or \$9 million
  - Employee salaries increased more than actuarial assumption
    - 0.6% increase, or \$3 million
  - Retiree Cost of living increased less than actuarial assumption
    - 0.6% decrease, or \$3 million

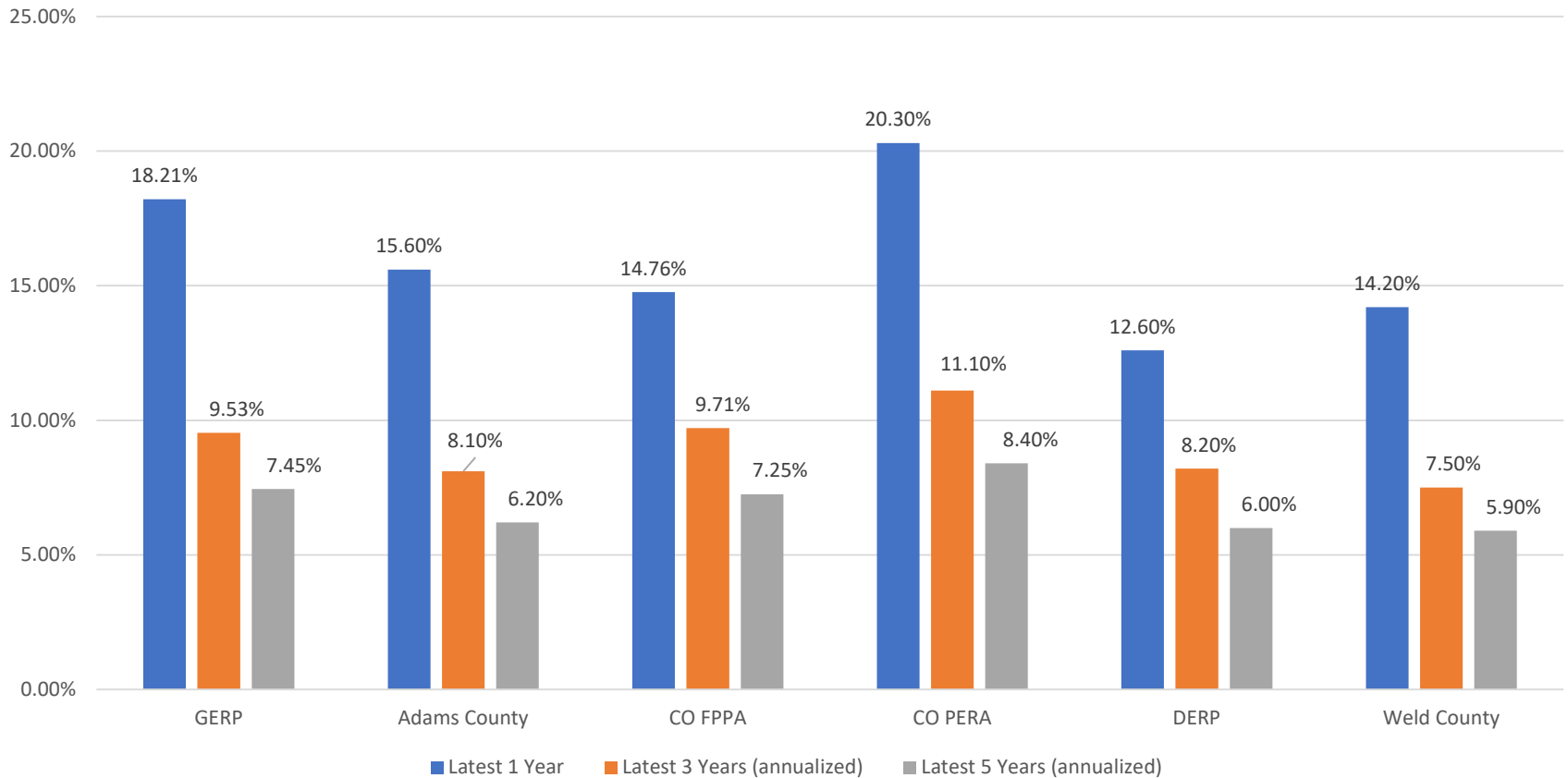
# GERP Returns as of December 31, 2019

	Latest 1 Year	Latest 3 Years (annualized)	Latest 5 Years (annualized)	Latest 10 Years (annualized)
<b>GERP return (net of fees)</b>	18.21%	9.53%	7.45%	8.66%
<b>Policy target return</b>	17.89%	9.63%	7.29%	8.43%
<b>Median public fund</b>	18.04%	9.27%	7.03%	8.06%

*GERP's Actuarial Assumed Long-term Rate of Return is 7.00%*

# Comparison to Local Plans

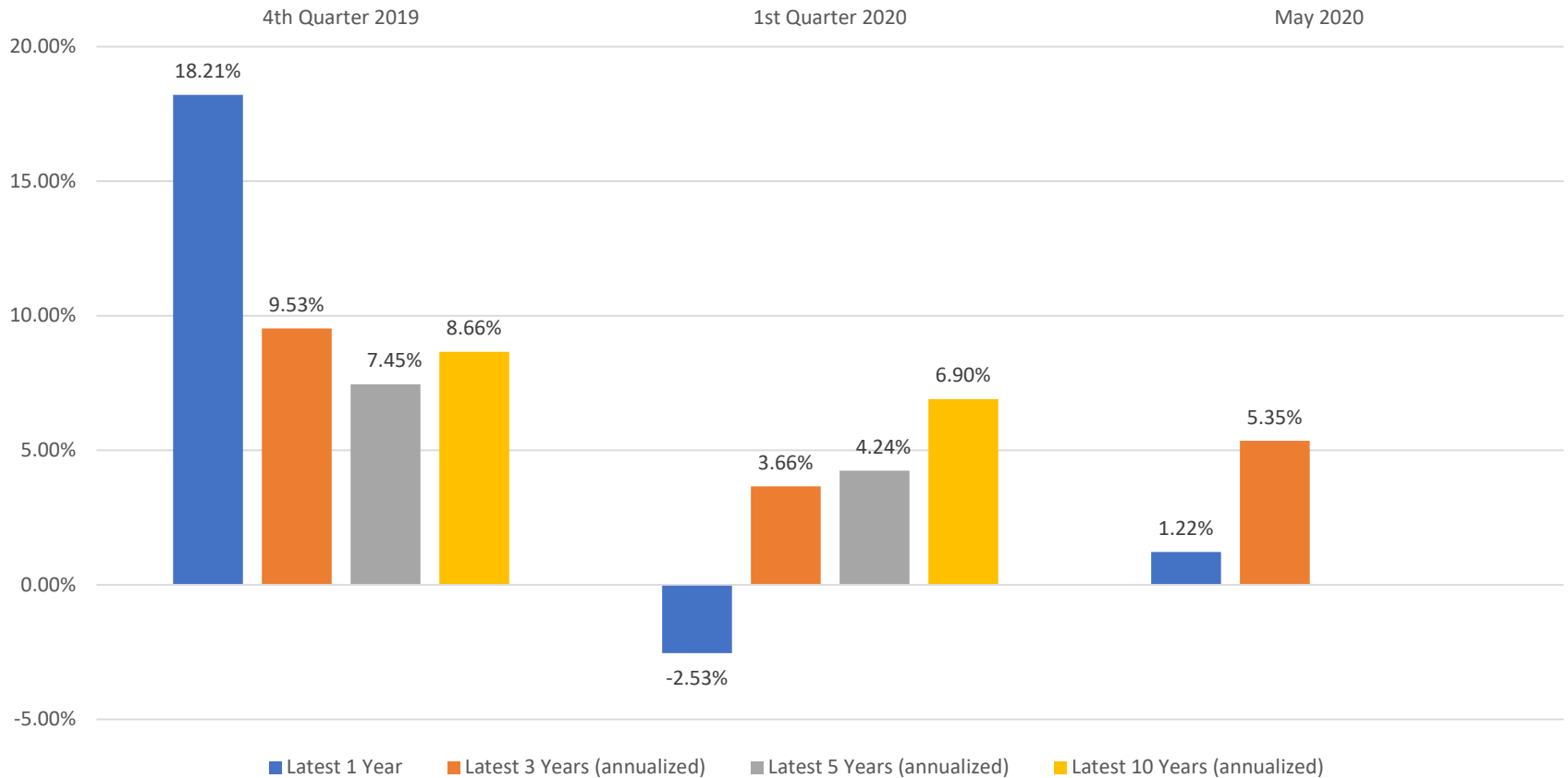
## Colorado Defined Benefit Plans





# Current Year Changes to Plan Return

## Effect of Covid-19 on Plan Return



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> GERP Pension Ordinance
<b>Item Initiator:</b> Terri Velasquez
<b>Staff Source:</b> Terri Velasquez, Finance Director
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b> Steve Shanks, GERP Administrator
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

The General Employee's Retirement Plan (GERP) is a defined benefit pension plan for career service employees of the City. The parameters of the plan are set by Council. A separate board elected by members of the plan has fiduciary and oversight responsibility for the plan.

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

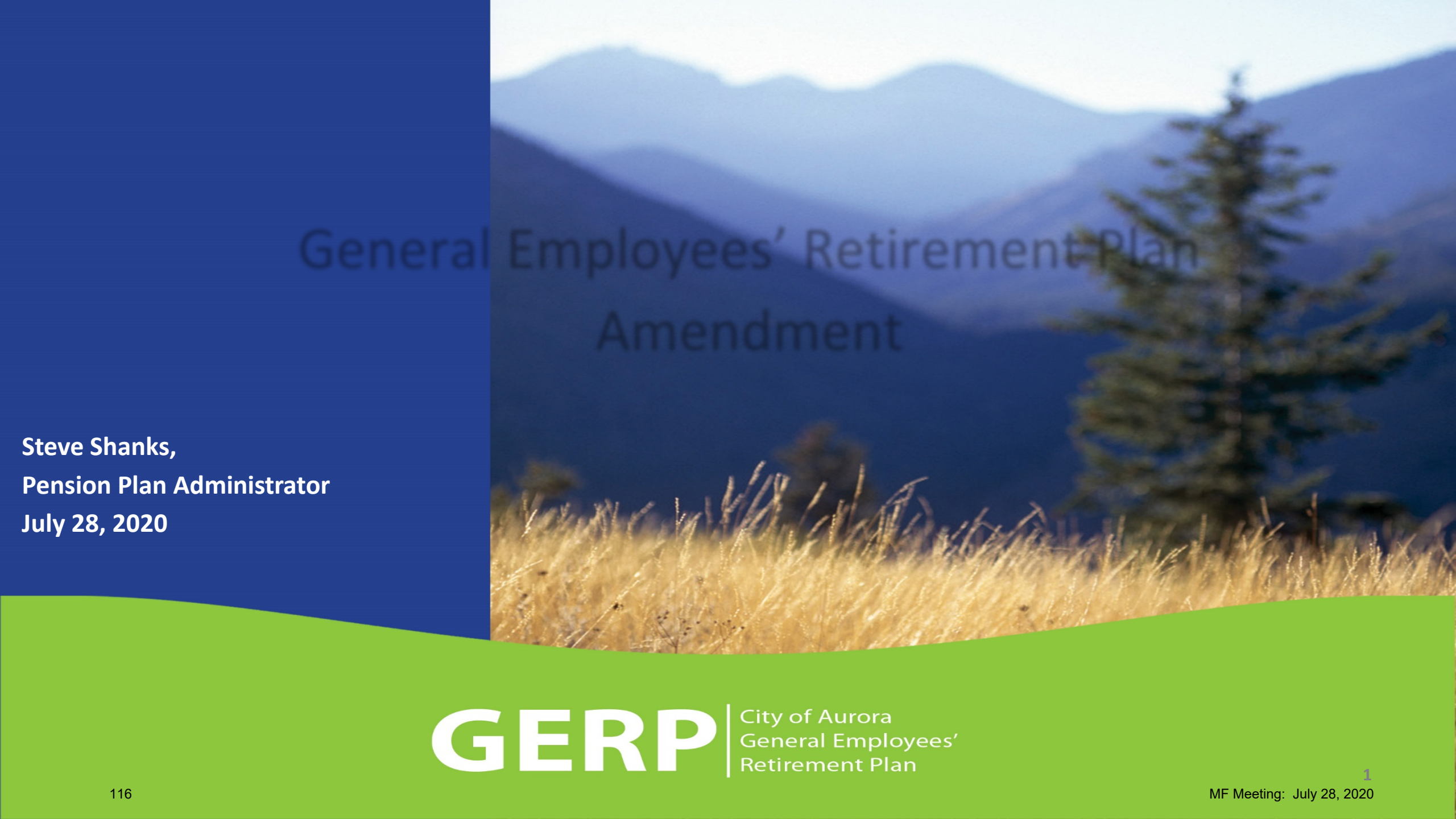
The proposed change is recommended by the City Attorney's Office, the GERP Board, and the GERP Actuary. The proposed ordinance changes the following: 1) The interest rate assumption is updated to seven percent. 2) The mortality assumption for calculations is updated based on a new Society of Actuaries mortality table published in 2019. 3) The Cost-of-living assumption used for actuarial equivalence purposes for alternative periodic benefits and single sum payments is updated for tier 1 benefits to 2.50 percent. 4) The final average monthly compensation for employees hired on or after January 1, 2021 and employed for fewer than 36 consecutive calendar months, shall be the employee's compensation for all credited service with the city divided by 36 months.

### **QUESTIONS FOR Committee**

Does the Committee recommend the proposed ordinance to amend the GERP plan?

### **EXHIBITS ATTACHED:**

2020-Ordinance-GERP-Definitions-Amendment .doc  
GERP Amendment 2020.pptx



# General Employees' Retirement Plan Amendment

Steve Shanks,  
Pension Plan Administrator  
July 28, 2020

**GERP** | City of Aurora  
General Employees'  
Retirement Plan

# Purpose of Amendment to Sec 102-137 of the City Code

- GERP commissioned an experience study by Milliman, the Plan's actuary, to examine the Plan's economic and demographic data from 2014 through 2018. This data is used to determine the actuarial assumptions for funding and financial reporting.
  - The proposed amendment will apply similar and consistent actuarial assumptions to benefits payments. The actuarial assumptions are used to define actuarial equivalence in Section 102-137 of the City Code.
- The GERP Board wishes to change the “final average monthly compensation” definition in Sec 102-137 of the City Code as it favors participants hired on or after retirement age.

# Cost of Living Assumption for Actuarial Equivalence, Alternative Periodic Benefits and Single Sum Payments

- Recommendation:
  - Reduce cost of living adjustment (COLA) assumption from 2.75% to **2.50%**
- GERP uses a measure of price inflation, the Consumer Price Index, Urban Wage Earners and Clerical Workers (CPI-W), to determine the annual COLA for Tier 1 members.
  - Milliman reviewed the average CPI-W increases over 10-year periods from 1979 – 2018 with increases ranging from 1.4% - 5.9%; and for the prior 20-year period a 2.2% increase; and for the past 30-year period a 2.5% increase.
  - Milliman also reviewed forecasts including ones from the Congressional Budget Office, the Social Security Administration and the U.S. Treasury based on inflation indexed bonds noting expected increases over longer periods from 2.1% - 2.6%.

# Interest Rate Assumption for Alternative Periodic Benefits and Single Sum Payments

- Recommendation:

- Reduce overall investment return assumption from 7.25% (net) to **7.00%** (net).

- Overall investment return assumption includes the real return of the investments plus inflation
  - GERP's real return was estimated at 4.50% and inflation at 2.75%. The recommendation is to keep the real return at **4.50%** and reduce inflation to **2.50%** to match the new price inflation assumption to the COLA.
  - Callan, GERP's investment consultant, prepared a 10-year real return forecast estimating a 4.65% annualized gross real return. Milliman reviewed this forecast, comparing it to their internal forecasts and a survey of 34 other investment consultants. Milliman found Callan's forecasted gross return at 4.65% to be reasonable and estimated investment-related expenses to be .15%.

# Mortality Assumption for Alternative Periodic Benefits and Single Sum Payments

- Recommendation:

Adopt the new **Society of Actuaries' Pub-2010 General Employees Retiree Mortality Table (amount-weighted), blended 50% male and 50% female, and projected to 2028 using the ultimate rates from Scale MP2018**

- The Society of Actuaries performed a study including 78 different public-sector pension plans and developed mortality tables specific to public-sector employee groups such as teachers, public safety and general employees that were issued in January 2019.
- The Society of Actuaries study found that public-sector employees are living longer.
- Milliman noted that GERP's actual experience from 2014 to 2018 was similar to that of the general employees from the Society of Actuaries study. The table noted above is an approximation of that used for the actuarial valuation for funding purposes.



# Mortality Assumption for Alternative Periodic Benefits and Single Sum Payments (continued)

- Below is a comparison of the life expectancies currently being used by GERP and those of the recommended mortality table.

Retirement Age	Life Expectancy (Current Assumption)	Life Expectancy (Proposed Assumption)	Increase in Years
50	82.1	85.9	3.8
55	82.4	86.3	3.9
60	83.0	86.8	3.8
65	83.8	87.4	3.6
70	85.0	88.2	3.2

# Benefit Payment Factors for Alternative Periodic Benefits and Single Sum Payments

- Alternative Periodic Benefits, including Money Purchase, Joint & Survivor and Certain & Lifetime, as well as Single Sum Payments, which are partial lump sums, are calculated using factors prepared by GERP's actuary, Milliman.
- All three actuarial assumption changes affect these factors as shown on the following pages.

# Benefit Payment Factors for Alternative Periodic Benefits and Single Sum Payments (continued)

## Money Purchase Factor – Tier 1

Age	Current	Proposed	Percent Difference*
50	16.61559	17.50189	-5.06%
55	15.27396	16.40141	-6.87%
60	13.73458	15.10278	-9.06%
65	12.05143	13.58523	-11.29%

## Money Purchase Factor – Tier 2

Age	Current	Proposed	Percent Difference*
50	12.61897	13.38850	-5.75%
55	11.89373	12.81276	-7.17%
60	10.98454	12.07428	-9.03%
65	9.91081	11.13624	-11.00%

\*Reflects factor change impact to benefit amount (i.e. would result in a reduction to the MP benefit amount)

# Benefit Payment Factors for Alternative Periodic Benefits and Single Sum Payments (continued)

## 100% Joint & Survivor – Tier 1

Age, Joint Annuitant Age	Current	Proposed	Percent Difference
65, 60	0.76888	0.81137	5.53%
65, 65	0.80959	0.84763	4.70%
65, 70	0.84874	0.88188	3.91%
55, 55	0.87426	0.89540	2.42%

## 100% Joint & Survivor – Tier 2

Age, Joint Annuitant Age	Current	Proposed	Percent Difference
65, 60	0.81041	0.84883	4.74%
65, 65	0.84037	0.87478	4.09%
65, 70	0.87025	0.90028	3.45%
55, 55	0.90481	0.92119	1.81%

# Who is Most Affected by the Factor Changes

- Money Purchase Benefit will decrease
  - Active employees with long tenures who work past retirement age
  - Tier II members who need to retire early
  - Deferred vested participants who separate from the City several years prior to starting benefit payments
- Joint & Survivor and Years Certain Benefits will increase
  - All retirees who select an option other than straight-life
- Partial Lump Sum Benefit will increase

# Final Average Monthly Compensation for Members Employed Fewer than 36 Months

- Due to the current definition for “final average monthly compensation” employees hired on or after retirement age who works for less than 36 months, which would include employees who don’t pass a trial period, can receive benefits that are proportionately better than employees with over 36 months of service.
- The current definition for those who work less than 36 months includes an average of all full months of credited service.
- The solution to make the benefit for those who work less than 36 months more proportional is to divide all earnings by 36.

# Comparison of Calculation for Less than 36 Month Employee

- The current retirement calculation for an employee hired at 67 at \$60,000 a year, who works for two years with no raise is as follows:
  - $\$120,000/24$  months of credited service = \$5,000 final average monthly compensation
  - $\$5,000 \times 1.75\%$  (Pension Benefit Factor)  $\times 2$  (Years of Credited Service) = \$175 monthly pension
- The same employee under the proposed definition is as follows:
  - $\$120,000/36 = \$3,333$  final average monthly compensation
  - $\$3,333 \times 1.75\%$  (Pension Benefit Factor)  $\times 2$  (Years of Credited Service) = \$117 monthly pension

ORDINANCE NO. \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA AMENDING CHAPTER 102 OF THE CITY CODE OF THE CITY OF AURORA, COLORADO, RELATING TO THE GENERAL EMPLOYEES' RETIREMENT PLAN

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

Section 1. The following definitions contained in Section 102-137 of the City Code of the City of Aurora, Colorado, are hereby amended to read as follows:

Sec. 102-137. Definitions.

*Actuarial equivalent* or *actuarially equivalent* means equality in value of the aggregate amounts expected to be received under different manners of payment based on interest rate, mortality and cost-of-living assumptions defined as follows, effective **January 1, 2021**, unless otherwise specifically provided in the plan:

- 1) *Interest rate assumption for alternative periodic benefits and single sum payments.* The interest rate used by the plan shall be **seven percent**.
- 2) *Mortality assumption for alternative periodic benefits and single sum payments.* The mortality assumption for calculations based upon the mortality of a participant or beneficiary shall be the **Society of Actuaries' Pub-2010 General Employees Retiree Mortality Table (amount-weighted), blended 50% male and 50% female, and projected to 2028 using the ultimate rates from Scale MP2018** except to the extent that subsection 102-149 (a) requires use of a mortality table prescribed by the Secretary of the Treasury for purposes of compliance with code section 415.
- 3) *Cost-of-living assumption used for actuarial equivalence purposes for alternative periodic benefits and single sum payments.* The cost-of-living assumption for tier 1 benefits shall be **2.50** percent. The cost-of-living assumption for tier 2 benefits shall be 0.25 percent. The cost-of-living assumption for benefits commencing before **January 1, 2021**, shall be the assumption in effect when the payment commenced as provided in tables furnished from time to time by the plan actuary. The tables furnished by the plan actuary are considered part of the plan document by reference.

*Final average monthly compensation* means an employee's compensation from the city during the 36 highest paid consecutive calendar months of the last ten years of credited service, divided by 36. If an employee **hired before January 1, 2021** was employed for fewer than 36



consecutive calendar months, such final average monthly compensation shall be based on the employee's compensation for all full months of credited service with the city. **If an employee hired on or after January 1, 2021 is employed for fewer than 36 consecutive calendar months, such final average monthly compensation shall be the employee's compensation for all credited service with the city, divided by 36.**

Section 2. The remaining definitions contained in Section 102-137 shall remain unchanged.

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

Section 4. That, 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

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> DRAFT Police Hybrid Pension Plan and Update
<b>Item Initiator:</b> Terri Velasquez
<b>Staff Source:</b> Terri Velasquez, Finance Director
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b> Cindy S. Birley, Esq. Partner Davis Graham & Stubbs LLP
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

Police Civil Service employees currently participate in a defined contribution (DC) pension plan. They do not participate in Social Security. During the 2018 Collective Bargaining process for the 2019-2020 contract, the Police union requested to leave the money purchase DC plan and go to FPPA to provide a defined benefit (DB) option for Police Civil Service employees. A ruling by the Fact Finder found in favor of the City of Aurora and transfer of the money purchase pension plan to FPPA was not agreed to. A presentation was made by AP-MPPP (Aurora Police Money Purchase Pension Plan) to the Management and Finance Policy Committee on July 24, 2018 to increase contributions. In addition, a second presentation was made at the Management and Finance Policy Committee on September 25, 2018. At the September 29, 2018, Budget workshop Council approved a one-time contribution increase from 10.5% to 11% for the AP-MPPP employer contributions if the employee plan participants also would increase their contributions from 10.5% to 11%. The 2019 budget included the one-time contribution increase cost of \$334,000 and the 2019 budget was approved unanimously by City Council. In addition, a resolution for the one-time contribution increase was presented and approved by Council on December 17, 2018. AP-MPPP participants overwhelmingly approved the contribution increase, and it was put in place as of January 1, 2019. On February 26, 2019 the AP-MPPP presented a request to the Management and Finance Policy Committee to increase their pension plan funding and to amend their plan. At the March 25, 2019 Special Study Session AP-MPPP Board requested that Council continue to increase their pension plan funding and to amend their plan. At the April 27, 2019 Spring Workshop, Council directed staff to include a place holder in the 2020 budget for the contribution increase and to pursue a hybrid defined benefit option. Council also approved staff spending funds for hiring consultants to assist with the development of a hybrid defined benefit option. At the September 24, 2019 Management and Finance Policy Committee an update was provided regarding

the hybrid defined benefit option and the request for the contribution increase. At the September 28, 2019 Budget Workshop, Council approved a contribution increase from 10.5% to 12% on a one-time basis at a cost of \$1,048,791. In addition, a resolution for the one-time contribution increase was presented and approved by Council on November 18, 2019. AP-MPPP participants overwhelmingly approved the contribution increase, and it was put in place as of January 1, 2020. On February 8, 2020, at the Winter Workshop, an update was provided on the progress of the development of a hybrid defined benefit option. City Council directed staff to draft the plan document and to continue the 12% employee and 12% employer contribution in an ongoing manner.

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

This agenda item is to present the draft Police Hybrid Pension Plan document to the Committee and related documents pertaining to the Police Hybrid Pension Plan and to provide an update regarding the timeline for implementation of the plan.

**QUESTIONS FOR Committee**

Does the Committee support moving this item forward to Study Session?

**EXHIBITS ATTACHED:**

- Police Pension - Plan Grid.pdf
- Police Pension DB Hybrid Plan.pdf
- Police Pension MOU.pdf
- Police Pension Timeline.pdf

	Aurora Police DB	FPPA Statewide DB	FPPA Statewide Hybrid
Multiplier	2%	2% for first 10 years, 2.5% thereafter	1.5%
Final Average Earnings	3-year Average	3-year Average	3-year Average
Includable Compensation	AP-MPPP Compensation	Base Salary from FPPA Rule 101.05	Base Salary from FPPA Rule 101.05
Immediate Unreduced Retirement	Earlier of Age 50 and Rule of 80 (age + service ≥ 80), or age 65 and vested	Age 55 with 5 or more years of service	Age 55 with 5 or more years of service
Early Retirement	Age 50 and vested. Reduced to be financially cost neutral to deferred Unreduced Retirement benefit	30 years or age 50. Reduced to be financially cost neutral if less than age 55	30 years or age 50. Reduced to be financially cost neutral if less than age 55
Vesting	5 years	5 years	5 years
COLA	Ad hoc	Ad hoc	Ad hoc
Death/Disability	Continue in FPPA D&D; Refund employee contributions	FPPA D&D	FPPA D&D
Contribution Interest	2.5%	5%	5%
Optional Forms	Single Life 50%/100% Survivor 50%/100% Survivor w/Pop-up	Single Life 50%/100% Survivor 50% Last Survivor 50%/100% Survivor w/Pop-up	Single Life 50%/100% Survivor 50% Last Survivor 50%/100% Survivor w/Pop-up
Plan Choice	One-time within 3 years of hire date*	N/A	N/A
Current Members	18-month window for opt in post plan effective date*	N/A	N/A
DROP <ul style="list-style-type: none"> <li>• Eligibility</li> <li>• Crediting Rate</li> </ul>	3 Years* <ul style="list-style-type: none"> <li>• Unreduced Retirement</li> <li>• Actual plan return minus 2%, with ceiling and floor</li> </ul>	5 Years <ul style="list-style-type: none"> <li>• Any Retirement</li> <li>• Individually managed</li> </ul>	5 Years <ul style="list-style-type: none"> <li>• Any Retirement</li> <li>• Individually managed</li> </ul>
Deferred Retirement	None	Actuarially increased; must retire by age 65	Actuarially increased; must retire by age 65
Contribution Rate	16.5% to DB, plus 7.5% to AP-MPPP; Split 50/50 City/Employee	12% Employee (beginning in 2022), 8% Employer	16% (minimum mandatory)

\* Subject to IRS approval

**RETIREMENT PLAN  
OF  
THE POLICE DEPARTMENT OF THE CITY OF AURORA  
(EFFECTIVE JANUARY 1, 2022)**

**RETIREMENT PLAN  
OF  
THE POLICE DEPARTMENT OF THE CITY OF AURORA**

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## ARTICLE I

### Purpose

The City of Aurora (“City”) hereby establishes a Plan effective January 1, 2022, for the administration and distribution of contributions made by the Employer and its eligible Employees for the purpose of providing retirement benefits for its eligible Employees.

This Plan and Trust are intended to comply with the requirements of Code Sections 401(a) and 501(a).

The provisions of this Plan shall apply solely to an Employee whose employment with the Employer terminates on or after the Effective Date of the Plan, unless otherwise provided herein.

## ARTICLE II

### Definitions and Construction

2.1 Definitions: Where the following words and phrases appear and are capitalized in this Plan, they shall have the respective meaning set forth below, unless their context clearly indicates to the contrary:

(a) Accrued Benefit. The benefit determined under the Plan expressed in the form of a monthly benefit commencing at Normal Retirement Date.

(b) Actuarial (or Actuarially) Equivalent or Equivalence. The following assumptions shall be used to determine Actuarial Equivalent or Equivalence for all purposes under the Plan except as otherwise specifically provided in the Plan, or where otherwise required by the Code, regulations and other federal guidance including for equality in value of the aggregate amounts expected to be received under different forms of payment and purchase of service amounts based on interest rate and mortality assumptions as defined below, or until changed by Plan amendment.

(1) Interest rate assumption for alternative periodic benefits. The interest rate used for purposes of computing alternative periodic forms of benefits shall be six percent (6%) per year compounded annually until changed by Plan amendment.

(2) Interest rate assumption for actuarial single-sum payments. The interest rate for purposes of computing single-sum payments shall be six percent (6%) per year compounded annually until changed by Plan amendment.

(3) Cost-of-living assumption for alternative periodic benefits, purchase of service amounts and single-sum payments. The cost-of-living assumption used for purposes of computing alternative periodic forms of benefits, purchase of service amounts and single-sum payments shall be zero percent (0%) per year compounded annually until changed by Plan amendment.

(4) Mortality assumptions. The mortality assumptions for calculations based upon the mortality of an Employee or Beneficiary shall be the following:

(A) Employee (Pre-Retirement): Pub-2010 Safety Employee Mortality for Males (amount weighted), projected to 2036 using the ultimate rates from Scale MP2019;

(B) Employee (Post-Retirement): Pub-2010 Safety Retiree Mortality for Males (amount-weighted), projected to 2028 using the ultimate rates from Scale MP2019; and

(C) Beneficiary (Post-Retirement): Pub-2010 General Employee Retiree Mortality for Females (amount-weighted), projected to 2028 using the ultimate rates from Scale MP2019.

Said mortality assumptions shall be used until changed by Plan amendment.

(c) Average Monthly Compensation. The average monthly Compensation of the Employee during the 36 consecutive completed calendar months in the last 120 or fewer months of employment affording the highest such average including months as an Employee prior to membership in the Plan, or if the period of employment is less than 36 months, during all of the months of the Employee's employment. However, should a considered period contain any months for which no Compensation was received, such months shall be disregarded in the count of consecutive months and shall not cause months that are not otherwise consecutive to fail to be consecutive.

(d) Beneficiary. The person or persons designated by a Member pursuant to the latest written notice which the Member has filed with the Plan Administration Committee to receive payment to which a Beneficiary may become entitled under this Plan.

(e) Code. This term means the U.S. Internal Revenue Code of 1986, as amended from time to time.

(f) Compensation. Means the total base salary set forth in the Employer's Compensation Ordinance, as from time to time in effect, for the rank and grade held by the Employee concerned and paid by the Employer to the Employee for services rendered by such Employee as an Employee, including paid leave for a maximum of 15 working days per calendar year for active duty or training with the National Guard or any branch of the U.S. Armed Forces, longevity pay (where eligible therefor), but excluding bonuses, commissions, overtime pay, holiday pay, other taxable income, and other forms of extra pay, received for services performed as an Employee for the portion of the Plan Year during which the Employee was a Member. However, Compensation shall not be reduced by the Member's mandatory contributions which are picked up by the Employer pursuant to Section 4.2, nor shall Compensation be reduced by any Elective Contributions, as defined in Section 2.1(o).

Any reference in this Plan to Compensation is a reference to the definition in this Section 2.1(f), unless the Plan reference specifies a modification to this definition. The Plan Administration Committee will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation taken into account under the Plan for any Plan Year shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") annual compensation limit.

The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not

exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Compensation shall also include regular Compensation (as defined above which excludes leave cashouts) for services, paid by the later of 2½ months after a Member's severance from employment with the Employer or the end of the Plan Year that includes the date of the Member's severance from employment, if it is a payment that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.

Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be treated as Compensation for the Plan Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

(g) Contribution Accumulation. An amount equal to a Member's contributions pursuant to Section 4.2 and amounts paid to purchase service pursuant to Section 6.4, credited with interest which begins to accrue on the first day of the month following the date the Member's contribution (or service purchase, if applicable), is made, through the earliest of a Member's retirement, commencement of participation in the DROP under Section 8.5, payment upon death, or receipt of refund, on such amounts at the rate of 2½% per annum, compounded annually, or until changed by Plan amendment.

(h) Covered Employment. This term means employment by the Employer as an Employee but excludes leased employees as defined in Code Section 414(n).

(i) Credited Service. This term is defined in Article III.

(j) CRS. This term shall mean Colorado Revised Statutes, as amended.

(k) Deferred Vested Member. A Member whose employment has terminated and who is entitled to receive a Deferred Vested Pension (as defined in Section 6.3).

(l) Disabled/Disability. A Member shall be Disabled (or have a Disability) when determined by the Board of Directors of the FPPA to be eligible for disability benefits as a result of such Member's having a permanent occupational disability or a total disability, and whether on-duty or whether not on-duty, as provided under and defined in CRS Title 31, Article 31, Part 8, and specifically in CRS Section 31-31-801, 31-31-803 and 31-31-806.5, or any successor provision thereto.

- (m) Disabled Member. A Member who is Disabled.
- (n) Effective Date. The Effective Date of this Plan is January 1, 2022.
- (o) Elective Contributions. Means amounts excludible from the Employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p), 457(b) or 414(v), and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code Section 457(b) plan.
- (p) Employee. Any person
  - (1) who is employed by the Employer in the Civil Service;
  - (2) who is paid by the Employer on a full-time salary basis;
  - (3) whose duties are directly involved with the provision of police protection; and
  - (4) who can normally be expected to be credited with at least one thousand six hundred (1,600) Hours of Service each Plan Year.

The term Employee shall not mean or include clerical or other personnel whose services for the Employer are auxiliary to actual police protection services. Leased employees, as defined in Code Section 414(n), shall be treated as Employees hereunder. However, see the exclusion for leased employees under Covered Employment.

The Employer shall, under its current employment policy, make the determination of whether a person employed by it meets the definition of Employee as set forth in this Section 2.1(p).

(q) Employer. The Police Department of the City of Aurora, Colorado ("Aurora Police Department"), provided, however, that Employer means the City of Aurora, Colorado (and any member of the group treated as a single employer under Code Section 414(b), (c), (m) or (o)) for purposes of determining (1) whether an Employee has terminated employment or retired, unless otherwise specifically provided, (2) Vesting Service, and (3) the Employer under USERRA.

(r) FPPA. This term means the Colorado Fire and Police Pension Association established pursuant to CRS, Title 31, Article 31, Part 2.

(s) Funding Agreement. An insurance contract with an Insurance Company, if any, or the trust agreement with the Trustee for the purpose of the investment and management of Retirement Trust Fund assets.

(t) Insurance Company. Any Insurance Company or Companies appointed by the Plan Administration Committee as provided in Article X.

(u) IRS. This term means the U.S. Internal Revenue Service.

(v) Leave of Absence. Any absence authorized by the Employer under the Employer's standard personnel practices, and supplemented by the labor agreement between the Employer and the recognized bargaining unit, as may from time to time be in effect. An absence due to military service described in CRS Section 28-3-601, et seq. (or other applicable law), including annual, extended and emergency military leave, shall be governed by CRS Section 28-3-601, et seq. and shall be considered a Leave of Absence hereunder, provided that the absence meets the requirements set forth in CRS Section 28-3-601, et seq.

(w) Make-up Period. This term is defined in Section 4.2(c).

(x) Member. Any Employee in Covered Employment who has made an irrevocable election to be included in the membership of the Plan. Any individual who agrees with the Employer that the individual's services are to be performed as a leased employee or an independent contractor shall not be a Member regardless of any classification as a common-law employee by the IRS or any other governmental agency, or any court of competent jurisdiction.

(y) Money Purchase Pension Plan or MPPP. The Money Purchase Plan and Trust Agreement of the Police Department of the City of Aurora (as Amended and Restated Effective October 1, 2016), as amended from time to time.

(z) Normal Retirement Age. The earlier of

(1) the later of the date a Member attains age 65 or the date such Member completes five years of Vesting Service; or

(2) the date the Member's age plus years of Credited Service is equal to or greater than 80; provided the Member has attained at least age 50.

(aa) Normal Retirement Date. For purposes of the commencement of a Pension, the term shall mean the first day of the month coinciding with or next following a Member's Normal Retirement Age provided the Member has terminated employment with the Aurora Police Department.

(bb) Pension. A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.

(cc) Pension Commencement Date. This term is defined in Section 8.1(b).

(dd) Plan. This Retirement Plan of the Police Department of the City of Aurora (Effective January 1, 2022), as amended from time to time.

(ee) Plan Administration Committee. The Plan Administration Committee established pursuant to Article IX which shall also serve as the Plan Administration Committee for the Money Purchase Plan.

(ff) Plan Year. The 12-month period beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup> during the Plan's existence.

(gg) Qualified Employment. Full-time employment as a law enforcement officer with any federal, state, or local law enforcement agency (other than (1) military service and (2) employment by the Police Department of the City of Aurora), any United States military service (other than Qualified Military Service), and any service with the United States Public Health Service Commissioned Corps (other than Qualified Military Service), provided that such service is not recognized if such service would cause a Member to receive a retirement benefit for the same service under more than one plan (excluding Social Security).

(hh) Qualified Military Service. Any service in the United States uniformed services (as defined under USERRA) in accordance with Code Section 414(u)(5) if such Member is entitled to reemployment rights under USERRA with respect to such service. For purposes of USERRA coverage only, service by a Member as an intermittent disaster response appointee of the National Disaster Medical System, when federally activated or attending authorized training in support of his Federal mission, is deemed "service in the uniformed services," although such appointee is not a member of the "uniformed services" as defined by USERRA.

(ii) Retired Member. A former Member whose employment has terminated by reason of Retirement and who is receiving or entitled to receive, or whose Beneficiary or estate is entitled to receive, benefits under this Plan.

(jj) Retirement. Termination of employment after a Member has fulfilled all age and service requirements for a Pension. Retirement shall be considered as commencing on the day immediately following a Member's last day of employment (or authorized Leave of Absence, if later). A Member shall not be eligible for Retirement if he is employed by the Employer as an Employee, unless the Member has attained his Normal Retirement Age and has terminated employment with the Aurora Police Department.

(kk) Retirement Trust Fund, Trust Fund or Trust. The trust fund for the operation of the Plan, titled the City of Aurora Police Retirement Plan Trust, maintained in accordance with the terms of the Funding Agreement under Article X or a separate Funding Agreement, as from time to time amended, and incorporated herein by reference, to which contributions are made, from which benefits and expenses of the Plan are paid, and which constitutes a part of this Plan and if a separate document, is incorporated herein by reference. "Retirement Trust Fund," "Trust Fund" or "Trust" when used in the Plan and Funding Agreement shall refer to the City of Aurora Police Retirement Plan Trust and/or the assets thereof.

(ll) Termination Benefit. This term is defined in Section 7.1.

(mm) Trustee. The members of the Plan Administration Committee shall serve as the Trustees unless the Plan Administration Committee appoints an individual,



corporation or an appropriate entity as Trustee to administer the Retirement Trust Fund in accordance with a trust agreement.

(nn) USERRA. Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(oo) Vested Member. An active Member in Covered Employment who has completed five or more years of Vesting Service or who has attained his Normal Retirement Age, if earlier.

(pp) Vesting Service. This term is defined in Article III.

2.2 Construction: The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender and words used in the singular shall include the plural unless the context clearly indicates to the contrary. Words such as “hereof,” “herein,” and “hereunder” shall refer to the entire Plan, not to any particular provision or section. Specific sections of the Plan shall be referenced herein by Section number.

## ARTICLE III

### Service, Eligibility, and Membership

3.1 Vesting Service: Except as provided in this Section 3.1, Vesting Service shall include all service, from the Member's employment commencement date as an Employee to the date of termination of employment, including any period of absence which is not considered a Break in Service as described in Section 3.4 hereof. Vesting Service shall also include the period of time during which a Member ceases to be in Covered Employment but continues to be employed by the Employer. If any break or breaks shall occur in the service of a Member, his Vesting Service prior to such break shall not be forfeited if such Member did not receive a refund of his Contribution Accumulation upon his termination.

3.2 Credited Service: Credited Service shall be used to determine a Member's benefit accrual and eligibility for retirement benefits under the Plan. A Member's Credited Service is the elapsed time period from the membership commencement date to the date of termination of employment, except as otherwise stated within this section. Generally, one day of Credited Service shall be credited for each day in the elapsed time period. A Member's Credited Service includes service purchased according to Section 6.4. Credited Service shall be credited on the basis of 1/365th year for each day of Covered Employment as an Employee, or as a Member of the Plan, if less, unless limited by Section 3.3. A Member who is on a Leave of Absence for Qualified Military Service shall be credited with each day for which a contribution is made.

3.3 Limitations on Credited Service: Credited Service shall not include any period of service or hours during which the Employee failed to make any Member Contributions required by the Plan. No period of Credited Service shall be deemed to be increased or extended by overtime. Notwithstanding any other Plan provisions to the contrary, Credited Service shall not include any Breaks in Service, nor any unpaid period of absence which is not considered a Break in Service, as described in Section 3.4 hereof.

3.4 Breaks in Service:

(a) General. If any break or breaks shall occur in the service of a Member, none of his service prior to the last such break shall be included in his Credited Service or Vesting Service, except as provided in Section 3.8. The Plan Administration Committee shall have the power to determine when a Break or Breaks in Service shall have occurred and such determination shall be made in a nondiscriminatory manner.

(b) Exceptions to Breaks in Service. None of the following shall be considered a Break in Service.

(1) A temporary layoff because of an illness or for purposes of economy, suspension, or dismissal, followed by reinstatement, reemployment or reappointment within one year.

(2) A formal Leave of Absence (other than for Qualified Military Service) followed by reinstatement, reemployment or reappointment within one year after termination of the Leave of Absence.

(3) A Leave of Absence for Qualified Military Service, provided that the Member meets the qualifications under USERRA for reemployment, including receiving an honorable discharge from the military, and returns to the service of the Employer within the time period specified under USERRA, and provided further that the cumulative period of Qualified Military Service does not exceed five (5) years in his employment relationship with the Employer (with limited exceptions as provided under USERRA).

(4) The first 12 months of any absence (not already counted hereunder) by reason of pregnancy of the Member, birth of the Member's child, placement of a child with the Member in connection with the adoption of such child by such Member, and absence for purposes of caring for such a child for a period beginning immediately following such birth or placement.

(5) A leave of absence pursuant to the Family and Medical Leave Act of 1993, as amended.

(c) Failure to Timely Return from Leave of Absence. A Leave of Absence shall be considered a Break in Service if a Member does not return to the service of the Employer within the time specified by (1) an authorized Leave of Absence or (2) a Leave of Absence required by federal law, including the time specified under USERRA following an absence for Qualified Military Service.

Notwithstanding the foregoing, a Leave of Absence for Qualified Military Service shall not be considered a Break in Service if:

(1) such Member dies while in service in the uniformed services (in which case his Leave of Absence for Qualified Military Service shall be deemed to have ended on his date of death); or

(2) such Member does not return to employment because he is not able to perform the essential tasks of an appropriate reemployment position or any other position with the Employer due to a disability incurred in, or aggravated during, his service in the uniformed services, after reasonable efforts by the Employer to accommodate his disability (in which case his Leave of Absence for Qualified Military Service shall be deemed to have ended at the end of the period specified in 38 U.S.C. Section 4311).

3.5 Membership: An Employee in Covered Employment shall become a Member only by making an irrevocable election in the manner prescribed by the Plan Administration Committee. Furthermore, once an election has been made to become a Member, such election may not be changed even for rehired Employees. Notwithstanding the foregoing:

(a) Any Employee in Covered Employment hired or rehired (provided no prior election has been made) by the Employer after January 1, 2022, must elect to become a Member within thirty-six (36) months of such hire or rehire date; and,

(b) Any Employee in Covered Employment not described in (a) above must elect to become a Member no later than June 30, 2023.

3.6 Termination of Membership: Active membership in the Plan shall terminate upon Retirement or upon the earlier termination of Covered Employment of a Member.

Notwithstanding the above, a Member who ceases to be in Covered Employment and terminated employment with the Aurora Police Department but continues to be employed by the Employer shall leave his Contribution Accumulation on deposit in the Retirement Trust Fund, but such Member who is no longer in Covered Employment may commence receipt of his Normal Pension after attainment of his Normal Retirement Age.

3.7 Withdrawal from Membership: Once an Employee has become a Member of the Plan, he may not withdraw from membership unless he ceases to be eligible for membership or unless he becomes eligible for benefits under the Plan.

3.8 Break in Service Prior to Retirement: If a Member terminates employment and does not receive a refund of his Contribution Accumulation upon his termination, his prior Credited Service and Vesting Service shall not be forfeited, if applicable.

3.9 Leave of Absence for Qualified Military Service: Notwithstanding any provision of this Plan to the contrary:

(a) contributions, benefits and service credit with respect to Qualified Military Service shall be provided in accordance with Code Section 414(u). The Plan Administration Committee shall establish appropriate procedures for a Member to make up contributions he missed by reason of such Leave of Absence for Qualified Military Service, on or prior to his last day of employment with his post-service Employer, in accordance with Section 4.2; and

(b) if a Member dies while performing Qualified Military Service, the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under this Plan had the Member resumed and then terminated employment on account of death.

## ARTICLE IV

### Contributions

#### 4.1 Contributions by the Employer:

(a) The Employer shall make contributions to the Retirement Trust Fund equal to 8.25% of each Member's Compensation per pay period; provided that once the Plan is funded on an actuarially sound basis, the Employer, after consultation with and agreement by the Plan Administration Committee, which agreement shall not be unreasonably withheld, may adjust its contribution rate to the Plan to take into account advance funding of the Employer contributions made to the Plan.

(b) In accordance with USERRA, when the Member contributes his make-up contributions, the Employer will also make timely contributions to the Retirement Trust Fund based on the same Compensation used to determine the amount of contributions made up by the Member and the Employer contribution rates for the Plan Years for which the contributions are made up by the Member.

#### 4.2 Contributions by Members:

(a) Member Contribution Amounts. Each Member shall make contributions to the Retirement Trust Fund equal to 8.25% of such Member's Compensation per pay period. Contributions shall be made by payroll deductions. Member contributions shall be picked up and paid by the Employer as provided in Code Section 414(h)(2) with the Member's gross income being reduced by the amount of the contributions picked up by the Employer. For purposes of the Plan, the Member's contribution picked up by the Employer under this Section 4.2(a) shall be allocated to the Member's Contribution Accumulation in the same manner as if it had been paid directly to the Plan by the Member.

(b) Requirements for Military Leave. A Member who meets the qualifications under USERRA for reemployment and, following a Leave of Absence for Qualified Military Service, returns to the service of his Employer within the time period specified under USERRA, shall be permitted, but not required, to make up any or all contributions which he missed during such period(s) of Leave of Absence, provided his cumulative period of Qualified Military Service in his employment relationship with the Employer does not exceed five (5) years (with limited exceptions as provided under USERRA).

(c) Timeframe to Make Up Contributions. Such contributions may be made up at any time during a period equal to the lesser of: (1) three times the length of the Member's Leave of Absence for Qualified Military Service; or (2) five years (the "Make-up Period"). Make-up contributions may be made up only during the Make-up Period and while the Member is employed post-military service with the Employer. The Make-up Period shall commence on the date on which the Plan Administration Committee notifies the Member that he may make up contributions following reemployment. If,

before the Member has completed making up missed contributions, the Member terminates employment or dies before the end of the Make-up Period, the Member's right to make up contributions shall terminate on the Member's last day of employment or date of death, as applicable.

If a Member takes a subsequent Leave of Absence for Qualified Military Service prior to completing payment of the contributions he elected to make up, and prior to the end of the Make-up Period, the remaining portion of his Make-up Period shall be suspended during the Member's subsequent Leave of Absence for Qualified Military Service. If the Member again returns to the service of his Employer within the period specified under USERRA, the remaining portion of such Member's initial Make-up Period shall resume upon his date of reemployment. Such Member shall be permitted, but not required, to make up any or all contributions which he missed during such subsequent Leave of Absence for Qualified Military Service.

(d) Amount of Contributions to be Made Up. The Member shall elect the amount of contributions to be made up, provided that such amount shall not exceed the difference between the amount the Member would have contributed, but for such Leave of Absence for Qualified Military Service, and the amount that was actually contributed during the period of such Leave of Absence for Qualified Military Service, if any.

(e) Retirement During the Make-Up Period. If a Member retires prior to completing payment of the contributions he elected to make up, and prior to the end of the Make-up Period, he shall be entitled to receive a Pension on his Retirement based on his Credited Service and Compensation credited at the rate that would have been in effect but for the Leave of Absence for each year of Qualified Military Service based on the contributions he has made up.

4.3 Application of Forfeitures: Any amount forfeited because of termination of employment of a Member prior to his having acquired a fully vested right to Retirement Benefits, because of death of any Member or for any other reason, shall not be applied to increase the benefits provided by the Plan.

4.4 Expense Contribution: The Employer may make contributions to the Retirement Trust Fund to be used to pay some or all of the expenses described in Section 9.8 and/or Article X.

## ARTICLE V

### Requirements for Retirement Benefits

#### 5.1 Normal Retirement or Delayed Retirement:

(a) Normal Retirement. A Member shall be eligible for a Normal Pension (described in Section 6.1 commencing as of his Normal Retirement Date, or Delayed Retirement Date (described in Section 5.1(b)), as applicable,

(1) if his employment terminates on or after his Normal Retirement Age and he is not employed by the Employer or

(2) if he is employed by the Employer but such Member has terminated employment with the Aurora Police Department, and he has attained his Normal Retirement Age.

Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Normal Pension shall commence.

(b) Delayed Retirement. In the event a Member continues his employment with the Aurora Police Department beyond his Normal Retirement Age, such Member shall continue to contribute to the Plan, as provided in Section 4.2, and shall continue to accrue a benefit as provided in Section 6.1 for such period of employment. Such Member's Delayed Retirement Date shall be as of the first day of the month coincident with or next following the date of his actual Retirement. Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Pension shall commence.

5.2 Early Retirement: A Member shall be eligible for Early Retirement if his employment with the Employer terminates after he has attained the age of 50 years and he has completed at least 5 years of Vesting Service.

A Member eligible for an Early Retirement shall be eligible for an Early Retirement Pension (described in Section 6.2 commencing as of his Normal Retirement Date), provided he is then living. Such Member may request the commencement of his Early Retirement Pension as of the first day of the month coinciding with or next following his Early Retirement, or as of the first day of any subsequent month which precedes his Normal Retirement Date, but the amount thereof shall be adjusted as provided in Section 6.2. Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Early Retirement Pension shall commence.

#### 5.3 Deferred Vested Retirement:

(a) A Member shall be eligible for, and may elect, a Deferred Vested Pension commencing as of his Normal Retirement Date, provided:

- (1) he is then living;
- (2) his employment terminates after he has become a Vested Member;
- (3) he is not employed by the Employer; and
- (4) he is not eligible for benefits under Section 5.1 or 5.2.

Notwithstanding the foregoing, a Deferred Vested Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Deferred Vested Pension shall commence.

(b) A Deferred Vested Member may request early commencement of his Deferred Vested Pension if such Member requests commencement of his Deferred Vested Pension as of the first day of the month coincident with or next following his 50th birthday or as of the first day of any subsequent month which precedes his Normal Retirement Date. If a Deferred Vested Member eligible to request commencement of his Deferred Vested Pension prior to his Normal Retirement Date makes such election, the amount thereof shall be adjusted as provided in Sections 6.2 and 6.3. Notwithstanding the foregoing, a Deferred Vested Member must file a benefit election form in accordance with the provisions of Section 8.1 before early payment of his Deferred Vested Pension shall commence.

5.4 Latest Date for Commencement of Payment of Benefits: Distribution of a Member's Accrued Benefit must be made or must commence no later than the Required Beginning Date. The Member's Required Beginning Date is April 1 of the calendar year following the later of the calendar year in which the Member (a) attains age 72 or (b) retires.

Notwithstanding any Plan provisions to the contrary, the Plan shall apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the final regulations under Code Section 401(a)(9). All required distributions shall be determined and made in accordance with the final regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of the final regulations.

Notwithstanding anything herein to the contrary, the Plan, which is a governmental plan (within the meaning of Code Section 414(d)) is treated as having complied with Code Section 401(a)(9) for all years to which Code Section 401(a)(9) applies to the Plan if the Plan complies with a reasonable and good faith interpretation of Code Section 401(a)(9).



## ARTICLE VI

### Amount of Retirement Benefits

6.1 Normal Pension or Delayed Pension: A Member who retires or terminates (including termination with the Aurora Police Department but continuing to work for the Employer but not in Covered Employment) and has met the requirements for a Normal Pension or Delayed Pension shall receive a monthly Pension benefit equal to 2.0% of the Member's Average Monthly Compensation multiplied by the total number of years of Credited Service.

6.2 Early Retirement Pension: A Member who meets the requirements for an Early Retirement Pension under Section 5.2 shall receive a monthly amount computed as for a Normal Pension, considering his Credited Service and Average Monthly Compensation at the date of his actual Retirement. If a Member eligible for an Early Retirement Pension under Section 5.2 or a Member eligible for a Deferred Vested Pension under Section 5.3 elects a Pension Commencement Date prior to his Normal Retirement Date, such monthly Pension benefit is reduced for each month between the Member's Pension Commencement Date and the Member's Normal Retirement Date. The reduction for early commencement of a monthly Pension benefit is as follows:

- (a) 0.292% per month for each month (if any) between:
  - (1) the Member's Pension Commencement Date, and
  - (2) the earlier of the Member's Normal Retirement Date and the first of the month coincident with or next following the Member's 55th birthday, plus
- (b) 0.375% per month for each month (if any) between:
  - (1) the later of the Member's Pension Commencement Date and the first of the month coincident with or next following the Member's 55th birthday, and
  - (2) the earlier of the Member's Normal Retirement Date and the first of the month coincident with or next following the Member's 60th birthday, plus
- (c) 0.458% per month for each month (if any) between:
  - (1) the later of the Member's Pension Commencement Date and the first of the month coincident with or next following the Member's 60th birthday, and
  - (2) the Member's Normal Retirement Date.

6.3 Deferred Vested Pension:

(a) A Member who meets the requirements for a Deferred Vested Pension may elect to (1) leave his Contribution Accumulation on deposit in the Retirement Trust Fund and become a Deferred Vested Member, or (2) receive, in lieu of all other benefits hereunder, a refund of his Contribution Accumulation.

(b) If the Member elects to receive a cash refund or a direct rollover (or a combination thereof) of his Contribution Accumulation in accordance with Section 7.7, payment shall be made within 90 to 120 days after the later of: (1) his date of termination of employment (or, if a Member has appealed his dismissal, the latest of (A) his date of termination, (B) an adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (C) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment); or (2) the date he files his election form with the Plan Administration Committee. Notwithstanding the foregoing, such Member's refund of Contribution Accumulation shall not be paid during any period in which he is employed by the Employer.

(c) A Deferred Vested Member who meets the requirement for a Deferred Vested Pension under Section 5.3 shall receive a monthly amount payable under Sections 6.1 or 6.2 above, considering his Credited Service at the date of his actual termination of employment and the Member's age at his Pension Commencement Date.

6.4 Purchase of Credited Service:

(a) An Employee may elect to purchase one month of Credited Service for each full month of

(1) full-time, non-vested Qualified Employment, to a maximum of sixty (60) months of Credited Service; and

(2) full-time employment as a law enforcement officer with the Police Department of the City of Aurora prior to becoming a Member.

(b) Purchase of Credited Service pursuant to Section 6.4(a) shall be subject to all of the following terms and conditions.

(1) After the Employee first becomes a Member of the Plan, the Employee must accrue one year of Credited Service in order to be eligible to purchase service credit, and the election to purchase service credit must be made within one year of an Employee's first eligibility to purchase service credit;

(2) Only one election to purchase Credited Service under this Section 6.4 may be made by an Employee;

(3) The Employee must provide certification from the previous employer as to the dates of Qualified Employment;

(4) The Employee must provide certification from any retirement program covering such Qualified Employment that the Credited Service to be purchased has not vested with that program;

(5) The Employee must provide certification that recognition of such Qualified Employment as Credited Service will not cause the Employee to receive a retirement benefit for the same service under more than one plan (excluding Social Security); and

(6) The Plan Administration Committee shall establish appropriate rules by which an Employee may purchase Credited Service where the certifications described above are impossible or impracticable to obtain.

(c) Purchase of Credited Service shall be made by (1) a one-time trust-to-trust transfer from the Employee's Money Purchase Pension Plan Account (without such funds being made available to the Member), (2) a one-time trust-to-trust transfer pursuant to Code Section 457(e)(17) from an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, or (3) a combination of (1) and (2). Under no circumstances may the purchase payment include Roth funds or after-tax employee contributions.

(d) The purchase payment for Credited Service is due within thirty (30) days of the date the Employee makes the election under Section 6.4(b) or such later date as is administratively feasible as determined by the Plan Administration Committee.

(e) A payment for Credited Service purchase may not be withdrawn. Purchased Credited Service shall be credited to the Member upon receipt by the Plan of the payment as described in (c) above.

(f) The cost to purchase Credited Service shall be determined by the Plan Administration Committee, in its sole discretion and such cost shall be calculated on an Actuarial Equivalent basis in accordance with Section 2.1(b), including the additional assumptions not defined in Section 2.1(b) or until changed by Plan amendment:

(1) The Member remains in continuous Covered Employment and is assumed to earn projected Credited Service until eligibility for Normal Retirement (reflecting the months of Credited Service purchased), with 3.5% annual salary increases during this period, and

(2) The Member retires immediately upon the date described in (1).

(g) The Plan Administration Committee shall establish such rules as are necessary to implement the provisions of this Section 6.4.

6.5 Non-Automatic Cost of Living Adjustment: Cost of living adjustments shall not be automatic but may be granted on an annual basis as determined by the Plan Administration Committee.

## ARTICLE VII

### Termination, Death and Disability

7.1 Termination Benefit: If any Member's employment terminates before he is eligible for benefits under Article V, he shall receive as a Termination Benefit a refund of his Contribution Accumulation. Notwithstanding the foregoing, such Member's Termination Benefit shall not be paid during any period in which he is employed by the Employer. Upon election by such Member, such benefit shall be paid in cash in one lump-sum (or in a direct rollover, or a combination thereof), after such Member's termination and shall be in lieu of all other benefits under the Plan. If such Member elects to receive a cash refund (or a direct rollover, or a combination thereof) of his Contribution Accumulation in accordance with Section 7.8, payment shall be made within 90 to 120 days after the later of: (a) his date of termination of employment (or, if a Member has appealed his dismissal, the latest of (A) his date of termination, (B) an adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (C) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment); or (b) the date he files his election form with the Plan Administration Committee.

7.2 Death of Member/In Line of Duty Survivor Benefits: If a Member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the Member's employment, and the survivors of such Member qualify for a benefit under C.R.S. Section 31-31-807.5 (as the same may be amended), a Termination Benefit consisting of a refund of his Contribution Accumulation shall be payable after his date of death. Such Termination Benefit shall be in lieu of all other benefits under the Plan. The Plan Administration Committee shall direct the Trustee to distribute such deceased Member's Termination Benefit in the form elected by such Member's Beneficiary, as permitted under Section 7.8. In the absence of such election, the Plan Administration Committee may direct the Trustee to distribute the Termination Benefit to the deceased Member's designated Beneficiary (or estate if no Beneficiary) in the form of a lump sum distribution as soon as administratively practicable following the death of the Member, or, if later, as soon as administratively practicable following the date the Plan Administration Committee receives notification of, or otherwise confirms, the Member's death.

7.3 Death of Member/Survivor Benefits: If a Member's employment with the Employer terminates on account of his death and the Member's Beneficiary or estate is eligible for a death benefit under Part 8 of Title 31, Article 31 of the Colorado Revised Statutes other than under C.R.S. Section 31-31-807.5 (as the same may be amended), a Termination Benefit consisting of a refund of his Contribution Accumulation shall be payable after his date of death. Such Termination Benefit shall be in lieu of all other benefits under the Plan. The Plan Administration Committee shall direct the Trustee to distribute such deceased Member's Termination Benefit in the form elected by such Member's Beneficiary, as permitted under Section 7.8. In the absence of such election, the Plan Administration Committee may direct the Trustee to distribute the Termination Benefit to the deceased Member's designated Beneficiary (or estate if no Beneficiary) in the form of a lump sum distribution as soon as administratively practicable following the death of the Member, or, if later, as soon as administratively

practicable following the date the Plan Administration Committee receives notification of, or otherwise confirms, the Member's death.

7.4 FPPA On-Duty Total Disability or On-Duty Permanent Occupational Disability:  
In the event that the FPPA determines that a Member has an "on-duty" Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5 (as the same may be amended), and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Disabled Member shall receive the Member's Contribution Accumulation which is payable upon such Disabled Member termination of employment with the Employer, and is in lieu of all other benefits payable under the Plan.

(a) Distribution of Lump Sum Plan Offset Amount. If **all** of the following circumstances occur:

(1) A Member is determined by FPPA to have an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended;

(2) Such Member is, therefore, found by FPPA to be entitled to either a total disability or a permanent occupational disability benefit pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended (hereinafter referred to as the "FPPA On-Duty Disability Benefit");

(3) Such disabled Member's FPPA On-Duty Disability Benefit is excludible from such disabled Member's gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment;

(4) Pursuant to the provisions of CRS Section 31-31-803(7), as the same may be amended, such disabled Member's FPPA On-Duty Disability Benefit that would otherwise be payable under CRS Section 31-31-806.5 is reduced by FPPA in an amount that is the actuarial equivalent of the lump sum value of the Member's aggregate Contribution Accumulation as of a date selected by FPPA and, as adjusted by FPPA based on CRS Section 31-31-803(7) ("Lump Sum Plan Offset Amount"); and

(5) The Plan Administration Committee and the Trustee make a good faith determination that pursuant to applicable federal tax law, regulations and rulings that the Member's Lump Sum Plan Offset Amount is also exempt from federal income taxation under the provisions of Code Section 104(a)(1) as an on-duty workmen's compensation type of benefit, the Plan Administration Committee shall direct the Trustee to distribute to the Disabled Member that portion of his or her Contribution Accumulation as soon as administratively

practicable following the later of the Member's termination of employment with the Employer or the date of the determination by FPPA that the Member has an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended.

(b) Distribution of Remainder of Participant's Nonforfeitable Accrued Benefit. If pursuant to the provisions of Section 7.3(a), a Disabled Member's Lump Sum Plan Offset Amount is distributed to him or her in the form of a lump sum distribution, and if after such lump sum distribution is made there is any remaining balance in the Disabled Member's Contribution Accumulation (hereinafter referred to as the "Remainder"), then the Disabled Member may elect to receive the entire Remainder of his or her Contribution Accumulation in the form of a lump sum distribution or direct rollover (or a combination thereof) after his or her receipt of the Code Section 402(f) notice.

7.5 FPPA Disability Other than On-Duty Total Disability or On-Duty Permanent Occupational Disability: In the event that the FPPA determines that a Member has a Disability that is neither an "on-duty" total disability nor an "on-duty" permanent occupational disability pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended, and after the date of the determination by FPPA that such Participant has such a Disability, and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Disabled Member's benefit is the Member's Contribution Accumulation which is payable upon the Member's termination of employment in the form of a lump sum distribution in lieu of all other benefits payable under the Plan.

7.6 Death of a Retired Member or Other Member Before Contributions Recovered: In the event that, at the termination of Pension payments following the death of a Retired Member or any other Member, the aggregate of such payments made to the Retired Member and his Beneficiary (if any), or any other Member and his Beneficiary (if any) is less than the amount of the Contribution Accumulation of a Retired Member at his Pension Commencement Date or his commencement of participation in the DROP under Section 8.5 (if earlier), or for any other Member, the date of payment due to his termination of employment or death, whichever is earlier, the difference shall be paid in one sum to the Beneficiary, if living, or to the estate of the last survivor of the Member or his Beneficiary. A Beneficiary may elect a Direct Rollover of his one sum payment pursuant to the provisions of Section 7.8.

7.7 Death of a Retired Member or Deferred Vested Member:

(a) In the event a Retired Member dies while receiving Retirement Benefit payments, his death benefit, if any, will be determined by the form of Retirement Benefit being paid.

(b) In the event that a Deferred Vested Member or a Retired Member dies prior to his Pension Commencement Date and Section 8.1(d) does not apply, the Plan Administrator shall pay survivor benefits to such Member's designated Beneficiary; provided, however, survivor benefits shall not be paid under this Section 7.7(b) if such

Member's survivor is eligible for a survivor benefit under Part 8 of Title 31, Article 31 of the CRS or any successor provision thereto. Such designated Beneficiary may elect (1) a refund of the Contribution Accumulation or (2) a Pension payable beginning on the earliest date the Member would have been eligible to receive benefits. If the Pension is selected, the survivor benefits shall be calculated as if the Member had selected Option 2 under Section 8.2.

7.8 Direct Rollovers: Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section and provided that the Eligible Rollover Distribution is at least two hundred dollars (\$200), a Distributee, including a non-spouse designated beneficiary, to the extent permitted under Section 7.8(b), may elect, at the time and in the manner prescribed by the Plan Administration Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. If the Eligible Rollover Distribution is at least five hundred dollars (\$500), the Distributee, including a non-spouse designated beneficiary, to the extent permitted under Section 7.8(b), may elect to have a portion of the Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover and receive a portion of the Eligible Rollover Distribution provided that the amount of the Direct Rollover is at least five hundred dollars (\$500). For purposes of this Section, the following definitions shall apply:

(a) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(b) Distributee. A Member or former Member. In addition, the Member's or former Member's surviving spouse and the Member's or former Member's spouse or former spouse who is the alternate payee under a domestic relations order are Distributees with regard to the interest of the spouse or former spouse. Pursuant to Code Section 402(c)(11), a Distributee also includes the Member's non-spouse designated beneficiary, pursuant to Code Section 401(a)(9)(E) (which includes certain trusts described in Code Section 402(c)(11)(B)), in which case any portion of the distribution made in a Direct Rollover can only be transferred to an individual retirement account or annuity (other than an endowment contract) described in Code Section 408(a) or (b) ("IRA") (including, effective for distributions after December 18, 2015, a SIMPLE IRA but only if such contribution occurs after the 2-year period described in Code Section 72(t)(6) and is made in accordance with the Protecting Americans from Tax Hikes Act of 2015) established for the purpose of receiving the distribution on behalf of such non-spouse beneficiary, subject to applicable tax restrictions, or to a Roth individual retirement account or annuity under Code Section 408A ("Roth IRA") established on behalf of the non-spouse designated beneficiary for the purpose of receiving the distribution. Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395, as clarified by the Special Edition dated February 13, 2007, of Employee Plans News of the Internal Revenue Service Tax Exempt and Government Entity Division. The required minimum distribution rules of Code Section 401(a)(9)(B) (other than clause iv thereof) shall apply to the transferee IRA.

(c) Eligible Retirement Plan. An individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the "alternate payee" pursuant to a qualified domestic relations order as defined in Code Section 414(p). An Eligible Retirement Plan includes a Roth IRA, subject to any limitations described in Code Section 408A(c). An Eligible Retirement Plan includes a SIMPLE IRA in accordance with Code Section 408(p)(1)(B) for purposes of a rollover contribution to such SIMPLE IRA, but only if such rollover contribution rollover contribution occurs after the 2-year period described in Code Section 72(t)(6).

(d) Eligible Rollover Distribution. A distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary; or for a specified period of 10 years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9); and

(3) the portion of any distribution that is not includible in gross income; provided, however, that a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only:

(A) to an individual retirement account or annuity described in Code Section 408(a) or 408(b); or

(B) in a direct trustee-to-trustee transfer, to a qualified trust, or an annuity contract described in Code Section 403(b), if such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.



Such after-tax portion may also be directly transferred to a Roth IRA, subject to any limitations described in Code Section 408A(c).

For purposes of determining the portion of a disbursement of benefits from the Plan to a Distributee that is not includible in gross income under Code Section 72, the guidance under I.R.S. Notice 2014-54 shall be followed.

(e) Waiver of 30 Day Notice and Notice of Tax Treatment. At least thirty (30) days before and not more than one hundred eighty (180) days before the date of distribution, the Distributee must be provided with a notice of rights which satisfies Code Section 402(f) as to rollover options and tax effects.

If a distribution is one to which Code Sections 401(a)(11) and 417 do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

(1) the Plan Administration Committee clearly informs the Distributee that the Distributee has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(2) the Distributee, after receiving the notice, affirmatively elects a distribution.

(f) Distribution to Non-spouse Designated Beneficiary. A distribution with respect to a non-spouse designated beneficiary shall be subject to Code Sections 401(a)(31), 402(f), and 3405(c).

#### 7.9 Designation of Beneficiary:

(a) Each active or Deferred Vested Member may designate a primary Beneficiary or Beneficiaries and a contingent Beneficiary or Beneficiaries to receive any benefit that may become payable under this Plan by reason of his death. Such designation shall be made on the form furnished by the Plan Administration Committee, and may be changed or revoked at any time without notice to the Beneficiary or Beneficiaries, but shall not be effective until filed with the Plan Administration Committee.

(b) If the active or Deferred Vested Member designates an individual under the age of 18 as a Beneficiary, any benefit that may become payable under this Plan by reason of his death shall be paid to a custodian under the Uniform Transfers to Minors Act or to a guardian or conservator appointed by the court for the benefit of such minor Beneficiary.

(c) If any person entitled to receive a benefit under this Plan is deemed by the Plan Administration Committee and/or its designee to be incapable of personally receiving and giving a valid receipt of such payment, the Plan shall make payment to a duly appointed guardian or other legal representative of such

person or, if none, to any person or institution then contributing toward or providing for the care and maintenance of such person. Any such payment shall be payment for the account of such person and a complete discharge of any liability of the Plan, the Plan Administration Committee, its designee and the employees and agents of the Plan Administration Committee. However, the Plan Administration Committee and/or its designee reserves the right to obtain periodic evidence that the Beneficiary is still living.

7.10 Uniform Simultaneous Death Act: The provisions of any law of Colorado providing for the distribution of estates under the Uniform Simultaneous Death Act, when applicable, shall govern the distribution of amounts payable under this Plan.

## ARTICLE VIII

### Retirement Benefit Payments

#### 8.1 General:

(a) Basic Form of Pension. The Plan's basic form of pension is a single life annuity. The Retired Member shall receive a pension payable for life with no payments to be made subsequent to his death, except as set forth in Section 7.6.

(b) Timely Filed Benefit Election Form by Member. A Member who is eligible for Retirement under this Plan must make a benefit election, in writing and in such manner as prescribed by the Plan Administration Committee, and such benefit election form must be filed with the Plan Administration Committee within 30 days prior to the date the Member requests commencement of his Pension, which must be as of the first day of a month, and which date shall be the Member's "Pension Commencement Date." To allow for administrative processing, the first actual Pension payment shall be made on the first day of the calendar month following the Member's Pension Commencement Date and shall include the first- and second-months' Pension payments. No Pension payments shall be made prior to the date a Member eligible for Retirement files a benefit election form with the Plan Administration Committee.

(c) Late Filed Benefit Election Form by Member. A Member who has terminated employment and files his benefit election form with the Plan Administration Committee after his Normal Retirement Date shall not be entitled to more than six (6) retroactive Pension payments.

(d) Death of Member Within 60 Days Prior to Member's Pension Commencement Date. If a Member eligible for Retirement or a Deferred Vested Member made a benefit election in writing, in such manner as prescribed by the Plan Administration Committee, and timely filed such benefit election form with the Plan Administration Committee, but died within 60 days prior to the Member's Pension Commencement Date, benefits shall be paid in accordance with the Member's election.

8.2 Optional Forms of Payment: A Member may elect to receive a Pension payable in accordance with one of the following options in lieu of the basic form of pension described in Section 8.1(a).

(a) Option 1—Joint and 100% Survivor Annuity. The Retired Member shall receive an adjusted Pension payable for life, and payments of 100% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime.

(b) Option 2—Joint and 50% Survivor Annuity. The Retired Member shall receive an adjusted Pension payable for life, and payments of 50 percent of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime.

(c) Option 3—Joint and 100% Survivor Annuity with Pop Up Feature. The Retired Member shall receive an adjusted Pension payable for life, and payments of 100% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime. Upon the death of the Beneficiary prior to the death of the Retired Member (1) the single life annuity shall become payable to the Retired Member and the monthly amount of such benefit shall be the amount of Pension which would have otherwise been payable to the Retired Member had he not elected an optional form of payment and (2) the first payment of such benefit shall be made as of the first day of the calendar month coincident with or next following the date of the Beneficiary's death and the last payment of which shall be made as of the first day of the month in which the death of the Retired Member occurs.

(d) Option 4—Joint and 50% Survivor Annuity with Pop Up Feature. The Retired Member shall receive an adjusted Pension payable for life, and payments of 50% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime. Upon the death of the Beneficiary prior to the death of the Retired Member (1) the single life annuity shall become payable to the Retired Member and the monthly amount of such benefit shall be the amount of Pension which would have otherwise been payable to the Retired Member had he not elected an optional form of payment and (2) the first payment of such benefit shall be made as of the first day of the calendar month coincident with or next following the date of the Beneficiary's death and the last payment of which shall be made as of the first day of the month in which the death of the Retired Member occurs.

The aggregate of the Pension payments expected to be made to a Retired Member and his Beneficiary (if any) under Section 8.2(a), (b), (c), or (d) shall be the Actuarial Equivalent of the Pension which the Retired Member is otherwise entitled to receive under the single life annuity form of payment upon Retirement. Subject to the provisions of Section 8.4, a Member may elect, change, or revoke an option without the approval of the Plan Administration Committee if his election, change, or revocation is filed in writing with the Plan Administration Committee no later than his Pension Commencement Date. Except as provided in Section 8.1(d), an election to receive an optional form of payment under Section 8.2(a), (b), (c), or (d) shall not become effective unless both the Member and the Beneficiary are alive on the Pension Commencement Date.

8.3 Benefit Election: A properly completed benefit election form (furnished by the Plan Administration Committee) must be returned to the Plan Administration Committee prior to the Member's Pension Commencement Date. If the Member files another benefit election form after the earlier form and prior to his Pension Commencement Date, the earlier form shall be deemed annulled. The designated Beneficiary may not be changed after the Pension Commencement Date.

8.4 Other Benefits Canceled by Option: Any Pension, death benefit, or other benefit that would otherwise have become payable under this Plan shall be canceled and superseded by an option or any other form of payment elected under this Article as of the date such option or other form of payment becomes operative.

## 8.5 Deferred Retirement Option Plan (DROP):

(a) In lieu of terminating employment and receiving a Pension, a Member who is eligible to receive an unreduced Pension may make an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) and defer the receipt of Pension benefits in accordance with the provisions of this Section 8.5.

(b) The purpose of the DROP is to allow an eligible Member to elect, in lieu of immediate termination of employment and receipt of a service retirement benefit, to continue employment for a specified period of time and to have the Member's contribution and Pension paid into the DROP account until the end of such specified period of the Member's participation, at which time employment is to cease. When a Member begins participation in the DROP, Employer contributions shall cease. An eligible Member must choose a straight life annuity or one of the retirement options for his non-DROP benefit provided in Article VIII at the same time the Member elects to participate in the DROP.

(c) An eligible Member may participate in the DROP only once.

(d) The duration of a Member's participation in the DROP shall not exceed a total of three years. Participation in the DROP must begin the first day of a month and end on the last day of a month. As a condition precedent to participation in the DROP, the Member shall execute an irrevocable agreement with his Employer in the form prescribed by the Plan Administration Committee which shall, among other items, clearly and unequivocally state that, except as provided in Section 8.5(e), the Member must retire after three years of the Member's participation in the DROP, and the Member shall also acknowledge that no distribution of any DROP funds can occur absent the termination of employment or death of the Member. The Employer shall provide a copy of such agreement to the Plan Administration Committee.

(e) If the Member's participation in the DROP is interrupted by Qualified Military Service, then, upon reestablishment of membership and provided that the Member has not received any distribution from his DROP account, the Member shall be immediately eligible for resumption of participation in the DROP for the balance of the three year maximum. Other than the above-described interruptions of participation, the three-year period shall continue to run in all other cases.

(f) Upon commencement of the Member's participation in the DROP, the Member shall remain an active Member. Nevertheless, the Member shall earn no additional Credited Service or additional benefits under the non-DROP provisions of the Plan.

(g) Upon commencement of the Member's participation in the DROP, the Member's Pension provided under Article VIII and the Member contributions under Section 4.2 shall be paid into the Member's hypothetical DROP account. In no case shall the Employer Contribution be used to fund the DROP.

(h) At the conclusion of a Member's participation in the DROP, the Member shall terminate employment with the Employer and shall start receiving the Member's monthly Pension under the non-DROP portion of the Plan.

(i) The following shall be used in determining and crediting interest for a Member's DROP account, with crediting to the DROP in any Plan Year reflective of both the DROP account balance at the start of the Plan Year, the timing of monthly nominal credits to the DROP account, and the timing of distribution of the DROP accumulated account balance:

(1) The DROP Interest Rate is determined as of December 31st for each Plan Year and is calculated by taking the actual annual rate of fair market value return of the investment portfolio of the Plan for such Plan Year net of Plan investment-related expenses and then reducing that return by two percent (2%). For any Plan Year, the DROP Interest Rate shall be no less than two and one-half percent (2.5%) nor greater than the interest rate specified in Section 2.1(b)(1) of the Plan. The DROP Interest Rate may be changed at any time by Plan amendment.

(2) Subject to (m) below,

(A) such DROP Interest Rate shall be credited to the Member's DROP account on an annual basis as of December 31st of each Plan Year, and

(B) if a Member's (or Beneficiary's) DROP account balance is distributed for any period when the DROP Interest Rate has yet to be determined by the Plan Administration Committee, 4.25% per annum, compounded annually (until changed by Plan amendment), shall be substituted for the DROP Interest Rate as defined above.

(j) A Member who participates in the DROP shall receive, at the option of the Member:

(1) A lump sum payment (or Direct Rollover, or a combination thereof) equal to the Member's DROP account balance; or

(2) A lump sum equal to the Member's DROP account balance, payable to an annuity provider selected by the Member as a result of the research and investigation by the Member.

(k) A Beneficiary of a Member who participates in the DROP shall, at the option of the Beneficiary, receive a lump sum payment (or Direct Rollover or combination thereof) equal to the Member's DROP account balance.

(l) A Member's (or Beneficiary's) failure to make an election under (j) or (k) above, as applicable, within 150 days of a Member's termination of employment (or, if a Member has appealed his dismissal, the latest of (i) his date of termination, (ii) an

adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (iii) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment) or death, if applicable, shall result in:

(1) an automatic rollover of the distribution (if greater than \$1,000 including the portion of the Member's distribution attributable to any rollover contribution) to an individual retirement plan consistent with the mandatory distribution rules of Code Section 401(a)(31) for any Member before the Member attains the later of age 62 or the Member's Normal Retirement Age, and

(2) a direct lump sum distribution to the Member (or Beneficiary) for any other distribution.

(m) If a Member dies without having designated a Beneficiary, the Member's DROP account shall be paid to the Member's estate within 150 days of the Member's death and if not paid within 150 days of the date of death shall cease to earn interest.

(n) Notwithstanding any other provision contained herein to the contrary, commencement of distributions under the DROP shall be paid in accordance with Code Section 401(a)(9).

(o) All benefits payable from the Plan, including payments from the DROP, shall be paid from the general assets of the Plan.

## ARTICLE IX

### Administration

9.1 Plan Administration Committee: The Plan shall be administered by the Plan Administration Committee.

(a) The Plan Administration Committee shall be the Plan administrator.

(b) Membership. The Plan Administration Committee shall be made up of five (5) individual members who shall be: four (4) current Participants and one (1) person who is not a Participant and who has business and/or investment experience within the local community. The Finance Director for the City ("Finance Director") and a Deputy Manager of the City appointed by the City Manager ("Deputy City Manager") shall be ex officio members of the Plan Administration Committee.

(c) Election. The member of the Plan Administration Committee who is not a Participant shall be elected by majority vote of the other members of the Plan Administration Committee. The four (4) members of the Plan Administration Committee who are Participants shall be elected by plurality vote of the current Participants.

(d) Resignation. Any member of the Plan Administration Committee may resign by delivering his or her written resignation to the Employer and the other members of the Plan Administration Committee. Any resignation of a member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered, unless otherwise agreed to by the other members of the Plan Administration Committee.

(e) Removal. Members of the Plan Administration Committee who are Participants may be removed, with or without cause, by majority vote of the current Participants. The member of the Plan Administration Committee who is not a Participant may be removed, with or without cause, by the majority vote of the other members of the Plan Administration Committee. Written notice of any such removal shall be delivered to any such removed member, to the other members of the Plan Administration Committee and to the Employer. Any removal of any member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered.

(f) Vacancies. Any vacancy on the Plan Administration Committee arising as a result of the resignation, removal, death or otherwise of a member who was a Participant shall be filled by plurality vote of the current Participants. Any other vacancy on the Plan Administration Committee shall be filled by majority vote of the other members of the Plan Administration Committee.

(g) Trustee. Each member of the Plan Administration Committee shall also be a Trustee, unless the Plan Administration Committee appoints a trustee.

(h) Compensation and Expenses. The members of the Plan Administration Committee shall serve without compensation for services rendered as a Plan



Administration Committee member, unless authorized by majority vote of the members of the Plan Administration Committee. Any compensation for services is to be made from the Trust Fund. Each Plan Administration Committee member shall be reimbursed from the Trust Fund for any expenses he or she may properly incur in connection with the performance of his or her duties as a member of the Plan Administration Committee.

(i) Bond. Every member of the Plan Administration Committee shall be bonded if required by applicable law, or as they deem appropriate, and the costs of such bond will be paid by the Trust Fund.

(j) Indemnification. The Plan Administration Committee and the individual members thereof including the ex officio members thereof, whether acting as the Plan administrator or as Trustees, and any employee of the Pension Administration Committee, performing duties therefor, shall be indemnified by the City of Aurora against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

9.2 Term: Except as provided in this Section 9.2, each member of the Plan Administration Committee who is elected by the current Participants shall serve for staggered three (3) calendar year terms or until the appointment of his or her successor. Under the staggering of the terms of such members elected by the current Participants, one such member shall be elected in one year, one such member shall be elected in the following year, and two such members shall be elected in the next following year. Anything contained in this Section 9.2 to the contrary notwithstanding, the staggering of the terms of the members of the Plan Administration Committee elected by the current Participants began under the Money Purchase Plan as of January 1, 1992, so that the initial term of one such member shall be for one (1) year, the initial term for one such member shall be for two (2) years and the initial term for two such members shall be for three (3) years. The Plan Administration Committee shall determine which such members shall have the initial terms of one year, two years or three years.

The other member of the Plan Administration Committee who is appointed by the majority vote of the other members of the Plan Administration Committee shall serve for a term designated by the Plan Administration Committee or until the appointment of his or her successor.

9.3 Powers in Event of Vacancy: In case of a vacancy in the membership of the Plan Administration Committee, the remaining members of the Plan Administration Committee may exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administration Committee pending the filling of the vacancy.

9.4 Plan Administration Committee Powers and Duties: The Plan Administration Committee shall have such powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following powers and duties:

(a) to select a President, Secretary and other officers, who need not be members of the Plan Administration Committee;

(b) to determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Accrued Benefit;

(c) to adopt by-laws, rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Agreement;

(d) to construe and enforce the terms of the Plan and the by-laws, rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;

(e) to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of the Plan and to decide or resolve any and all questions, including interpretations of the Plan, as may arise in connection with the Plan;

(f) to determine the amounts and time of payment of benefits and the rights of Members and beneficiaries to Plan benefits; to take any actions necessary to assure timely payment of benefits to any Member or beneficiary eligible to receive benefits under the Plan; and to assure a full and fair review for any Member who is denied a claim to any benefit under the Plan;

(g) to determine all considerations affecting the eligibility of any Employee to be or become a Member of the Plan;

(h) to determine the amount of the Member's contributions to be withheld by the Employer in accordance with the Plan and to maintain such records of a Member's Contribution Accumulation as are necessary under said Plan;

(i) to determine the Vesting Service or Credited Service of any Member and compute the amount of Pension, or other sum, payable under the Plan to any person;

(j) to authorize and direct disbursements of Pensions under the Plan and payment of Plan expenses;

(k) to appoint or employ for the Plan any agents and to obtain such clerical, medical, legal, and actuarial services as it may deem necessary or appropriate;

(l) to engage the services of an Investment Manager or Managers (as defined in ERISA Section 3(38)), each of whom shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under its control;

(m) with the advice of the Plan's actuary, to adopt from time to time such mortality and other tables as it may deem necessary or appropriate for the operation of the Plan;

- (n) to make valuations and appraisals of the assets held in the Retirement Trust Fund and with the advice of the Plan's actuary, to determine the liabilities of the Plan;
- (o) to create reserves from such assets for any purpose;
- (p) to delegate to one or more of the members of the Plan Administration Committee the right to act on its behalf in all matters connected with the administration of the Plan and Trust;
- (q) to receive and review reports of the financial condition and of the receipts and disbursements of the Retirement Trust Fund from the Funding Agent;
- (r) to furnish the Employer with information which the Employer may require for tax or other purposes; and
- (s) to develop such procedures and may require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under Section 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations.

The Plan Administration Committee shall exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner.

9.5 Manner of Action/Rules and Decisions: Any action or decision of the Plan Administration Committee shall be decided by majority vote of the members of the Plan Administration Committee then appointed and qualified. The Plan Administration Committee may adopt such rules and actuarial tables as it deems necessary or desirable. All rules and decisions of the Plan Administration Committee shall be uniformly and consistently applied to all Members in similar circumstances. The Plan Administration Committee is required to provide a notice in writing to any person whose claim for benefits under this Plan has been denied, setting forth the specific reasons for such denial. The Plan Administration Committee shall adopt rules and procedures to carry out the intent of this Section and to provide a basis for a full and fair review by the Plan Administration Committee of the decision denying the claim and provide such person with an opportunity to supply any evidence he has to sustain the claim.

Any rule or decision, except as to benefits, which is not inconsistent with the provisions of the Plan shall be conclusive and binding upon all persons affected by it, and there shall be no appeal from any ruling by the Plan Administration Committee which is within its authority.

When making a determination or calculation, the Plan Administration Committee shall be entitled to rely upon information furnished by the Employer, the legal counsel of the Plan Administration Committee, or the actuary for the Plan.

9.6 Authorized Representative: The Plan Administration Committee may authorize any one of its members, or its President or Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Plan Administration Committee must evidence this authority by an instrument signed by all members.

9.7 Authorization of Benefit Payments: The Plan Administration Committee shall issue directions to the Funding Agent concerning all benefits which are to be paid from the Retirement Trust Fund pursuant to the provisions of the Plan. The Plan Administration Committee shall keep on file, in such manner as it may deem convenient or proper, all reports from the Funding Agent.

9.8 Payment of Expenses: All expenses incident to the administration, termination or protection of the Plan and Retirement Trust Fund, including, but not limited to, actuarial, legal, accounting and Funding Agent's fees shall be paid from the Retirement Trust Fund pursuant to applicable Colorado and federal law, unless the Employer pays the expenses.

9.9 Unclaimed Benefits: During the time when a benefit hereunder is payable to any Member, Beneficiary or other payee, the Plan Administration Committee, upon request by the Funding Agent or at its own instance, shall mail by registered or certified mail to such payee at his last known address, a written demand for his then address or for satisfactory evidence of his continued life, or both. If such information is not furnished to the Plan Administration Committee within three months from the mailing of such demand, the Plan Administration Committee may, in its sole discretion, determine that such payee is deceased and may declare such benefit, or any unpaid portion thereof, terminated as if the death of the payee had occurred on the date of the last payment made thereon or the date such payee first became entitled to receive benefit payments, whichever is later. Any such declaration by the Plan Administration Committee shall later be revoked upon a receipt of the requested information by the Plan Administration Committee.

9.10 Electronic Media: Any applicable notices, elections, and consents provided or made for a Member, Beneficiary, alternate payee or individual entitled to benefits under the Plan may be made by means of electronic media to provide such applicable notices and make such elections and consents as described in Section 1.401(a)-21 of the Income Tax Regulations or other federal guidance.

9.11 Governing Law: The Plan and Trust shall be deemed executed and governed under federal law and the laws of the State of Colorado. Notwithstanding any provision in the Plan and Funding Agreement to the contrary, the terms "husband," "wife," "husband and wife," "marriage," and "spouse" shall be defined and construed in accordance with federal tax law, including I.R.S. Revenue Ruling 2013-17 and I.R.S. Notice 2014-19 and subsequent regulations and rulings, but only to the extent required to maintain qualification of the Plan and Trust under Code Sections 401(a) and 501(a) for a governmental plan, as defined in Code Section 414(d). Should any provision of the laws of the State of Colorado be in conflict with the express powers, duties and responsibilities of the Trustee or Plan Administration Committee as set forth in this instrument, in such event the terms of this instrument shall control. If any provision of the Plan or Trust is or becomes invalid or otherwise unenforceable, that fact shall not affect the validity or enforceability of any other provision of the Plan or Trust. All provisions of the Plan and Trust shall be so construed as to render them valid and enforceable in accordance with their intent.

9.12 Return of Contributions Made Under a Mistake of Fact: Notwithstanding any other provision in the plan, if a contribution (whether Employer and/or Member Contribution) that is more than the correct amount of contribution be paid to the Retirement Trust Fund due to

a mistake of fact, the Plan may refund the mistaken portion of the contribution to the Employer within one year of the date on which the mistaken portion of the contribution was made. The Plan shall not pay the Employer earnings attributable to the mistaken portion of the contribution but shall reduce the amount returned to the Employer pursuant to this Section by the amount of losses attributable to the mistaken portion of the contribution.

## ARTICLE X

### Funding Agent/Management of Funds

10.1 Acceptance: Each Trustee who is a member of the Plan Administration Committee accepts the Trust created under the Plan and agrees to perform the obligations imposed. Alternatively, the Plan Administration Committee may appoint a Trustee (or Trustees) or an Insurance Company to administer the Retirement Trust Fund. The Trustee (or Trustees) or Insurance Company shall serve at the pleasure of the Plan Administration Committee and shall have such rights, powers and duties as are provided to it under the trust agreement or insurance contract.

10.2 Responsibility of Funding Agent: All contributions under this Plan shall be paid to the Trustee, or Insurance Company, if applicable, the “Funding Agent” and shall be held, invested and reinvested by the Trustee or Insurance Company, if applicable. All property and funds of the Retirement Trust Fund shall be retained for the exclusive benefit of Members, as provided in the Plan, and shall be used to pay benefits to Members or their Beneficiaries, or to pay expenses of administration of the Plan.

10.3 Appointment of Custodian: The Plan Administration Committee may appoint a custodian to hold all or any portion of the Plan assets and may enter into a separate agreement with the custodian.

10.4 Funding and Investment Policy: The Plan Administration Committee shall periodically obtain cash flow projections from the Plan’s actuary and shall supply them to the Trustee or Insurance Company, if applicable, so that an appropriate investment policy may be maintained which shall satisfy the objectives of the Plan. The Plan Administration Committee shall conduct an annual review of the funding policy and methods and shall notify the Trustee or Insurance Company, if applicable, of any anticipated significant changes in the number or composition of plan participants or any other matter (including a change in the contribution level) which would have a significant impact on the expected cash flow.

10.5 Bonding of Funding Agent: No Trustee or Insurance Company shall be required to furnish any bond or security for the performance of its powers and duties hereunder unless applicable law makes the furnishing of such bond or security mandatory, in which event the Retirement Trust Fund may pay the premium on any bond secured hereunder.

10.6 Investment Powers:

(a) Except as provided in subsection (b), the Trustee shall have full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager. The Trustee shall coordinate his or her investment policy with Plan financial needs as communicated by the Plan Administration Committee. Each Trustee is authorized and empowered, subject to the provisions of subsection (b), with the following powers, rights and duties:

(1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, repurchase agreements, United States retirement plan bonds, corporate and municipal bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes, U.S. Treasury bonds and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustees in good faith shall be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(2) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest, including, if a bank is acting as Trustee, specific authority to invest in any type of deposit of the Trustee at a reasonable rate of interest or in a common trust fund (the provisions of which govern the investment of such assets and which the Plan incorporates by this reference) as described in Code Section 584 which the Trustee (or an affiliate of the Trustees, as defined in Code Section 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency;

(3) To invest any part of the money or property of the Trust Fund in a collective investment trust, a common trust fund or in a group trust that satisfies the requirements of IRS Revenue Ruling 81-100, as further amended by IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2008-40, and effective January 10, 2011, by IRS Revenue Ruling 2011-1, and as subsequently amended by future guidance. Each such collective investment trust, common trust fund or group trust is adopted, with respect to monies invested therein, as part of the Plan and its Trust Fund, and custodial account and each declaration of trust or trust agreement and related adoption, participation, investment management, or other agreements, as amended from time to time, with respect to monies invested therein, are incorporated by reference into the Plan and its trust instrument, or custodial agreement(s), upon approval by the Trustees.

(4) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustees shall decide;

(5) To credit and distribute the Trust as directed by the Plan Administration Committee. The Trustees shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustees shall be accountable only to the Plan Administration Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Administration Committee;

(6) To extend mortgages;

(7) To compromise, contest, arbitrate or abandon claims and demands, in the discretion of the Trustees;

(8) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;

(9) To lease for oil, gas and other mineral purposes and to create mineral severance by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(10) To hold any securities or other property in the name of the Trustees or their nominee, with depositories or agent depositories or in another form as they may deem best, with or without disclosing the trust relationship;

(11) To perform any and all other acts in the judgment of the Trustees necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(12) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(13) To file all tax returns required of the Trustees;

(14) To furnish to the Employer, (specifically the City Manager, Finance Director and City Attorney), the Plan Administrator and the Plan Administration Committee an annual statement (no later than July 1 of the succeeding year) of account showing the condition of the Trust Fund and all investments, receipts, disbursements, and other transactions effected by the Trustees during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts shall be conclusive on all persons, including the Employer, the Plan Administrator and the Plan Administration Committee, except as to any act or transaction concerning which the Employer, the Plan Administrator or the Plan Administration Committee files



with the Trustees written exceptions or objections within ninety (90) days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object; and

(15) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustees shall not be obliged or required to do so unless indemnified to their satisfaction.

(16) No later than November 30 of each year, the Trustees shall make available to the Finance Director of the Employer a copy of the most recent audit report of the Plan and Trust prepared through the means of an independent audit.

(b) Anything contained herein to the contrary notwithstanding, the Trust Fund shall be invested by the Trustees; provided that, the Trust Fund shall be managed and invested by the Trustees pursuant to the standard and other provisions for trustees set forth in the Colorado Uniform Prudent Investor Act, Article 1.1 of Title 15, C.R.S. Such investments shall be audited at least biennially. To the extent the investment limitations described in this subsection (b) are modified or repealed by applicable Colorado law, then the provisions of this subsection shall be deemed modified or repealed in accordance therewith.

10.7 Records and Statements: The records of the Trustees pertaining to the Plan shall be open to the inspection of the Plan Administrator, Plan Administration Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administration Committee may specify in writing. The Trustees shall furnish the Plan Administration Committee or the Plan Administrator with whatever information relating to the Trust Fund the Plan Administration Committee or Plan Administrator considers necessary.

10.8 Fees and Expenses from Fund: Each Trustee shall serve without compensation for services rendered as a Trustee, unless authorized by majority vote of the Trustees if payment is to be made from the Trust Fund. The Trustees shall pay all fees and expenses reasonably incurred by them in their administration of the Plan from the Trust Fund unless the Employer pays the fees and expenses.

10.9 Parties to Litigation: Except as otherwise provided by applicable law, only the Employer, the Plan Administrator, the Plan Administration Committee, and the Trustees shall be necessary parties to any court proceeding involving the Trustees or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Administrator, the Plan Administration Committee, the Trustees, Participants and Beneficiaries.

10.10 Professional Agents: The Trustees may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustees as in their opinion may be necessary. The Trustees may delegate to any agent, attorney, accountant or other person selected by the Trustees any non-Trustee power or duty vested in the

Trustees by the Plan, and the Trustees may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.11 Distribution of Cash: The Trustees shall make any distribution under the Plan in cash.

10.12 Distribution Directions: If no one claims a payment or distribution made from the Trust, the Trustees shall promptly notify the Plan Administration Committee and shall dispose of the payment in accordance with the subsequent direction of the Plan Administration Committee.

10.13 Third Party: No person dealing with the Trustees shall be obligated to see to the proper application of any money paid or property delivered to the Trustees, or to inquire whether the Trustees have acted pursuant to any of the terms of the Plan. Each person dealing with the Trustees may act upon any notice, request or representation in writing by the Trustees, or by the Trustees' duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Trustees that they are acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.

10.14 Resignation: A Trustee(s) may resign at any time as a Trustee of the Plan by giving thirty (30) days' written notice in advance to the Employer and to the Plan Administration Committee.

10.15 Removal: A Trustee may be removed in the same manner as a member of the Plan Administration Committee, as set forth in Section 9.1(e). Vacancies in the Trustees shall be filled in the same manner as vacancies in the Plan Administration Committee, as set forth in Section 9.1(f).

10.16 Interim Duties and Successor Trustees: Each successor Trustee shall succeed to the title to the Trust vested in his or her predecessor by accepting his or her position on the Plan Administration Committee if the Plan Administration Committee members serve as Trustees and if not by accepting in writing his or her appointment as successor Trustee and filing the acceptance with the former Trustee and the Plan Administration Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee (if applicable), shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his or her predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the Employer and the Plan Administration Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

10.17 Valuation of Trust: The Trustees shall value the Trust Fund as of the last day of the Plan Year, and the Trustees shall value the Trust Fund on such other date(s) as directed by the Plan Administration Committee.

10.18 Limitation of Liability – If Investment Manager Appointed: The Trustees shall not be liable for the acts or omissions of any Investment Manager or Managers the Plan

Administration Committee may appoint, nor shall the Trustees be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Plan Administration Committee, the Trustees and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

10.19 Manner of Action: Any action or decision of the Trustees shall be decided by majority vote of the Trustees then appointed and qualified.

## ARTICLE XI

### Reemployment and Limitations

11.1 Reemployment of Former Members: A Member whose employment has terminated, and who is rehired by the Employer and becomes a Member within five years after his date of termination, may make a one-time repayment within one year of reemployment with the Employer into the Trust an amount equal to any amount received upon the previous termination of employment, with compound interest thereon at the Actuarial Equivalent interest rate under Section 2.1(b)(2) from the distribution date through the date of repayment. For purposes of restoring Credited Service, the Plan shall accept payment by a Member contribution of an eligible rollover distribution from, or a direct rollover of an eligible rollover distribution from, the following: a qualified plan described in Code section 401(a) or 403(a), excluding after-tax employee contributions, an annuity contract described in Code section 403(b), excluding after-tax employee contributions, and an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Under no circumstances may the repayment be made from Roth funds or after-tax employee contributions. For purposes of restoring Credited Service, the Plan will also accept a Member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Code section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income. Upon repayment of the full amount, the Member shall be entitled to the Vesting Service and Credited Service accrued at the prior termination. Should a former Member, rehired by the Employer, elect not to reimburse the Trust for the amount previously received with interest as provided in this subsection, such former Member, upon being employed by the Employer shall be treated as a new Employee for all purposes of this Plan, and the previously accrued Vesting Service and Credited Service shall not be reestablished.

If a Deferred Vested member is rehired by the Employer as an Employee in Covered Employment prior to payment or commencement of payments under the Plan, the Credited Service accrued at the prior termination shall be reestablished and the pension payable upon the later of termination of employment or retirement shall be based on the combined total Credited Service established during each period of employment and the Average Monthly Compensation as of the later termination of employment or retirement.

11.2 Reemployment of Retired Members: If a Retired Member is reemployed by the Employer, no Pension payments shall be made during the period of such reemployment. Such reemployed Retired Member shall be entitled to a pro rata portion of the monthly Pension for the month of reemployment which shall reflect the portion of such month the Member was retired. Upon the subsequent termination of employment by a Retired Member who was reemployed by the Employer, the Plan shall resume paying the Member's previous benefit that was suspended and an additional amount based on the period of reemployment as a Plan Member, if applicable. The additional benefit shall be equal to the benefit earned under Article VI, which generally is 2% of the Average Monthly Compensation earned during the period of reemployment, multiplied by the years of Credited Service earned during the period of reemployment, subject to adjustment for early retirement under Article VI. The Member may not change the form of

annuity benefit that was originally selected. Such annuity benefit shall commence as soon as practicable following the Member's subsequent termination of employment.

11.3 Maximum Benefit Limitation: The Plan incorporates by reference the requirements of Code Section 415 and final regulations interpreting Code Section 415, as applicable to this governmental retirement plan, including but not limited to the special provisions under Code Section 415(b)(2)(G) for qualified participants as defined in Code Section 415(b)(2)(H), and the provisions of Code Sections 415(b)(2)(I) and 415(b)(11). The cost-of-living increase of Code Section 415(d) shall continue to apply to increase the dollar benefit limit of Code Section 415(b) after the Member's severance from employment. The limitation year is the calendar year. If a Member repays the Retirement Trust Fund amounts previously received upon the Member's prior termination pursuant to Section 11.1, any such repayment shall not be taken into account for purposes of Code Section 415 pursuant to Code Section 415(k)(3).

11.4 Special Rules Relating to Purchase of Permissive Service Credit: If a Member purchases Credited Service under Section 6.4 that qualifies as "permissive service credit" pursuant to Code Section 415(n), the limitations of Code Section 415 may be met by either:

- (a) treating the accrued benefit derived from such contributions as an annual benefit for purposes of Code Section 415(b), or
- (b) treating all such contributions as annual additions for purposes of Code Section 415(c).

11.5 Special Rules Relating to Repayment of Cashouts: If a Member repays the Retirement Trust Fund amounts previously received upon his prior termination pursuant to Section 11.1 hereunder, any such repayment shall not be taken into account for purposes of Code Section 415.

11.6 Limitations on Actions: Unless a shorter statute of limitations applies, administrative actions or civil actions brought by a Member, spouse, Beneficiary, or any other person regarding any benefit of any kind payable under this Plan, including, but not limited to, actions regarding the eligibility for or amount of benefits, shall commence within two years after the Member begins receiving retirement benefits or the Member terminates and receives a refund of the Member's Contribution Accumulation.

11.7 Binding Effect: The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

## ARTICLE XII

### Miscellaneous

12.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee or Member, or as a right of any Employee or Member to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any Employee or Member at any time, with or without cause.

12.2 Rights to Retirement Trust Fund Assets: No Member shall have any right to, or interest in, any assets of the Retirement Trust Fund upon termination of his employment or otherwise, except as provided under this Plan, and then only to the extent of the benefits payable to such Member out of the assets of the Retirement Trust Fund. Neither the Employer, the Funding Agent, nor any member of the Plan Administration Committee shall be liable to any Member or Beneficiary for benefits from this Plan, except for those payable from the Retirement Trust Fund in accordance with the terms of the Plan and the Funding Agreement.

12.3 Inalienability: Except for:

(a) assignments for child support purposes provided for in Colorado Revised Statutes Sections 14-10-118(1) and 14-14-107, as they existed prior to July 1, 1996,

(b) income assignments for child support provided for in Colorado Revised Statutes Section 14-14-111.5,

(c) writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and

(d) payments made in compliance with a properly executed and certified court order approving a written agreement dividing retirement benefits between a Member and an alternate payee ("DRO"), entered into pursuant to Colorado Revised Statutes Section 14-10-113(6),

benefits under this Plan shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process. Members, Retired Members, Disabled Members, Deferred Vested Members and their Beneficiaries under the Plan are hereby restrained from selling, transferring, anticipating, assigning, pledging, encumbering, or otherwise disposing of their Retirement Benefit, prospective Retirement Benefit, or any other rights or interest under the Plan, and any attempt to anticipate, assign, pledge, or otherwise dispose of the same shall be void. Said Retirement Benefits, prospective Retirement Benefits and rights and interests of said Members, Retired Members, Disabled Members, Deferred Vested Members or Beneficiaries shall not at any time be subject to the claims of creditors or liabilities or torts of said Members, Retired Members, Disabled Members, Deferred Vested Members or Beneficiaries, nor be liable to attachment, execution, or other legal process.

In accordance with the provisions of CRS Section 14 10-113(6), the Plan Administration Committee may adopt, modify and revoke from time to time rules or procedures governing the

implementation of this subsection. Any such rules or procedures implementing this subsection may include, but are not limited to: (1) a requirement that, in order for the parties' agreement concerning the division of a Participant's Accrued Benefit under the Plan to be effective, a standardized form adopted by the Plan Administration Committee must be used by the parties and the court; (2) the timing and method of payment to the alternate payee under such court order of a Participant's Accrued Benefit under the Plan; and (3) any other provisions that are consistent with the provisions of CRS Section 14-10-113(6).

The rights of a former spouse under a DRO end upon the death of the Member unless such former spouse is named as a Beneficiary or co-Beneficiary. If a former spouse is designated as co-Beneficiary, such person shall receive a portion of the benefit which would otherwise be payable to the Beneficiary.

12.4 Bankruptcy: If any Member shall become bankrupt or attempt to anticipate, assign, or pledge any benefits under the Plan, then, in the discretion of the Plan Administration Committee, such benefits shall cease, and in that event the Plan Administration Committee shall have the authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such Member, his spouse, children, or other dependents, or any of them, in such manner and in such proportions as the Plan Administration Committee may deem proper.

12.5 Confidentiality: Records of Members, Former Members, Retired Members, Disabled Members, Deferred Vested Members, Beneficiaries, benefit recipients and their dependents which specifically identify financial information of such persons shall be kept confidential.

12.6 Use of IRS Compliance Programs: Nothing in this Plan document should be construed to limit the availability of the IRS's Employee Plans Compliance Resolution System ("EPCRS"). The Plan Administration Committee or the Employer may take whatever corrective actions are permitted under the IRS EPCRS, as is deemed appropriate by the Plan Administration Committee or the Employer.

12.7 Severability of Provisions: In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.

## ARTICLE XIII

### Amendments

13.1 Amendment by Employer: The Employer reserves the right to amend this Plan from time to time, provided that: (1) except as otherwise provided hereafter in this paragraph, at least sixty-five percent (65%) of the participating Employees who are affected by such amendment approve of it; and (2) no amendment will reduce the non-forfeitable interest in the Accrued Benefit of any Member, Retired Member, Disabled Member, Deferred Vested Member or Beneficiary as of the date of such amendment. To the extent not prohibited by applicable law, this Plan may be amended by written agreement of the Employer and all of the then acting members of the Plan Administration Committee without approval of at least sixty-five percent (65%) of the participating Employees who are affected by such amendment if, but only if: (1) the Plan Administration Committee and the Employer determine that such amendment is required in order to obtain or maintain the Plan's initial or continued qualification under Code Section 401 or the Retirement Trust Fund's tax-exempt status under Code Section 501 (and provided that the Plan Administration Committee and the Employer may rely upon the good faith advice of its pension or tax counsel in making any such determination); and (2) the Plan Administration Committee and the Employer determine that such amendment does not affect the rights or interests of any Member, Retired Member, Disabled Member, Deferred Vested Member or Beneficiary in the Plan or in their Plan benefit in a material way.

No amendment may authorize or permit any of the Retirement Trust Fund (other than the part which is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Members or their Beneficiaries or estates. Except as provided in Section 14.4, no amendment may cause or permit any portion of the Retirement Trust Fund to revert to or become a property of the Employer. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustees, the Plan Administrator or the Plan Administration Committee without the written consent of the affected Trustees, the Plan Administrator or the affected member of the Plan Administration Committee.

With regard to any amendment of the Plan that alters in any way the benefits received by the Members under the Plan, the Plan Administration Committee shall represent and be the agent for the Members in the negotiations with the Employer regarding such amendments.



## ARTICLE XIV

### Termination

14.1 Continuance of the Plan/Right to Terminate: The Employer expects to continue this Plan and the related Trust indefinitely. However, in the event that the Employer is legally dissolved pursuant to federal or state statute, court order or judicial decision, the Employer may terminate the Plan and related Trust, but only if such termination is permitted under applicable Colorado law. The Employer may at any time by adoption of a resolution to completely terminate the Plan and related Trust upon full funding of the Plan on a Plan termination basis. The Employer may direct and require the Funding Agent to liquidate the share of the Retirement Trust Fund allocable to Members or their Beneficiaries.

14.2 Allocation of Assets Upon Plan Termination: Upon a complete termination or partial termination of the Plan, or a permanent discontinuance of contributions, the benefits accrued up to the date of termination by the affected Members and their Beneficiaries, respectively, shall be nonforfeitable; however, actual payment of such benefits shall only be to the extent permitted from Plan assets as described below. The assets of the Retirement Trust Fund available to the Members, or their Beneficiaries, affected by the termination or partial termination shall be allocated to provide such nonforfeitable benefits, to the extent possible, in the following order of precedence:

(a) Such amount which is equal to the Member's Contribution Accumulation, with interest thereon, to the date of termination of the Plan or, if earlier, the date of the Member's Retirement, less the total amount of Retirement Benefits, if any, theretofore received by such Member or his Beneficiary;

(b) The balance remaining after the allocation described in (a) above shall be allocated for the benefit of each Retired Member (including his Beneficiary) in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension of such Member at the date of termination, less any amount allocated pursuant to (a) above;

(c) The balance remaining after the allocation described in (b) above shall be allocated for the benefit of each Member who has attained his Normal Retirement Date but who has not retired, in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension accrued by such Member at the date of termination of the Plan, less an amount allocated pursuant to (a) above;

(d) The balance remaining after the allocation described in (c) above shall be allocated for the benefit of each Member and Deferred Vested Member for whom no allocation has been made under (b) and (c) above, in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension accrued by each such Member at the date of termination, less any amount allocated pursuant to (a) above.

14.3 Manner of Distribution: Any distribution after termination of the Plan may be provided:

(a) through the purchase of nontransferable annuities from one or more insurance companies, with the amount of the benefit determined by a premium equal to the Actuarial Equivalent value of each Member's benefit;

(b) by a distribution in a single sum of the Actuarial Equivalent value of each Member's benefit; or

(c) by a combination of (a) or (b).

In making such distribution, any and all determinations, divisions, appraisals, apportionments and allotments shall be made by the Plan Administration Committee acting under the information supplied by the Plan's actuary and shall be final and conclusive and not subject to question by any person.

14.4 Exclusive Benefit Rule/Residual Amounts: In no event shall the Employer receive any amounts from the Retirement Trust Fund except that, upon termination of the Plan and notwithstanding any other provisions of the Plan, the Employer shall be entitled to receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan to its Members and Beneficiaries arising out of any variations between actual requirements and expected actuarial requirements.

14.5 Contributions Contingent Upon Approval: This Plan and the Retirement Trust Fund are designed to qualify under Code Sections 401(a) and 501(a). Anything herein to the contrary notwithstanding, if a determination letter is issued by the Internal Revenue Service to the effect that the Plan does not meet the requirements of Code Sections 401(a) and 501(a), as initially submitted, the Employer shall be entitled at its option to withdraw all contributions made, in which event the Plan and the Retirement Trust Fund shall then terminate and all rights of the Members shall terminate effective as of the date of the adverse determination letter.

14.6 Consolidation or Merger: The Plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to any other plan, unless the benefits payable to each Member if the Plan were terminated immediately after such action would be equal to or greater than the benefits to which such Member would have been entitled if this Plan had been terminated immediately before such action.

This Plan may be executed by original signature or electronic signature in multiple counterparts and may be delivered by fax or other electronic means, each of which shall be deemed to be an original, and all of which, when taken together shall constitute one (1) document.

The Employer and each member of the Plan Administration Committee (who is also a Trustee) have executed this Plan on each date indicated below.

WITNESS:

**EMPLOYER**

\_\_\_\_\_

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

Dated: \_\_\_\_\_

Approved as to Form:

**PLAN ADMINISTRATION  
COMMITTEE/TRUSTEE**

\_\_\_\_\_  
Daniel Brotzman, City Attorney

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter “MOU”) is entered into as of the date this MOU is last signed by a party hereto (the “Effective Date”) between **CITY OF AURORA, COLORADO** (hereinafter “Aurora”) on the one hand and the **FIRE AND POLICE PENSION ASSOCIATION OF COLORADO** (hereinafter “FPPA”) on the other hand. Aurora and FPPA may hereinafter collectively be referred to as the “Parties” and each as a “Party.”

For purposes of this MOU, Aurora shall be defined to include Aurora and anyone claiming liability or liable through Aurora including, but not limited to, the City Council, the Mayor, the City Manager, executives, officers, and employees of Aurora and, the predecessors, successors and assigns of each of them.

For purposes of this MOU, FPPA shall be defined to include the Fire and Police Pension Association and anyone claiming liability or liable through FPPA including, but not limited to the Board of Trustees, individual trustees, executives, officers, and employees of FPPA, and the predecessors, successors and assigns of each of them.

## RECITALS

WHEREAS, the City of Aurora sponsors the Money Purchase Pension Plan and Trust Agreement of the Police Department of the City of Aurora (the “MPP”);

WHEREAS, C.R.S. Section 31-31-601 provides that a withdrawn local alternative pension plan may be amended to change from a money purchase to a defined benefit plan;

WHEREAS, the City is considering amending the MPP to include a defined benefit option (hereinafter the MPP and defined benefit option are referred to as the “Hybrid Plan”);

WHEREAS, under the Hybrid Plan, 7.5% of a member's compensation per year shall be contributed to the MPP, with the remaining mandatory member and employer contributions contributed to a defined benefit option, if elected by the Member;

WHEREAS, C.R.S. § 31-31-601(1)(b)(II) requires members of local alternative plans to be covered by the provisions of C.R.S. Sections 31-31-803, 31-31-807 and 31-31-807.5, related to disability and survivor benefits in lieu of any other defined disability and preretirement death benefits ("FPPA Disability and Survivor Benefit Statutes");

WHEREAS, Aurora and FPPA intend for the eligible members of the Hybrid Plan to continue to be covered under the FPPA Disability and Survivor Benefit Statutes with such disability and survivor benefits determined based on the MPP eligibility criteria; and

WHEREAS, Aurora and FPPA intend that the benefits provided under the FPPA Disability and Survivor Benefit Statutes shall be offset by the actuarial equivalent of the benefits a member receives from the MPP and the annuitized value of any refund of contributions and any other amount payable due to the member's death or disability under the defined benefit option under the Hybrid Plan, but the combined offsets shall be adjusted by taking into account that the total contribution to the Hybrid Plan for purposes of determining the offsets shall not exceed that required by FPPA for benefits under C.R.S. Section 31-31-403.

#### AGREEMENT

The Parties hereby agree as follows:

- (1) That FPPA shall not challenge the establishment of the Hybrid Plan by Aurora.
- (2) That each member of the Hybrid Plan who is eligible for the death and disability coverage provided by the FPPA Disability and Survivor Benefits Statutes shall

- (a) be covered by the FPPA Disability and Survivor Benefits Statutes,
  - (b) have a contribution made for such member, and
  - (c) have eligibility for such disability and survivor benefits determined based on the MPP eligibility criteria, i.e., for a disability benefit, the member has not reached age fifty-five with twenty-five years of accumulated service and is a participant under a local money purchase plan.
- (3) That the benefits provided under the FPPA Disability and Survivor Benefit Statutes shall be offset by the actuarial equivalent of the benefits a member receives from the MPP and the annuitized value of any refund of contributions and any other amount payable due to the member's death or disability under the defined benefit option under the Hybrid Plan, but the combined offsets shall be adjusted by taking into account that the total contribution to the Hybrid Plan for purposes of determining the offsets shall not exceed that required by FPPA for benefits under C.R.S. Section 31-31-403.
- (4) That under C.R.S. Section 31-31-803(7), C.R.S. Section 31-31-804, and C.R.S. Section 31-31-808, when computing the offsets (which are based on benefits paid by the Hybrid Plan) under the FPPA Disability and Survivor Statutes, the combined contribution rates by Aurora and the member to the MPP and the defined benefit option under the Hybrid Plan shall be taken into account to determine if the benefits have been funded at the same rate of contribution specified in C.R.S. Sections 31-31-402(1) and (2) as are required for benefits under C.R.S. Section 31-31-403 ("FPPA Rate of Contribution").
- (5) That in the event such contributions made to the Hybrid Plan exceed the FPPA Rate of Contribution, such excess shall be allocated first to the MPP account balance and second to the defined benefit option under the Hybrid Plan.

- (6) This MOU may be executed in counterparts, each of which is equally admissible into evidence.
- (7) This MOU is for the sole benefit of the Parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this MOU.
- (8) This MOU constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.
- (9) This MOU may only be amended, modified or supplemented by an agreement in writing signed by both of the Parties hereto. No waiver by either Party of any of the provisions of this MOU shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by either Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from or under this MOU shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege arising from or under this MOU preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- (10) If any provision of this MOU is found to be in violation of any law by a court of competent jurisdiction in a final, non-appealable decision, the Parties covenant that they

shall undertake good-faith efforts to reform this MOU, or make a new agreement that, to the maximum extent permitted by law, is consistent with this MOU.

- (11) This MOU shall be construed and enforced pursuant to the laws of the State of Colorado.





**FIRE AND POLICE PENSION  
ASSOCIATION OF COLORADO**

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Dan M. Slack  
Its: Executive Director

STATE OF COLORADO            )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_.

Seal:  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission expires:

APPROVED AS TO FORM

By: \_\_\_\_\_  
Kevin Lindahl  
General Counsel, Fire and Police Pension  
Association of Colorado

Dated: \_\_\_\_\_.

## AURORA POLICE HYBRID PLAN ESTIMATED TIMELINE

Action	Responsible Party	Date
1. Review Plan, Memorandum of Understanding with FPPA (“MOU”) and seed money requirements	DGS, Milliman	June 9, 2020 (8:00 am to 10:00 am)
2. Review Plan, MOU, and seed money requirements	DGS, Milliman	July 8, 2020 (9:00 am to 11:00 am)
3. Prepare final drafts of Hybrid Plan and MOU	DGS	July 22, 2020
4. Present Plan, MOU, and seed money requirements to Management and Finance Policy Committee	Hybrid Plan Team	July 28, 2020 (1:00 pm to 5:00 pm)
5. Hybrid Team Meeting (Pre-City Council Prep Meeting)	Hybrid Plan Team	August 12, 2020 (9:00 am to 11:00 am)
6. Present Plan, MOU, and seed money requirements to City Council Meeting	Hybrid Plan Team	August 17, 2020 or August 24, 2020 (Tentative Date)
7. Educate MPPP plan participants regarding the DB option	Innovest, Aurora Police Board	September 2020
8. Conduct participant vote to allow DB option plan modification	Innovest, Aurora Police Board	October 2020
9. Modify existing MPPP to accommodate new design	DGS	TBD
10. Conduct RFP regarding Custodian for Plan	Aurora, Innovest, Aurora Police Board	TBD
11. Select Custodian for Hybrid Plan	Aurora, Innovest, Aurora Police Board	TBD
12. Prepare pick-up and adoption resolutions for final Plan and Trust	DGS	TBD
13. Adopt Resolutions, Hybrid Plan and Trust	City Council	TBD
14. File for IRS Determination Letter	DGS	TBD
15. File for IRS Private Letter Ruling	DGS	TBD
16. Start Hybrid Plan	Aurora, Aurora Police Board	January 1, 2022

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Hazard Pay Update
<b>Item Initiator:</b> Nancy Wishmeyer
<b>Staff Source:</b> Jacob Bergeron, Labor Relations Officer; Nancy Wishmeyer, Controller; Michael Lawson, Special Project Manager
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

The city intends to provide hazard pay to eligible employees and have the costs of such pay covered by the CARES Act Coronavirus Relief Fund. This agenda item provides an update on city hazard pay policies and status on amounts and timing of hazard pay distributions.

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

Update on Hazard Pay to include:

- overview of city resolution,
- alignment with CARES Act funding criteria,
- overview of city hazard pay policy,
- status of MOUs with Fire and Police,
- hazard pay cost assumptions to date and projected through end of 2020.

### **QUESTIONS FOR Committee**

Information Only

### **EXHIBITS ATTACHED:**

Hazard Pay M and F Presentation\_Final.pptm  
Interim BPM 5 Hazard Pay 07.17.2020.pdf



# Hazard Pay

Jacob Bergeron, Labor Relations Officer

Nancy Wishmeyer, Controller

# Presentation Overview

- Overview of Resolution
- CARES Funding Criteria
- City Policy Overview
- MOU Status
- Costing Assumptions to Date and Projected



# Resolution

## RESOLUTION NO. 2020-53

A RESOLUTION OF THE CITY OF AURORA, COLORADO, REPEALING R2020-39 PASSED ON MAY 18, 2020, AND REPLACING IT WITH THE FOLLOWING EXPRESSING THE AURORA CITY COUNCIL'S STRONG SUPPORT OF PROVIDING HAZARD PAY TO POLICE OFFICERS AND FIREFIGHTERS FOR THE COVID-19 CRISIS AND ISSUING CORRESPONDING INSTRUCTION TO THE CITY MANAGER

WHEREAS, on March 13, 2020, the City of Aurora, Colorado (the "City") declared a local state of emergency due to the outbreak of COVID-19; and

WHEREAS, the City Manager declared a local state of disaster on March 18, 2020; and

WHEREAS, the City, along with other state, local and federal authorities have taken a wide array of actions to mitigate the effects of the pandemic and prevent further spread; and

WHEREAS, the United States Congress approved the Coronavirus Aid, Relief, and Economic Security Act (the "CARES ACT") and the CARES ACT was signed into law by President Trump on March 27, 2020, providing over 2 trillion dollars in an economic relief package to protect the people from the public health and economic impacts caused by the Severe Acute Respiratory Syndrome Coronavirus-2, commonly known as COVID-19; and

WHEREAS, the City expects to receive funds approved by Congress under the CARES ACT and distributed through the counties across the nation, to assist the City in addressing the economic costs of the COVID-19 pandemic; and

WHEREAS, the CARES Act requires that Coronavirus Relief Funds may only be used to cover those costs of the City that are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), were not accounted for in the budget most recently approved by the Aurora City Council as of November 4, 2019; and were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the City Council wishes that CARES ACT funds are used, if available and eligible, to provide Police Officers and Firefighters with hazard pay during the state of

- Aurora City Council passed on May 18, 2020 Resolution No. 2020-53 which instructs the City Manager to pursue hazard pay for first responders to the extent eligible and permitted under the CARES Act.
- CARES Funds were appropriated by the United States Congress, distributed to certain county governments (Arapahoe and Adams Counties for our purposes), and were made available to the City, pending approval from the county governments.







# CARES Criteria

- The CARES Act generally:  
Requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that—
  1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
  2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
  3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
- CARES Guidance Specific to Hazard Pay (from the US Treasury FAQs):  
“The CARES Act Guidance requires that Coronavirus Relief Funds may only be used to cover hazard pay for public safety, public health, and similar positions whose services are substantially dedicated to the mitigating or responding to the COVID-19 public health emergency.”



# BPM 5 Hazard Pay



City of Aurora

City Manager  
15151 E. Alameda Parkway, 5th Floor  
Aurora, Colorado 80012  
phone 303.739.7010  
fax 303.739.7123

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## INTERIM BUSINESS POLICY MEMORANDUM

**EFFECTIVE DATE:** July 17, 2020  
**DATE REVISED:** July 17, 2020  
**DATE ISSUED:** July 17, 2020  
**NO./SUBJECT:** COVID-19 BPM No. 5 Hazard Pay  
**AUTHOR**  
**/DEPARTMENT:** Human Resources Department

### I. POLICY

This interim policy establishes the provisions of hazard pay for certain public safety employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency, during and beyond the local state of disaster declared by the City Manager on March 18, 2020.

Payment of hazard pay pursuant to this policy is contingent upon approval and receipt of funds distributed by the County, made available through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act was signed into law on March 27, 2020, with the purpose of providing funds in an economic relief package, to protect the people from the public health and economic impacts caused by COVID-19.

The CARES Act requires that Coronavirus Relief Funds may only be used to cover those costs of the Local Government that:

- In carrying out the Council instruction provided under Resolution No. 2020-53, the City has implemented COVID-19 BPM 5, “Hazard Pay”.
- COVID-19 BPM 5, “Hazard Pay” is the official City policy governing the administration of hazard pay. BPM 5 was executed and given effect by the City Manager on July 17, 2020.
- An express provision of BPM 5 is that hazard pay will be administered through formal agreements, i.e. Memorandums of Understanding (MOUs) with the respective bargaining units.

# MOU Status

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF AURORA (“CITY”)  
AND  
THE FRATERNAL ORDER OF POLICE  
LODGE 49 (“UNION”)**

**Re: COVID-19 Hazard Pay**

WHEREAS, the City of Aurora, along with other state, local and federal authorities have taken a wide array of actions to mitigate the effects of the pandemic and prevent further spread; and

WHEREAS, the United States Congress approved the Coronavirus Aid, Relief, and Economic Security Act (the “CARES ACT”) and the CARES ACT was signed into law on March 27, 2020, providing over \$2 trillion dollars in an economic relief package to protect the people from the public health and economic impacts caused by the Severe Acute Respiratory Syndrome Coronavirus-2, commonly known as COVID-19; and

WHEREAS, the CARES Act requires that Coronavirus Relief Funds may only be used to cover those costs of the City that are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), were not accounted for in the budget most recently approved by the Aurora City Council as of November 4, 2019; and were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF AURORA (“CITY”)  
AND  
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS  
LOCAL 1290  
 (“UNION”)**

**Re: COVID-19 Hazard Pay**

WHEREAS, the City of Aurora, along with other state, local and federal authorities have taken a wide array of actions to mitigate the effects of the pandemic and prevent further spread; and

WHEREAS, the United States Congress approved the Coronavirus Aid, Relief, and Economic Security Act (the “CARES ACT”) and the CARES ACT was signed into law on March 27, 2020, providing over \$2 trillion dollars in an economic relief package to protect the people from the public health and economic impacts caused by the Severe Acute Respiratory Syndrome Coronavirus-2, commonly known as COVID-19; and

WHEREAS, the CARES Act requires that Coronavirus Relief Funds may only be used to cover those costs of the City that are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), were not accounted for in the budget most recently approved by the Aurora City Council as of November 4, 2019; and were

- Negotiations between the City and the Unions are underway to reach a mutually agreeable MOU and secure the ability to begin the administration of hazard pay from CARES funds to the eligible members.



# Costing Assumptions

Year to date and projection estimates as of July 10, 2020:

- Year to Date 3/14/20 through 7/10/20:
  - Police: 4,791 eligible weeks for 476 police officers \* 100 = \$479,100
  - Fire: 4,631 eligible weeks for 388 firefighters \* 100 = \$463,100
- Projection through November 20 pay period end date:
  - Police: \$598,880
  - Fire: \$517,579
- Totals for the year:
  - Police: \$1,077,980
  - Fire: \$ 980,679
  - Total: \$2,058,659



**Questions or Comments?**



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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Financial Policies Regarding Use of Funds Available
<b>Item Initiator:</b> Hays, Greg
<b>Staff Source:</b> Hays, Greg
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

The city has had financial policies regarding the use of funds available for many years. They have been recently updated in response to the COVID financial crisis.

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

Fund balances and reserves should be maintained where appropriate for good financial management to provide for cash flow requirements, emergencies, unexpected needs, and revenue variations. For the General Fund, three types of reserves are maintained: TABOR Reserves, Policy Reserves, and Operating Reserves. These vary in terms of usability given the nature of the need. The details behind each are discussed in the attached document.

### **QUESTIONS FOR Committee**

Info Only

### **EXHIBITS ATTACHED:**

Policies regarding use of funds available (2020 GH version).doc

## **FINANCIAL POLICIES REGARDING THE USE OF FUNDS AVAILABLE**

### **Level and Use of Funds Available**

#### **Background**

All organizations should maintain financial reserves or “rainy day funds.” However, maintenance of excessive reserves precludes their use to meet an organization’s needs. A policy as to the amount of reserves to be maintained, the purposes for which their use is allowed, and how the reserves are restored after use is an important component of good fiscal practice for any organization.

#### **Policy:**

Fund balances and reserves should be maintained where appropriate for good financial management to provide for cash flow requirements, emergencies, unexpected needs, and revenue variations. For the General Fund, three types of reserves are maintained: TABOR Reserves, Policy Reserves, and Operating Reserves. These vary in terms of usability given the nature of the need. The details behind each are discussed below:

#### **TABOR Reserve**

- The TABOR Reserve is named after the Taxpayer Bill of Rights passed by a vote of the people in 1992 and is the most restrictive as to its use. It is intended to be used only in extremely rare circumstances resulting from major emergencies. Examples of a major emergency may include a tornado requiring extensive additional city operational or capital costs, a protracted health, civilian, or military crisis requiring extensive operational or capital costs. The funds are not intended to be used to adjust for revenue variances due to the normal variances in the economy.
- Funds Available for the TABOR Reserve Fund is considered “Restricted”. Restricted fund balances (governmental funds) are only those where the funds have restrictions on their use as determined by contractual or legal requirements, usually set by an outside party such as the state, the federal government or a grantor. The TABOR reserve is defined by the State Constitution and is to be maintained and the amount adjusted annually in accordance with the Constitution.
- The TABOR reserve may be borrowed as long as there is a high assurance of repayment. Any borrowing should take into account the potential impact on the City’s bond rating. The borrowing should be for one-time uses.
- Any spending of the TABOR reserve must be restored by the end of the following fiscal year. When the TABOR Reserve Fund is used, specific budgetary plans should be formally made for quickly restoring them. To help protect the City’s financial future and to maintain a high level of financial creditability, every effort should be made to follow the plan.
- Assets may replace cash as the TABOR Reserve on an ongoing basis. This replacement should take into account the potential impact on the City’s bond rating. In addition, once the cash is replaced with an asset, its liquidity will be lessened, which affects its use as a “rainy-day” fund.



### Policy Reserve

- The 10% Policy Reserve was created by City Council in XXXX and can only be used by vote of City Council. It is intended to be used only in extremely rare circumstances resulting from major emergencies for one-time uses. Examples of a major emergency may include a natural disaster such as a tornado requiring extensive additional city operational or capital costs, a protracted health, civilian, or military crisis requiring extensive operational or capital costs. The funds are not intended to be used to adjust for revenue variances due to the normal variances in the economy.
- Funds Available for the Policy Reserve is considered “Committed”. Committed fund balances are those that have been set aside for a specific purpose by ordinance or resolution of Council and that purpose can only be changed by ordinance or resolution.
- The 10% Policy Reserve is to be maintained and adjusted annually to an amount equal to no less than 10% of the adjusted budgetary operating expenditures of the General Fund. Adjusted budgetary operating expenditures are all expenditures, less expenditures related to pass-through revenue, including 2/1,000-related revenue, the transfer to the Capital Projects fund, and incentive-related expenditures.
- When the Policy Reserve Fund is used, specific budgetary plans should be formally made for quickly restoring them. At the time the funds are used, a restoration schedule should be agreed upon, optimally within two fiscal years. To help protect the City’s financial future and to maintain a high level of financial creditability, every effort should be made to follow the plan. In addition, any use of the Policy Reserve Fund and repayment plan should take into account the potential impact on the City’s bond rating.

### Operating Reserve

- The Operating Reserve was created by City management and is the least restrictive in its use.
- Funds Available for the Operating Reserve is considered “Assigned”. Assigned fund balances are those that have been designated for a purpose by informal action of Council (no ordinance or resolution) or by City Manager or Finance Director as long as Council has been advised of any assignment through either the budget process or some other process. The assignment may be changed through the same mechanism.
- Operating reserves have a minimum target of 1% to 3% of annual budgetary revenues. These are intended to be usable in limited circumstances.
- The purpose of the General Fund Operating Reserve is to provide a source of additional funds in cases where Council determines such use is appropriate and necessary. Use of these funds should be for one-time uses (as defined by that policy) and may include paying for unexpected revenue shortfalls in a year, unexpected expenses, including emergencies, and offsetting potential budget cuts as deemed appropriate and necessary by Council. These reserves are also to assist with meeting financial bond rating agency total reserve requirements.
- When feasible, these reserves should be maintained at a minimum level of approximately 3% of General Fund budgeted revenues.

- In some cases, important one-time expenditure needs or revenue variations during a year may make it prudent to draw down the Operating Reserves to a level below 3%; this is not a violation of this policy which provides for a 1% to 3% range.
- When the operating reserve is less than 3%, future budgetary actions should be taken as soon as feasible to restore the operating reserves to the minimum of 3%. Unless Council has determined otherwise through the budget, a supplemental or other action, the operating reserve should normally be automatically restored to up to the 3% level to the extent any undesignated fund available is available at year end.
- Maintenance of an Operating Reserve of less than 1% is not considered financially prudent and should be avoided.
- When Operating Reserves are used, they should be restored as quickly as feasible, usually from any one-time monies that become available in any budget year. Any use of the Operating Reserves and repayment plan should consider the potential impact on the City's bond rating.

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## Management and Finance Policy Committee Agenda Item Commentary

<b>Item Title:</b> Internal Audit Second Quarter Progress Report
<b>Item Initiator:</b> Wayne Sommer
<b>Staff Source:</b> Wayne Sommer, Internal Audit Manager, x37075
<b>Deputy City Manager Signature:</b> Roberto Venegas
<b>Outside Speaker:</b>
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

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

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

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

The M&F Committee functions as the Audit Committee for the City. Internal Audit provides quarterly updates to the Audit Committee on our progress against the approved annual audit plan.

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

2nd quarter progress report against the 2020 audit plan.

### **QUESTIONS FOR Committee**

### **EXHIBITS ATTACHED:**

2020 IA Quarterly Report as of 6.30.2020.pdf  
Executive Summary - Aurora Police Overtime Grants.pdf  
Executive Summary - Property and Evidence.pdf  
Executive Summary Purchasing Part 2.pdf

# Internal Audit Report



## 2020 Office of the Internal Auditor Operations Report

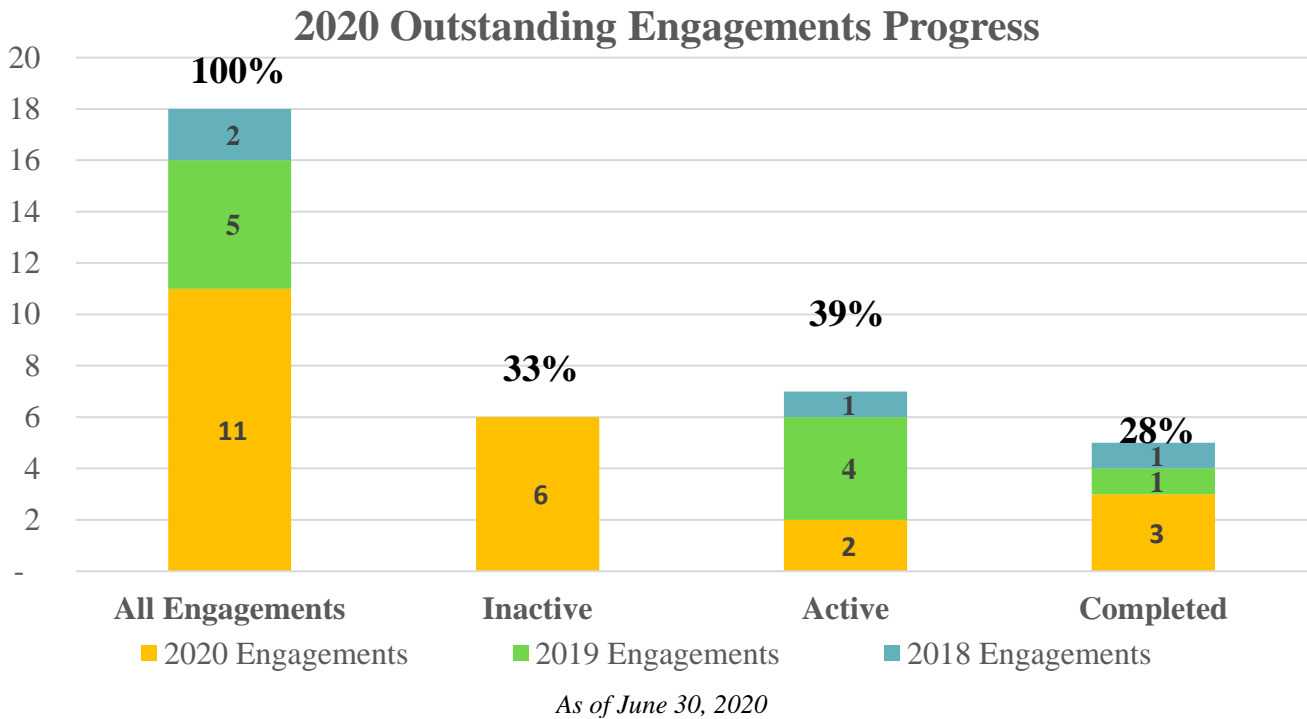
For the quarter ended June 30, 2020



## 2020 ENGAGEMENT PROGRESS SUMMARY

Through June 30, Internal Audit has completed 28% of scheduled engagements; 39% are currently active. We added one new engagement in the most recent quarter. In total, 67% of all our engagements are either active or were completed in the first half of the year.

Our audit work has been modestly impacted by the COVID-19 pandemic. We continue to adapt our approach and work on our engagements remotely. In March 2020, the Internal Audit Manager was appointed by the City Manager to serve as the Recovery Manager under the City’s Disaster Recovery Plan. While this role has consumed his time, the staff has continued capably to discharge our annual audit plan. The Internal Audit Manager continues to review all audit reports before they are issued.



## Agile Engagements

Internal Audit applies its own custom agile approach to our engagements. This approach brings valuable information to our clients more quickly than the traditional approach through a report provided at the end of each milestone.

This is an explanation of our Milestones:

**Team Preparation:** *Ensure that the engagement team can properly conduct the engagement.*

**Client Evaluation:** *Gain a deeper understanding of the client's operating environment and client issues that may affect the engagement objectives and that may influence subsequent engagement procedures.*

**Process Controls and Efficiency:** *Determine whether appropriate process controls exist and whether processes are efficient.*

**Risks:** *Assess the impact of identified risks on the engagement objectives, scope, and on the objectives test work procedures.*

**Planning and Preparation Finalization:** *Determine the final engagement objectives, scope, and objectives test work procedures.*

**Objectives Test Work:** *Obtain sufficient evidence to afford a reasonable basis for conclusions on the engagement objectives.*

**Reporting:** *Summarize the results of our engagement procedures and our related conclusions, findings, and recommendations in a clear and concise report that addresses all engagement objectives.*

**Wrap Up:** *Complete all administrative tasks necessary for a complete and orderly closeout of the engagement.*

In the table below, purple shading shows completed milestone work; hatched cells represent milestones in progress; and, orange shading represents future milestone work and the projected quarter. These projections may be impacted by work arrangements required to comply with the pandemic stay-at-home order. Engagement descriptions and objectives for active engagements follow the table below.

Engagements	Milestones							
	Team Preparation	Client Evaluation	Internal Controls	Risk Evaluations	Preparation Finalization	Objectives Test Work	Reporting	Wrap Up
Payroll Operations, Part 1				ON HOLD				
Succession Planning Survey		ON HOLD						
City Governance	ON HOLD							
P-card Transactions							Q3	Q3
Public Safety Dispatch Culture Follow Up								Q3
Marijuana Enforcement	Q2	ON HOLD						
Secondary Employment Compliance	ON HOLD							
APD Body Cam Compliance								Q3
Construction Project Review	TBD							
Court Case Management	TBD							
Development Incentives Tracking	Q3							
NEW APD Versadex Case Management Audit				Q3				



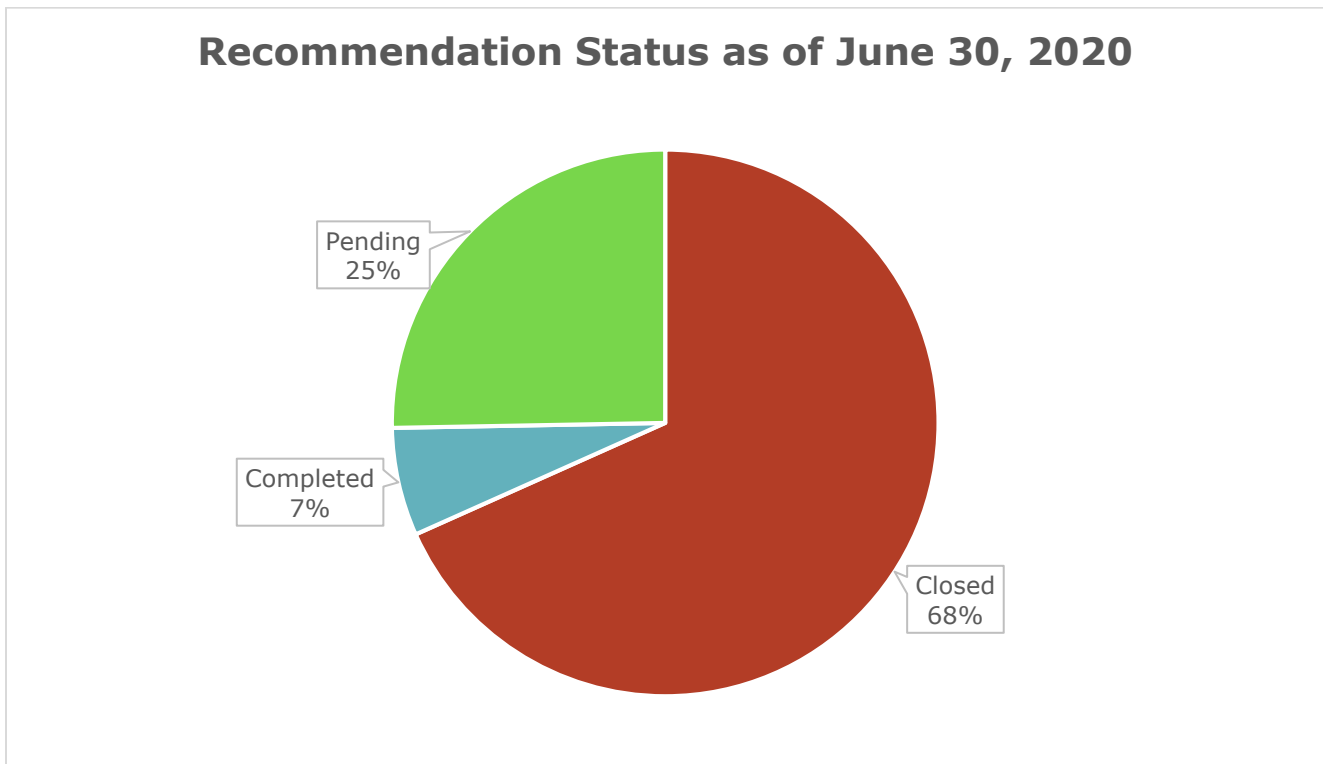
Engagements	Comments
Payroll Operations, Part 1	This engagement was originally assigned to the Internal Audit Manager. Progress was delayed due to competing priorities. We have broken this engagement into parts to allow for completion of part 1 and then a deferral until more time is available for the latter parts. The objective for Part 1 will be: <i>Assess the efficiency and effectiveness of overall payroll operations including the effectiveness of process controls as designed.</i>
Succession Planning Survey	This was originally planned as a joint project with Human Resources. The pandemic requires that we postpone this until a more suitable time for both departments.
City Governance	This is an important and large engagement. The pandemic requires that we postpone this until a more suitable time for all involved.
P-card Transactions	This is an active engagement. We expect to complete this in Q3.
Public Safety Dispatch Culture Follow Up	The draft final report has been provided to the client for review. This engagement will be completed in Q3.
Marijuana Enforcement	Planning began for this engagement, however, we are deferring this engagement, at the request of management, until the division has automated their operations.
Secondary Employment Compliance	We will refrain from planning for this engagement until we have a clearer picture of the pandemic's impact on City operations.
APD Body Cam Compliance	This is an active engagement, fieldwork is complete. We expect to complete this in Q3.
Construction Project Review	We will refrain from planning for this engagement until we have a clearer picture of the pandemic's impact on City operations.
Court Case Management	We will refrain from planning for this engagement until we have a clearer picture of the pandemic's impact on City operations.
Development Incentives Tracking	We will begin this engagement in Q3.
NEW APD Versadex Case Management Audit	This is an active engagement. We expect to complete this in Q4.

## **Other Matters**

**Staff Professional Development:** All staff is on track to complete their annually required 40 hours (minimum) of continuing professional training for 2020. Sheree Van Buren is pursuing her Certified Fraud Examiner (CFE) designation.

## RECOMMENDATIONS

We maintain and track the implementation status of our audit recommendations in our TeamMate audit software. The chart below displays the status of recommendations as of June 30, 2020. As of that date, 25% of all audit recommendations issued remained incomplete (Pending.) The table that follows outlines the status of audit recommendations by engagement. The table lists active audits with outstanding recommendations. Internal Audit regularly monitors the progress made on these recommendations.



**Closed:** Client management has approved the implementation. No further action is necessary.

**Completed:** The client has implemented the recommendation and is waiting for client management’s final approval.

**Pending:** Implementation is not completed.

Report Release Date	Audit Plan Year and Engagement Name	Closed	Completed	Pending	Grand Total
January 2016	2015 Payroll and HR Audit	14		1	15
January 2016	2015 PROS Timesheet Audit	2	-	1	3
September 2017	2016 Citywide Physical Security Assessment	14	-	9	23
September 2017	2016 Core 4 Culture Impact Assessment	2	1	1	4
March 2018	2016 Fire Department Overtime	16	5	1	22
April 2017	2016 Overall Disaster Preparedness Assessment	6	4	1	11
May 2018	2017 Lethal and Less Lethal Weapons Inventory and Control Review	11	-	7	18
January 2019	2018 Change of Command MGTF	7	-	1	8
May 2019	2018 Fleet Management Operational Review	15		19	34
November 2018	2018 Overall Disaster Preparedness: Recommendations Follow-up	2	1	4	7
October 2019	2018 Purchasing Operations Review-Part 1	1	-	5	6
August 2019	2019 APD Program Expenses	3	-	1	4
May 2019	2019 APD CALEA Property and Evidence Audit	4	-	1	5
February 2020	2019 Grant Administration Processes	-	-	16	16
October 2019	2019 House Aurora Partnership	1	6	6	13
October 2019	2019 Planning Culture Survey	-	3	11	14
June 2020	APD CALEA Property and Evidence Audit	-	-	2	2

<b>Engagements with pending recommendations</b>	98	20	87	205
<i>Subtotal as a percentage of grand total</i>	48%	10%	42%	100%
<b>Closed and Completed</b>	137	2	-	139
<i>Subtotal as a percentage of grand total</i>	99%	1%	0%	100%
<b>Grand total for all recommendations</b>	235	22	87	344
<i>Subtotal as a percentage of grand total</i>	68%	6%	25%	100%

## Implementation Notes

### 2015 Payroll and HR Audit

- Revised completion date is September 30, 2020.

### 2015 PROS Timesheet Audit

- Completion is dependent upon a decision regarding the City's timekeeping systems.

### 2016 Citywide Physical Security Assessment

- Management charged a cross-departmental steering committee with overseeing the recommendation implementation process. This committee is progressing slowly but steadily and providing regular progress reports to the City Manager. Some items will be addressed through initiatives funded in the 2020 budget. Other items may be addressed in the recommended reopening plan for the Aurora Municipal Center under the Recovery Committee's work.

### 2016 Core 4 Culture Impact Assessment

- Human Resources will be addressing the recommendations.

### 2016 Fire Department Overtime

- The remaining recommendation will be addressed through the strategic planning discussions in 2020.

#### 2016 Overall Disaster Preparedness Assessment

- Revised completion dates are September 30, 2020 (Internal Audit completed a follow-up engagement on the recommendations from this original engagement: see *2018 Overall Disaster Preparedness: Recommendations Follow Up* below.)

#### 2017 Lethal and Less Lethal Weapons Inventory and Control Review

- The implementation effort is dependent on the new inventory system. Testing of the new inventory system is now beginning.

#### 2018 Change of Command Metro Gang Task Force

- Final recommendation around policies is being reviewed by the MGTF board.

#### 2018 Fleet Management Operational Review

- Fleet is making consistent progress addressing their recommendations.

#### 2018 Overall Disaster Preparedness: Recommendations Follow Up

- Implementation is in progress; revised dates are in Q3 2020.

#### 2018 Purchasing, Part 1

- Implementation is in progress.

#### 2019 APD Program Expenses

- Implementation is in progress.

#### 2019 CALEA Property and Evidence Audit

- Implementation is in progress.

#### 2019 Grant Administration Processes

- Implementation in progress.

#### 2019 House Aurora Partnerships

- Management continues to make progress on recommendation implementation; revised recommendation dates are in Q3 and Q4 2020.

#### 2019 Planning Culture Survey

- Implementation is in progress.

#### 2020 CALEA Property and Evidence Audit

- Implementation is in progress.

## INTERNAL AUDIT TEAM

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### **Wayne Sommer** | Internal Audit Manager

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Wayne is a Certified Public Accountant (CPA) and a Chartered Global Management Accountant (CGMA) with 40 years of diverse work experience. He began his career as an auditor for KPMG in Washington, DC (then known as Peat Marwick Mitchell and Co), advancing to the Audit Senior level with specialization in not-for-profit entities and financial institutions. He spent the next seven years in various financial and management capacities at Trustbank Savings, FSB in Virginia (also known as Dominion Federal Savings and Loan.) Prior to coming to the City of Aurora, Wayne spent 23 years at the International City/County Management Association (ICMA) in Washington, DC with 14 of those as Director, Administration and Finance, and the last nine working in executive management roles performing strategic planning, business development, and organizational change and development. Wayne also managed ICMA's U.S. Programs, which offered research and consulting products and services to local governments, the private sector, and the Federal government. Wayne has been with the City of Aurora since May 2014.

**Professional Associations:** American Institute of Certified Public Accountants; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Michelle Crawford** | Internal Audit Staff

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Michelle is a Certified Internal Auditor (CIA), a Certified Fraud Examiner (CFE), Certified in Risk Management Assurance (CRMA) and has 13 years of experience in governmental auditing. She received her Bachelor's in business administration at the University of Montana and her Master's in accountancy from Missouri State University. Upon graduation from Missouri State University, she started her career at the Missouri State Auditor's office as a Staff Auditor I and progressed over the next seven years to a Senior Auditor. As an auditor with the State Auditor's office, she conducted performance audits of local governments and worked on the statewide Single Audit. Michelle has been with the City of Aurora since October 2014.

**Professional Associations:** Association of Certified Fraud Examiners; Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association

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### **Sheree Van Buren** | Internal Audit Staff

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Sheree is a Certified Internal Auditor (CIA) with 10 years of audit experience. She graduated from Colorado State University in 2010 with a Bachelor of Science in Business Administration – Accounting degree. Prior to joining the City of Aurora, she spent three years as an Audit Associate with PwC, LLP. During this time, Sheree worked in the financial services industry, performing year-end financial statement audits for local and international investment companies.

**Professional Associations:** Institute for Internal Auditors; Association of Local Government Auditors; Government Finance Officers Association; National Forum for Black Public Administrators; Black Employees for a Better Aurora

## Appendix A: Completed Engagement Summary Reports

- APD OT Grants
- Purchasing Part 2
- Property and Evidence



The Executive Summary should be interpreted within the context of the complete engagement report.

May 2020

## BACKGROUND

Aurora Police Department requested this audit to ensure that overtime charged to Colorado Department of Transportation (CDOT) grants is accurate.

APD receives funds from five CDOT grants for overtime.

## Aurora Police Department – Overtime Grants

### SCOPE

Our scope included all record from October 1, 2018 through September 30, 2019 related to the following Colorado Department of Transportation Overtime Grants.

### OBJECTIVES

- Verify that grant overtime is substantiated.
- Verify controls reviewing grant overtime are operating effectively and efficiently.

### CONCLUSIONS

We conclude, based upon the results of our engagement procedures, that overtime is substantiated adequately and that controls over reviewing grant overtime are working effectively and efficiently. Nonetheless, we have detailed some issues and recommendations for APD to address.

### KEY RECOMMENDATIONS AND RESPONSE

We recommend overtime forms include sufficient detail to explain the services performed during the time worked. APD should establish formal procedures for a random review of grant overtime, which would include all officers working an APD-specified number of hours of grant overtime. The Traffic section should develop standardized policies and procedures for processes related to overtime paid by grants.

### Management Response

We agree with the recommendations and are working on implementing them.

View complete audit report: [Link](#)



## BACKGROUND

Internal Audit conducts this annual engagement to review controls that ensure the chain of custody is unbroken. It is a requirement for the Aurora Police Department's Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation.

## Aurora Police Department Property and Evidence Unit

### SCOPE

January 1, 2019, through December 31, 2019

### OBJECTIVES

- Ensure compliance with CALEA Standard 84 – Property and Evidence Control.
  - Conduct an annual audit of property and evidence in compliance with Appendix K. A supervisor not routinely or directly connected with control of property and evidence conducts this audit.
- Ensure the reliability and integrity of internal controls that ensure the chain of custody for property and evidence is intact.

### CONCLUSIONS

- The City of Aurora Police Department Business Services Division – Property and Evidence Unit has complied with CALEA standard 84.1.6 and Appendix K.
- The controls in place are operating effectively to ensure the chain of custody for property and evidence is intact.

### KEY RECOMMENDATIONS AND RESPONSE

We recommend Property and Evidence Unit Management implement the Internal Audit recommendations to address Unit work culture.

Management has agreed to implement the recommendations.

View complete audit report here: [Link](#)

## **BACKGROUND**

The Purchasing Services Division is responsible for acquiring goods and services through a competitive bid process. Internal Audit is reviewing the division's activities to ensure they possess sufficient capacity to handle City needs in a timely fashion.

## **Purchasing Operations Review – Part 2**

### **SCOPE**

Our audit work covers the period of January 1, 2017 through December 31, 2018.

### **OBJECTIVES**

During part 2 of this engagement, we determined staff compliance with established policies and procedures and assessed the effectiveness of our software acquisition process and procurement controls for complex IT systems. (As requested by the M&F Committee (City Audit Committee))

### **CONCLUSIONS**

Internal Audit found no errors in a random statistical sample of 99 purchases. City staff is in compliance with purchasing processes and policies. The efficiency and effectiveness of citywide purchasing processes can be improved; however, Internal Audit has already made recommendations to that effect in Part 1 of this engagement.

The process and procurement controls for acquiring complex IT systems are operating effectively as designed.

## **KEY RECOMMENDATIONS AND RESPONSE RECOMMENDATIONS**

There were no recommendations from part 2 of the Purchasing Operations Review engagement.

View complete report here: [Link](#)