REPORT OF THE AUDITOR-GENERAL ON COUNTY EXECUTIVE OF KISUMU FOR THE YEAR ENDED 30 JUNE, 2022

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.

B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for the intended purpose.

C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations and that its internal controls, risk management and overall governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Adverse Opinion

I have audited the accompanying financial statements of County Executive of Kisumu set out on pages 1 to 51, which comprise of the statement of assets and liabilities as at 30 June, 2022, and the statement of receipts and payments, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, because of the significance of the matters described in the Basis for Adverse Opinion section of my report, the financial statements do not present fairly, in all material respects, the financial position of the County Executive of Kisumu as at 30 June, 2022 and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Cash Basis) and do not comply with the Public Finance Management Act, 2012 and the County Governments Act, 2012.

Basis for Adverse Opinion

1. Unsupported Prior Year Adjustments

The statement of assets and liabilities reflects prior year adjustments balance of Kshs.742,970,432 which includes an expenditure of Kshs.40,000,000 paid to National Hospital Insurance Fund (NHIF) for a medical insurance scheme without a supporting contract.

Further, the balance includes an expenditure on climate change balance of Kshs.3,594,426 whose cash flows and expenditure were not disclosed contrary to the end year procedures issued by The National Treasury which required Accounting Officers to disclose cash flows and expenditure on climate change.

In addition, the balance includes an amount of Kshs.3,004,475 for interim certificate No.1 dated 8 June, 2021 in respect of proposed completion of Ngege Dispensary in Nyakach Sub-county and an amount of Kshs.4,950,000 incurred on supply of a fogging machine.

The rest of the balance was not supported with authorized journal entries.

In addition, the statement of cash flows reflects changes in prior year adjustments of Kshs.634,655,676 which vary with the computed amount of negative Kshs.899,407,752. The variance was not explained..

In the circumstances, the accuracy, and cutoff of the prior year adjustments could not be confirmed.

2. Cash and Cash Equivalents

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.1,228,336,891 which, as disclosed in Note 8A to the financial statements includes bank balances totalling to Kshs.1,228,144,862. The following observations were however made:

2.1 Variances in Comparative Bank Balances

The Note 8A to the financial statements discloses comparative balances for various bank accounts amounting to Kshs.5,195,711 which had not been reflected in the audited financial statements for the year 2020/2021 as indicated below:

Name of the Bank Account	Bank Balances (Kshs.)
Kisumu Aquaculture Business Dev. Prog	842,185
JOOTRH	41,635
Alcoholic Drink CTRL-KSM County	4,303,041
Seme Sub-County Imprests A/C	1,378

Name of the Bank Account	Bank Balances (Kshs.)
Kisumu Central Sub-County Imprests A/C	2,414
Kisumu East Sub-County Imprests A/C	1,337
Nyando Sub-County Imprests A/C	907
Nyakach Sub-County Imprests A/C	1,987
Kisumu West Sub-County Imprests A/C	827
Total	**5,195,711**

2.2 Anomalies in Bank Reconciliation Statements

Review of the bank reconciliation statements for various accounts held by the County Executive revealed the following anomalies:

i. Payments in the bank statement not in the cash book amounted to Kshs.1,653,433 with some transactions outstanding since July, 2021. Management did not provide an explanation on the payments.

ii. Payments in the cash book not in the bank statement (unpresented cheques) of Kshs.6,537,649. No reason was given for failure to replace or reverse them in the cash book. Similarly, there were receipts in bank statements not in cash book totalling to Kshs.207,950 for which no explanation was provided for non-inclusion in the cash book.

iii. Receipts in the cash book not in the bank statements amounted to Kshs.411,437,692 whose details including source of the receipts and the date cleared by the bank were not provided for review.

iv. Various bank balances amounting to Kshs.16,901,677 as at 30 June, 2022 were not supported with bank reconciliation statements, cash books and bank certificates.

v. Note 8A to the financial statements discloses a balance of Kshs.160,534,832 held in a local bank account. However, the bank reconciliation statement as well as the manual cash book reflected a balance of Kshs.160,605,834 resulting to an unexplained variance of Kshs.71,002. Further, the reconciliation statement for 30 June, 2022 reflects balance as per bank statement of Kshs.117,127,997 while the bank certificate reflects a balance of Kshs.117,054,995, resulting to an unreconciled and unexplained variance of Kshs.73,002 between the two balances.

vi. Similarly, the bank reconciliation statement for a project account reflected a balance of Kshs.8,527,727 as at 30 June, 2022. However, the bank certificate reflected a balance of Kshs.10,111,950 resulting to an unexplained variance of Kshs.1,584,223.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.1,228,336,891 could not be confirmed.

3. Use of Goods and Services

The statement of receipts and payments reflects use of goods and services balance of Kshs.1,074,027,052 and as further disclosed in Note 3 to the financial statements. Review of records revealed several unsatisfactory matters:

3.1 Domestic Travel and Subsistence

3.1.1 Unsupported Payments for Domestic Travels

(i) Note 3 to the financial statements discloses use of goods and services amount of Kshs.1,014,027,057 which includes an amount of Kshs.178,231,080 under domestic travel and subsistence allowance. Included in this expenditure is an amount of Kshs.40,331,867 reflected as transfer to KCB – Kisumu, whose payment details were not provided for audit. Further, the expenditure includes amount of Kshs.11,436,490 indicated as payment to the Kenya Revenue Authority for income tax obligations. Management did not explain why PAYE should be paid through the domestic travel and subsistence account.

(ii) Further, the expenditure includes an amount of Kshs.54,616,445 paid to twenty (20) members of staff as daily subsistence allowance, where some of the members received amounts ranging from Kshs.1,000,000 to Kshs.13,000,000 per person in the year under review. Management explained that the huge imprests had been taken out by team leaders on behalf of a group of employees and officers on official duty. However, supporting schedules for the group activities were not provided.

(iii) In addition, the expenditure includes an amount of Kshs.301,000 paid to a travel firm for air tickets for staff. However, copies of air tickets, boarding passes, attendance list and activity report were not provided for audit . The expenditure also includes an amount of Kshs.4,491,100 paid in respect to attendance to workshops whose invitation letters and workshops, signed schedules to confirm attendance reports and minutes of deliberations held were not provided for audit review.

(iv) Similarly, an amount of Kshs.510,850 was paid to two (2) firms for provision of air tickets. However, the firms were not in the prequalified list of suppliers.

(v) In addition, a payment of Kshs.122,650 paid during the year was not supported by invoices for the year 2018/2019. However, the amount had not been included as a pending bill during the year 2020/2021. Further, documents including copies of air tickets, duly signed and rubberstamped passports and boarding passes were not provided for audit.

(vi) Included in the domestic travel and subsistence is directly expensed imprest of Kshs.2,406,416 issued to an officer from the Department of Governance and Administration to facilitate a trip to India and undertake community engagement in the Nairobi Liaison Office on village council roles in road maintenance. However, Management did not explain the rationale for funding activities of the Department of Governance and Administration.

3.2 Unsupported Rentals of Produced Assets

Further, the balance includes expenditure on rentals of produced assets amounting to Kshs.13,074,217. The amount includes payments totalling to Kshs.4,939,200 relating to rental services for the Nairobi Liaison Office. However, lease agreement and other supporting documents were not provided for audit . Further, the rentals of produced assets balance includes a payment of Kshs.1,003,662 in respect of rent and rates for the Governor's house in the months of July and August, 2022 and an expenditure of Kshs.690,000 being six (6) months' rent for the Deputy Governor's house. However, the valuation report of the houses was not provided for audit review.

3.3 Wrong Charge Under Other Operating Expenses

In addition, the balance includes other operating expenses amounting to Kshs.251,682,137 which also includes purchase of furniture balance of Kshs.3,116,780 which had been charged to the wrong account.

In the circumstance, the accuracy, completeness and regularity of the use of goods and services amounting to Kshs.1,074,027,052 could not be confirmed.

4. Transfers to Other Government Entities

The statement of receipts and payments reflects transfers to other Government entities amounting to Kshs.2,157,907,922 and as disclosed under Note 4 to the financial statements. Review of documents provided for audit revealed the following unsatisfactory matters:

4.1 Unsupported Transfer of Funds

The balance includes transfers to Kisumu County Emergency Fund amounting to Kshs.128,013,000. Included in these transfers is an amount of Kshs.9,042,684 incurred on supply and delivery of food items. Although, there were supporting documents showing the nature and purpose of the items procured were of emergency in nature, Management did not explain reasons for procuring and paying for the food on behalf of Kisumu County Emergency Fund which is an autonomous entity.

4.2 Variances in Transfers to Other Government Entities

Further, the balance includes transfers amounting to Kshs.726,630,141 which varied with the amount reflected in the respective entity financial statements totalling to Kshs.593,977,267 as indicated in the table below :

	Payee	Amount as Per the County's Financial Statements (Kshs.)	Amount as per the Entities Financial Statements (Kshs.)
1.	City of Kisumu	491,964,572	489,444,572
2.	Kisumu County Emergency Fund	128,013,000	-
3.	Kisumu East District Hospital	70,681,923	60,500,000
4.	Kombewa District Hospital	8,146,442	8,201,901
5.	Muhoroni District Hospital	6,740,426	9,790,426
6.	Nyakach Sub-County Hospital	5,576,651	8,073,241
7.	Chulaimbo Sub-District Hospital	5,938,946	6,018,946
8.	Ahero Sub-District Hospital	9,568,181	11,948,181

4.3 Unsupported Other Capital Grants and Transfers

In addition, the transfers to other Government entities includes other capital grants and transfers amounting to Kshs.309,570,004. The amount includes payments made to individuals, private enterprises, a consultancy firm, a bank, construction companies, auto mobile companies and public entities like the Commissioner of Domestic Taxes totalling to Kshs.228,078,614 which were not supported while transfers to various youth polytechnics and vocational training center self-help groups amounting to Kshs.71,775,500 were not supported with confirmation of receipts and accountability statements expenditure returns.

In the circumstances, the regularity, accuracy and completeness of transfers to other Government entities totalling to Kshs.1,026,484,255 could not be confirmed.

5. Acquisition of Assets

The statement of receipts and payments reflects acquisition of assets amount of Kshs.924,670,289 which, as disclosed in Note 7 to the financial statements includes purchase of specialised plant, equipment and machinery amounting to Kshs.49,122,884 which further includes an expenditure of Kshs.13,820,404 incurred on the purchase of sports items supplied to various Wards. However, distribution list indicating the Ward name and beneficiaries, signed issue (S11) and receipt (S13) vouchers were not provided for audit. Further, the expenditure includes refurbishment of buildings amounting to Kshs.2,274,070 paid to a transport company whose supporting documents were not provided.

In the circumstances, the accuracy and completeness of acquisition of assets amounting to Kshs.16,094,474 could not be confirmed.

6. Discrepancies in the Integrated Financial Management System (IFMIS)

Review of IFMIS data revealed the following anomalies:

6.1 Voided Transactions

One thousand two hundred and ninety-nine (1299) transactions in IFMIS totalling to Kshs.1,073,623,658 were voided. However, supporting documents such as the voided payment vouchers, request to void payments, The National Treasury approval and Exchequer requisitions from the Controller of Budget were not provided. Further, the voided payments were not disclosed as pending accounts payable. The utilization of funds meant for voided transaction was also not confirmed.

6.2 Invoices Billed Greater than LPO/LSOs Amount

Further, payments in IFMIS amounting to Kshs.341,128,265 were billed higher than the corresponding Local Purchase Orders'/Local Service Orders' amount of Kshs.282,741,220. No explanation was provided for over-invoicing the amount by Kshs.58,387,045.

6.3 Transactions in System Payments but not Processed in Payment Details

In addition, two hundred and fifty-two (252) payments amounting to Kshs.256,093,457 were reflected in the internet banking (IB) but were not in IFMIS payment details. This is an indication that the payments were made outside IFMIS. No explanation was provided for failure to process the payments in IFMIS.

6.4 Unexplained Cash Payments

IFMIS records reflects cash payment for thirteen (13) transactions amounting to Kshs.88,546,249 which were not explained.

In the circumstances, the accuracy and completeness of the affected expenditures could not be confirmed.

7. Lack of Fixed Assets Register

As disclosed in Annex 6 to the financial statements, the summary of fixed assets register reflects assets with a historical cost brought forward and additional amount during the year of Kshs.6,247,139,791 and Kshs.924,670,289, respectively, totalling to Kshs.7,171,810,080. However, the amount differed with the supporting documents balance of Kshs.8,869,129,667 resulting to an unexplained variance of Kshs.1,697,319,587. Further, the supporting documents did not indicate the year of acquisition of the asset while eight (8) vehicles were not included in the list of motor vehicles.

In the circumstances, accuracy and completeness of assets valued at Kshs.7,171,810,080 as at 30 June, 2022 could not be confirmed.

8. Irregular Purchase of Office Furniture and General Equipment

Acquisition of assets expenditure includes an amount of Kshs.9,912,318 for purchase of office furniture and general equipment which further includes expenditure totalling to Kshs.1,739,990 incurred on purchase of various ICT items which was not done in e-procurement. However, the appointment letters for the Tender Opening and Evaluation Committees were not provided for audit review as required by the Public Procurement and Asset Disposal Act, 2015 and the above procurement process was not done in e-procurement contrary to Regulations 49(2) of the Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, the propriety and value for money on the above expenditures could not be confirmed.

9. Irregular Contract

Management entered into a contract to carry out fencing and equipping of tree nursery and production of 6,000 bamboo seedlings at a contract sum of Kshs.3,499,200. However, review of contract records provided revealed that the contractor was paid the full contract sum of Kshs.3,499,200. However, during physical inspection carried out in the month of July, 2022, it was revealed that there was no fence and bamboo nursery at the earmarked site.

In the circumstances, the propriety and value for money on Kshs.3,499,200 spent on this project could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Executive of Kisumu Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my adverse opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

1. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year under review reflects total budgeted receipts balance of Kshs.11,248,535,017 and actual receipts of Kshs.8,404,407,350 resulting to a budget shortfall of Kshs.2,844,127,667 or 25% of the budget. Similarly, the County Executive spent an amount of Kshs.8,945,512,306 against actual budget of Kshs.11,248,535,017 resulting to an under absorption of Kshs.2,303,022,711 or 20%. Further, the Management did not provide any footnote explanations for variances as required by the Public Sector Accounting Standards Board reporting template.

The under-funding and under-performance affected the planned activities and may have impacted negatively on service delivery to the public.

2. Pending Bills

Disclosure 1 of other importance disclosure for the financial statements reflects pending accounts payable amounting to Kshs.2,416,382,496. The amount includes pending accounts payable amounting to Kshs.1,950,176,560 relating to 2020/2021 and earlier years which have not been paid. Further, details of the pending bills have not been disclosed in annexure 2 to the financial statements.

Failure to settle bills in the year to which they relate adversely affect the implementation of the subsequent year's budgeted programs as the pending bills form a first charge.

3. Prior Year Matters

In the audit report of the previous year, several paragraphs were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management had not resolved the issues nor given any explanation for failure to implement the recommendations

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Compensation of Employees

The statement of receipts and payments reflects compensation of employees balance of Kshs.4,545,113,972. Review of the expenditure records revealed the following:

1.1 Irregular Recruitment Process

The County Public Service Board advertised for one (1) vacancy in the position of Director, Supply Chain and thirteen (13) vacancies positions of Chief Supply Chain Management Officers in a local daily. However, the applications were to be received latest by 1 April, 2021 or 15 days after the advertisement. This is contrary to Section B 4(1) of the Public Service Commission Human Resource Policies Manual, 2016 which requires Government agencies to advertise all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty-one (21) days before closing the advert.

1.2 Non-Compliance with the One-Third of the Basic Salary Rule

Review of the payrolls revealed that one hundred and fifty-four (154) employees earned net salaries less than a third of their basic pay. This was contrary to Section19(3) of Employment Act, 2007 which stipulates that the total amount of all deductions which may be made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages or such additional or other amount as may be prescribed. This may expose the staff to pecuniary embarrassment.

1.3 Irregular Retention of Staff Beyond Mandatory Retirement Age

Review of the payroll for June, 2022 revealed that fourteen (14) employees who had attained the mandatory retirement age of 60 years were still in employment without explanation. This is contrary to Section D.21 of the Public Service Commission Human Resource Policies and Procedures Manual for the Public Service, 2016 on mandatory retirement age which states that all officers shall retire from the service on attaining the mandatory retirement age of 60 years or at 65 years for persons with disabilities and/or as may be prescribed by the Government from time to time.

1.4 Irregular Payment of Special Duty Allowance

As disclosed in Note 2 to the financial statements, Management paid personal allowances paid as part of salary amounting to Kshs.668,186,824. The amount includes special duty allowance of Kshs.1,500,869 paid to various officers for more than six (6) months. This is contrary to Section C.15 of the Public Service Commission Human Resource Policies and Procedures Manual, 2016, which states that the payment of special duty allowance will not be payable to an officer for more than six (6) months.

Further, review of payroll records revealed that eleven (11) officers were performing duties of posts that were more than two (2) grades higher than their substantive grades. This was contrary to the provisions of Section C 15(3) of the Public Service Commission

Human Resource Policy and Procedures Manual for the Public Service, 2016 where officers shall not be called upon to perform duties of a post that is more than two (2) grades higher than the officer's substantive grade.

1.5 Irregular Engagement of Casuals

Note 3 to the financial statements reflects routine maintenance - other assets amounting to Kshs.90,054,407. The amount includes casual wages expenditure balance of Kshs.12,487,450 incurred by the Department of Roads and Public Works. The casual employees had been engaged for a continuous period of more than three (3) months. However, the terms of employment were not converted to regular employment terms. This is contrary to Section 37 of the Employment Act, 2007 which provides for conversion of the casual employment to regular employment terms for employees who have worked in an entity continuously for more than two months.

1.6 Payment of Salaries Outside the Integrated Payroll and Personnel Database (IPPD)

The statement of receipts and payments reflects compensation of employees balance of Kshs.4,545,113,972. The expenditure includes an amount of Kshs.503,156,098 paid outside the IPPD system. This is contrary to Treasury Circular No.13/2019 dated 28 August, 2019 which states that the allocation of personnel emoluments must be supported by Integrated Personnel Payroll Data (IPPD) and each Ministry, Department and Agency (MDA) will be required to provide this information to support personnel requirements. Management has attributed the failure to include some of the employees into the IPPD system to lack of payroll numbers, inability to define some of the cadre of staff into the system and the temporary nature of the engagement of some of the employees.

1.7 Non-Compliance with the Law on Fiscal Responsibility - Wage Bill

The statement of receipts and payments reflects compensation of employees amounting to Kshs.4,545,113,972 which is equivalent to 54% of the total revenue of Kshs.8,404,407,350. This is contrary to Regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations, 2015 which provides that the County Government's expenditure on wages and benefits for its public officers shall not exceed thirty-five (35) percent of the County Government's total revenue.

In the circumstances, Management was in breach of the law.

2. Unsatisfactory Construction of Ngege Dispensary

During the years audit review, Management paid an amount of Kshs.3,004,475 in respect of proposed completion of Ngege Dispensary in Nyakach Sub-county. Review of records revealed that Management engaged a contractor at a cost of Kshs.3,060,387 for a period of three (3) months commencing 26 March, 2021. Physical inspection in the month of November, 2022 revealed that although the dispensary was complete, wide cracks were observed along the walls and the dispensary had not been put into use as intended.

In the circumstances, value for money may not have been obtained in respect of Kshs.3,004,475 spent on the facility.

3. Delayed Completion of Projects

As disclosed in Note 4 to the financial statements, the statement of receipts and payments reflects other capital grants and transfers amounting to Kshs.309,570,004. Included in this amount is Kshs.18,556,765 paid to a construction Company and Kenya Power and Lighting which was incurred on EU IDEAS Project. Review of contract records revealed that the County Executive entered into two contract agreements with a contractor on 25 September, 2019 for the construction to completion of administration and ablution block, and construction to completion of milk processing plant, cooling plant, power generator house and zero grazing unit at contact sums of Kshs.13,152,195 and Kshs.13,719,430, respectively.

Further, according to the contracts, the works were expected to be completed by 17 May, 2020 but the contractor requested for several extension with the last extension requested up to 17 September, 2021 which was sixteen (16) months after the initial completion date. Further, the performance security provided by the contractor from a local bank expired on 7 December, 2020. Payment records provided indicated that payments totalling to Kshs.34,227,998 had been made in respect of the Project.

In addition, site inspection carried out in the month of November, 2022 and January, 2023, revealed that, although the structures had been completed, the cooling plant and the administration block remained unused. The equipment procured including milking machines, cooling plants and the administration block had not been installed and the water tower and tank were destroyed due to the poor installation.

Whereas the grant contract indicated that VAT/taxes, duties and charges were not eligible, the electricity supply quotation indicated that connection cost will include 14% VAT of Kshs.968,014. Although Management committed process and apply of VAT exemption vide no evidence was provided in support of the application or evidence the granting of the exemption.

In the circumstances, the project had not been operationalized, thus delaying service delivery to the public.

4. Irregular Procurement of Consultancy Services

During the year under review, Management paid an amount of Kshs.4,500,000 for consultancy on the development of the implementation plan of the Kisumu County COVID-19 Social Economic Re-engineering Recovery Strategy. Review of the procurement process for the consultancy service revealed that the procurement of the services was not done in e-procurement contrary to Regulations 49(2) of the Public Procurement and Asset Disposal Regulations, 2020. There was no evidence of open tendering as stipulated in the second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020 and the tender evaluation report was not provided for audit, contrary to Regulation 78(1) of the Public Procurement and Asset Disposal Regulations, 2020.

Further, the procurement for the consultancy service was not in the approved annual procurement plan contrary to Regulation 40 of the Public Procurement and Asset

Disposal Regulations, 2020 which require preparation, approval and implementation of an annual procurement plan.

In the circumstances, Management was in breach of the law.

5. Acquisition of Assets

The statement of receipts and payments reflects acquisition of assets balance of Kshs.924,670,289 as further disclosed in Note 7 to the financial statements. The following observations were made:

5.1 Unsatisfactory Construction of Roads

The balance includes an amount of Kshs.80,027,061 in respect of construction of roads. The expenditure includes a payment of Kshs.5,221,429 for improvement of Pundo Kandara Junction Access Road. Management had entered into the contract with a construction firm on 25 February, 2020 at a contract sum of Kshs.5,221,636 for a period of ten (10) weeks. However, physical inspection in the month of November, 2022 revealed that the road was complete but the culverts and drainage works stated in the approved bill of quantity were not done as per the specifications.

Further, the expenditure includes a payment of Kshs.4,663,548 incurred on the improvement of Nubian Access Road which was not procured in e-procurement contrary to Regulations 49(2) of the Public Procurement and Asset Disposal Regulations, 2020.

5.2 Unsatisfactory Construction and Civil Works

5.2.1 Relocation of Agriculture Sheds

The balance also includes construction and civil works amounting to Kshs.569,085,786 which further includes an expenditure of Kshs.3,932,430 incurred on the proposed relocation and reconstruction of agriculture sheds, acquisition of three thousand one hundred and sixty (3,160) assorted copies of 4th Annual State of the County speech book at a cost of Kshs.4,844,555 and event management services procured at a cost of Kshs.1,000,000. However, direct procurement method was used to procure the services contrary to Section 103(2) of the Public Procurement and Asset Disposal Act, 2015 without giving any justification.

5.2.2 Construction of Market Sheds at Riat Market

Further, the expenditure includes an amount of Kshs.7,430,618 incurred on construction of a modern market shade and fence at Riat Market. Review of procurement records revealed that Management awarded the contract to a construction company at a contract price of Kshs.8,452,850 for a contract period of three (3) months from the date of signing the contract. However, review of the project status and physical verification in July, 2022 revealed that certified works to date amounted to Kshs.7,580,618 but the market was yet to be put in use due to incomplete flooring, construction of stalls, fencing and electrical works. No satisfactory explanation was provided for the stalling of works or delay in the project's completion and the Management had not made any budgetary provision to complete the remaining works.

5.2.3 Construction of Market Shed at Pap Onditi

In addition, the expenditure includes an amount of Kshs.7,578,856 paid to a firm in respect to construction of a modern market at Pap Onditi at a contract sum of Kshs.42,400,400. The contract agreement was signed on 24 February, 2016 which was executable in three (3) phases. Information on the project indicated that the value of certified works as per the statement of account dated 23 June, 2020 amounted to Kshs.28,194,018 with a total of Kshs.15,171,073 having been paid. However, site inspection carried out in the month of July, 2022 indicated that the works had stalled and the contractor was not on site. Further, there were no budgetary provisions for the project in the financial year 2021/2022.

5.3 Unsatisfactory Rehabilitation of Civil Works

Further, the balance on acquisition of assets includes rehabilitation of civil works amounting to Kshs.58,358,174 which further, includes an amount of Kshs.8,063,168 in respect to construction of Guba-Gita-Namba-Kabongo and Lela-Agulu-Mbaka-Oromo roads. The contract was awarded to a Company at a contract sum of Kshs.21,525,925 for a contract period of 16 weeks which ended on 14 March, 2022. However, physical inspection carried out in the month of July, 2022 revealed that the Lela-Agulu-Mbaka-Oromo road had not been started yet the contract agreement had expired.

5.4 Unsatisfactory Construction of Buildings

In addition, the balance on acquisition of assets expenditure includes construction of buildings amounting to Kshs.118,870,669. The expenditure includes an amount of Kshs.24,019,773 paid for the proposed construction of a cancer center at Jaramogi Oginga Odinga Teaching and Referral Hospital at a contract price of Kshs.165,622,113. The contract was signed on 11 May, 2020 for a period was eighteen (18) months ending November, 2021. However, the project status report provided for audit review dated 17 February, 2022 reflected 61% progress of works twenty-one (21) months after the contract lapse. Physical inspection of the project in June, 2022 revealed that the project had stalled and the contractor was not on site.

Further, interim certificate number 5 dated 24 May, 2022 in respect of preliminary substructure works, superstructure branchy external walling and internal walling amounted to Kshs.48,256,344 against the bill of quantities amount of Kshs.38,461,895 resulting to unauthorized variation of quantities of Kshs.9,794,449. This is contrary to Section 139(1) of the Public Procurement and Asset Disposal Act, 2015.

In addition, Management paid an amount of Kshs.4,932,651 in respect of proposed Kosawo Dispensary. Review of records revealed that the contract was awarded to a contractor at a contract sum of Kshs.37,138,510 for a period of three (3) months. However, project inspection carried out in the month of July, 2022 revealed the project had stalled, and the contractor was not on site**.** Further, the contract period and the performance bond had since expired and there was no evidence of approval for contract extension.

6. Non-compliance with the Public Procurement and Assets Disposal Regulation, 2020

During the year under review, Management made a cash expenditure totalling to Kshs.1,200,000 charged to catering services for board and committee meetings. The cash expenditure was incurred the form of imprests. This is contrary to the Second Schedule Threshold Matrix of the Public Procurement and Asset Disposal Regulations, 2020 which limits cash purchase to Kshs.50,000 per item per financial year for goods and services.

Further, an amount of Kshs.25,730,350 was made for the supply and delivery of various medical items. Review of documents in support of the payments revealed that suppliers registration certificates had expired. Management awarded tenders amounting to Kshs.3,564,110 to suppliers with expired and invalid PIN, tax certificates and AGPO certificates. This is contrary to Regulation 75 (1) of the Public Procurement and Asset Disposal Regulations, 2020 which provides for rejection of tenders which are not in conformity with the preliminary requirements.

In addition, the statement of assets and liabilities reflects an amount of Kshs.742,970,432 in respect of prior year adjustments which, as disclosed in Note 12 to the financial statements were payments made after 30 June, 2021. This balance includes an amount of Kshs.4,950,000 incurred on supply of a fogging machine through request for quotation. The balance exceeded the required threshold for use of request for quotations limit of Kshs.3,000,000 prescribed in the Second Schedule of the Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, Management was in breach of the law.

7. Non-Compliance with Public Procurement and Asset Disposal Act, 2015

During the year under review, Management paid an amount of Kshs.1,504,050 for supply and delivery of medical drugs. Review of records indicated that the drugs were delivered on 31 August, 2021. However, inspection and acceptance certificate in relation to the goods was issued two (2) months before delivery. This is contrary to Section 48(3) of the Public Procurement and Asset Disposal Act, 2015 which requires the Inspection and Acceptance Committee to inspect goods, works or services immediately they are delivered.

In addition, procurement of goods and services amounting to Kshs.3,400,00 were split into two (2) contracts. This was contrary to Section 54(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that no procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure.

In the circumstances, Management was in breach of the law.

8. Long Outstanding Imprests

The statement of assets and liabilities reflects outstanding imprests and advances balance of Kshs.54,120,090. The amount includes imprest totalling to Kshs.52,928,848 which has been outstanding for more than one year, dating back to the 2013/2014 financial year. Management has not provided any explanation for not recovering the long outstanding imprests from the salaries of the defaulting officers. Further, several officers held multiple imprests totalling to Kshs.33,180,906. This was contrary to Regulation 93(5) and (8) of the Public Finance Management (County Governments) Regulations, 2015 which requires that imprest be surrendered or accounted for within 7 working days after returning to duty station and prohibits issue of new imprests to officers with outstanding imprests.

In the circumstances, Management was in breach of the law.

9. Unfunded Matching-Fund Programme

Included in other capital grants of Kshs.309,570,004 is an amount of Kshs.35,000,000 paid to Rural Electrification and Renewable Energy Corporation (REREC) in respect of the Matching-Fund Programme. Management had entered into framework collaboration with the REREC on 9 September, 2021. The Corporation was to contribute up-to a maximum of Kshs.5,000,000 per constituency while Management mapped seven (7) areas and committed an amount of Kshs.35,000,000 for the project.

However, review of projects progress report revealed that the initial budget was estimated at Kshs.193,479,991 which was revised to Kshs.76,664,631. This was against the planned commitment charge of Kshs.70,000,000 resulting to a shortfall of Kshs.6,664,631. Analysis of the approved supplementary budget estimates for the financial year 2021-2022 also revealed that the additional commitment charge was not factored in the County contribution to REREC for Rural Electrification projects.

In the circumstances, the implementation of the matching fund programme is doubtful and value for an amount of Kshs.35,000,000 spent on the project could not be achieved.

10. Irregular Payment to the Council of Governors

During the year under review, Management paid an amount of Kshs.950,000 for activities of the Council of Governors. This is contrary to Section 37 of the Inter-Governmental Relations Act, 2012 which states that the operational expenses of the Council of Governors should be provided for in the annual estimates of the revenue and expenditure of the National Government.

In the circumstances, Management was in breach of the law.

11. Failure to Bank Hospital Revenue

Review of revenue records maintained at the Lumumba Sub-county Hospital revealed that an amount of Kshs.5,112,433 was collected during the year under review. However, analysis of bank statements revealed bankings of Kshs.4,479,840 resulting to unexplained unbanked revenue of Kshs.632,593. Further, review of building plans approvals files revealed that the Department of Finance invoiced a total of Kshs.16,741,730 during the year to various applicants who had submitted building plans for approvals. However, no evidence was provided to support receipt of funds. In addition, an amount of Kshs.8,703,350 was invoiced, received and deposited in a Kenya Commercial Bank (KCB) account but the Management did not provide a cash book and bank statements to confirm receipt and transfer of these funds to the County Revenue Fund.

This was contrary to Regulation 63(1) of the Public Finance Management (County Governments) Regulations, 2015 which states that an accounting officer and a receiver of revenue are personally responsible for ensuring that adequate safeguards exist and are applied for the prompt collection and proper accounting for, all county government revenue and other public moneys relating to their county departments or agencies.

In the circumstances, Management was in breach of the law.

12. Avoidable Expenditure

The statement of receipts and payments reflects use of goods and services amount of Kshs.1,074,027,052 as disclosed in Note 3 to the financial statements. This amount includes other operating expenses amounting to Kshs.251,682,137 out of which an amount of Kshs.4,600,000 was in respect of a court award being principal of Kshs.1,316,000 and accrued interest of Kshs.3,284,000 arising from a legal case between a firm and Municipal Council of Kisumu. The court had awarded the plaintiff an amount of Kshs.1,316,000 subject to an interest of 14% per annum for any delayed payment. Payment of interest amounting to Kshs.3,284,000 on defrayment of delayed payments led to loss of public funds which could have been avoided

In the circumstances, effectiveness in use of public resources could not be confirmed.

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the matter described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing else has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

Weak Controls Over Fuel Expenditure

Included in the use of goods expenditure amount of Kshs.1,074,027,052 were fuel costs amounting to Kshs.68,968,625. Review of the fleet management system, motor vehicle records and the supplier statement for the period under review revealed instances of fuel drawn but not recorded in the work tickets, fuel drawn in the supplier statement, detail orders and the amounts recorded in the work tickets which varied with the Management reports. Further, fuel drawn by two (2) vehicles was not supported with detailed orders, a fuel register, work tickets and suppliers' records while some grounded motor vehicles were drawing fuel for the period they were not in use.

In the circumstances, effectiveness of controls over fuel records and management could not be confirmed.

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for maintaining effective internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the County Executive's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to dissolve the County Executive or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the County Executive's financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015, and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.

- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the County Executive's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the County Executive to cease to continue to sustain its services.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the County Executive to express an opinion on the financial statements.

- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.

CPA Nancy Gathungu, CBS
<u>AUDITOR-GENERAL</u>

Nairobi

20 April, 2023