REPORT OF THE AUDITOR-GENERAL ON COUNTY EXECUTIVE OF NAIROBI CITY 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 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 Government of Nairobi City Executive set out on pages 1 to 61, 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: combined for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with 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 discussed in the Basis for Adverse Opinion section of my report, the financial statements do not present fairly, the financial position of the County Government of Nairobi City Executive 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. Compensation of Employees

The statement of receipts and payments and as disclosed in Note 6 to the financial statements reflects compensation of employee's balance of Kshs.4,982,191,769 which is a reduction of Kshs.1,448,091,389 or 23% from the prior year amount of Kshs.6,430,283,158. Although Management explained that the reduction was as a result of two hundred (200) staff members who had been seconded to the Nairobi Metropolitan Services (NMS) and others who had retired, details in support of the staff members transferred and those that retired during the year were not provided for audit.

In the circumstances, the accuracy and completeness of the expenditure amount of Kshs.4,982,191,769, incurred on compensation of employees, could not be confirmed.

2. Unsupported Expenditure on use of Goods and Services

The statement of receipts and payments and as disclosed in Note 7 to the financial statements reflects use of goods and services total expenditure amount of Kshs.7,642,844,133. However, examination of records revealed the following anomalies;

2.1 Utilities, Supplies and Services

Review of records in support of the utilities, supplies and services expenditure of Kshs.156,511,724 revealed that, payment vouchers amounting to Kshs.100,862,069 paid to Kenya Power and Lighting Company Limited (KPLC), were not supported with invoices and bills from the Company.

Further, included in Annex 2 to the financial statements are pending accounts payable balance of Kshs.26,270,995,418. The pending payable includes supply of services balance of Kshs.22,929,252,921 as at 30 June, 2022 which in turn includes balances of Kshs.304,812,436 and Kshs.120,674,506 as at 30 June, 2021 and 30 June, 2022 respectively owing to KPLC. However, the KPLC through letter referenced KPI/10B.2A/FNL/I0/2 dated 9 March, 2022 indicates that the County owes the Company an amount totalling Kshs.1,460,542,895. The discrepancy in the two sets of records was not explained. In addition, it was established that the County committed to pay to KPLC an amount of Kshs.50,000,000 every month with effect from January, 2022. However, as at 30 June, 2022 only an amount of Kshs.156,511,724 had been paid instead of a total of Kshs.300,000,000 as committed in the letter.

Similarly, review of the pending bills for the year under review revealed that the County owed Nairobi City Water and Sewerage Company (NCWSC) an amount of Kshs.249,199,058, for bills dating back to 2016/2017 financial year. Bills for 2018/2019, 2019/2020, 2020/2021 and 2021/2022 have neither been paid nor included in the pending accounts payable. In addition, the Management did not provided documents in support of payments, if any, remitted to NCWSC.

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

2.2 Communication Supplies and Services

The balance includes communication, supplies and services balance totalling to Kshs.54,863,887 which includes an amount of Kshs.8,001,724 paid for supply of laptops and telephones. However, the issue voucher and distribution list were not provided for audit indicating to whom the items were issued.

Further, physical inspection of sampled bin cards at County's general stores revealed one hundred and sixty-nine (169) communication equipment of unknown value, which were reflected as having been received in the stores but could not be physically confirmed.

2.3 Manual Insurance Costs

The balance includes an amount of Kshs.679,635,812 in respect of insurance costs. Review of records indicate that, the County awarded National Hospital Insurance Fund (NHIF) a contract for provision of a comprehensive medical insurance group life and last expense cover for the County staff members on 8 September, 2021, for ten (10) months at a contract price of Kshs.691,807,590.

However, review of payment records revealed that the County paid NHIF an amount totalling to Kshs.764,635,812 resulting to unreconciled variance of Kshs.72,828,222. Management indicated that additional staff members were included under the existing cover. However, Management did not enter into an addendum contract with NHIF to support the extra amount paid, and instead continued to use the initial contract. Further, Management did not provide the list of the additional staff members included under the cover and the reasons for their omission in the initial contract.

2.4 Fuel Oil and Lubricants

The balance also includes payments in respect of fuel, oil and lubricants amounting to Kshs.90,217,637. However, Management did not maintain updated fuel register and fuel statements from service providers indicating the vehicle, period and quantity of consumed fuel. In addition, the fleet department operated seven (7) fuel smart cards which were used to fuel the one hundred and seventy-six (176) County vehicles that were in good condition during the year under review. However, detailed analysis and ownership records for the vehicles were not provided for audit verification. The vehicle fueling system was prone to abuse since the fueling smart cards, which were not used exclusively for fueling a specific County vehicle, may be used to fuel any vehicle, including non-County vehicles.

Further, Management did not maintain data on the quantity of fuel consumed by each vehicle and most drivers did not record the odometer reading in the work tickets for each distance covered. It was not possible to reconcile fuel consumed with the distance covered in the work tickets.

2.5 Distribution of Goods

The balance further includes an amount of Kshs.127,917,259 paid to seventeen (17) suppliers of various supplies such as sanitary and cleaning materials face masks sanitizers stationary furniture and fittings hairdressing equipment, education materials uniforms and tyres. However, the payment vouchers were not supported with the respective receipt and issue vouchers.

2.6 Supply of Goods Under Emergency Department

The balance includes other operating expenses and emergency relief and refugee assistance amounting to Kshs.2,268,832,045 and Kshs.157,830,690 respectively. Review of expenditure records maintained by the Disaster and Emergency Department charged to the two components revealed that Management procured foodstuff totalling to Kshs.275,045,034 for Disaster and Emergency Department from a local company. However, records supporting the distribution of the foodstuff were not provided for audit.

Similarly, review of the payment and store records revealed that Management incurred an expenditure totalling to Kshs.37,669,760 in respect of emergency COVID response. However, supporting documents such as distribution list, acknowledgement of receipt, reports and approvals were not provided for audit. Further, review of the particulars of the items and the nature of the transactions revealed that these items although classified as emergencies, did not qualify to be categorized as emergencies.

In addition, review of records maintained in the stores revealed that Management procured fifteen thousand nine hundred (15,900) (high density) mattresses at a cost of Kshs.135,669,000 from a local merchant for disaster management. However, records indicating how, why and where the mattresses were distributed, were not provided for audit . The County may have paid for goods which were not received, resulting to loss of funds.

In the circumstances, the occurrence and valuation of expenditure amounting to Kshs.448,383,794 incurred on emergency services, could not be confirmed.

2.7 Unsupported Procurement of Goods

The balance includes specialized materials and services of Kshs.757,304,469 which includes an amount of Kshs.16,649,000, which was incurred on account of supply and delivery of face masks and hand sanitizers amounting to Kshs.14,369,000 and Kshs.2,280,000 respectively, from two local suppliers for Nairobi City County Alcoholic Drinks Control and Licensing Board, a semi-autonomous entity which prepares its own financial statements. However, Management did not provide supporting documents such as receipt and issue vouchers for the goods and approval for the above payments which were made without a budget. Further, physical inspection of the goods at the Board's headquarters in South C revealed that the goods were not received at the facility.

2.8 Irregularities in Procurement of Masks

The balance includes specialized materials and services of balance of Kshs.757,304,469 which also includes an amount of Kshs.19,600,000 which was paid to a local company. The Deputy Director Public Health sought authority from the Chief Officer Health Services to procure masks for the County through Memo Ref. CHS/9/5/COVID-19/200/ac of 28 March, 2020.The approval was given on 28 March, 2020. However, it was noted that requisition for the purchase was done on 28 August, after approval to procure had already been done. Further, Local Purchase Order (LPO) to the bidder was issued on 16 April, 2020 before the requisition was done.

The bidder supplied the masks on 5 January, 2021 as per the delivery note No. 037 and invoiced the County as per invoice No. 078 of 5 January, 2020 one year before delivery was done.

Further, Inspection and Acceptance Committee was appointed on 12 January, 2021 six (6) days after delivery of the masks. The inspection and acceptance certificate was issued on 12 January, 2020 and the inspection report signed by members on the same date and before the appointment of the inspection and acceptance committee and before delivery.

In view of the inconsistencies in the procurement process, it was not possible to confirm the validity of the procurement and delivery of the goods amounting to Kshs.19,600,000.

2.9 Retreats at Unknown Venue

Note 7 to the financial statements reflect training expenses totalling to Kshs.162,446,923 which includes an amount of Kshs.2,981,200 in respect of payment for services to a supplier for facilitation of a retreat on County Organizers structure for 30 drivers at a rate of Kshs.5,220 for five (5) days, all totalling to Kshs.783,000; eighty (80) gala night dinner at the rate of Kshs.7,540 totalling to Kshs.603,200 and fifty (50) full conference for 5 days at the rate of Kshs.6,380 per person per day, totalling to Kshs.1,595,000. The grand total for the retreat services provided was Kshs.2,981,200, which was paid for a retreat whose venue was not disclosed for audit review. In addition, the County paid allowances to the drivers totalling to Kshs.1,700,000. However, the number exceeded the maximum of fifteen (15) days allowed for retreats. Further, supporting documents such as work tickets, signed attendance register and reports for the respective retreat were not attached in support of the expenditure.

2.10 Domestic Travel and Subsistence

The balance includes an amount of Kshs.273,070,829 in respect of domestic travel and subsistence expenditure which includes a payment of Kshs.8,599,072 paid to a local tours and travels company for provision of accommodation, transport, meals and laundry for the International HOPE medical team. Examination of records provided indicated that this expenditure was incurred on 14 May, 2019. However, the amount payable was not included in the pending bills list for the 2020/2021 financial year. Further, the payment was not supported by work documents indicating the kind of exercise undertaken and approvals for the expenditure from the departmental head. Further, the payment was supported by a copy of the invoice instead of the original invoice. In addition, list of the doctors attached was not supported by official documents in respect of itinerary from the hospital in their Country of origin indicating the dates of arrival, work plans and duration of stay in the Country.

2.11 Other Unsupported Payments

Review of expenditure listing provided for audit revealed that an expenditure totalling Kshs.113,216,907 was not supported by payment vouchers, approvals and tender documents as analysed in **Appendix 1** of this report.

2.12 Goods not Taken on Charge

Review of a sampled payment vouchers revealed that although Civic Education Materials totalling to Kshs.7,195,000 were said to have been procured and delivered to the stores as per the stores receipt vouchers, the stores Management did not provide stores receipt and issue vouchers for audit verification.

In the circumstances, the propriety, accuracy and completeness of expenditure amounting to Kshs.7,642,844,133 could not be confirmed.

3. Failure to Provide Transaction Status

Review of expenditure analysis obtained from the Integrated Financial Management Information Systems, (IFMIS) revealed that 11,229 payment transactions with a total expenditure of Kshs.15,627,395,783 had been invalidated during the year under review. However, there was no documentary evidence provided to support authorization and reasons for invalidation of the transactions which had been presented to the Controller of Budget (CoB) for approval.

Review of payment transactions revealed that although the Management paid merchants in the year under review, payments totalling Kshs.1,019,221,448 were retuned back to the County accounts as a result of missing information from the payees. However, the current status of the returned amount was not provided for audit verification.

In the circumstances, unauthorized payments may have been made in place of invalidated transactions.

4. Irregularities in Procurement of Transferred Services

Review of the deed of transfer of services to Nairobi Metropolitan Services (NMS) revealed that on 25 February, 2020, the County Government of the Nairobi City unequivocally transferred four of its core functions to the National Government. These functions included County Health Services, County Transport Services, County Planning and Development Services and County Public Works, Utilities and Ancillary Services.

However, the County Management continued to execute some of these services which had been transferred to Nairobi Metropolitan Services, through award of a contract in respect to procurement of medical drugs and supplies totalling to Kshs.75,950,000 during the year under review. The contract was awarded to two local merchants at a cost of Kshs.37,730,000 and Kshs.38,220,000 respectively. The supporting documents such as receipt vouchers, issue vouchers, inspection certificates and schedules or lists detailing how the drugs were distributed to various dispensaries and health centres were not provided for audit.

In the circumstances, the regularity of additional expenditure of Kshs.75,950,000 could not be confirmed.

5. Misallocation of Expenditure Items

Audit verification of payment records revealed that various items amounting to Kshs.262,844,724 were posted to the wrong account items but Management did not provide approval for reallocations as required by the Section 154(2)(b) of the Public Finance Management Act, 2012.

In the circumstances, the classification and recording of the financial transactions could not be confirmed.

6. Unreconciled Bank Balances

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.1,489,166,265 as disclosed in Note 13 A and B to the financial statements. The amount relates to balances held in fifty (50) bank accounts operated by County Government of Nairobi City Executive during the year under review. However, forty (40) bank statements, bank certificates, bank reconciliation statements, and cash books were not provided for audit.

Further, review of the bank reconciliation statement for an account held at Development Bank revealed outstanding receipts in cash book not in bank statement and payments in bank not in cash book of Kshs.273,125,134 and Kshs.299,416,825 respectively. No explanation was provided to explain why receipts were not banked, and how expenditure was incurred without being accounted for in the cash book. It was also observed that the bank statement did not reflect bank charges despite the financial statements reflecting finance costs amounting Kshs.4,944,596.

In addition, the County held a special purpose account at the Central Bank of Kenya with a bank balance of Kshs.87,273,852 but had not been included in the cash and cash equivalents balance. Similarly, the following balances were not in agreement with the bank confirmation certificates provided for audit, as detailed in the table below;

Bank Account	Financial Statement (Kshs.)	Bank Certificate (Kshs.)	Variance (Kshs.)
Central Bank of Kenya-Development A/C	772,117	182,446	589,671

Bank Account	Financial Statement (Kshs.)	Bank Certificate (Kshs.)	Variance (Kshs.)
Central Bank of Kenya-KRB RMLF A/C	7,358,321	4,432,659	(147,074,338)
Central Bank of Kenya-Recurrent A/C	69	1,921,031	(1,920,962)
Central Bank of Kenya-Special Purpose A/C	44,358,139	0	44,358,139
Central Bank of Kenya-Revenue A/C	1,272,610,648	1,926,115,791	(653,505,143)
Cooperative Bank - University of Maryland Health Services	0	10,015,718	(10,015,718)

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.1,489,166,265 could not be confirmed.

7. Outstanding Imprests

The statement of assets and liabilities reflects accounts receivable – outstanding impressts amounting to Kshs.8,374,380, as disclosed in Note 14 to the financial statements. However, accounting documents for issued imprests which include the memorandum cash books were not provided for audit. In addition, although, the outstanding imprest amount was due and ought to have been surrendered on or before 30 June, 2022, Management did not explain why the imprest had not been surrendered on the due dates or recovery measures taken against holders of the outstanding imprests.

In the circumstances, the accuracy and completeness of the outstanding imprest balance of Kshs.8,374,380 could not be confirmed.

8. Accounts Payable – Deposits and Retentions

The statement of assets and liabilities reflects Nil balance on deposits and retentions. However, review records provided revealed that the County Government signed contracts with merchants for various projects totalling to Kshs.2,277,257, and paid an amount of Kshs.96,329,530 whose retention moneys totalling to Kshs.9,632,953 were deducted during the year under review. However, supporting records such as cash book, bank statement and deposit register were not provided for audit and the County did not reflect any deposits outstanding as at the end of the year. Further, Management paid retention monies to the contractors before the contracts were issued with certificates of practical completion and handing over reports.

In the circumstances, the accuracy and completeness of the deposits and retentions reflected in the financial statements, could not be confirmed.

9. Irregularities in Acquisition of Assets

9.1 Irregular Construction of a Perimeter Wall

During the year under review, Management paid an amount of Kshs.9,949,900 in respect of a contract awarded to a local limited company for construction of a perimeter wall and toilet at Riruta Health Centre where an amount of Kshs.4,000,002 had been paid leaving a balance of Kshs.5,949,898 outstanding. It was observed that the contract was executed by Nairobi City County Government on 26 June, 2020, certificate of interim completion was issued on 15 July, 2020 and inspection committee team appointed on 28 May, 2021. Following the transfer of health functions on 25 February, 2020 and upon establishment of the Nairobi Metropolitan Services (NMS) on 25 February, 2020, the County Executive effectively extinguished all powers it previously had with respect to running of the health function so transferred. The County Government performed health functions which had been transferred and therefore did not have the mandate to do so, and the expenditure was not supported by any relevant authority.

9.2 Uninstalled Apparel and Garment Making Equipment

Note 11 to the financial statements reflects acquisition of assets balance of Kshs.1,053,902,033 which includes purchase of office furniture and general equipment of Kshs.334,650,689. The office furniture and general equipment expenditure includes Kshs.28,357,500 in respect of a contract awarded to a local merchant to supply, deliver and install apparel and garment making equipment to the Jogoo Road. The machine was requested on 16 March, 2021, advertised in the Public Procurement Information Portal (PPIP) where three firms responded. The professional opinion was signed on 16 April, 2021 and a Local Purchase Order was raised on 5 April, 2021 before the professional opinion. The delivery note, invoice and stores receipt statements were dated 23 June, 2021. However, some members opened the tenders, evaluated them and inspected the goods said to have been delivered, contrary to Section 46(1) of the Public Procurement and Asset Disposal Act, 2015, which requires segregation of duties in the three parts of the procurement process. Further, physical inspection of the Market office in the month of September, 2022 revealed that the equipment had not been installed and were not in the store.

9.3 Irregularities in Procurement of Laptops

Note 11 to the financial statements reflects purchase of office furniture and general equipment of Kshs.334,650,689 which includes Kshs.18,432,620 paid to a local company for supply and delivery of 40 laptops, 40 printers, 40 photocopier machines and 80 computers to Waithaka and Kagundo Road Fire Stations. However, review of the procurement plan from Waithaka and Kagundo Road Fire Stations revealed that the department had requested for 5 photocopiers for each department totalling to ten (10) photocopiers and not forty (40) which were ordered through the LPO issued to the merchant, and those that were delivered. On 18 December, 2020 a memo was raised for the correction of the contract price stating that an oversight was noted and that the correct quantity required was 10 photocopiers. A committee was appointed on 17 December, 2020 and through their report advised the Management to return 14 photocopiers to the supplier leaving a balance of 26 photocopiers. The supplier was requested to collect 14 photocopiers which raises doubts on the transparency of the procurement process.

Three records had the following discrepancies; Local Purchase order indicated Kshs.21,887,120 inspection report indicated Kshs.20,022,720 while the stores receipt statement indicated Kshs.20,044,720.

Physical inspection carried out in the month of September, 2022 at Waithaka Station revealed that the equipment had not been delivered to the users. The local purchase order and delivery notes were not stamped by the general store’s management.

In the circumstances, the expenditure amounting to Kshs.18,432,620 paid under acquisition of assets could not be confirmed.

10. Unsupported Scholarship and Bursaries

Note 9 to the financial statements reflects other grants and payments totalling Kshs.799,090,730. Included in this amount is Kshs.641,260,040 in respect of scholarships and other educational benefits. The schedules provided by the Education Department of the County reflects payments of Kshs.433,760,040 and Kshs.207,500,000 for scholarship and other education benefits respectively totalling Kshs.641,260,040. However, Management did not provide adequate supporting documents such as acknowledgement from the school signed register by the beneficiaries as a proof that they received the scholarships complete information of the beneficiaries in the form of admission members, final primary school and approvals by the committee.

In the circumstances, the accuracy of the bursary and scholarship amounting to Kshs.641,260,040 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Government of Nairobi City Executive 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 audit 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.

Emphasis of Matter

Possible Loss of Funds due to Premature Termination of Contract

The County Government of Nairobi City (NCCG) had entered into a contract with National Bank of Kenya (NBK) for provision of automated revenue collection and value-added financial services through contract no. NCC/FIN&ECO/G-G/1/2018-2019 dated 10 June, 2019 to run for a period of five (5) years. This was to provide government revenue collection and management solutions and offer automated revenue collection services to manage service delivery, monitor and track revenue assets, monitor and track revenue collection activities, seal revenue leakages and enforce payment for services delivered.

Following the signing of deed of transfer of functions between the National Government and the County Government of the Nairobi City as per the gazette notice No.1609 of 25 February, 2020, the National Government was bestowed the responsibility of collecting and remitting all revenue accruing from the transferred functions. This led to the appointment of the Kenya Revenue Authority (KRA) as the principal agent for overall revenue collection.

Consequently, the Nairobi Metropolitan Services (NMS) engaged Kenya Revenue Authority (KRA) as an agent for the collection of the County revenue through a different platform, Nairobi Revenue Sure (NRS) at a cost which was not disclosed. This prompted the cancellation of the existing contract with the bank through letter dated 3 February, 2022 based on clause 16 of the contract.

On 24 February, 2022 National Bank of Kenya responded to the County indicating that they had invested heavily on the project through various channels which were still active including the mobile App, mobile short code service and service web portal which were still active. The Bank stated that it had supplied over 500 gadgets to various revenue staff members. The County had failed to pay the Bank a significant debt of Kshs.566,278,045, contrary to clause 16.4 of the agreement and the Bank demanded immediate payment of the debt together with damages which were to be determined, for breach of contract in relation to pre-mature termination. Management has therefore exposed the County Government to loss of funds premature termination of the contract.

My opinion is not modified on the effect of the above matter.

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 combined reflects final receipts budget and actual on comparable basis amounting to Kshs.39,627,536,000 and Kshs.28,209,671,039 respectively, resulting to an underfunding of Kshs.11,417,864,961 or 29% of the budget. Similarly, the County Executive incurred expenditure amounting to Kshs.27,643,066,558 against an approved budget of Kshs.39,627,536,000 resulting to an under-expenditure of Kshs.11,984,469,442 or 30% of the budget.

Although Management explained that the underperformance was a result of under collection of own generated revenue, measures on how the own generated revenue could be increased have not been articulated. Further, the underfunding and underperformance affected the implementation of planned activities and impacted negatively on service delivery to the public.

2. Unresolved Prior Year Matters

In the audit report of the previous year, several issues 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 has not resolved the issues or given any explanation for not complying with the provisions of the Public Sector Accounting Standards Board in relation to format and contents of its financial statements, and The National Treasury's Circular Ref: No. AG.4/16/3 Vol.1(11) dated 1 July, 2022.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, because of the significance of the matters discussed in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, based on the audit procedures performed, I confirm that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1.1 Pending Accounts Payable

1.1.1 Motor Vehicles

As disclosed in Note l on other important disclosures to the financial statements, pending accounts payable amounted Kshs.26,270,995,418 which includes supply of goods amount of Kshs.1,622,502,916, which further includes an amount of Kshs.146,020,847 incurred on procurement of twenty-three (23) motor vehicles from various private vendors, between 2014/2015 and 2021/2022 financial years. Management revealed that the log books for the vehicles were with the vendors and had not been transferred to the City County due to non-payment, the ownership of the vehicles could not be confirmed.

Further, out of the twenty-three (23) motor vehicles, seventeen (17) double cabin pickups which were procured from several dealers. However, physical verification of the vehicles revealed that eight (8) of the vehicles were grounded and not serviceable**,** two (2) vehicles were detained by the supplier, while one vehicle. The whereabout of an additional vehicle procured from a third private dealer was not known.

1.1.2 Legal Fees – Omitted Fee Note

The above balance includes pending bills totaling to Kshs.22,929,252,921 in respect of supply of services which constitutes a contingent liability of Kshs.21,210,002,361 for firms engaged by the County Executive to provide legal services which excludes contingency liabilities of Nairobi Metropolitan Services (NMS).

Further, review of sampled files revealed that most of the legal costs arose from negligence on the part of the County employees. This exposed the County to loss of public funds as evidenced by the fee notes issued to the County for various legal cases. A sample of seven (7) of the legal cases and the related observations are detailed below;

1.1.2.1 E 371 of 2020 - Over-Rated Fee Note

(i) Under Case No.E371 of 2020

the County Executive gave instructions to an advocate to defend the County in a consolidated matter seeking for nullification of Nairobi City County Assembly Appropriation Act, 2020/2021. The County sought the services who raised a fee note of Kshs.1,675,485,000. The County revised the amount to Kshs.1,175,153,451, out of which Kshs.55,000,000 was paid to the advocate in the year under review. However, review of the Advocates Remuneration Act, 2014 revealed that the advocate based his fee at a rate of 3% of the total budget value of Kshs.37,454,976,280 instead of the amount in dispute of Kshs.6,073,343,662.

(ii) Case No. ELC E011/2020

The matter relate to a dispute in relation to 3 parcels of land in Kariobangi No. 90, 78 and 86 measuring 2 acres each, valued at Kshs.120,000,000. The advocate forwarded a fee note of Kshs.40,000,000. However, recalculation of the fee as per the advocates rate indicates the fee should not have been more than Kshs.10,000,000, resulting to an excess charged fee amount of Kshs.30,000,000.

(iii) Under Case No. MISC 368 of 2016

Review of documents revealed that the matter related to a dispute in relation to 40.4 ha of land with an estimated value of Kshs.300,000,000. However, advocate forwarded a fee note amount of Kshs.348,510,400 which was higher than the value of the land.

(iv) E021 of 2021

Review of documents Case No.E021 of 2021 revealed legal suit NBI ELRC Petition No. E021 of 2021, relating to a petition against appointment of Liquor Board Members. Had the Legal Department of the City County advised the Governor and Management in respect of appointment of the Board of Members, the City County would not have lost an amount totalling to Kshs.24,000,000, related to the legal fees charged, on account of the petition.

(v) HCCCELC NO. 83/16

Review of documents legal suit No. HCCCELC NO. 83/16 revealed that this legal matter related to a dispute arising from double allocation of the same piece of land in Langata to Sidcup Enterprises and John Serewa, by the City County. However, the legal charges could have been avoided, had the City County Management in charge of land allocation ensured that the piece of land was allocation to only one person.

(iv) Review of documents provided revealed legal suit No. HC PET 179 of 2019 which related to a case between NCCE and Martin Shikuku, where land was invaded, subdivide and sold to third parties, whereby the City County was sued. The advocate handling this legal matter raised a fee note of Kshs.55,691,850, a cost which would have been avoided, had the City County Management not engaged in abuse of office which resulted to invasion, subdivision and sale of the land.

(vi) Review of documents provided revealed legal suit HCCC No. 1885 of 1992, which was partly paid as at the 2021/2022 financial year. This legal matter relates to a case where an officer of the City County allocated land with an estimated value of Kshs.23,816,088 to the complainant and reallocated the same parcel to a different person thereafter. The total cost relating to this legal matter, including penalties of 18% p.a of Kshs.23,816,088 charged from 1 October 1980 to date, claims of Kshs.1,702,959,645 and architect, quantity surveyor and valuers fees of Kshs.1,045,384 were charged to the County's budget. The total cost amounting to Kshs.1,704,005,029, is a cost which could have been avoided had the officer concerned not engaged in abuse of office.

It was noted that the City County Executive was exposed to a total potential loss of Kshs.3,383,218,730 in relation to legal services sought from private advocates, whose legal fees were in excess of the legal fees set out in the Advocates Act.

Further, Management did not provide evidence of any communication with the National Treasury, Attorney General and CECM Finance in relation to the legal expenses, contrary to Article 156 of the Constitution of Kenya which designates the Attorney General as the Principal Legal Adviser to the Government. The County Government also acted contrary to Section 17 of the Office of the Attorney General Act No.19 of 2012 which provides that no Ministry or Department shall engage the services of a consultant to render any legal services relating to the functions of the Attorney General without the approval of the Attorney General. Similarly, there was no criteria to classify cases that could be handled by the internal advocates and those that required external advocates, exposing the County to unnecessary extra-legal costs. In addition, the legal department did not provide an effective risk management program to enable Management to avoid or minimize to a reasonable level, matters with high negative impact, which could expose the County to huge legal costs.

1.1.3 Discrepancy Between Advocates Fees and Reviewed Assessments

Cap 16 of the Advocates Act, 2014 provides a basis for remuneration for legal services. However, review of twenty-three (23) sampled fee notes for various cases provided for audit revealed significant discrepancies between the advocates fee of Kshs.3,428,367,610 and reviewed assessments by Management of Kshs.1,809,879,304 resulting to variance of Kshs.1,618,488,306**.** No explanation was provided for the significant discrepancies despite the fact that legal charges are guided by the standard remuneration order for legal fees.

There was no evidence of any measures taken by Management towards ensuring that any legal charges to the County is based on the standard remuneration order for advocates. In addition, the County did not have legal fees payment policy, a gap which exposes the County to possible exploitation by the advocates.

1.2 Pending Staff Payables

As disclosed in Note 2 on the important disclosures to the financial statements, pending staff payables amounted to Kshs.222,411,928 as at 30 June, 2022 which includes a balance of Kshs.8,794,324 in respect of interest charged on delayed payments due to Local Authorities Provident Fund (LAPFUND). This was contrary to Section 53A(1) of the Retirement Benefits Act, 2012, which requires remission of pension contributions within the statutory deadlines.

Further, analytical review of the payroll for the year under review revealed that an amount of Kshs.471,115,744 in respect of employer's contributions to the staff retirement benefits scheme was not remitted to the Pension Scheme contrary to Section D.39 (1) of the Public Service Human Resource Policies 2016, which provides that the Government will contribute 15% of an employee's monthly basic salary, drawn from the 75 Consolidated Funds, towards the employee pension while the employee will contribute 7.5% of his monthly basic salary towards the Scheme. In addition, these pension payables were not included in the pending bills and therefore the accuracy of the pending bills could not be confirmed.

Review of documents provided for audit also revealed that deductions totalling to Kshs.28,843,248 in respect of various contributions made by the staff members during the year under review were deferred. No explanation was provided for failure to remit the deductions. Similarly, Management had not remitted contributions amounting to Kshs.34,061,222, for fifty-eight (58) retirees for a period of thirty-five (35) months spread between 2013 to June 2019. These payables were also not included in the pending bills and therefore the accuracy of the pending bills could not be confirmed.

1.3 Other Pending Payables

As disclosed in Note 2 on the important disclosures to the financial statements, other pending payables amounted to Kshs.72,878,965,572 which includes amounts due to National Government Entities of Kshs.986,734,337 in respect of Pay As You Earn (PAYE) of Kshs.762,382,808, Value Added Tax (VAT) of Kshs.118,553,546, and penalties of Kshs.105,797,983. The amount of PAYE and VAT were deducted but not remitted to the Kenya Revenue Authority (KRA), contrary to Section 37(1) of the Income Tax Act which requires an employer paying emoluments to an employee to deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

Further, the balance includes an amount of Kshs.71,609,409,396 due to third parties which includes amounts owed to LAPFUND of Kshs.28,499,298,304 which further includes an amount of Kshs.24,991,527,302 in respect of principal and interest. The penalties is charged at a rate of 3% per month on 15th of every month and additional 36% which was compounded annually, and had accumulated from the financial year, 2011. Comparison between the LAPFUND and the Defunct Local Authority balance and The National Treasury financial records revealed total outstanding balances of Kshs.12,166,812,887 and Kshs.1,331,028,494, while the financial statements reflect a balance of Kshs.15,266,472,473 and Kshs.13,232,825,831, resulting to unreconciled variances of Kshs.3,099,659,586 and Kshs.11,901,797,337 respectively.

In addition, included in the pending bills amount of Kshs.71,609,409,396 are historical Government loans of Kshs.15,328,285,000 and Kshs.3,815,640,000 from Kenya Commercial Bank (KCB). These loans, which date back to the year 1970s were issued to finance the Umoja II Housing Project and water infrastructure. However, Management did not have any contractual records with details of when the loans were taken, the principal amount and the interest rate applicable. Further, the KCB loan of Kshs.3,815,640,000 differs with the KCB bank loan statement of Kshs.4,504,199,426, resulting to an unreconciled variance of Kshs.688,559,426.

Review of records held at LAPTRUST reflected an outstanding balance of Kshs.23,031,271,451 in respect of principal and interest penalty amounts of Kshs.16,339,508,857 and Kshs.6,691,762,594 respectively. The interest was charged at a rate of 1.25% per month (15% p.a) compounded.

Had the County remitted the respective deductions by due deadlines since the financial year 2011, savings of Kshs.41,331,036,159 would have been made. There was no evidence of measures taken by Management to negotiate with the respective institutions.

In view of the discrepancies, the legality, completeness and accuracy of disclosure made of pending bills balance of Kshs.99,372,372,918 could not be confirmed.

2. Failure to Implement an Effective Risk Management Programme

The Nairobi City County, through the procurement plan for the year under review, approved a budget of Kshs.19,900,000 for an automated case management system under the legal department. However, physical verification within the department in September, 2022 revealed that although very crucial and sensitive records were maintained by the department, the records were managed manually, which poses a risk of loss of important documents. Further, the department did not have mechanisms to enable identification, assessment and management of legal risks, a situation which has exposed the County to significant legal costs. This was contrary to Section 31 of The County Attorney Act, 2016 which provides that all entities should have automated their records through an Information Management system by September 2019.

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

3. Non-Compliance with Office of the County Attorney Act, 2020

As disclosed in Note 7 to the financial statement, the statement of receipts and payments reflects use of goods and services amount of Kshs.7,642,844,133 which includes other creditors totalling to Kshs.1,862,737,482 relating to payment of pending bills. The other creditors include an amount of Kshs.1,302,758,364 of pending legal dues, fees, arbitration and charges paid during the year under review. However, the approved final budget expenditure was Kshs.820,191,479 against actual amount of Kshs.505,363,387 allocated resulting to an unexplained over-expenditure of Kshs.797,394,977 whose approval for reallocation was not provided for audit.

Further, as a control measure and legal requirement, the Office of the County Attorney Act, 2020 requires the County Attorney to prepare and submit annual reports to the Governor and the County Assembly, with details outlined in Section 28 of the Act.

However, there was no evidence that the reports were submitted as required, since the reports were not provided for audit review. It was not possible to confirm the number of cases which had been ruled in favor of or against the County. The County may also not efficiently plan and budget for legal costs.

In addition, review of the payroll records and staff establishment revealed that the County has a fully-fledged litigation department. However, it was not clear why the County was not defended by the legal officers in some of the legal cases. Review of the staff list provided for audit revealed that the department had six (6) legal counsels against a proposed number of thirty-five (35). This resulted to inefficient service delivery and hiring of expensive external legal services.

Section 17(1) of the Office of the County Attorney Act, 2020 provides that there shall be a County Solicitor who shall be competitively recruited and appointed by the County Public Service Board. However, the officer currently holding the position is on acting capacity and therefore cannot be held liable for any omission or commission as an Accounting Officer of the County Attorney. No explanation was received from the County Public Service Board for not appointing the Solicitor as per the Act.

It was also observed that, most of the legal suits relate to irregular allocation of parcels of land. The advocates engaged by the County base their fees on the market value of the land. Although the County has a department with qualified valuers, there was no evidence of professional advice to the legal department in respect of the accurate market prices, as documentary evidence to this effect was not provided for audit review**.**

In view of the anomalies, it was not possible to confirm the value for money delivered from legal expenditure amount totalling to Kshs.797,394,977 and Management was in breach of the law.

4. Irregular Payment to Council of Governors

During the year under review, an amount of Kshs.5,020,000 paid to the Council of Governors with respect to exhibition booths for sixteen (16) participants, at a rate of Kshs.50,000 each for the period between 3 May to 5 May, 2021 in Makueni County. However, approval for the expenditure item in the budget and evidence of attendance were not provided for audit. This is contrary to Section 37(b) of the Intergovernmental Relations Act, 2012 which provides that the operational expenses of the Council of Governors shall be provided for in the annual estimates of revenue and expenditure of the National Government.

The above payment was irregular and Management was in breach of law.

5. Development (EED) Centers Supply and Delivery of Trapezium Tables and Chairs to Early Childhood

During the year under review**,** Management paid an amount of Kshs.18,942,100 in respect of a contract awarded to a local company for the supply and delivery of trapezium tables and chairs to Early Childhood Development (ECD) Centers vide contract number NCC/EDU/SPORTS/T/344/2018-2019 of 7 October 2019, through open tender. However, there was no segregation of duties for the opening and evaluation panel since the same committee members opened and evaluated the tender documents. This was contrary to Section 46(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that an Accounting Officer shall ensure that an ad hoc evaluation committee is established in accordance with this Act and Regulations made thereunder and from within the members of staff, with the relevant expertise.

Further, review of the list of bidders who responded revealed that thirteen (13) bidders went through preliminary evaluation. However, the checklist provided for audit revealed that bidder 1 who had a quote of Kshs.11,637,500 being the lowest most responsive was disqualified because he was a resident of a neighboring County. Had he been considered then the County could have saved an amount of Kshs.7,304,600. Bidder number 3 was disqualified because he did not issue a certified copy of the Bill of Quantities from the lawyer, which however, was ticked in the checklist as having been issued. This casts doubt on the transparency of the procurement process for the supply of furniture under this contract.

In the circumstances, it was not possible to confirm value for money and transparency in respect of purchase of the trapezium tables and chairs worth Kshs.18,942,100.

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

During the year, Management paid an amount of Kshs.5,969,000 to a local consultant for consultancy services on disaster management and coordination. The completion period was three (3) months. However, no evidence was provided to confirm the scope of services for the consultancy. The same officers who opened the tenders also evaluated them, contrary to Section 46(1) of the Public Procurement and Asset Disposal Act, 2015, which requires segregation of duties between the members of the tender opening committee and those of the tender evaluation committee.

Further, Management did not provide a professional opinion from the head of procurement as required by Section 84(1) and (3) of the Public Procurement and Asset Disposal Act, 2015. There were no letters to unsuccessful bidders as required by Section 87(3) of the Public Procurement and Asset Disposal Act, 2015. As at the time of audit there was no disaster management and coordination policy in place.

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

7. Loss of Funds on Provision of Internet Services and Wireless LAN

Further, Management paid an amount of Kshs.46,496,259 which was paid to a supplier for provision of internet services and wireless Local Area Network (LAN) infrastructure to the County Executive for a period of 2 years. However, review of the contract documents revealed that two (2) bidders responded and the successful bidder was awarded the contract at a bid sum of Kshs.46,496,259. The evaluation committee was appointed vide memo ref: NCC/SCM/JK/047/2021-2022 dated 30 August, 2021 and the evaluation was carried out whose report indicated that both firms passed the preliminary and technical evaluation, with the successful bidder scoring 100%. However, the evaluation committee recommended an award to the highest evaluated bidder for a period of two years. The head of procurement approved the recommendation of the evaluation committee to award the tender to the successful bidder at a contract sum of Kshs.46,496,259. Further, it was established that an arithmetical error, which denied the lowest bidder marks, was omitted.

Whereas the law requires that the lowest most responsive bidder be awarded the contract, Management awarded the contract to the highest ranked bidder resulting to a loss of Kshs.12,017,507 which could have been saved and used for other purposes.

Physical inspection of two (2) sampled departments revealed that most of the offices including fourth floor - Human Resource Development department and some legal department offices did not have WIFI.

In view of the anomalies, it was not possible to confirm that value for money was achieved on the expenditure of Kshs.46,496,259.

8. Lack of Transparency in Procurement of Construction Material

Note 7 to the financial statements reflects other operating expenses amount of Kshs.2,268,832,045 which includes expenditure of Kshs.9,213,780 paid to two bidders, for Kshs.2,390,000 and Kshs.6,823,780. However, review of the documents provided revealed that Management appointed the same members to serve in both opening and evaluation committee for the tenders, contrary to Section 46(4) of the Public Procurement and Disposal Act, 2015 which requires segregation of duties between the members of the tender opening committee and those of the tender evaluation committee.

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

9. Failure to Establish Nairobi City Disaster and Emergency Management Council

Note 9 to the financial statements reflects other grants and payments totalling Kshs.799,090,730 which includes emergency relief and refugee assistance-civil contingency reserves of Kshs.157,830,690. However, review of the department's records revealed that Management did not establish a Disaster and Emergency Management Council contrary to Section 4(a)-(f) of the Nairobi City Disaster and Emergency Management Act, 2015 which provides that there should be a Disaster and Emergency Management Council in the County which should be responsible for setting relevant policies, approve plans and oversee the implementation of risk reduction, preparedness, response and recovery activities by all County agencies and other agencies performing roles related to disaster management.

Further, the County did not have clear guidelines on what constitutes disaster, emergency pandemic and which sector should coordinate this incase of any emergency. Absence of a Disaster and Emergency Council may result in uncoordinated, poorly planned, lack of accountability and inadequate facilities which may result to loss of funds.

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

10. Leasing of Medical Equipment Not Accounted For

Note 9 of other important disclosures to the financial statements reflects an amount of Kshs.153,297,872 (2020-2021: Kshs.132,021,177) in respect of leasing of medical equipment deducted at source. Records provided for audit revealed that the equipment were distributed to Mama Lucy Kibaki Hospital and Mbagathi Hospital. Physical verification carried out on 9 November, 2022 revealed that the two hospitals had records indicating receipt and physical existence of the equipment. However, the basis for the deduction of Kshs.153,297,872 under the equipment in the year under review was not provided.

In the circumstances, it was not possible to confirm the value for money from the leased equipment at a cost of Kshs.153,297,872.

11. Delay in Installation and Commissioning of Machines

11.1 Printing Press

Review of records provided revealed that, the County procured four (4) state-of-the-art printing press machines at a cost of Kshs.51,297,261 in the 2016/2017 financial year. Physical verification carried out revealed that although the machines were delivered, three of the machines; perfect binder Kshs.10,025,743, offset printing machine Kshs.14,410,000 and Gullotine machine Kshs.7,575,286, had not been installed five (5) years after their procurement. Management's explanation was that the machines' height was more than the height of ceiling of offices in Nairobi City Hall and as a result they could not fit, putting into question if feasibility study and user requisition and specifications had been carried out before initiation of the purchase.

11.2 Weights and Measures Equipment

During the year under review, Management paid an amount of Kshs.17,206,000 in respect of supply, installation and commissioning of weights and measures equipment at the new Ukulima Market. The installation works commenced on 31 May, 2019 for a period of three (3) months. The scope of works included foundation civil works costing, weigh office building works, supply of weighbridge deck and sensors, CCTV system set up costing, equipment installation and calibration, four (4) dormant platforms and ten (10) electronic counter scales.

Physical inspection of the market carried out in the month of November, 2022 revealed that machines with a cost of Kshs.7,696,000 comprising of equipment installation and calibration, 4 dormant platforms and 10 electronic counter scales had not been installed.

Further, it was observed that the partial machines which have been installed did not have enough space for a vehicle to negotiate corners, since the entry point to the market was occupied by a private developer. Further, the market has never been put into use, and this exposed the already completed works to vandalism and deterioration.

In addition, whereas the works had been supervised by Nairobi Metropolitan Services the payment for the works was made by the Nairobi City County Executive. No evidence was provided to confirm that NMS had authorized the County to pay.

In the circumstances, it was not possible to confirm value for money of expenditure totalling to Kshs.17,206,000.

12. Irregularities in Construction and Civil Works

12.1 Incomplete Projects

The statement of receipts and payments reflects an amount of Kshs.1,053,902,033 in respect of acquisition of assets and as disclosed in Note 11 of the financial statements. The amount includes Kshs.110,392,197 and Kshs.51,520,178 in respect of construction of buildings and refurbishment of buildings respectively out of which Kshs.30,378,478 relates to construction and rehabilitation of local halls across the County namely Pumwani Kayole, Lumumba, Bahati, Joseph Kangethe, Mugomoini and Waithaka halls.

However, physical inspection revealed that there were no water tanks which was in the bill of quantity, there was one manhole yet the bill of quantity had two manholes, roofing works were done poorly, tilling were done poorly and one room had no tiles, the buildings were not marked, the washrooms were not connected to the main sewer and the contractor had closed the social halls and were not accessible.

12.2 Procurement of Transferred Services

Review of the deed of transfer of services to Nairobi Metropolitan Services revealed that on 25 February, 2020, the County Government unequivocally transferred four of its functions to the National Government, which included County Planning and Development Services and County Public Work. However, the County Management continued to execute some of these services through procurement of construction and civil works, by initiating one hundred and fifty-five (155) Ward projects with a total cost of Kshs.2,299,277,257. The department did not have the technical capacity to supervise the works and they relied on engineers from the Nairobi Metropolitan Services for technical services, which resulted to inefficient and ineffective service delivery.

12.3 Construction and Civil Works - Delayed Projects

Note 11 to the financial statements discloses construction and civil works expenditure of Kshs.467,486,554 which includes an amount of Kshs.96,329,530 in respect of eight (8) projects paid during the year under review. Physical verification carried out in the month of November, 2022 revealed that although the projects related to the financial year 2019/2020 and were to take a period of six (6) months, they had not been completed as at the time of inspection.

12.3.1 Contract for Non-Existent Road

Management entered into a contract with a local contractor for rehabilitation of selected roads and drainage in Mlango Kubwa for a period of six (6) months vide contract No. NCC/WDP/T/042/2019-2020 at a contract sum of Kshs.13,795,798, which was ongoing according to the project status. However, physical inspection and interview of a sample of residents in the month of November, 2022 revealed that the project did not exist.

12.3.2 Anomalies in Implementation of Road Projects

Physical inspection of a sample of sixteen (16) road projects with a total cost of Kshs.241,780,160 which includes seven (7) fully paid with a total cost of Kshs.88,225,979. However, one (1) road project in Kilimani Ward with a cost of Kshs.13,055,183 under the County Government had a signpost belonging to Nairobi Metropolitan Service (NMS). Similarly, two (2) projects with a cost of Kshs.27,190,272, with poor drainage and workmanship, had Members of County Assembly's (MCA) signposts four (4) projects with a cost of Kshs.47,980,525 had no signage. This was contrary to Section 131 of the contract documents which states that the Contractor shall provide and erect publicity signs on the site as directed.

In addition,, the following anomalies were observed in relation to contracts for works and services;

(i) A Contract No. NCC/WDF/044/2018/2019 at a price of Kshs.16,146,040 was awarded to a contractor for grading, gravelling and drainage improvement for seven (7) feeder roads in Githurai. Out of the seven roads, only one road was done while six (6) projects had construction materials dumped and the contractor was not on site revealed that the works had stalled for a long period. Efforts to reach the Engineer at NMS was not fruitful. It was established that the contractor had been paid an amount of Kshs.15,052,087. No explanation was provided for payment of services not rendered.

(ii) Contract No. NCC/WDF/T/167/2021/2022 at a contract sum of Kshs.13,802,132 in respect of construction of Mariru Park Road in Mwiki Ward had been paid an amount of Kshs.11,361,510. However, the works were incomplete and the contractor was not on site.

(iii) Contract No. NCC/WDP/T/064/2019-2020 totalling to Kshs.13,650,880 in respect of construction of Madoya Road, located between Outreach Church Ngei and Madoya Area in Huruma Ward had been paid an amount of Kshs.9,076,160. However, the road and the drainage had poor workmanship.

(iv) Contract No. NCC/WDF/T/167/2021-2022 totalling to Kshs.13,972,200 in respect of rehabilitation of Kapsoit Road and the access road from Sony House off Kangundo Road in Umoja I was paid Kshs.12,488,768. However, the contractor had not done the works on culverts.

12.3.3 Lack of Extension for Delayed Projects

Review of records provided for audit revealed that seventy-seven (77) projects with contractual price of Kshs.1,102,108,473 and certified certificates of Kshs.781,316,859 had delayed completion. There was no evidence that extension of the contract period was sought for the delayed projects, contrary to Regulation 132(3) of the Public Procurement and Asset Disposal Regulations, 2015, which requires such request for extension of time be made and granted for the delayed projects, some of which were started in the 2018/2019 financial year.

The performance bonds had expired, and no explanation was obtained from the Management on measures undertaken to ensure that the completed works were not exposed to further deterioration and vandalism and management was also in breach of the law.

12.4 Projects Procured but Not Implemented

Review of Ward records revealed that Management signed contracts with different merchants for rehabilitation of sixty-eight (68) roads in the County, two (2) of which were to be implemented in the 2018/2019, fourteen (14) in 2019/2020 and fifty-two (52) in 2021/2022 financial years. The total cost of the projects was Kshs.1,062,016,963. However, physical inspection carried out revealed that the sixty-eight (68) projects had not been implemented and the contract period had elapsed as per the contract documents. No explanation was provided by Management for not implementing the projects or terminating the related contracts. Further, there was no explanation for commencing new projects before completing the ongoing projects.

Further, review of the financial evaluation reports revealed that the contractors had the financial capability to handle such huge projects. There was no explanation why these contractors who, according to the financial evaluation reports had the financial capacity to implement the huge projects, did not complete the projects as set out in the respective contracts. There was also no evidence of measures taken by Management to ensure that the projects were completed.

ln addition, Management did not maintain a risk management and maintenance of risks register, contrary to Section 9.9 of the Public Procurement and Disposal General Manual, 2009 which provides that the greatest risks which must be mitigated in the management of procurement contracts.

There was also no evidence of payment of interest and damages by the bidders for delayed works, contrary to Section 140 of the Public Procurement and Asset Disposal Act, 2015 which provides interest on overdue amounts and liquidated damages.

In the circumstances, it was not possible to confirm value for money for the total expenditure amount by Kshs.1,062,016,963.

13. Irregularities in Fleet Management

Annex 6 to the financial statements reflects non-current assets with net book value of Kshs.26,866,439,852 as at 30 June, 2022, which includes transport equipment totalling to Kshs.1,154,951,310. However, Management did not provide a motor vehicle register indicating the financier, engine number, chassis number, tag number, year of purchase, payment voucher number and the acquisition value. Further, various anomalies were observed on management of the fleet as highlighted below;

(i) Records provided for audit revealed that the County had five hundred and eighty - nine (589) fleet of motor equipment which comprised of forty-one (41) equipment, one hundred and twenty (120) heavy vehicles, three hundred and sixty-seven (367) light vehicles and sixty-one (61) motorcycles. However, the Management did not provide the log books for the motor vehicles for verification. In addition, review of records for the mechanical department provided for audit revealed existence of a fleet of three hundred and twenty- eight (328) moving equipment resulting to inconsistency in the two sets of records**.**

Further, it was observed that a new motorcycle was grounded. However, the motorcycle was not reflected in any of the two lists provided for audit.

(ii) Review of the staff list maintained by the Human Resource Department for the month of June, 2022 revealed that the City County has a total of one hundred and five (105) drivers with a fleet of vehicles of five hundred and eighty-nine (589). This mismatch between the number of drivers and size of the fleet of vehicles indicates inefficient management of the transport system, arising from procurement of unutilized fleet of vehicles which continue to incur repairs and maintenance costs, which could have been avoided if the County Management maintained an optimal size of motor vehicle fleet. No explanation was provided for maintenance of a motor vehicle fleet which was in excess of drivers.

In view of the avoidable repairs and maintenance costs incurred on the excess motor vehicle fleet, it was not possible to confirm that public resources were managed in an efficient and effective way.

(iii) Physical verification carried out on a sample of the three hundred and sixty-eight (368) of the moving equipment on15 September, 2022 revealed that one hundred and fifty-two (152) vehicles were grounded**.** No explanation was provided for failure to dispose the equipment to avoid further vandalism and costs. Further, eleven (11) vehicles were grounded as a result of accidents on various dates. However, no police abstract or claims for compensation from the insurance companies was provided for audit.

(iv) The County Executive Management opted to repair and maintain its vehicles in private garages despite owning its garage. However, justification was not provided for audit review. A total of twenty-seven (27) vehicles were taken to the County's Central Garage for repairs more than two years ago whose exact timelines was not ascertained due to lack of track records from the department. The vehicles have not been serviced by the Management and no explanation was provided for failure to repair them.

(v) A wheel loader was repaired. However, due non-payment, the equipment is currently at a private garage. No explanation was provided by the Management for failure to pay for the repairs, therefore exposing the wheel loader to vandalism and accrual of demurrage costs.

(vi) A grader was taken to a private garage and a backhoe excavator was taken to the NMS Garage were not insurance to be able to operate. Management did not give reasons for failure to obtain insurance cover for the same. The idle equipment are exposed to vandalism and deny opportunity for service delivery to the public.

(vii) Three (3) Nissan Single Cabin Pickup motor vehicles were impounded by the supplier due to non-payment of the purchase cost of the motor vehicles. A visit to a local garage revealed that the garage was repairing 12 County vehicles which had been brought at different times. A long outstanding bill of unknown amount by the County was the hindrance for release of the repaired vehicles. Further, physical verification at another garage revealed that, the garage was repairing 10 County vehicles which had similarly been brought at different times. Three of these vehicles were procured in the year 2016 at a cost of Kshs.9,000,000 and taken to the garage in 2016 for engine overhaul. To date the vehicles have not been released to the County due to non-payment. In addition, ten (10) motor vehicles were grounded another depot for more than two years. However, the reason for the grounding of the vehicles was not provided.

(viii) An Insurance firm was paid an amount of Kshs.132,877,237 during the year under review for provision of insurance cover County motor vehicles. However, it was not possible to confirm the value for money on the expenditure as Management did not provide supporting documents in respect of insurance compensation for the County's fleet of vehicles. In addition, twelve (12) vehicles of the County were repaired at various private garages but had not been released to the County because the insurance company had not compensated the mechanics. There was no evidence of measures taken by Management to obtain the serviced vehicles.

Further, fourteen (14) vehicles were at various private garages, repaired but impounded for lack of payments. However, these vehicles were not insured and therefore no compensation was obtained from insurance companies for the repair works done**.** Detailed review of records revealed that the vehicles were not included among those benefiting from the insurance cover. No explanation was provided by the Management on why the vehicles were not covered or compensated by insurance companies. The vehicles held by the garages for non-payment were not available to facilitate movement within the County and this may have affected efficiency of service delivery to the people of the City County.

(ix) Six (6) vehicles were found at a yard undergoing repair. However, there was no approval from Management for the repairs. In addition, it was also not possible to confirm the period the vehicles had been in the yard due to lack of supporting documents in relation to the duration. This contravened Regulation 132(1) of the of the Public Finance Management (County Governments) Regulations, 2015, which states that the Accounting Officer of a County Government entity shall take full responsibility and ensure that proper control systems exist for assets and that — (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse; (b) movement and conditions of assets can be tracked.

(x) A visit to a repair yard indicated that a vehicle was at the repair yard. However, no Local Service Order (LSO) was issued from the County with details of the repairs required on the vehicle. The vehicle had been vandalized with number plates, battery and side mirrors missing. Further, it was also noted that the insurance for the vehicles had explained and been vandalized.

(xi) A visit to a garage revealed that, the garage was repairing six (6) County vehicles which had been brought at different times and had been at the garage for over one year. Management explained that the County had an unpaid bill of Kshs.1,613,244 which had affected performance of the contractor. It was further observed that the framework contract between the County and garage had expired. However, the garage continued to provide services without a renewed contract.

(xii) Review of a list of fire engines provided by County officials at the Headquarters revealed that the County had a fleet of seventy-one (71) fire engines. However, the analysis and status report on the firefighting equipment was not provided for audit review. As a result, it was not possible to confirm the status of the fleet.

In addition, physical verification of some equipment at various garages revealed that a motor vehicle was impounded at a garage since 2018 for non-payment of Kshs.206,929 while two other cars had been impounded since 2016 for non-payment amount of Kshs.105,400 and Kshs.301,636 respectively. It is not clear why the outstanding amounts remained unpaid to enable release of the vehicles considering that the amounts were not significant.

(xiii) Review of motor vehicle records provided for audit revealed that some vehicles were bearing the green number plates of the defunct City Council, while others had GK number plates and others had normal private number plates. The lack of uniformity in registration of County's motor vehicles may result to challenges in identification of the vehicles. This contravened Regulation 132(1) of the Public Finance Management (County Governments) Regulations, 2015 which states that the Accounting Officer of a County Government entity shall take full responsibility and ensure that proper control systems exist for assets and that — (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse of assets.

In the circumstances, it was not possible to confirm the existence, ownership and security of the County equipment, motor vehicles and other valuable assets.

14. Failure to Implement Donor Funded Project

Note 13 A to the financial statements reflects cash and cash equivalent balance of Kshs.1,489,166,265 which includes a balance of Kshs.22,683,840 in respect of the Agricultural Sector Development Support Programme II (ASDSP II). The Programme was a continuity of ASDSP I which was concluded in June, 2017 and whose aim was to contribute to transformation of crop, livestock and fishery production on commercially oriented enterprises, which was to ensure sustainability of food and nutrition security for the 47 Counties. This programme was financed by the Government of Sweden, Kenyan Government and other Development Partners for a five-year period between 1 July, 2017 and June, 2022. Information provided for audit indicated that the programme did not commence due to non-remittance of funds from the Ministry of Agriculture and Livestock, and the County Government.

Review of the operations of the ASDSP II programme Special Purpose Account (SPA) held at a local Bank revealed that the project had an opening balance of Kshs.8,051,855 as at 1 July, 2021 and closing balance of Kshs.1,986,313. The payment vouchers provided for audit revealed that an expenditure of Kshs.5,965,542 which included Kshs.4,950,902 and Kshs.933,900 were spent on pre-feasibility and appraisal studies, extended concept innovation and travelling allowances. However, the feasibility reports were not provided for audit. In addition, the operational account bank statement revealed that additional amount of Kshs.22,683,840 from the Central Bank was credited in the account on 1 August, 2022.

There was no documentary evidence that the project was extended after expiry of its terms and conditions on 30 June, 2022.

In the circumstances, it was not possible to confirm the status of and value for money on the project due to lack of documents on the project status and disbursement of the Agricultural Sector Development Support Programme II (ASDSPII).

15. Non-Compliance with Law on Submission of Financial Statements

The County Management did not submit financial statements for three (3) of its funds audit namely, Disaster and Emergency Fund, County Lottery Distribution Trust Fund and Ward Development Fund. This was contrary to Section 47(1) of the Public Audit Act, 2015 which states that the financial statements required under the Constitution, the Public Finance Management Act, 2012 and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

In the circumstances, Management was in breach of law.

16. Non-Compliance with Third Rules in Basis Salary

During the year under review, the City County Executive made deductions and recoveries from its employees' salaries in excess of two thirds of their basic pay. In some cases, employees remained with negative net pay.

Management indicated that this was a result of implementation of half salary due to impress recovery, contributory pension scheme for devolved employees, overpayment recovery due to absenteeism and termination of COVID-19 tax relief. However, this salary below one-third status may lead the affected staff members to engage in undesirable activities resulting in loss of funds by the County. The affected staff members may face pecuniary embarrassment arising from their inability to meet their personal obligations.

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

17. Non-Compliance with the National Cohesion and Integration Act, 2008

The Nairobi City County Executive had employees from one ethnic community being more than 44% cent of the workforce contrary to Section 7(1) of National Cohesion and Integration Act, 2008, which provides that all public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff. Further, Section 7(2) of the Act states that no public establishment shall have more than one third of its employees from the same ethnic community.

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

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, because of the significance of the matters discussed in the Basis for Adverse Opinion and the Basis for conclusion on Effectiveness of Internal Controls, Risk Management and Governance sections of my report, based on the audit procedures performed, I confirm that internal controls, risk management and governance were not effective.

Basis for Conclusion

1. Lack of an Adequate Assets Register

A summary of non-current asset register at Annex 6 to the financial statements reflects property, plant and equipment with a net book value of Kshs.26,866,439,852 as at

30 June, 2022, which is made up of ten (10) classes of non-current assets. This balance excludes an unknown value of land which is owned by the City County Government, which casts doubt on completeness of the County land reflected in the financial statements. Further, Management did not provide an analysis of each class of asset in support of the balances reflected in the summary of non-current assets register. The County did not provide an updated fixed asset register in support of the balances in the financial statements.

In the absence of an updated assets register, it was not possible confirm the effectiveness of controls over fixed assets, status, accuracy, completeness and their existence.

2. Lack of Approved Information Technology Security Policy and Disaster Recovery Plan

Review of the Information and Communication Technology (ICT) of the County revealed that there was no Information Technology Policy, Data Recovery Plan (DRP) and IT Security Policy. The policies described above are vital for effective and efficient management of the County's IT resources, with the aim of ensuring that data stored in its systems does not lose its integrity and is readily available when required. In addition, the County had not installed antivirus programs in its systems and did not have mechanisms for ensuring that there is up-to-date security on all systems software.

Further, the County did not have an IT Steering Committee, which is critical in providing oversight and formulating policies to ensure provision of IT services by the IT Department, to assist in the achievement of organizational objectives in an efficient, effective and economical manner.

Similarly, the County did not have a disaster recovery plan and had not implemented a backup and retention strategy. Also, the County's backups were not stored in a secure offsite storage facility. Further, formal documented and tested emergency procedures were not provided for audit. Management had no back up and retention strategy to ensure continuity of operations in case there was a system failure and did not conduct regular review and risk assessment of its operational areas.

In the absence of a comprehensive approved policy framework, the system users were not guided on the rules and procedures to follow in order to minimize risk of errors or loss of data confidentiality, integrity and availability. It was also not possible to confirm the recoverability of data in the event of a system crush.

3. Weakness in the Internal Controls Systems

The County Management did not have a records management policy which specifies standardization practices, guidelines on management of records at the registry and automation of records systems which has resulted to misplacement and loss of important records. Further, Management had over fifteen (15) policies at draft level. It was not clear why the policies were not finalized, approved and implemented.

In the circumstances, the existence of an effective check and balance could not be confirmed.

4. Undocumented Program Change Management

The audit revealed that the County had not documented and approved processes to manage upgrades made to all financial and performance information systems. This implies that changes to the financial system could occur without the completion of formal change request documentation.

In the absence of a sound and approved framework, there were no rules and procedure guidelines for users of the system, which ensures minimization of risk of errors and fraud, confidentiality, integrity and availability of data.

5. Weakness in Human Resources Management

5.1 Unreconciled Number of Employees

Records maintained by the County revealed that the County had a total of four thousand eight hundred and nighty seven (4,897) employees. However, this number differed with the Payroll Registration for the month of September which reflected five thousand eight hundred and eighty-four (5,884), resulting to a variance of nine hundred and eighty-seven (987) employees between the two set of records.

Management explained that the number reflected in its records was based on the County employed staff members and that the additional staff members were those seconded from the National Government. However, a list of the additional nine hundred and eighty-seven (987) staff members seconded to the County from the National Government was not provided for audit.

In the absence of the list of additional staff, it was not possible to confirm that the nine hundred and eighty-seven (987) staff members were part of the approved staff establishment for the County.

5.2 Unconfirmed Human Resource Skills

Review staff members list for the month of June, 2022 revealed that some staff members were promoted to senior positions in the County. However, their educational or professional skills in the staff list maintained at the Human Resource data records did not match the requirements for the respective positions. This may have resulted either from lack of training to the staff members or failure to update their personal files data in the payroll. The Management did not provide evidence to confirm the academic, professional and experience required for the two thousand one hundred and seventy-eight (2,178) staff positions in the County.

5.3 Learning, Development and Skills Gap

However, the Management did not provide evidence of training programmes for the drivers and mechanical technicians. Further, it was observed that the Fleet Management Department did not have records for all the drivers in respect of skills and competence and also did not have an approved policy framework to guide the operations of its fleet management, including acquisition and disposal of County fleet and allocation of drivers and vehicles to senior officers.

5.4 Avoidable Medical Claims

Review of records maintained by the County revealed that despite having signed a contract with National Hospital Insurance Fund (NHIF) for a medical cover for its staff members, the premiums were not remitted to the Fund on time which resulted to discontinued services. Following the absence of the medical cover, the staff members paid their medical expenses and claimed from the County amounts of Kshs.22,563,844. Had the Management remitted to the NHIF the premiums as per the terms of the contract for staff medical cover, the claims amounting to Kshs.22,563,844 would have been saved for utilization on other purposes.

In the circumstances, existence of an efficient and effective system on use of public funds could not be confirmed.

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 control, 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 controls 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 controls would not necessarily disclose all matters in the internal controls 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 controls 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 County Executive's 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 controls 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
AUDITOR-GENERAL

Nairobi

20 April, 2023