

AGENDA
REGULAR MEETING OF THE CITY COUNCIL
480 S. ALLISON PARKWAY
CITY OF LAKEWOOD, COLORADO
HYBRID MEETING
MARCH 24, 2025
7:00 PM

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: [Lakewood.org/CouncilVideos](https://lakewood.org/CouncilVideos)

Lakewood Speaks: Lakewoodspeaks.org

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How to Connect to Provide Public Comment: Online participants may post written comments of any length to LakewoodSpeaks.org, an online forum for public comments.

ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – STATEMENT OF CONFLICT OF INTEREST

ITEM 5 – PROCLAMATION CELEBRATING NOWRUZ DAY

ITEM 6 – INITIAL PUBLIC COMMENT

Anyone who would like to address the Council on any matter other than an agenda item will be given the opportunity. Speakers should limit their comments to three minutes.

**ITEM 7 – R-2025-12 – ADOPTING THE CONNECT. DISCOVER. CREATE
LAKEWOOD PUBLIC ART PLAN**

**CONSENT AGENDA
ORDINANCES ON FIRST READING**

- ITEM 8 – R-2025-13 – APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE COLFAX TRANSPORTATION SAFETY PROJECT**
- ITEM 9 – R-2025-14 – APPOINTING MEMBERS OF THE VICTIM ASSISTANCE COMPENSATION BOARD**
- ITEM 10 – R-2024-15 – REAPPOINTING MEMBERS OF THE LAKEWOOD ADVISORY COMMISSION**
- ITEM 11 – R-2025-16 – REAPPOINTING A MEMBER OF THE LAKEWOOD HISTORIC PRESERVATION COMMISSION**
- ITEM 12 – R-2025-17 – APPOINTING AND REAPPOINTING MEMBERS OF THE LAKEWOOD PLANNING COMMISSION**
- ITEM 13 – O-2025-12 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTEREST IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF THE W 1ST AVENUE AND DEPEW STREET LOCAL DRAINAGE PROJECT AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND CONDEMNATION OF REAL PROPERTY INTERESTS (SUBJECT TO FURTHER COUNCIL APPROVAL)**
- ITEM 14 – O-2025-13 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTEREST IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF THE W 3RD AVENUE LOCAL DRAINAGE PROJECT AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND CONDEMNATION OF REAL PROPERTY INTERESTS (SUBJECT TO FURTHER COUNCIL APPROVAL)**

END OF CONSENT AGENDA

**ORDINANCES ON SECOND READING
AND PUBLIC HEARINGS**

-
- ITEM 15 – O-2025-9 – REPEALING AND REPLACING TITLE 4 OF THE LAKEWOOD MUNICIPAL CODE REGARDING THE PERSONNEL POLICIES CODE FOR THE CITY OF LAKEWOOD, COLORADO**
- ITEM 16 – O-2025-10 – AUTHORIZING AN INTERNAL LOAN AGREEMENT IN THE FORM OF A TRANSFER OF GENERAL FUNDS IN THE AMOUNT OF \$19,682,727 TO THE STORMWATER ENTERPRISE FUND AND**

AUTHORIZING THE EXPENDITURE OF THESE FUNDS BY THE
DIVISION OF PUBLIC WORKS VIA THE MILE HIGH FLOOD DISTRICT
FOR MAJOR DRAINAGEWAY IMPROVEMENTS OF THE NORTH DRY
GULCH AREA OF LAKEWOOD

**ITEM 17 – O-2025-11 – AMENDING TITLE 10 OF THE MUNICIPAL CODE TO ALIGN
WITH RECENT STATE LEGISLATION ON USE OF ELECTRONIC
MOBILE DEVICES AND CHILD RESTRAINT SYSTEMS**

ITEM 18 – GENERAL PUBLIC COMMENT

Anyone who would like to address the Council on any matter other than an agenda item
will be given the opportunity. Speakers should limit their comments to three minutes.

ITEM 19 – GENERAL BUSINESS

ITEM 20 – MAYOR AND CITY COUNCIL REPORTS

A. COUNCIL MEMBERS BY WARD

B. MAYOR

ITEM 21 – ADJOURNMENT

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 5

To: Mayor and City Council

From:

Subject:

SUMMARY STATEMENT:

BACKGROUND INFORMATION:

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: None

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: None

ATTACHMENTS: 1. Nowruz Day Proclamation

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

P R O C L A M A T I O N

NOWRUZ DAY

WHEREAS, Nowruz, meaning “New Day,” marks the vernal equinox and the beginning of spring, and is about celebrating renewal, connecting with loved ones and honoring nature; and

WHEREAS, Nowruz, is celebrated as the beginning of the new year by more than 300 million people all around the world and has been celebrated for over 3,000 years in the Middle East, Central Asia, and other regions; and

WHEREAS, Today Nowruz connects people of different ethnicities, cultures and faiths, affirming a life in harmony with nature and an awareness of the natural cycle of life; and

WHEREAS, Nowruz is an opportunity to break down walls and connect with one another in the name of our shared values and is a reminder to honor the past while looking forward to a brighter future; and

WHEREAS, Nowruz is the messenger of better, brighter days ahead and a reminder of what connects as a community; let us join Colorado’s vibrant Iranian community and other Nowruz revelers in contemplating nature’s power of renewal and rejuvenation, and wish them a prosperous new year ahead.

NOW, THEREFORE, on behalf of the City Council and the people of the City of Lakewood, I, Wendi Strom, Mayor of the City of Lakewood, Colorado, by virtue of the authority vested in me, do hereby proclaim:

MARCH 24, 2025, AS NOWRUZ DAY IN THE CITY OF LAKEWOOD

GIVEN under my hand and Seal of the
City of Lakewood, this 24th day of
March 2025.

Wendi Strom, Mayor

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 6

To: Mayor and City Council

From:

Subject:

SUMMARY STATEMENT:

BACKGROUND INFORMATION:

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: None

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: None

ATTACHMENTS: None

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 7

To: Mayor and City Council
From: Traci Wieland, Director of Community Resources
Subject: **Resolution for the Connect. Discover. Create. Lakewood Public Art Plan**

SUMMARY STATEMENT: The Community Resources Department respectfully requests City Council adoption of the Connect. Discover. Create. Lakewood Public Art Plan as an inspiring and aspirational guide for the future of public art in Lakewood, following a 20-month community-inspired planning process. The draft plan development encompasses an extensive planning process, including public artful community engagements, stakeholder meetings, pop-up events, benchmarking and condition assessments, and valuable community input. The plan sets forth priority focus areas in the form of Core Concepts that will guide recommendations for the next ten years. View the draft plan and appendices at LakewoodTogether.org/PublicArt. In addition, a Lakewood Speaks presentation is provided at LakewoodSpeaks.org.

BACKGROUND INFORMATION: Public Art is a key component of city services, and it plays a unique role in that it is free and accessible for all. Lakewood's Public Art Program began as a community-led initiative and, since its inception in 1995, more than 60 permanent works of art have been installed across the city. In 2013, the Community Resources Heritage, Culture and the Arts (HCA) division and the Comprehensive Planning department, through a community input process, developed the first Public Art Master Plan. Since then, the Public Art Program in Lakewood has matured into a rich community amenity.

Over the last 10 years, the 2013 Public Art Master Plan goals have been achieved, and highlights include an iconic artwork on the Civic Center Plaza, the 50th Anniversary artwork at Addenbrooke Park and temporary projects like LandMark. In addition, critical community partnerships have flourished, and the public art collection has grown.

The City of Lakewood has a strong commitment to providing high-quality community arts programs for its residents. Lakewood's current strategic plan, completed in April 2023, **Imagine Tomorrow! Arts, parks and recreation for all** set a priority to update the 2013 Public Art Master Plan under goal one: "Serve the diverse needs of the community by balancing unique arts, parks and recreation programming, services and events with the demand for high-quality core services." Another priority identifies opportunities to create distinctive and playful gathering spaces under goal two: "Respond to community needs and priorities by maximizing the efficiency of existing arts, parks and recreation facilities and resources through proactive asset maintenance and stewardship". Finally, the plan identifies conservation of art and cultural resources as a priority under goal five: "Responsibly conserve vibrant arts, parks and recreational resources through preservation, sustainable practices and environmental stewardship."

In July 2023, through a competitive bid process, the public art consulting firm ThereSquared LLC was selected to assist the Community Resources Heritage, Culture and the Arts (HCA) division and the Comprehensive Planning department in launching the Public Art Plan.

PLAN ELEMENTS:

Community Engagement:

The public input process involved a series of engagement activities to ensure the community's voice directly

influenced the Plan. Residents and stakeholders were engaged through a variety of methods including:

1. An interactive project website, LakewoodTogether.org/PublicArt, provides project background, quick polls, a mapping exercise, project timeline, compilation of existing resources, information about upcoming events, and other ways to get involved.
2. Community-facing “Artful Engagement” events at Cider Days (October 2023), Earth Day (April 2024), and Inspire Arts Lakewood (June 2024).
3. A bilingual survey of community feedback.
4. Targeted surveys to the Mayor and City Council, Business Improvement Districts, and Arts District.
5. An interactive mapping poster engagement activity within the Lakewood Cultural Center’s Corner Gallery and the HUB at 40 West Arts.
6. Stakeholder interviews and focus group meetings with community organizations, artists, and developers.
7. Meetings and work sessions with the Internal Advisory Group of department leaders.
8. Presentations and feedback from the Planning Commission.

Key Findings:

The planning process revealed that community support is significant for a continued and reinvigorated Public Art Program in Lakewood and indicated the potential for public art to grow and positively impact Lakewood’s neighborhoods. In addition, 85% of survey respondents stated it was very important or somewhat important for their family to experience the arts. Survey results further indicated the community wants more art added around the city in gathering spaces, in more diverse locations and at gateways entering the city. When asked to share a few words about the future of the public art program in Lakewood, the community said: Be different, celebrate diverse identities and artists, and prioritize public art because it is key to making the city attractive to residents, visitors and businesses. When asked in what ways public art adds value, the top responses were: Adds color and vibrancy to our city, provides free and accessible artwork, and creates a sense of place and makes public spaces more memorable.

Vision, Mission, and Guiding Principles:

Through the research and engagement process, themes about Lakewood’s Public Art Program and future vision emerged. Updates to the program’s vision, mission and guiding principles reflect the aspirations the community holds for public art. The Vision and Mission confirm the community’s desire for public art to be woven into the fabric of the community, creating a vibrant destination through inclusive, diverse, and sustainable practices that inspire connection. Ultimately, the Guiding Principles, developed through the engagement process, are the foundation of the Core Concepts and Key Strategies of the public art plan.

Core Concepts:

Core Concept A: CREATE TRANSFORMATIVE ART DESTINATIONS THROUGHOUT LAKEWOOD:

A desire exists to support and maintain Lakewood’s existing art destinations, to bring art to underserved areas (“art deserts”) and to achieve a more equitable and balanced artistic landscape across Lakewood. Arts partners are creating an impact through art and placemaking in areas such as the 40 West Arts District and along the Alameda corridor and the city can continue to collaborate with these partners to support these efforts, but additionally, outside these partner-focused art hubs, the community desires art in more diverse locations.

- Four key strategies will be employed to achieve this goal: expanding artwork across Lakewood, creating art oases, seeking placemaking opportunities and encouraging developers to include art.
- This Core Concept is shared with the 40 West ArtLine Framework Plan, bringing the two plans into alignment on multiple facets.

Core Concept B: **UNIFY AND GUIDE PUBLIC ART AND PLACEMAKING INITIATIVES:**

Currently, Public Art is being developed by the City and strategic partners in the community. To infuse more public art throughout Lakewood, a more unified vision and cohesive approach is needed. The City can generate and support projects internally, as well as provide leadership, guidance, advocacy, and potential cost-sharing to priority projects by community partners, developers, businesses, and other stakeholders.

- Strategies for achieving this goal are: Unify and guide by creating a cohesive strategy for implementing public art and forge impactful alliances by proactively engaging and expanding strategic partnerships.

Core Concept C: **DIVERSIFY LAKEWOOD’S ARTISTIC LANDSCAPE:**

There is room for diversification in Lakewood’s collection, not only in public art locations, but also in the diversity of artists represented and the variety of styles, scales, and artistic mediums within the collection. Working with a more diverse group of artists can expand the overall vision of the collection and create a collection that is reflective of the entire Lakewood community.

- Accomplishing this core concept will mean tackling strategies aimed at expanding the variety of art represented within Lakewood’s public art collection and providing access and opportunities for diverse artist participation within the Public Art Program for a broad array of emerging, local, and regional artists.
- The Core Concept aligns with the 2023 Imagine Tomorrow Plan’s focus on equity and access as a factor in future planning for public art.

Core Concept D: **ENGAGE COMMUNITY THROUGH PUBLIC ART:**

Lakewood residents view public art as a source of community pride. Sharing in the process and benefits of building the public art collection and providing accessible interaction beyond static viewing can expand the community’s engagement and awareness of public art and inspire a deeper sense of community ownership.

- Ensuring opportunities for diverse community participation with the public art committee, selection panels, and community engagement activities is a key strategy. Creating more digital resources related to the arts in Lakewood, activating public art sites through lectures and programs, and continuing to inform and share successes with the community will increase residents’ connection to public art.

Plan Recommendations:

The recommendations outlined in this section of the Lakewood Public Art Plan will help guide the program and build capacity towards the aspirational Core Concepts, which were developed with extensive stakeholder input and engagement. The research and feedback for the Public Art Plan indicated community and internal support for continued implementation and maintenance of public art throughout Lakewood.

To continue to build upon and implement the vision of the Lakewood Public Art Plan and to maintain a sustainable collection for the future, the plan recommends:

1. Explore Sustainable Funding for the Public Art Program
2. Identify Public Art Support Resources
3. Develop Streamlined and Clear Internal Guidelines and Procedures
4. Maintain the Existing Collection
5. Develop a “Priority Public Art Project List” and Create Yearly Work Plan

BUDGETARY IMPACTS: The Connect. Discover. Create. Lakewood Public Art Plan process informs the

next 10 years of Lakewood’s investment in public art and outlines community-based priorities for implementation. To fulfill the plan’s mission, it is important to carefully balance resources and maintenance needs with future project planning. The City will evaluate project priorities, consider grant and project partner opportunities, and weigh community input.

Adoption of the Connect. Discover. Create. Lakewood Public Art Plan demonstrates approval of plan recommendations and does not directly have a budgetary impact. The plan was funded through the Heritage, Culture and the Arts Division Revenue Fund and approved through the City’s 2023-2024 Budget. The 2024-2025 Budget includes funding allocated for the implementation of artwork as part of the Colfax Safety improvement project, the aesthetic package for the 6th and Wadsworth project, the Art on the Common rotating sculpture program, the partnership project with Public Works to beautify electric boxes with art wraps in each of the five wards of the city, and various other small temporary public art projects.

STAFF RECOMMENDATIONS: Staff recommend approval of Resolution R-2025-12 to allow staff to implement the community’s vision for public art in Lakewood and begin implementation of plan recommendations.

ALTERNATIVES: City Council could deny approval or request further investigation of plan outcomes. The contract with ThereSquared will expire at the end of May 2025.

PUBLIC OUTREACH: Throughout the 20-month planning process, the community, internal and external stakeholders, developers, and artists were broadly engaged to create an aspirational and visionary plan that provides diverse and equitable access to public art for the entire community. The value of public art to Lakewood residents and visitors was evident from the positive feedback received through the public engagement process. The team received approximately 1,500 points of engagement with citizens through surveys, meetings, artful engagements and online resources. By the conclusion of the planning process, the project team had received over 2,300 visits to the project page. To learn more about the planning process, including project background, quick polls, a mapping exercise, project timeline, compilation of existing resources, and other ways the community could participate, visit LakewoodTogether.org/PublicArt.

NEXT STEPS: Upon adoption, The Connect. Discover. Create. Lakewood Public Art Plan will provide strong guidance to support future public art implementation and meet the enthusiastic citizen support for public art in their community. In addition, the plan recommends strategies that can be implemented in the near-term as well as recommendations that require further investigation.

ATTACHMENTS:

1. Resolution R-2025-12
2. Connect. Discover. Create Lakewood Public Art Plan_Final

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

A RESOLUTION

ADOPTING THE CONNECT. DISCOVER. CREATE LAKEWOOD PUBLIC ART PLAN

WHEREAS, the City of Lakewood (the City) Community Resources Heritage, Culture and the Arts Division completed the “Connect. Discover. Create. Lakewood Public Art Plan” (Public Art Plan), that, if adopted, would supersede the City’s 2013 Public Art Master Plan;

WHEREAS, the Public Art Plan aligns with the Lakewood Comprehensive Plan, the Imagine Tomorrow Arts, Parks, and Recreation Master Plan, and the 40 West Artline: A Framework for Moving Forward;

WHEREAS, the City’s previous Public Art Master Plan was adopted as an amendment to the City’s Comprehensive Plan in accordance with City Charter 9.1(a) and 17.14.2 of the Zoning Ordinance;

WHEREAS, City staff asks City Council to adopt the Public Art Plan as a standalone Citywide plan;

WHEREAS, approximately one thousand five hundred (1,500) City residents and stakeholders engaged in the Public Art Plan process and their contributions revealed the community is supportive of the Public Art Plan and its potential to enhance and positively impact the City’s neighborhoods;

WHEREAS, the City Council hereby finds and determines that adopting the Public Art Plan is in the best interests of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The City Council hereby adopts the Connect. Discover. Create. Lakewood Public Art Plan to supersede the City’s 2013 Public Art Master Plan.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney



CONNECT. DISCOVER. CREATE.

LAKEWOOD

PUBLIC ART PLAN

MARCH 2025

Acknowledgements

CITY COUNCIL MEMBERS

Wendi Strom, *Mayor*
Jeslin Shahrezaei, *Ward 1*
Glenda Sinks, *Ward 1*
Isabel Cruz, *Ward 2*
Sophie Mayott-Guerrero, *Ward 2*
Roger Low, *Ward 3*
David Rein, *Ward 4*
Jacob LaBure, *Ward 5*
Paula Nystrom, *Ward 5*

Thank you to the thousands of residents who provided feedback and engaged in development of this plan, including key conversations with:

COMMUNITY ADVISORS

Evan Beloni, *public artist*
Liz Black, *40 West Arts District*
Rachel Griffin, *Alameda Connects and ACBID*
Clare Johnson, *Alameda Connects and ACBID*
Tiimo Mang, *public artist*
Collin Parson, *public artist*
Tom Quinn, *Alameda Connects and ACBID*
Ratha Sok, *public artist*

And, to City staff who contributed to the Public Art Plan:

CITY LEADERSHIP

Kathy Hodgson, *City Manager*
Ben Goldstein, *Deputy City Manager*
Holly Bjorklund, *Chief Financial Officer*
Max E. Kirschbaum, *Public Works Director*
Travis Parker, *Chief of Sustainability and Community Development*
Katie Faltys, *Interim Economic Development Director*
Traci Wieland, *Community Resources Director*

STAFF ADVISORS

Brad Chronowski, *Landscape Architect*
Kyle Duley, *Parks Supervisor*
Nestor Fedak, *Placemaking Installations Coordinator*
Caitlin Hasenbalg Long, *Senior Sustainability Planner*
Jim Haselgren, *Parks Manager*
Ray Hill, *City Engineer – Capital Projects and Utilities*
Kara Mueller, *Senior Planner*
Stacie Oulton, *Public Information Manager*
Brea Pafford, *Senior Planner*
Amber Thill, *Operations Manager*
Roger Wadnal, *Comprehensive Planning Manager*

PROJECT TEAM

Project Manager: Laine Godsey, *Arts Programming Curator*
Alexis Moore, *Principal Planner*
Michelle Nierling, *Heritage Culture and the Arts Manager*
Allysen Santilli, *Marketing and Promotions Supervisor*

And finally, we appreciate the expert guidance from our consultants.

CONSULTANTS

Kendall L. Peterson, *ThereSquared*
Jill Stilwell, *Stilwell Cultural Consulting*
Rachel Cain, *More Sky Less Ceiling*
Design by Kristin Lathrop, *Loah Design*

Cover Photography: Spoor of the Anthropocene (2021) by Jason Mehl, LandMark Temporary Installation, Forsberg Iron Spring Park (Photo credit Anna Kaye)



*Shelter (2020) by Eileen Roscina,
LandMark Temporary Installation, Kendrick Lake Park*

TO THE LAKEWOOD COMMUNITY:

Arts and culture are embedded in and integral to the Lakewood community. Opportunities to discover and participate in the arts can be found throughout the city including parks, cultural facilities, and community gathering spaces. Lakewood is home to many talented artists, performers, vital cultural organizations, and diverse community celebrations. The role of the City's Heritage, Culture and Arts division (HCA) is to support and celebrate the broad and vibrant arts and culture sector. HCA is committed to providing opportunities for the Lakewood community to engage in exceptional arts and cultural experiences and this plan helps us achieve that goal.

Public Art is a key component of city services. Public art serves a unique role in that it is free and accessible for all. It helps create memorable spaces, celebrates our cultural heritage and history, generates conversations, and connects communities. Public art provides a platform for artist development and creative expression, inspires engaging experiences and contributes to the local economy.

Lakewood's Public Art Program began as a community-led initiative and since its inception in 1995, more than 60 permanent works of art have been installed across the city. Temporary art installations have been exhibited through the Art on the Commons program and projects like LandMark and the permanent, four-mile 40W ArtLine experience enriches the West Colfax corridor for residents and businesses. Lakewood continues to recognize the value of public art for the community and remains committed to stewarding the public art collection for generations to come.

As our original 2013 Public Art Plan was coming to an end, we embarked on updating this essential document. Nearly 1,500 community voices shared their aspirations for public art in our community and helped inform the new plan. The **Connect. Discover. Create. Lakewood Public Art Plan** will guide the Public Art Program and prioritize activities for the next ten years. It articulates the vision, core concepts, and key strategies for enriching the public art experience for our residents and visitors.

A special thank you to our Lakewood community for your continued support and enthusiasm for art and culture in Lakewood.

Michelle Nierling
Heritage, Culture and the Arts Manager



Albedo (2021) by Mia Mulvey, LandMark Temporary Installation, Coyote Gulch Park

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Echoes and Reflections: Lakewood's 50th Anniversary (2019) by Collin Parson, Addenbrooke Park

Introduction

Located in Jefferson County, the City of Lakewood is a regional destination for arts, parks, and recreation with magnificent views of the Rocky Mountain foothills. Once a dispersed rural farming community, Lakewood is now the fifth-most populous city in Colorado and connected to Denver via light rail. The Civic Center/Belmar Park area is rich in historic and cultural resources, housing the Lakewood Cultural Center and Heritage Lakewood Belmar Park. Downtown Lakewood and the Alameda Corridor Business Improvement District (ACBID) are hubs of cultural activity featuring art installations, Arts on Belmar galleries, and Discover Alameda, an arts and history trail experience. The 40 West Arts District, a Certified Creative District along the Lakewood West Colfax BID, is another node of cultural activity with dozens of art installations, artists, venues, galleries, and the 40 West ArtLine, Lakewood's four-mile-long award-winning free walking and biking arts path.



SURVEY SAYS:

Lakewood stands out for its location and its outdoor amenities!

According to a 2023 survey of Lakewood residents,

- Proximity to Denver and the Mountains
- Parks and Open Spaces
- Views and Location
- Arts and Culture Opportunities

ranked as the top four things that make Lakewood unique and different.

PUBLIC ART IN LAKEWOOD

In 1994, a group of passionate members of the non-profit Lakewood Arts Council began enriching Lakewood's cultural vibrancy through the installation of public artwork around the city. Throughout the following 17 years, artworks accumulated and momentum for establishing a Public Art Program grew. Integrating public art in parks and public spaces was identified as a recommendation in the 2008 Community Resources Master Plan. In 2013, the City commissioned and adopted Lakewood's first Public Art Master Plan. The City also developed internal Guidelines and Procedures to help implement the Plan, began to build a formal public art program and purchased public art using an informal 1% for art philosophy.

Since its inception, the Public Art Program in Lakewood has matured into a rich community amenity. Public art is initiated and implemented through a multifaceted and collaborative nature, across many departments within the City and through community partners. Partnerships with organizations like Alameda Corridor Business Improvement District (ACBID) and 40 West Arts have flourished and provided robust collaborative opportunities for public art around Lakewood. Within the City, the Heritage, Culture, and the Arts (HCA) Division of the Community Resources Department oversees coordination, development, and implementation of many public art projects City-wide along with oversight of the permanent collection. However, projects emanate from a variety of sources including:

- Community Resources Department (representing arts, parks, and recreation)
- Planning and private development, voluntarily, or through the Enhanced Development Menu, or other zoning regulations
- The 40 West ArtLine Framework Plan and Design Standards & Guidelines
- City Council
- Public Works
- Economic Development

Artworks throughout the city range from temporary community-based projects to iconic sculptures.



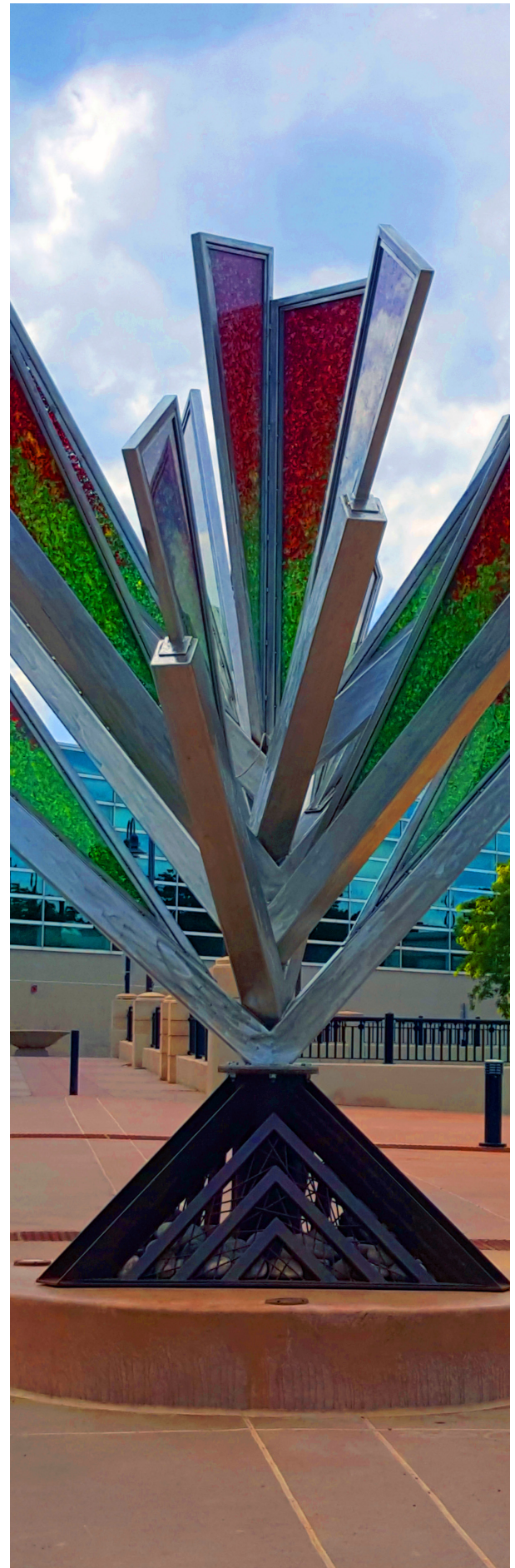
Joyful Dancing (2016) by Kevin Robb, Roundabout North of Belmar Library

Over the last 10 years, the 2013 Public Art Plan's goals have been achieved and some highlights include:

- Iconic artwork on the Plaza
- 50th Anniversary artwork at Addenbrooke Park
- Lakewood Public Art Committee formed
- Temporary projects like LandMark have added versatility to the program
- The collection has grown to more than 60 works of art
- The 40 West ArtLine has proven to be an important community connector
- Partnerships with community organizations like the Alameda Corridor BID and the Lakewood West Colfax BID have flourished

Since 2014, the Public Art Program had been voluntarily funded through the City's capital improvement project funds. Utilizing this consistent funding, along with other funding sources such as general fund budget exceptions, partnerships and federal grants, the last decade has seen many successful public art projects, from "Dance of the Indian Paintbrush" at the Civic Center Plaza to the 50th Anniversary installation, "Echoes and Reflections" at Addenbrooke Park and has engaged more than 250 local artists in temporary and permanent public art projects. The 40 West ArtLine, funded through a National Endowment for the Arts Our Town Grant in 2018, added 16 permanent public art installations to the City's collection, along with many temporary installations and placemaking elements. During budget challenges related to the pandemic of the early 2020's, voluntary contributions to the program were withdrawn.

In 2023, the City embarked upon this plan update titled, Connect. Discover. Create. Lakewood Public Art Plan. This visionary plan builds on the accomplishments of the previous plan and sets a course for the future of the Public Art Program. The planning process revealed that community support abounds for a continued, more diverse and reinvigorated Public Art Program in Lakewood. Updates to Lakewood's Public Art Program vision, mission and guiding principles reflect the aspirations of the community for public art. Four Core Concepts with key strategies serve as a roadmap, steering the Public Art Program for the next 10 years. This plan includes recommendations for sustained success of the Public Art Program in Lakewood.



Dance of the Indian Paintbrush (2015) by Tim Upham, Civic Center Plaza

Vision and Mission

VISION

Public Art is visible from the moment you enter Lakewood, woven into the fabric of the community, creating a vibrant destination, unique sense of place and source of pride for residents and visitors alike.

MISSION

The Lakewood Public Art Program engages and builds community through inclusive, diverse, and sustainable public art that inspires opportunities for discovery, fosters connection, and creates welcoming and memorable places.



Pollinator Path (2021) designed and led by Charlotte Ricker with volunteers, 40 West Arts District

Guiding Principles

The Public Art Program Guiding Principles reflect the interests and expectations of the community, best practices within the field, and ensures alignment with other City of Lakewood key values and efforts.

Access: The Public Art Program provides artwork that is easily accessible for the whole community to enjoy and interact with for free.

Variety: The Public Art Program strives to install a range of different types of artworks to add variety, color, and vibrancy to the city.

Diverse Locations: The Public Art Program strives to add artwork and create memorable experiences throughout all of Lakewood, including gathering spaces, parks, trailheads, neighborhoods, and areas without art.

Quality: The Public Art Program will foster artistic excellence and creativity in artwork and art experiences.

Sustainability: The Public Art Program will be a sustainable, reliable program for the public to enjoy through ongoing investment, sustainable materials, and proper collection care and maintenance.

Inclusivity: The Public Art Program actively seeks out and invites diverse participation for its Public Art Committee, selection panels, engagement activities, artists, and variety of artworks.

Engagement: The Public Art Program will engage our community and local artists with public art and demonstrate the many benefits of art for our community.

Lakewood Public Art: Assessment and Accomplishments

Currently, Lakewood boasts a public art collection of roughly 60 works of permanent art, including pieces created through the ArtLine partnership with the 40 West Arts District. Despite the interruption of the Covid Pandemic from 2020-2022, approximately 26 works of art were installed from 2013-2023, since the first Public Art Master Plan was adopted. Lakewood's collection is widely distributed geographically, predominantly in parks and recreation areas in Lakewood, with larger clusters of artworks in the ArtLine area and the Civic Center/Alameda Corridor. The existing collection is predominantly bronze and painted metal sculptures. The majority of the artists represented in the collection are local to Colorado.

PROGRAM HIGHLIGHTS AND ACCOMPLISHMENTS SINCE 2013:

The 2013 Public Art Master Plan established a series of goals and objectives for the Public Art Program. Highlights of accomplishments made towards the goals for that plan include:

- The Public Art Program established administrative policies and guidelines for public art.
- The program continued to see innovative opportunities for temporary, loaned and touring art as well as permanent works for the ArtLine, LandMark, and 50th Anniversary.
- The City and the Public Art Program have actively supported and partnered to help the 40 West Arts District and the ArtLine to become a unique cultural area for the city.
- The program has grown since 2013 and moved beyond traditional bronzes.
- The program identified and utilized funding mechanisms for public art including:
 - A voluntary and informal 1% contribution for art with capital projects (discontinued during Covid).
 - Grants for new artwork, including the Our Town grant that launched the ArtLine.
 - Collaboration with community partners like ACBID and 40 West Arts to develop new public art projects.
- The "Enhanced Development Menu" and other standards in the Lakewood Zoning Ordinance and the ArtLine Design Standards & Guidelines were created to encourage, and in some cases along the ArtLine require, public art in private development.



Have you viewed/ noticed/enjoyed public art in Lakewood?

85% replied "Yes," they viewed/noticed or enjoyed public art.

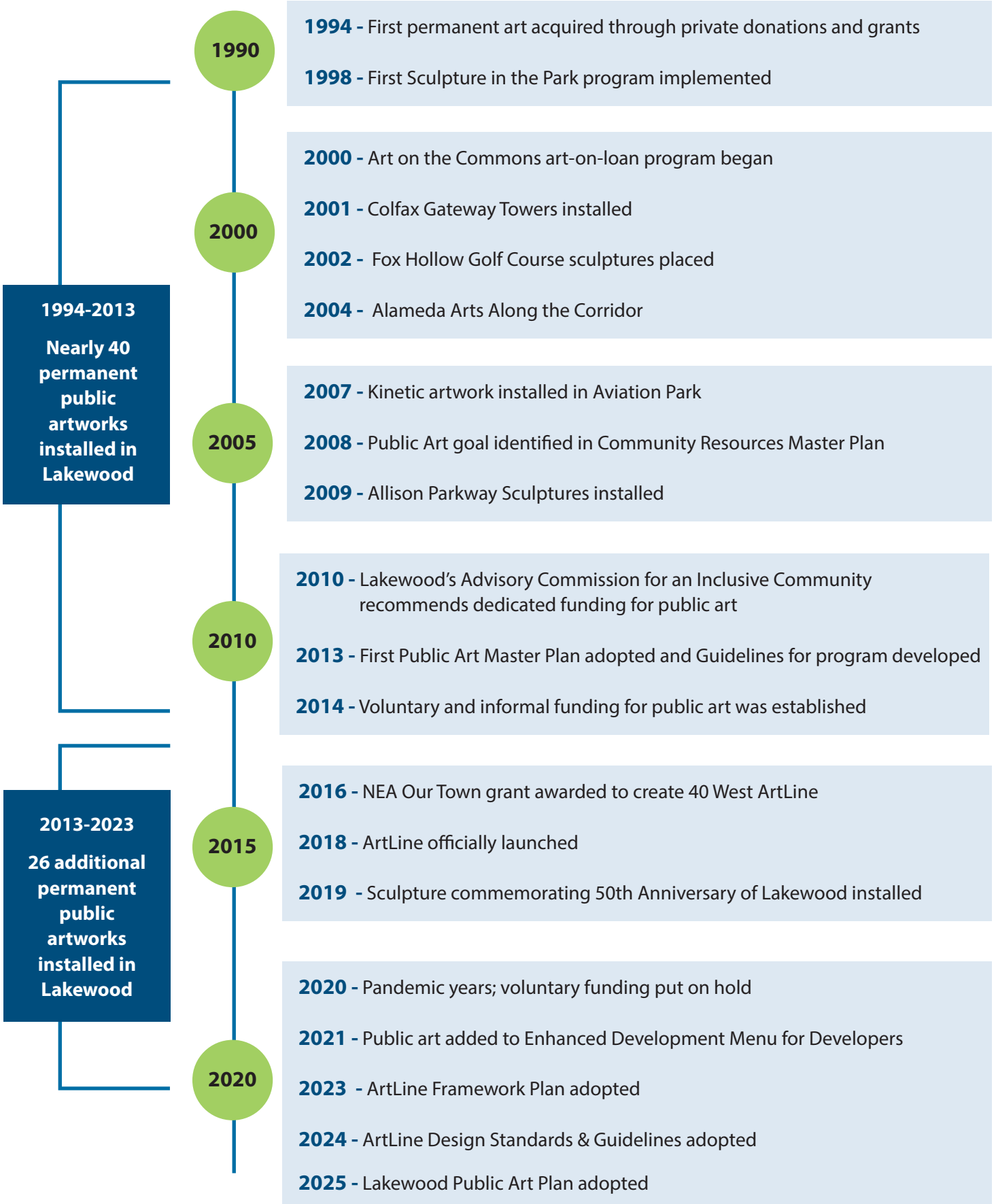
When asked "Where?" community members have enjoyed art, the top responses were:

- Cultural facilities (Lakewood Cultural Center, Heritage Lakewood Belmar Park, Washington Heights Arts Center)
- Lakewood parks
- Library
- Colfax/40W Arts District - ArtLine, Colfax Sculpture Walk
- Light Rail Stations



*Stranger Reduction Zone (2021) by Timothy Flood,
40W ArtLine, Walker-Branch Park*

Lakewood Public Art Program Timeline





“Art is critical for the overall health and vitality of communities.”
—2023 Lakewood Community Survey Response

Bollards (2021) by Annette Coleman, Cottage Park

Public Art Matters: Benchmarking Public Art

Public art is a vital component of any thriving community, offering numerous benefits that enrich its social, cultural, and economic fabric. Investing in public art is not just about beautification; it’s also about enhancing community identity, fostering social cohesion, supporting economic growth, and creating a sense of pride and belonging among residents. By bringing cultural diversity and depth, public art offers opportunities for experiencing different perspectives and traditions and serves as a powerful educational tool, inspiring creativity, and critical thinking.

Research through organizations like the Western Arts Federation Public Art Archive and CODAworx quantifies the economic benefits of public art to attract tourists, boost local businesses, and enhance the aesthetic appeal of neighborhoods and commercial areas. It strengthens the attractiveness and livability of a community, making it a desirable place to live, work, and visit.

Public art transforms ordinary spaces into vibrant environments, creating a sense of place and encourages residents and visitors to engage with their environment in new ways. Investing in public art fosters community engagement and a sense of ownership, strengthening community pride.

As defined by the Public Art Archive, public art has the power to transform spaces, tell stories, ignite our imaginations, and perhaps most significantly, “you can experience it anywhere — from cultural and historical districts to recreational and municipal spaces, both indoors and outdoors. The incredible variety of public art allows people from all backgrounds and cultures to discover all that it has to offer — and it’s free!” A Housing Matters article from the Urban Institute also shares that “the communal nature of public art can give marginalized communities who’ve been historically excluded from the public sphere the chance for self-expression and participation in the arts.”

In Lakewood, public art is a free and accessible, artistically vibrant amenity that is provided to everyone in the community, enhancing the quality of life for all.

BENCHMARKING FUNDING SOURCES

Many surrounding communities have public art programs that serve as helpful comparisons when assessing future funding opportunities for public art in Lakewood. A benchmarking study of neighboring cities included Arvada, Golden, Littleton, Lone Tree, Thornton, and Wheat Ridge. These communities were chosen based on the following criteria: proximity to Lakewood, similar population size and demographics, suburban in nature, landlocked or considered built-out, and similar cultural amenities (like the Lakewood Cultural Center). Funding strategies ranged from a percent-for-art ordinance and a lodging/hotel/motel tax to general fund dollars and per capita funding. Details on this benchmarking can be found in the Appendix.

Trend Highlights in Public Art

Full list is available in the Appendix

- Public Art programs are striving to be more flexible and allow for great creativity, such as allowing for temporary projects, art experiences/events, marketing/promotion and educational programming.
- Percent for art funding works in places that are growing or larger cities, but public art programs are seeking more innovative and sustainable funding sources through urban renewal districts, business development districts, real estate or lodging tax, general fund allocations, developer contributions, and/or partnerships.
- Larger, temporary artwork is becoming more desirable, as it encourages spaces to be reinterpreted by different artists; new work engages audiences, reduces maintenance costs, helps avoid controversies, encourages experimentation, and can keep projects within a designated location.
- The definition of “art” is expanding. In addition to painting, sculpture, ceramics, metalsmithing, music, literature, spoken word/poetry, and dance, art can include culinary arts, horticulture, fiber arts (weaving, quilting, knitting), jewelry making, performance, craft, etc.
- Experiential public art is a trend that focuses on experiences and human interaction as much as (sometimes more than) the aesthetics of the artwork.
- Another emerging trend is “**Art+...**,” which combines art with social issues like homelessness and mental health to raise awareness and inspire community-driven solutions.



“Should Lakewood increase or decrease its investment in public art?”

46% spend more or much more

42% spend same

6% didn’t know

4% spend less

Actors (2009) by Don Mitchell, Alameda and Allison Parkway median



Goodwin Family Remembrance Bench (2023) by Tiimo Mang, Taft Park

The Planning Process

In the fall of 2023, the City began to engage the community in developing the Lakewood Public Art Plan. This innovative plan envisions the next 10 years, providing goals and strategies for the program's reinvigoration, growth, and enhanced community impact through 2035. Through the planning process, the Lakewood Public Art Plan captures the community's aspirational vision and possibilities for the future of the program, as well as concrete, attainable steps to move toward that vision.

The planning process unfolded over the following five phases*:

PHASE I:
Plan Launch
(Summer 2023)

PHASE II:
Research and
Discovery
(Fall 2023)

PHASE III:
Community
Engagement
(Fall 2023-
Winter 2024)

PHASE IV:
Plan
Development
(Spring 2024 -
Winter 2025)

PHASE V:
Plan Adoption
(Spring 2025)

(*See Appendix for phase details)

SUMMARY OF COMMUNITY ENGAGEMENT

The Connect. Discover. Create. Lakewood Public Art Plan process involved a series of engagement activities to ensure the community's voice directly influenced the Plan. Close to 1500 residents and stakeholders were engaged in the planning process through a variety of methods including:

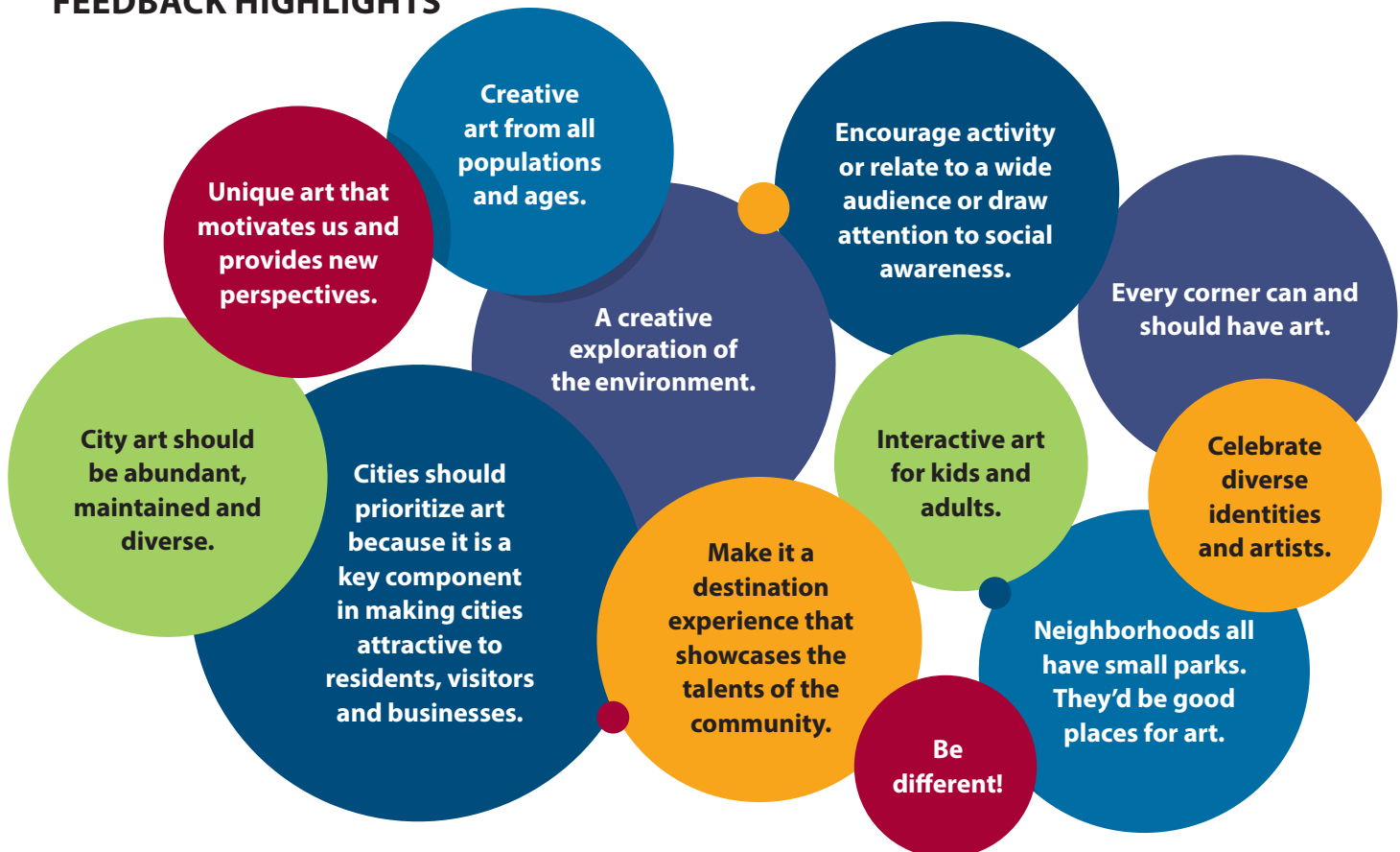
- An interactive project website, www.lakewoodtogether.org/publicart, providing project background, quick polls, a mapping exercise, project timeline, compilation of existing resources, information about upcoming events, and other ways to get involved.
- Community-facing "Artful Engagement" events at Cider Days (October 2023), Earth Day (April 2024), and Inspire Arts Lakewood (June 2024).
- A bilingual survey of community feedback.
- Targeted surveys to Mayor and City Council,

Business Improvement Districts, and Arts District.

- An interactive mapping poster engagement activity within the Lakewood Cultural Center's Corner Gallery and the HUB at 40 West Arts.
- Stakeholder interviews and Focus Group meetings with community organizations, artists, and developers.
- Meetings and work sessions with Internal Advisory Group of department leaders.
- Presentations to Planning Commission.

Overall, the plan research and outreach revealed that the community is supportive of and enthusiastic about the Public Art Program and its potential to grow and continue to enhance and positively impact Lakewood's neighborhoods.

FEEDBACK HIGHLIGHTS



Other highlights and findings from the community outreach, polls, and other engagement are featured throughout this document. For a complete summary, see the Appendix.



The Four Seasons (2016) by Yulia Avgustinovich, Garrison St at 6th Ave.

Key City Plans: Alignment

This Lakewood Public Art Plan does not stand alone. It is informed by and aligns with other significant City planning efforts, including the Lakewood Comprehensive Plan, 2023 Imagine Tomorrow: Arts, Parks, and Recreation for All, and the 40 West ArtLine: A Framework for Moving Forward.

A review of these and other plans including the West Colfax Vision 2040 plan, the 40 West Arts Urban Design and Mobility Concepts Plan, and Alameda Corridor Business Improvement District (ACBID) Public Art Workplan revealed that arts, culture, and public art are key components to Lakewood's identity and uniqueness. Public art is consistently identified as a desirable element as Lakewood develops and re-develops. Public art is said to create a sense of place and community pride.

Many of these plans have sections that specifically reference the importance of public art and placemaking elements, and recognize that these enhancements add to the character of Lakewood neighborhoods. A few of the plans, for special districts like ACBID or 40 West Arts District, reference public art more specifically and in depth.

Please see the Appendix for a complete analysis of how this plan aligns with other important City plans.



Knot (2021) by Kalliopi Monoyios, LandMark Temporary Installation, Belmar Park (Photo credit Anna Kaye)

Key Findings

Through the extensive planning, research, and engagement process, themes about Lakewood's Public Art Program and the vision for its future emerged. These Key Findings are at the root of the Public Art Plan and are the foundation of the Core Concepts, Strategies, and Implementation Plan.

WE KNOW:

- The community of Lakewood is interested in and supportive of the arts and public art.

85% of survey respondents stated it was very important or somewhat important for their family to experience the arts (65% stated it was very important).

- Lakewood's Public Art Program has been successful, even during periods of limited funding.
- There are many locations within Lakewood that would be desirable places for developing new public art projects.
- Public art is being developed along the West Colfax corridor by 40 West Arts, Lakewood's state-certified Creative District, and along the Alameda corridor by the Alameda Corridor Business Improvement District (ACBID).
- Lakewood's Public Art Program would benefit from a sustainable source of funding for public art and maintenance of art.

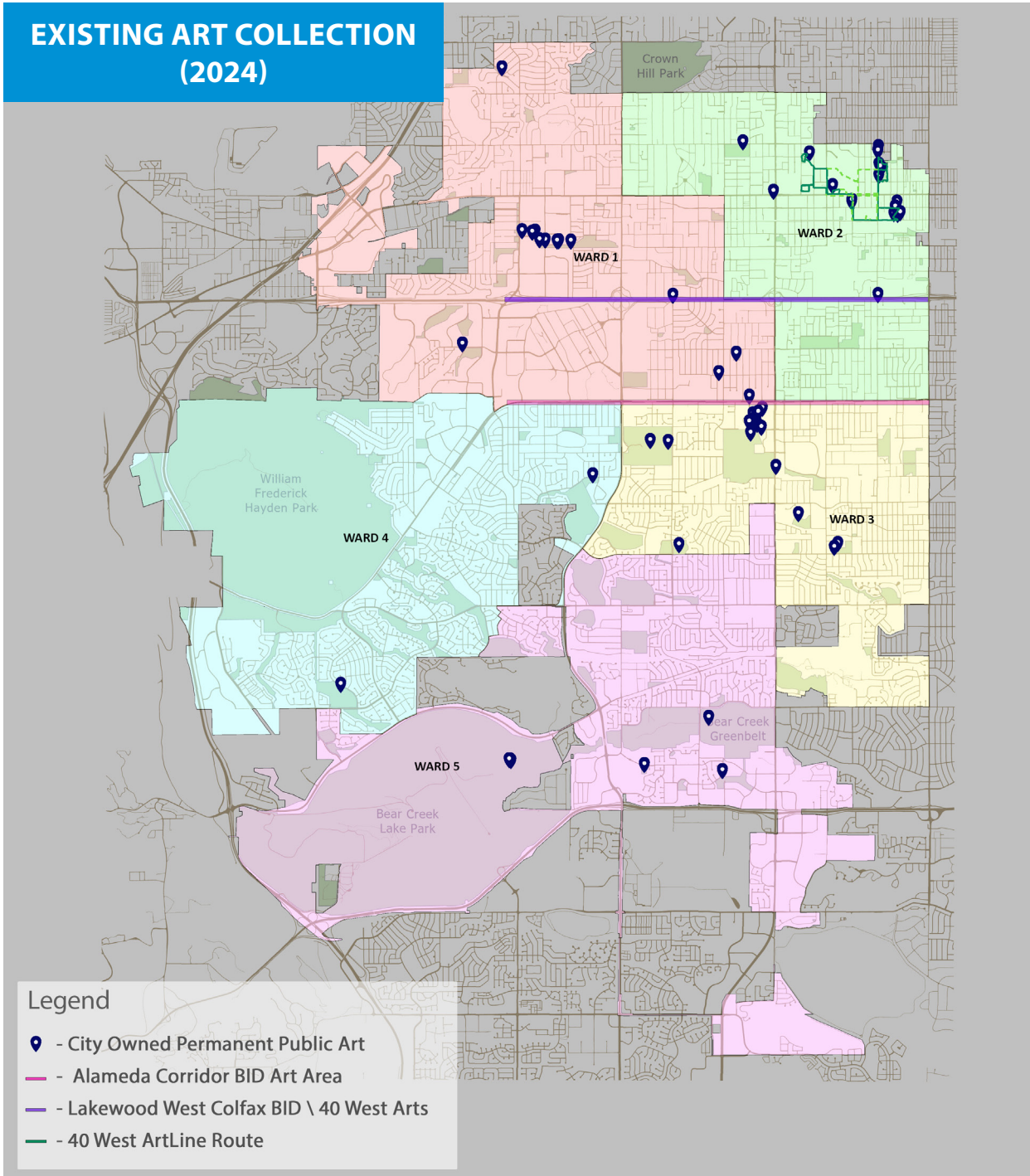
Survey results indicate the community wants more art added around the city in central gathering spaces, in more diverse locations (neighborhoods, trailheads, etc.), and at noticeable gateways entering the city.

- Additional resources dedicated to developing and maintaining public art will ensure the program's effectiveness and success.
- A clarified and streamlined public art process will help facilitate more public art projects in Lakewood.
- There is a large concentration of artists in and around Lakewood who could benefit from a more robust public art program.

Public Art Location Analysis

EXISTING COLLECTION ANALYSIS

To understand the current geographic distribution of public art in Lakewood, and to help identify where gaps exist, the locations of the existing public art collection are shown in the map below. In addition to the City-owned permanent public art collection, the map indicates the areas of Lakewood covered by the Alameda Corridor Business Improvement District, Lakewood-West Colfax Business Improvement District, and 40 West Arts. These community partners help implement art that is not part of the City-owned collection, but that is available for public enjoyment and contributes to the arts experience in Lakewood. The map also highlights the 40 West ArtLine area, which includes temporary artworks in addition to permanent art that is part of the City collection.

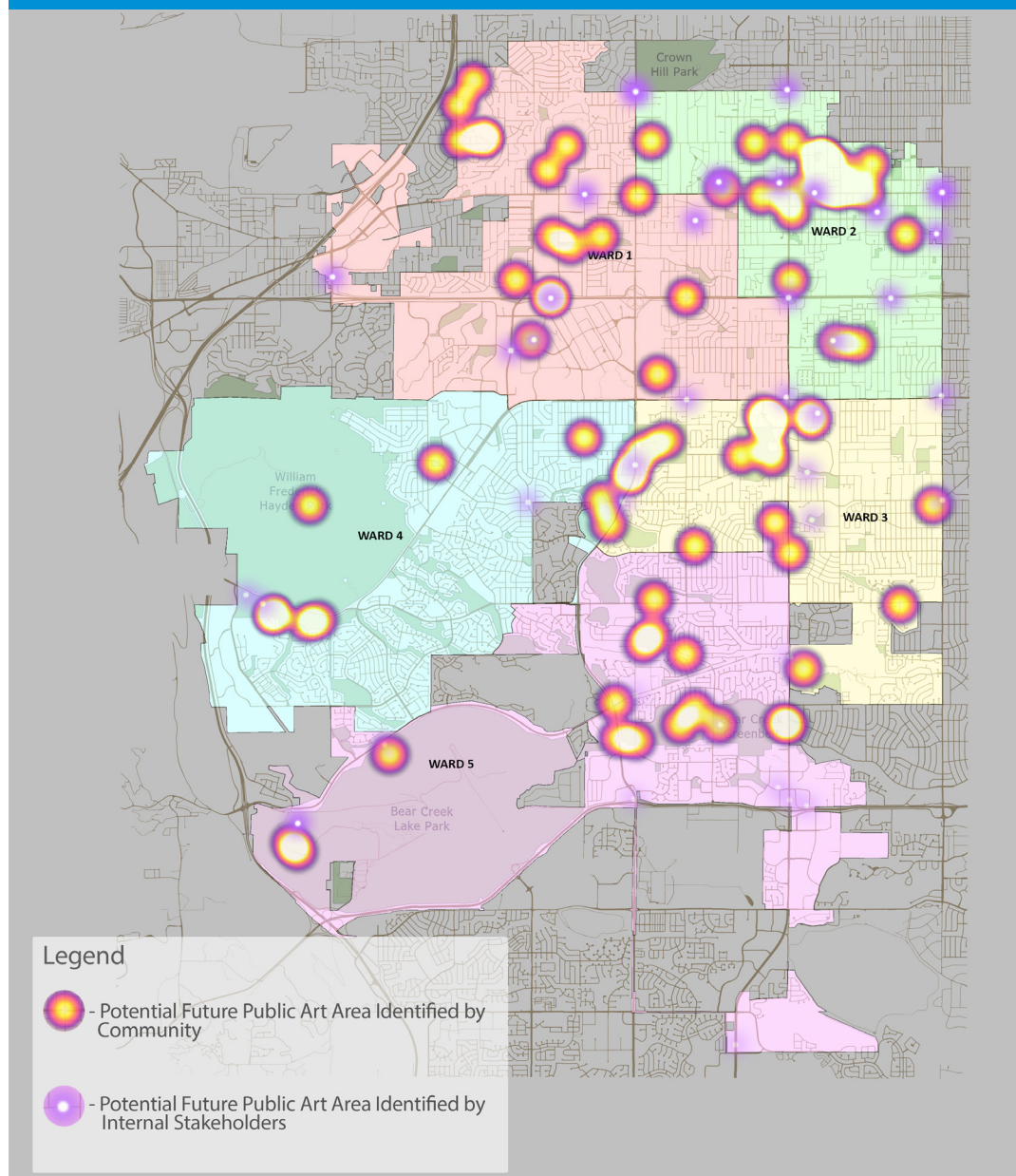


FUTURE SITE ANALYSIS

There are many possibilities in Lakewood for implementing new public art projects. Through community engagement, the public shared where they envision public art in the future. Data was collected through hands-on mapping activities at Cider Days, the Corner Gallery, 40W Arts Hub, and Earth Day. In addition, community members pinned over 100 locations to an online mapping tool on the [Connect. Discover. Create. Lakewood Public Art Plan](#) website on Lakewood Together. The map below reveals a heatmap where the areas that were pinned most often by the community are yellow, and areas with fewer pins are indicated in red. Internal stakeholders were also asked to consider potential areas for future public art based on anticipated development activity in Lakewood, future Capital Improvement Projects (CIP), and identified gateway areas. The potential future art areas identified by internal stakeholders are shown in light purple on the map below.

This combined mapping exercise highlights the key roadway intersections and corridors, parks, gateways into the city, and transit stops that are considered popular locations for potential future public art.

POTENTIAL FUTURE ART AREAS (2024)

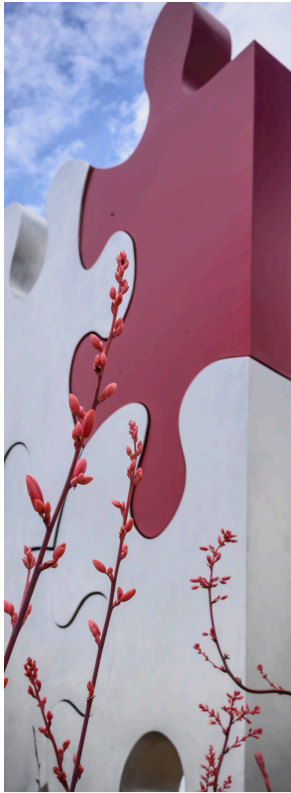


PREFERRED ART TYPES

Those individuals who contributed to the various mapping activities were also asked what types of art they preferred in Lakewood. Respondents preferred:

- Environmental, Land or Earthworks
- Gateways or Iconic Sculptures
- Murals in a variety of locations around the city
- Kinetic/Interactive artwork
- Functional artwork, like benches and lighting

Core Concepts and Key Strategies



*Connected (2015) by
Christopher Weed,
W14th Ave and N Lamar St*

CORE CONCEPT A: CREATE TRANSFORMATIVE ART DESTINATIONS THROUGHOUT LAKEWOOD

Public art has the power to build community and create a strong sense of place throughout Lakewood. Many locations throughout Lakewood would be ideal sites for new public art projects, from parks and trailheads to recreation centers and gateways. A desire exists to not only support and maintain Lakewood's existing art destinations, but also to bring art to underserved areas ("art deserts") and achieve a more equitable and balanced artistic landscape across Lakewood.

Thoughtful consideration of the spaces for public art can help create "transformative destinations" for the entire Lakewood community.

Partners are creating significant impact through art and placemaking in areas such as the 40 West Arts District and along the Alameda corridor and the City should continue to collaborate with these partners to support these efforts. Additionally, outside of these partner-focused art hubs, the community desires art in more diverse locations such as neighborhoods, trailheads, central gathering spaces, parks, and at noticeable gateways coming into the city. Public art can energize and transform these urban and natural spaces, through careful planning, prioritization, and leadership.



40 West ArtLine: A Framework for Moving Forward (2023)

The Public Art Plan connects to the 40 West ArtLine Framework Plan through shared goals and strategies, including:

Goal C

Transformative Destinations. Enhance existing and create new transformative destinations that attract visitors, support resident needs, and promote local businesses and development.



"What three things do you want the Lakewood Public Art Program to focus on in the next five to 10 years?"

- Add more art around the city in the central gathering spaces.
- Add art to more diverse locations throughout Lakewood (neighborhoods, trailheads, etc.)
- Create a mural program.

KEY STRATEGIES

1. Expand Artwork Across Lakewood

Prioritize diversifying public art locations to distribute artwork more evenly throughout Lakewood.

- a. Review and regularly update a “Priority List of Public Art Locations” for implementation.
- b. Prioritize locations according to upcoming capital improvement projects (CIP), infrastructure grants, and key priorities.
- c. Prioritize significant works of art in locations that serve as gateways within the city.
- d. Capitalize on and complement the beauty of Lakewood’s outdoor spaces, trails, and recreational areas with site-sensitive and community supported public art.
- e. Create a mural program to distribute art throughout the city and to help mitigate blight and graffiti.
- f. Expand utility box wrap art projects across all five wards of the city to beautify utilitarian spaces and mitigate graffiti.
- g. Continue to encourage and organize temporary art installations to reach a variety of locations throughout the city.
- h. Evaluate existing programs (i.e. Art on the Commons) to ensure they are meeting the goals and guiding principles of the Public Art Plan and continue to be a positive investment for public art funds.

2. Create Art Oases

Support existing transformative art destinations and also prioritize installation of artwork in “art deserts,” or areas of the city where access to art is lacking.

- a. Prioritize projects in areas that are outside of existing art hubs.
- b. Identify and map “art deserts” and other community pockets that could greatly benefit from an infusion of creative energy and placemaking. Prioritize these areas for City-led public art projects.
- c. Implement the 40 West ArtLine Framework Plan and the community vision for this transformative art destination.

3. Seek Placemaking Opportunities

Invite and be open to one-of-a-kind opportunities for the city to introduce and integrate placemaking and art.

- a. Regularly meet with other City departments, including Public Works, Parks, and others to better understand long-lead CIP projects and what strategies and advocacy is needed for public art integration.
- b. Regularly track and get updates on the 10 Year Capital Improvement Project (CIP) list for Lakewood including large public/private, redevelopment, and infrastructure projects.

4. Encourage Developers to Include Art

Promote and streamline the process and guidelines to assist developers in creating more public art in Lakewood.

- a. Clarify and streamline the process for public art in the Enhanced Development Menu and other areas of the zoning code to make it easy for developers to implement public art as an attractive option.
- b. Create and promote a simple guide/tear sheet for developers to easily understand the public art options and incentives open to them, the benefits, and the process. Include an artists’ roster.
- c. Provide support and guidance to developers through the process of integrating public art into their projects.
- d. Support the 40 West ArtLine Framework Plan and Design Standards & Guidelines recommendations to engage developers to create public art along the ArtLine in the 40 West Arts District.



*Dermal Plate Gateway (2018)
by PUNCH, 40W ArtLine,
Mountair Park*

CORE CONCEPT B: UNIFY AND GUIDE PUBLIC ART AND PLACEMAKING INITIATIVES

The City of Lakewood's Public Art Program can become a proactive catalyst, creating a visionary and unifying guide for the initiation and implementation of public art projects across the community.

Public Art is being developed by the City and strategic partners in the community. To infuse more public art throughout Lakewood, a unified vision and cohesive approach is needed.

The City can generate and support projects through the Public Art Program and on behalf of City departments as well as provide leadership, guidance, advocacy, and potentially cost sharing to priority projects by community partners, developers, businesses, and other stakeholders. Through the unification of these efforts, the Public Art Program in Lakewood aspires to be a beacon of creativity, fostering collaborations that will benefit the community for years to come.

KEY STRATEGIES

1. Unify and Guide

Create a unified strategy for implementing and expanding public art, driven by the City's Public Art Program and its Public Art Plan.

- a. Promote the vision, aspirations, and Core Concepts of the Lakewood Public Art Plan within the City organization and with key entities outside the City.
- b. Implement the Guidelines and Procedures of the Public Art Program.
- c. Proactively identify and direct public art projects generated within the City government and shepherd them to fruition.
- d. Actively engage with entities outside of the City government, including ACBID and 40 West Arts, to align public art goals.
- e. Expand or enhance public art projects initiated by entities outside of the City government through partnerships or joint ventures, resulting in greater impact.
- f. Serve in a leadership role by providing guidance, resources, and answering questions for all those interested in developing public art in Lakewood (e.g., developers, HOAs and neighborhoods, internal departments, BIDs.)
- g. Unify and streamline processes for the care and maintenance of the City's public art collection that can serve as a shared guideline for public art preservation.

2. Forge Impactful Alliances

Proactively engage and expand strategic partnerships – or “joint ventures” – with community partners to cultivate and amplify public art in Lakewood.

- a. Partner to augment specific projects and art nodes that achieve common goals for community partners, like ACBID and 40 West Arts District.
- b. Consider ArtLine Framework Plan Priority Areas that overlap with City-owned, prioritized art locations for developing partnerships or “joint ventures.”
- c. Clarify the “joint venture” processes to all partners creating public art to facilitate regular collaboration with key partners while ensuring a transparent, inclusive, and open process.



Sunlaps (2021) by Jaime Molina, LandMark Temporary Installation, Bear Creek Greenbelt Park (Photo credit Anna Kaye)

CORE CONCEPT C: DIVERSIFY LAKEWOOD'S ARTISTIC LANDSCAPE

Community support for public art is strong.

To ensure support continues, the City needs to focus on equity and diversification in Lakewood's collection.

The Public Art Program will consider the equity of public art locations, variety of artwork styles, scales, and artistic mediums, and importantly, the diversity of artists represented.



Lakewood's 2023 Imagine Tomorrow plan focuses on equity as a factor in planning for the future, stating: "Equity means ensuring that everyone has the same access and receives the appropriate investment relative to their current conditions... Public arts, parks, recreation and open space should be equally accessible and available to all people regardless of income level, ethnicity, religion, gender, ability, language or age."

KEY STRATEGIES

1. Diversify Lakewood's Artistic Landscape

Expand the variety represented within Lakewood's public art collection.

- a. Follow the Imagine Tomorrow Plan and the Public Art Plan Guiding Principles to ensure inclusion and diversity are key criteria when selecting artists, permanent artwork, and/or generating temporary art projects.
- b. Seek to include and represent diverse and underrepresented artists in the public art collection, including but not limited to, people from varying social, racial, and ethnic backgrounds, cultures, abilities, and gender identities, while also expanding the thematic variety of artwork in the collection in ways that inform and generate community conversations.
- c. Strive to diversify public art in terms of style, themes, size, medium, etc. to add variety, color and vibrancy to Lakewood, expanding the definition of public art to include performative, experiential, temporary, murals, kinetic, environmental/earthwork, functional, sound-based, and other types of artistic mediums.

2. Empower Local Talent

Provide access and opportunities for diverse artist participation within the Public Art Program for a broad array of emerging, local, and regional artists.

- a. Develop capacity to facilitate additional artists' resources in accessible formats and languages.
- b. Host (and/or partner with others to host) events to solicit new artists for Lakewood public art projects and provide education and training to apply for projects.
- c. Host early and mid-career development workshops to teach artists how to apply for public art projects. Encourage participation from diverse and emerging public artists in the Lakewood community, by conducting outreach to historically underrepresented groups.
- d. Consider enacting a mentorship/apprenticeship program between emerging and established public artists.
- e. Develop and share a pre-juried on-call, intentionally diverse and inclusive artist roster for a variety of different projects from small mural projects to developer-led projects.
- f. Partner with local art and education entities such as Jeffco Public Schools, Rocky Mountain College of Art and Design and/or Red Rocks Community College to provide career workshops and other resources for emerging artists.



Maternal Wrap (1997)
by Tim Cherry,
Coyote Gulch Park

CORE CONCEPT D: ENGAGE COMMUNITY THROUGH PUBLIC ART

Public art is a source of community pride and enjoyment for Lakewood residents. It is the role of the Public Art Program to continually engage the community in the public art process and provide educational opportunities about the collection and its artists.

In addition to adding color and vibrancy, the community believes that public art adds value by providing artwork that the whole community can enjoy and interact with for free.

Sharing the process and benefits of building the public art collection will expand the community's awareness and inspire a sense of community pride and ownership.

KEY STRATEGIES

1. Enhance Community Engagement

Create more opportunities for diverse community participation in the Public Art Program.

- a.** Ensure diverse participation in the Public Art Committee, selection panels, and community engagement activities.
- b.** Increase the visibility and community awareness of the Public Art Program, particularly in neighborhoods and communities where art is currently lacking, and/or communities that have been historically underserved.
- c.** Create more resources in accessible formats, in Spanish and English, related to the arts in Lakewood, including maps, downloadable tours, and an app with detailed information and stories on social media, that can be distributed around the community for ease of access.
- d.** Host public art happenings and/or events, particularly those that encourage inclusive community engagement.
- e.** Continue to inform and share successes with the community and City leadership to build awareness and support for the Public Art Program.
- f.** Create art that provides accessible interaction beyond static viewing and diversify the type of activations of public art sites to include lectures, social gatherings, and multicultural events.

Plan Recommendations

To continue to build upon and implement the vision of the Lakewood Public Art Plan and to maintain a sustainable collection for the future, increased support and capacity building are essential for success. Currently, public art is mainly project based and is funded through department general fund dollars, budget exceptions, Business Improvement District partnerships, and Neighborhood Participation Program grant applications. In addition, small temporary mural art has been accomplished through Heritage, Culture and the Arts summer camp programs. The Open Space Fund can support small infrastructure improvements to accommodate art installed in parks. Identifying consistent funding to sustain and grow the program will benefit public art for the Lakewood community.

The recommendations outlined in this section will help guide the program and build capacity towards the aspirational Core Concepts developed in the Lakewood Public Art Plan. The research and feedback for the Public Art Plan indicated community and internal support for continued implementation and maintenance of public art throughout the community.

KEY:

NT = NEAR-TERM 2025-2027

MT = MID-TERM 2028-2030

LT = LONGER-TERM 2031-2035

OG = ONGOING



Our Lady (2023) by Cal Duran, Aviation Park

RECOMMENDATION 1

EXPLORE SUSTAINABLE FUNDING FOR THE PUBLIC ART PROGRAM

To be a successful program for the City of Lakewood, the Public Art Plan recommends consistent, predictable, and sustainable funding. This will better enable the program to initiate new public art, maintain the existing collection, and partner with/assist the many other entities creating art in the public realm.

The 2013 Public Art Master Plan recommended establishing a 1% for art contribution from Capital Improvement Projects which was implemented internally as a voluntary 1% of new construction projects. While funding in the voluntary program varied from year-to-year, it resulted in reliable funding for the development of community public art projects, such as the artist bench program, Dance of the Indian Paintbrush at the Civic Center, storybook bollards in Lasley Park, and the 50th anniversary artwork at Addenbrooke Park.

NT

1. **Identify Potential Dedicated Funding:**

This plan recommends staff develop a sustainable funding strategy beginning with the 2025-2026 budget cycle to confirm the importance of public art and demonstrate support for maintenance needs. This could include:

- Identifying federal or state grant funding and internal matching funding, in partnership with local non-profits.
- Engaging in community partnerships to advance public art in the city.
- Incorporating new public art with new park development and capital projects when feasible, including a portion of funding for future maintenance costs.
- Identifying other funding sources.

NT

2. **Promote Developer Funded Projects:**

Promote the Enhanced Development Menu to the development community and consider increasing points awarded for public art installation in areas of Lakewood that are in need of public art. Develop flow charts and resources to facilitate the process.

NT

3. **Explore Maintenance and Conservation Funding:**

Explore reserving/allocating a portion of the public art funding to be used for general conservation and maintenance. For new projects, reserve 10%-20% of the budget for future maintenance costs.

MT

4. **Consider Funding Grants to Artists:**

Once public art is funded, explore allocating a portion of the funds for artist grants to support and fund diverse local artists and help create and distribute community-initiated artwork throughout Lakewood.

LT

5. **Explore Developer Requirements:**

Continue to investigate formalizing required developer contributions to the public art program (as a development fee or installation requirement).

RECOMMENDATION 2

IDENTIFY PUBLIC ART SUPPORT RESOURCES

Currently, public art is initiated and implemented through a multifaceted and collaborative nature, across many departments within the City and through community partnerships. While the Heritage, Culture and the Arts (HCA) division oversees coordination, development, and implementation of many public art projects City-wide along with oversight of the permanent collection, public art projects emanate from a variety of sources including: Community Resources (HCA and Parks), Planning and private development, Sustainability's Enhanced Development Menu, the ArtLine Framework Plan, City Council, Public Works, and Economic Development. Artworks developed by the City and community partners range from temporary community-based projects, to iconic sculptures. Central oversight and coordination of this multi-pronged approach to public art facilitation, implementation and maintenance is recommended.

OG

1. **Streamline Oversight of Public Art**

Establish streamlined public art process and oversight to develop strong collaborative networks across all City Departments and the Public Art Committee. Central coordination of public art is recommended to enhance initiation, implementation, and oversight of City public art projects, including Developer-led projects, public-private partnerships and the 40W ArtLine placemaking initiatives involving public art. The plan calls for staff to determine resource needs while leveraging existing staff and community resources. This includes assessing the need for additional staff and contractual support opportunities to support new art installations and existing maintenance needs.

OG

2. **Streamline Art Maintenance Oversight:**

Explore ways to centralize and streamline the process for assessing needs for ongoing public art collection maintenance through regular care assessments and an information sharing system to consolidate maintenance requests. This includes assessing the need for specialized support for public art requiring conservation care beyond general maintenance.

RECOMMENDATION 3

DEVELOP STREAMLINED AND CLEAR INTERNAL GUIDELINES AND PROCEDURES

A clarified and streamlined public art process will help facilitate more public art projects in Lakewood. Updated internal guidelines and procedures will clarify the process for City staff, developers, and community partners who are initiating and implementing public art projects.

NT

1. **Update Internal Guidelines and Procedures:**

As a companion document to the Public Art Plan, the Guidelines and Procedures for the Public Art Program were reviewed and revised. They will require regular updates.

NT

2. **Develop an On-Call Artist Roster:**

Consider creating a Request for Qualifications for a diverse set of artists to be considered as part of an on-call roster of creatives for upcoming projects. Selection of the artist pool should follow selection criteria outlined in the internal Guidelines and Procedures.

NT

3. **Attend Internal Meetings:**

Regularly attend or convene City project meetings and establish ongoing communication between public art staff and other City departments to provide proactive support regarding public art inclusion in Capital Improvement Projects.

MT

4. **Develop Informational “Tear Sheets”:**

Develop easy to understand internal operating “tear sheets” and/or flow charts to share internally and with the public to clarify public art processes to internal City departments, developers, and others looking to implement public art. Ensure these “tear sheets” are user-friendly, easy to find online, and frequently reviewed and updated by staff as needed to reflect any process or policy changes that occur over time.

MT

5. **Create Developer Pamphlet:**

Create a “Benefits of Public Art” pamphlet for developers to reference as they begin the development process.

OG

6. **Refine Procedures:**

Develop and regularly review/update public art internal Guidelines and Procedures to reflect the operations and best practices of the program.

RECOMMENDATION 4

MAINTAIN THE EXISTING COLLECTION

The collection assessment showed that maintenance is needed for some artworks. Other works of art originally meant to be temporary are still in place and deteriorating.

MT

1. **Create Maintenance Plan:**

Work with a conservation consultant to assess the collection and create a maintenance plan for repairs, restoration and possible deaccession of artwork. A proper maintenance plan will prioritize which projects are urgent, which are ongoing and costs for each.

OG

2. **Establish Ongoing Collection Assessment:**

Based on staffing and funding capacity, establish a periodic collection assessment which would identify any maintenance or condition issues that need to be addressed, thus preventing artwork from deteriorating beyond the point of being safe or needing to be deaccessioned.

RECOMMENDATION 5

DEVELOP A “PRIORITY PUBLIC ART PROJECT LIST” AND CREATE YEARLY WORK PLAN

Develop a “Priority Public Art Project List” based on Public Art Plan recommendations, research, community input, planned infrastructure projects, and available funding. The list can be used to develop the Public Art Program annual work plan, focusing on specific projects. This will build excitement for new projects and programs and set expectations with the community.

OG

1. **With internal City stakeholders, develop a “Priority Public Art Project List” for temporary and/or permanent projects.**

- This list could be revisited annually with staff and include opportunities related to Capital Improvement Projects, new developments for possible collaboration, art deserts, 40 West ArtLine Framework Plan recommendations, and other possible project areas that are prime areas for activation through public art.
- Select projects to pursue, annually or bi-annually, from the “Priority Public Art Project List” depending on funding and staffing availability.
- The following are areas where priority projects have been identified:
 - Capital improvement projects and street projects
 - Parks and trails
 - Recreation and other City facilities
 - Art deserts & places that need art
 - Gateway areas (announcing arrival in Lakewood)
 - Public & private development/investment areas coming up
 - Private development for partnerships
 - Temporary art opportunities
 - 40 West ArtLine

Recommendation Matrix

Near-Term	Mid-Term	Long-Term	On-Going
1.1 Identify Potential Dedicated Funding	1.4 Consider Funding Grants to Artists	1.5 Explore Developer Requirements	2.1 Streamline Oversight of Public Art
1.2 Promote Developer Funded Projects	3.4 Develop Informational “Tear Sheets”		2.2 Streamline Art Maintenance Oversight
1.3 Explore Maintenance and Conservation Funding	3.5 Create Developer Pamphlet		3.6 Refine Procedures
3.1 Update Internal Guidelines and Procedures	4.1 Create Maintenance Plan		4.2 Establish Ongoing Collection Assessment
3.2 Develop an On-Call Artist Roster			5.1 Develop a “Priority Public Art Project List”
3.3 Attend Internal Meetings			



CONNECT. DISCOVER. CREATE.
LAKEWOOD
PUBLIC ART PLAN

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 8

To: Mayor and City Council
From: Max Kirschbaum, Director of Public Works
Subject: **Colfax Safety IGA - TIP Funds**

SUMMARY STATEMENT: This resolution authorizes City Staff to enter the City of Lakewood into an Intergovernmental Agreement (IGA) Amendment with the Colorado Department of Transportation (CDOT), which will incorporate a \$4,185,000 Transportation Improvement Program (TIP) grant into the funds available for the project and will authorize City Staff to pay the City's local match funds of \$1,046,250 required by the grant for the purpose of constructing the Colfax Transportation Safety Project.

BACKGROUND INFORMATION: West Colfax Avenue between Wadsworth and Sheridan Boulevards has the highest concentration of traffic injuries and deaths in the City of Lakewood.

The City was previously awarded a \$10,000,000 Safer Main Streets Initiative grant by the Denver Regional Council of Governments to improve safety and provide other features along this section of Colfax. In 2023, the City was also awarded another \$4,185,000 grant to help cover additional project construction costs. The grant applications included traffic collision data from the six-year period between June 2014 and June 2020. During that time, there were 312 serious injuries and eight fatalities along this 1.5 mile stretch of road. Eighty-one of the serious injuries and six of the deaths involved pedestrians or cyclists.

This project is the culmination of collaboration between multiple City departments, the Colorado Department of Transportation, the Regional Transportation District, the Lakewood-West Colfax Business Improvement District, and the 40 West Art District. The grant application was also supported by the West Colfax Community Association, the Two Creeks Neighborhood Organization, the ArtLine project team, the West Corridor Transportation Management Association, Metro West Housing Solutions, FirstBank, Broad Street, and the Denver Streets Partnership.

City staff will continue to closely inform both residents and business owners of progress and development during the implementation of the Colfax Transportation Safety Project. In fact, the City developed a project website, <https://www.lakewoodtogether.org/westcolfax>, to inform the public of the project's status and to allow citizens to pose questions to the design team. Additionally, the project team held a public meeting at the 40W Hub center on August 22, 2024, and also provides monthly update presentations to the West Colfax Community Association (WCCA) to answer questions from citizens and local business owners. To the extent possible, the project will incorporate artistic elements from local artists and community members. City staff will continue to keep affected businesses and neighborhoods informed and involved in the implementation process to minimize negative effects of construction and to make both the process and the completed project an asset to the community.

The overall project was split into two separate phases to expedite project construction and to utilize the full extent of the available state and federal grant funding. Phase 1 of the project has already begun construction and is scheduled to be completed by the end of 2025. This phase of the project will construct the raised concrete medians, signalized pedestrian Z-crossings, median fencing, and landscaping for the full length of the project corridor. Phase 2 of the project will construct the curbside improvements, including buffered sidewalks and shared-use paths with landscaping, storm sewer improvements, traffic signals, and a reduced number of

driveway accesses onto Colfax Ave. This phase of the project is currently in the Right-of-Way acquisition process which will take approximately 6-12 months. After Right-of-Way has been acquired, the City will work with CDOT to advertise the construction of the project in the following months.

BUDGETARY IMPACTS: Adequate City funds are available in the approved 2025 budget for the Colfax Transportation Safety Project for local match required in the proposed IGA Amendment.

STAFF RECOMMENDATIONS: Approval of the resolution.

ALTERNATIVES: City Council could choose not to approve this resolution, which would result in decreased available funds to construct the Colfax Transportation Safety Project. City Staff would consider various options, including scope reduction or project phasing, to allow the project to proceed, but it is likely that the project would be delayed indefinitely.

PUBLIC OUTREACH: Public outreach for this resolution has occurred through the normal City Council meeting notifications.

NEXT STEPS: If the City Council approves the resolution, the Colfax Safety Project will move forward.

ATTACHMENTS:

1. Resolution R-2025-13
2. Amended IGA

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

R-2025-13

A RESOLUTION

APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE COLFAX TRANSPORTATION SAFETY PROJECT

WHEREAS, pursuant to C.R.S. § 29-1-203 and § 29-1-203.5 as amended, the City of Lakewood (the “City”) and the Colorado Department of Transportation (“CDOT”) have the authority to enter into Intergovernmental Agreements;

WHEREAS, West Colfax Avenue between Wadsworth and Sheridan Boulevards has the highest concentration of traffic injuries and deaths in the City of Lakewood;

WHEREAS, The Colfax Safety Project is intended to improve the safety and other features of Colfax Avenue between Wadsworth and Sheridan boulevards;

WHEREAS, the City of Lakewood was awarded a \$10,000,000 Safer Main Streets Initiative grant to improve safety and other features of Colfax Avenue between Wadsworth and Sheridan Boulevards;

WHEREAS, the Lakewood City Council approved the required grant local matching funds of \$2,500,000 to the 2021 Capital Improvement and Preservation Fund on March 15, 2021 for the Safer Main Streets Initiative grant;

WHEREAS, the City of Lakewood and CDOT entered into an Intergovernmental agreement (IGA) in 2021 for the Colfax Transportation Safety Project (R-2021-27), which incorporated the Safer Main Streets Initiative grant award;

WHEREAS, the City of Lakewood was subsequently awarded a \$4,185,000 Transportation Improvement Program grant in 2023, which will provide additional funding for the Colfax Transportation Safety Project;

WHEREAS, the Lakewood City Council approved the required grant matching funds of \$1,046,250 for the Transportation Improvement Program grant in the 2025 City of Lakewood Budget; and

WHEREAS, the City of Lakewood and CDOT must now amend the IGA that was previously approved via Resolution R-2021-27 to incorporate the additional Transportation Improvement Program grant funding and accompanying local match funding into the agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood:

SECTION 1. The City Council hereby finds and determines that authorizing the City Manager to enter into the Intergovernmental Agreement (IGA) amendment, attached

hereto as Attachment A and incorporated herein, between the City of Lakewood and the Colorado Department of Transportation (CDOT) for the Colfax Transportation Safety Project is and shall be in the best interest of the residents of the City, and hereby authorizes the City Manager to enter into the IGA with CDOT on behalf of the City of Lakewood;

SECTION 2. The City's Chief Financial Officer is hereby authorized and directed to pay amounts not to exceed one million forty-six thousand two hundred fifty dollars (\$1,046,250.00) for the City's local match of the Transportation Improvement Grant.

SECTION 3. This Resolution shall become effective immediately upon its adoption.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STATE OF COLORADO AMENDMENT

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

Amendment and Restatement No. 1

Project #: C 0404-063 (24353)/STU M760-051 (25758)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		Amendment and Restatement Routing Number 21-HA1-XC-00055-M0004
Local Agency CITY OF LAKEWOOD		Original Agreement Routing Number 21-HA1-XC-00055
Agreement Maximum Amount	\$17,731,250.00	Original Agreement Execution Date July 16, 2021
		Original Agreement Expiration Date March 29, 2031

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment and Restatement No. 1 represents and warrants that he or she is duly authorized to execute this Amendment and Restatement No. 1 and to bind the Party authorizing his or her signature.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____
LOCAL AGENCY CITY OF LAKEWOOD *See Attached Signature Page*

In accordance with §24-30-202 C.R.S., this Amendment and Restatement No. 1 is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Amendment and Restatement No. 1 Execution Date: _____

1) PARTIES

This Amendment and Restatement No. 1 to the Original Agreement shown on the Signature and Cover Page for this Amendment and Restatement No. 1 is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

All terms used in this Amendment and Restatement that are defined shall be construed and interpreted in accordance with this Amendment and Restatement.

3) PURPOSE AND MODIFICATION

A. History

1. On July 16, 2021, the Parties executed an Intergovernmental Agreement, in the amount of \$12,500,000.00.
2. On August 25, 2021, Option Letter 1 was executed to encumber \$1,500,000.00 in Design funds.
3. On April 7, 2022, Option Letter 2 was executed to reduce \$300,000.00 in Design funds.
4. On December 30, 2022, Option Letter 3 was executed to encumber \$1,280,000.00 in Design funds.
5. On August 16, 2024, Option Letter 4 was executed to encumber \$6,750,467.00 in Construction funds.

B. The Parties are amending and restating the Original Agreement through this Amended and Restated Intergovernmental Agreement while retaining the Original Agreement Execution Date shown on the Signature and Cover Page, and all Option Letters (if applicable), and Amendments (if applicable) to the Original Agreement, and the Original Agreement Expiration Date shown on the Signature and Cover Page.

C. The Parties hereby revoke all provisions of the Original Agreement in its entirety, except for the Original Agreement Execution Date and Expiration Date and the Amendments and Option Letters referenced in §3.A. above. This Amendment and Restatement No. 1 without reference to those provisions revoked, shall hereafter constitute the Intergovernmental Agreement as amended and restated.

4) TERM AND EFFECTIVE DATE

A. This Amendment and Restatement No. 1 shall not be valid or enforceable until signed and dated by the State Controller or an authorized delegate. The Execution Date of the Original Agreement remains unchanged. The State shall not be bound by any provision of this Amendment and Restatement before this Amendment and Restatement No. 1 is executed by the State Controller or an authorized delegate and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment and Restatement either before or after the Amendment and Restatement No. 1 term shown in §3.C of this Amendment and Restatement No. 1.

B. The Parties' respective performances under this Amendment and Restatement No. 1 and the changes to the Original Agreement contained herein shall continue from the Original Agreement Execution Date shown on the Signature and Cover Page and shall terminate on the Original Agreement Expiration Date shown on the Signature and Cover Page.

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EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 29, 2031 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.

- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.
- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in §2.B.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

- LL. “**State Purchasing Director**” means the position described in the Colorado Procurement Code and its implementing regulations.
- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State’s approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency’s attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

- 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
 - (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
 - (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.

- (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
- (d) The requirements of §6.A.iii.b.2 also apply to any advertising and bid awards made by the State.
- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.C.
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with §2.C.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in §9.A.).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in §7.A. and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's

treasury. Local Agency represents to the State that the amount designated “Local Agency Funds” in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency’s laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency’s allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State’s obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an “Option Letter” to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered

into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information “PII”

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a “Third Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor’s duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency’s obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information (this insurance requirement only applies if the Subcontractor has or will have access to State Confidential Information)

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance (this insurance requirement only applies if the Subcontractor is providing professional services including but not limited to engineering, architectural, landscape architectural, professional surveying, industrial hygiene services, or any other commonly understood professional service)

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and

b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protected consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

a. \$1,000,000 each occurrence; and

b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or

similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.C.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes

to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Christopher Beaver, PM I
CDOT
2829 W Howard Pl
Denver, CO 80204
303-512-4014
christopher.beaver@state.co.us

For the Local Agency

CITY OF LAKEWOOD
Roger Wadnal, Comprehensive Planning & Research Division Manager
470 South Allison Pkwy
Lakewood, CO 80226
303-987-7519
rogwad@lakewood.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§19** shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales

and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts. Contractor refers to Local Agency and Contract refers to Agreement.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

Financial obligations of the Parties payable after the current State Fiscal Year or fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the Parties to indemnify or hold Contractor harmless; requires the Parties to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void

ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N and Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G and Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A-1
SCOPE OF WORK

Name of Project: WEST COLFAX PED SAFETY & INFRA - SMS
Project Number: C 0404-063/STU M760-051
SubAccount #: 24353/25758

The design phase includes both packages in the project. Phase 1 for construction of the Colfax Safety Improvements Project primarily includes work within the median that does not have any ROW impacts which require additional clearances or other long lead procedures. This work will consist of removing the existing median and installing new medians in existing locations, closing off thru access of side roads at certain locations, and construction of “Z” mid-block crossings. The medians will be constructed with 2-3ft tall barrier walls with fencing on top to discourage pedestrian crossings everywhere but designated areas. Street lighting will be installed within the median and existing roadside lighting will be removed in Phase 2. Any storm sewer crossing required in Phase 2 will be constructed as a stub out under the median in Phase 1 so that newly constructed areas will not be disturbed in Phase 2.

If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B-1

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C-5 - FUNDING PROVISIONS**City of Lakewood - C 0404-063 (24353)/STU M760-051 (25758)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$17,731,250.00, which is to be funded as follows:

1. FUNDING

a. Federal Funds (80% of STBG Award)	\$4,185,000.00
b. Local Agency Funds (20% of STBG Award)	\$1,046,250.00
c. State Funds (80% of SMS Award)	\$10,000,000.00
d. Local Agency Funds (20% of SMS Award)	\$2,500,000.00

TOTAL FUNDS ALL SOURCES	\$17,731,250.00
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2. OMB UNIFORM GUIDANCE

a. Federal Award Identification Number (FAIN):	TBD
b. Name of Federal Awarding Agency:	FHWA
c. Local Agency Unique Entity Identifier	V1L8TD75JRQ5
d. Assistance Listing # Highway Planning and Construction	ALN 20.205
e. Is the Award for R&D?	No
f. Indirect Cost Rate (if applicable)	N/A
g. Amount of Federal Funds Obligated by this Action:	\$0.00
h. Amount of Federal Funds Obligated to Date (including this Action):	\$0.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted	\$4,185,000.00
b. State Funds Budgeted	\$10,000,000.00
c. Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	80%	\$14,185,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	20%	\$3,546,250.00
TOTAL PROJECT ESTIMATED FUNDING	100%	\$17,731,250.00

4. FOR CDOT ENCUMBRANCE PURPOSES**STBG Funds**

a. Total Encumbrance Amount (Federal funds + Local Agency funds)	\$5,231,250.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

SMS Funds

a. Total Encumbrance Amount (Only State funds are encumbered)	\$10,000,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS	\$15,231,250.00
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Note: Only \$9,230,467.00 in Design and Construction funds are currently available. Additional funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

STBG Funds

WBS Element 24353.20.10	Performance Period Start*/End Date TBD-TBD	Const. 3301	\$0.00
WBS Element 25758.20.10	Performance Period Start*/End Date TBD-TBD	Const. 3301	\$0.00

SMS Funds

WBS Element 24353.10.30	Performance Period Start**/End Date N/A- N/A	Design 3020	\$2,480,000.00
WBS Element 24353.20.10	Performance Period Start**/End Date N/A- N/A	Const. 3301	\$6,750,467.00
WBS Element 25758.20.10	Performance Period Start**/End Date N/A- N/A	Const. 3301	\$0.00

*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

**The Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal & State funds for this Work is 80% federal & State funds to 20% Local Agency funds, and this ratio applies only to the \$17,731,250.00 that is eligible for federal & State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$17,731,250.00, and additional federal & State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$17,731,250.00, then the amounts of Local Agency and federal & State funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$14,185,000.00. For CDOT accounting purposes, the federal funds of \$4,185,000.00, State funds of \$10,000,000.00 and the Local Agency funds of \$1,046,250.00 will be encumbered, but the Local Agency funds of \$2,500,000.00 will not be encumbered for a total encumbrance of \$15,231,250.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget of this project is \$17,731,250.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal & State funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D-1

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Exhibit E

Local Agency Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. C 0404-063/STU M760-051	STIP No. SR12020	Project Code 24353/25758	Region 01
Project Location WEST COLFAX AVE BETWEEN SHERIDAN BLVD AND WADSWORTH BLVD			Date 9/19/2024
Project Description WEST COLFAX PED SAFETY & INFRA - SMS			
Local Agency City of Lakewood	Local Agency Project Manager Eric King		
CDOT Resident Engineer Maria Hajiaghadee	CDOT Project Manager Christopher Beaver		
INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i> . LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource. The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). <i>Please write in "NA", if Not Applicable.</i>		x
		PROJECT DEVELOPMENT		
1	5.1	Prepare Design Data - CDOT Form 463	x	
	5.2	Determine Delivery Method	x	#
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement - Project Development - Construction Contract Administration (including Fabrication Inspection Services)	x x	# #
3,3A	5.5	Conduct Design Scoping Review Meeting	x	x
3,6	5.6	Conduct Public Involvement	x	#

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	x	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	x	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	x	#
3	5.10	Obtain Utility and Railroad Agreements	x	#
3	5.11	Conduct Final Office Review (FOR)	x	#
3A	5.12	Justify Force Account Work by the Local Agency	x	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	x	#
3	5.14	Document Design Exceptions - CDOT Form 464	x	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses (Must be included as a project special)	x	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	x	
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	x	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	x	#
	5.21	Ensure Authorization of Funds for Construction		x
	5.22	Use Electronic Signatures	x	
	5.23	File Project Development Records/Documentation in ProjectWise		x
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		x
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Christopher Beaver <u>11/16/2023</u> CDOT Design Project Manager Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		x
	6.4	Enforce Prompt Payment Requirements	x	x
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☒ LCPTracker ☒	x	
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	x	
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	x	#
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) ☒ Non-Federal Project (Use 7.2 series in Chapter 7) ☐				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	x	#
7		Advertise for Bids	x	#
7		Concurrence to Advertise		x
7		Distribute "Advertisement Set" of Plans and Specifications	x	
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	x	
7		Open Bids	x	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		x
		Submit required documentation for CDOT award concurrence	x	
		Concurrence from CDOT to Award		x

		Approve Rejection of Low Bidder		X
7,8		Award Contract (federal)	x	#
LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	x	#
		CONSTRUCTION MANAGEMENT		
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	x	#
8	8.2	Project Safety	x	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications (Structures)	x	#
		Pre-survey • Construction staking • Monumentation	x x	
		Partnering (Optional)	N/A	N/A
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	x	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	#
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Eric King 303-987-7994 Local Agency Professional Engineer Phone number	x	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (including projects with structures)	x	
		Fabrication Inspection and documentation	x	#
9	8.6	Review and Approve Shop Drawings	x	#
9	8.7	Perform Traffic Control Inspections	x	#
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system. Provide the name and phone number of the person authorized for this task. Eric King 303-987-7994 Local Agency Representative Phone number	x	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	#
9B	8.12	Prepare and Authorize Change Orders	x	x
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	#
9	8.17	Resolve Contractor Claims and Disputes (No Federal Funds used for claims)	x	

	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. <u>Andrea Hebard</u> CDOT Construction Project Manager <u>andrea.hebard@state.co.us</u> Email Address		x
9	8.19	Ongoing Oversight of DBE Participation	x	
LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	x x	x #
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	x x x	# x
9C	9.3	Perform Project Acceptance Samples and Tests	x	
9C	9.4	Perform Laboratory Acceptance Tests	x	
9C	9.6	Accept Manufactured Products Inspection of structural components: On-system requires CDOT Approval • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	 x x x	 # # #
9C	9.6	Approve Sources of Materials On-system requires CDOT Approval	x	#
9C	9.7	Independent Assurance Testing (IAT) On-system requires CDOT Approval Local Agency Procedures ☐ CDOT Procedures ☒ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 x x	 x #
9C	9.8	Approve mix designs On-system requires CDOT Approval • Concrete • Hot mix asphalt	x x	# #
9C	9.9	Check Final Materials Documentation	x	#
9C	9.10	Complete and Distribute Final Materials Documentation	x	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	x	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	x	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	x	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	x	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	x	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	x	
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	x	

	10.8	Contract Compliance and Project Site Reviews	x	#
	FINALS			
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable	x	#
10	11.2	Write Final Project Acceptance Letter	x	
10	11.3	Advertise for Final Settlement	x	
11	11.4	Prepare and Distribute Final As-Constructed Plans	x	
11	11.5	Prepare EEO Certification and Collect EEO Forms	x	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	x	
LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA CDOT	
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	x
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	x	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)	x	#
11	11.11	Process Final Payment	x	
	11.12	Close out Local Project	x	x
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	x	x
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	x	x

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region Civil Rights Office

CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub- recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISES

SECTION 1. Policy

It is the policy of the Colorado Department of Transportation (CDOT) that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Accordingly, CDOT's federally approved DBE Program Plan shall apply to this agreement.

SECTION 2. Subrecipient and Participant Obligation.

The Local Agency and its subrecipients agrees to ensure that DBEs certified through the Colorado Unified Certification Program have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement.

All participants on contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement shall take all necessary and reasonable steps in accordance with the CDOT's federally approved DBE Program Plan to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

Local Agency subrecipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT and federally assisted contracts.

SECTION 3. DBE Program.

The Local Agency subrecipient shall be responsible for complying with CDOT's FHWA-approved DBE Program Plan.

Local Agency requirements can be found at:

<https://www.codot.gov/business/civilrights>

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1,
PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING
EIGHT (8) STEPS.

EXHIBIT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

- 7.1 To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 7.1.1** Subrecipient DUNS Number;
 - 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3** Subrecipient Parent DUNS Number;
 - 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 7.2.1** Subrecipient's DUNS Number as registered in **SAM**.
 - 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zipcode + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangements as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

	CDOT SUBRECIPIENT RISK ASSESSMENT	Date:		
Name of Entity (Subrecipient):				
Name of Project / Program:				
Estimated Award Period:				
Entity Executive Director or VP:				
Entity Chief Financial Officer:				
Entity Representative for this Self Assessment:				
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
EXPERIENCE ASSESSMENT		Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?		☐	☐	
2 Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>		☐	☐	
3 Does your staff assigned to the program have at least three full years of experience with this federal program?		☐	☐	
MONITORING/AUDIT ASSESSMENT		Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?		☐	☐	☐
5 a) Were there non-compliance issues in this prior review?		☐	☐	☐
b) What were the number and extent of issues in prior review?		☐ 1 to 2	☐ >3	☐
OPERATION ASSESSMENT		Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>		☐	☐	
FINANCIAL ASSESSMENT		Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?		☐	☐	
b) If Yes, who approved the rate, and what date was it approved?				
8 Is this grant/award 10% or more of your entity's overall funding?		☐ >10%	☐ <10%	
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		☐	☐	☐
10 Has your entity had difficulty meeting local match requirements in the last three years?		☐	☐	☐
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?				

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐
Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.			
☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.  <i>Tool Version:</i> v2.0 (081816)			

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program’s statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

- 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served

- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report
 - ii. Project labor agreement certification or project workforce continuity plan
 - iii. Prioritization of local hires
 - iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient Unique Entity ID;
 - 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
 - 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
 - 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
 - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
 - 8.1.3.8.2. Whether the project prioritizes local hires.
 - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
- v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
 - b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.
16. Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
 - b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for Agreement or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:
<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q
SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration: To:		From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

Exhibit R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 9

To: Mayor and City Council
From: Jay Robb, City Clerk
Subject: **Appointing Members of the Victim Assistance Compensation Board**

SUMMARY STATEMENT: Resolution 2025-14 appoints three new members of the Victim Assistance Compensation Board for terms beginning October 1, 2024, and ending September 30, 2027.

BACKGROUND INFORMATION: The Screening Committee held interviews on March 4, 2025, and recommended Matthew Baynes (Lakewood resident), Donna DeVisser (Lakewood resident), and Devon Meyers (Municipal Court employee) to serve on the Victim Assistance Compensation Board.

Adoption of this resolution will officially appoint the members listed above to serve terms beginning October 1, 2024, and ending September 30, 2027.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of the resolution.

ALTERNATIVES: Denial of the recommended appointment.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If the resolution is adopted by the City Council, the new members will be contacted by City staff to receive orientation and begin serving on the Commission.

ATTACHMENTS: 1. Resolution R-2025-14

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

R-2025-14

A RESOLUTION

APPOINTING MEMBERS OF THE VICTIM ASSISTANCE COMPENSATION BOARD

BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Matthew Baynes, a Lakewood resident, is hereby appointed to the Victim Assistance Compensation Board to serve a three-year term that commenced on October 1, 2024, and will end September 30, 2027.

SECTION 2. Donna DeVisser, a Lakewood resident, is hereby appointed to the Victim Assistance Compensation Board to serve a three-year term that commenced on October 1, 2024, and will end September 30, 2027.

SECTION 3. Devon Meyers, a Lakewood Municipal Court employee, is hereby appointed to the Victim Assistance Compensation Board to serve a three-year term that commenced on October 1, 2024, and will end September 30, 2027.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 10

To: Mayor and City Council
From: Jay Robb, City Clerk
Subject: **Reappointing Members of the Lakewood Advisory Commission**

SUMMARY STATEMENT: The Resolution reappoints two members to the Lakewood Advisory Commission for full, three-year terms.

BACKGROUND INFORMATION: The Screening Committee held interviews on March 4, 2025, and recommended the reappointment of two individuals to the Lakewood Advisory Commission.

Adoption of the Resolution will officially reappoint Elisabeth Moolenaar and Glenn Weadock to the Lakewood Advisory Commission, to serve full, three-year terms which began on January 1, 2025, and will end on December 31, 2027.

BUDGETARY IMPACTS: None.

STAFF RECOMMENDATIONS: Staff is recommending the adoption of the Resolution.

ALTERNATIVES: The City Council could vote against one or both reappointments.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If the Resolution is adopted, the members will continue their service on the Lakewood Advisory Commission.

ATTACHMENTS: 1. Resolution R-2025-15

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

R-2025-15

A RESOLUTION

REAPPOINTING MEMBERS OF THE LAKEWOOD ADVISORY COMMISSION

BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Glenn Weadock, a Lakewood resident, is hereby reappointed to the Lakewood Advisory Commission to serve a three-year term that commenced on January 1, 2025, and will end December 31, 2027.

SECTION 2. Elisabeth Moolenaar, a Lakewood resident, is hereby reappointed to the Lakewood Advisory Commission to serve a three-year term that commenced on January 1, 2025, and will end December 31, 2027.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 11

To: Mayor and City Council
From: Jay Robb, City Clerk
Subject: **Reappointing a Member of the Lakewood Historic Preservation Commission**

SUMMARY STATEMENT: The staff is requesting the approval of a resolution reappointing a member to the Lakewood Historical Preservation Commission for 4-year terms beginning April 1, 2025, and ending March 31, 2029.

BACKGROUND INFORMATION: The Screening Committee held interviews on March 4, 2025, and unanimously recommended one resident to be reappointed to the Lakewood Historical Preservation Commission.

Adoption of this resolution will officially reappoint Jon Hostager to the Commission, to serve 4-year terms beginning April 1, 2025, and ending March 31, 2029.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of the resolution.

ALTERNATIVES: Denial of any recommended appointments.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: Upon approval of the resolution by City Council, the new members will be contacted by City staff to receive orientation and begin serving on the Commission.

ATTACHMENTS: 1. Resolution R-2025-16

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

R-2025-16

A RESOLUTION

REAPPOINTING A MEMBER OF THE HISTORIC PRESERVATION COMMISSION

BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Jon Hostager, a Lakewood resident, is hereby reappointed to the Historic Preservation Commission to serve a four-year term that will commence on April 1, 2025, and will end March 31, 2029.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 12

To: Mayor and City Council
From: Jay Robb, City Clerk
Subject: **Appointing and Reappointing Members of the Lakewood Planning Commission**

SUMMARY STATEMENT: Resolution 2025-17 reappoints two members of the Lakewood Planning Commission for full, four-year terms beginning April 1, 2025, and ending March 31, 2028. The Resolution also appoints a new member of the Planning Commission for full, four-year terms beginning April 1, 2025, and ending March 31, 2028.

BACKGROUND INFORMATION: The Screening Committee held interviews on March 5, 2025, and recommended Jenny O'Neill (Ward 5 representative) and Kip Kolkmeier (at-large representative) to be reappointed to the Lakewood Planning Commission to serve full, four-year terms beginning April 1, 2025, and ending on March 31, 2029.

The Screening Committee also recommended Topher Williams (at-large representative) to serve on the Planning Commission for a full, four-year term beginning April 1, 2025, and ending on March 31, 2029.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of the Resolution.

ALTERNATIVES: Denial of the recommended appointment.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If approved by the City Council, the new members will be contacted by City staff to receive orientation and begin serving on the Commission.

ATTACHMENTS: 1. Resolution R-2025-17

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

R-2025-17

A RESOLUTION

APPOINTING AND REAPPOINTING MEMBERS OF THE LAKEWOOD PLANNING COMMISSION

BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Jenny O'Neill, a Lakewood resident, is hereby reappointed to represent Ward 5 on the Lakewood Planning Commission, to serve a four-year term that will commence on April 1, 2025, and will end March 31, 2029.

SECTION 2. Kip Kolkmeier, a Lakewood resident, is hereby reappointed to represent an at-large position on the Lakewood Planning Commission, to serve a four-year term that will commence on April 1, 2025, and will end March 31, 2029.

SECTION 3. Topher Williams, a Lakewood resident, is hereby appointed to represent an at-large position on the Lakewood Planning Commission, to serve a four-year term that will commence on April 1, 2025, and will end March 31, 2029.

INTRODUCED, READ AND ADOPTED by a vote of ___ for and ___ against at a hybrid regular meeting of the City Council on March 24, 2025, at 7 o'clock p.m., at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 13

To: Mayor and City Council
From: Max Kirschbaum, Director of Public Works
Subject: **West 1st Ave Drainage - Acquire Property at W 1st Avenue, West of Depew**

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property to construct a local drainage project at W 1st Avenue and Depew Street.

BACKGROUND INFORMATION: The City of Lakewood has budgeted funds to construct a local drainage project on W 1st Avenue and Depew Street. The project will replace an existing inlet that is a hazard to the public at the corner of W 1st Avenue and Depew Street. The project will improve the drainage system by adding curb and gutter, additional inlets, and pipes.

This ordinance declares the city's intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

A map is attached that conceptually illustrates the property rights that are anticipated to be needed. A permanent easement is required from one property at 5580 W 1st Avenue. Permanent easements will be located along the eastern edge of 5580 W 1st Avenue to provide future maintenance for the proposed drainage facilities.

It is anticipated that temporary easements for the construction period, illustrated in green on the maps, will be required from the same property at 5580 W 1st Avenue. The temporary easements are required to perform re-grading, tree or shrub removal, and landscape restoration to blend the area around the improvements into the surrounding site features and yards.

BUDGETARY IMPACTS: The funding for this project was approved in the 2025 budget. No additional funding is necessary. This project will be paid for by the Stormwater Enterprise fund.

STAFF RECOMMENDATIONS: Approval of the ordinance.

ALTERNATIVES: If this Ordinance is not approved, the City will not obtain the property rights needed to construct the local drainage project. The safety hazard at the corner of W 1st Avenue and Depew Street will remain.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: City staff has contacted the affected property owners to present the initiation of the design phase of this project. Notification of City Council's consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there could be no discussion of land value at the City Council hearing about this ordinance because this is the very start of the acquisition process and no land values have yet been determined.

ATTACHMENTS: 1. Ordinance O-2025-12
2. 1ST DEPEW ORDINANCE EXHIBIT

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

O-2025-12
AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTEREST IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF THE W 1ST AVENUE AND DEPEW STREET LOCAL DRAINAGE PROJECT AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND CONDEMNATION OF REAL PROPERTY INTERESTS (SUBJECT TO FURTHER COUNCIL APPROVAL)

WHEREAS, to increase public safety along W 1st Avenue at the corner of W 1st Avenue and Depew Street, the City of Lakewood (the "City") desires to implement the W 1st Avenue and Depew Street Local Drainage Project (the "Project"), which will add storm sewer improvements along W 1st Avenue and Depew Street (the "Improvements");

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Project (the "Property Interests");

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

- a. Declare the City's intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;
- b. Authorize negotiations for, and acquisitions of, the Property Interests;
- c. Accept the instruments of conveyance for the Property Interests; and
- d. Authorize the City Attorney to initiate condemnation proceedings (subject to further Council approval) to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to this proposal identified herein.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:

SECTION 1. The W 1ST Avenue and Depew Street Local Drainage Project (the "Project") will serve a public purpose by improving stormwater runoff collection and fixing

a hazardous inlet at the corner of W 1st Avenue and Depew Street, and it is necessary to acquire certain Property Interests from adjacent property owners, further described in Section 2 herein, to advance such public purpose.

SECTION 2. It is the intent of the City of Lakewood to acquire the Property Interests in the form of (i) permanent easements; (ii) temporary construction easements; or (iii) any other interests as may be warranted for the Project, with any improvements contained herein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the "City Manager") confirms that any or all of those parcels identified on Exhibit A are necessary for the Project, the City Manager shall give notice of intent to acquire such Property Interests in conformance with Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports acquired in conformance with Section 38-1-121, C.R.S. or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired pursuant to Section 3 above.

SECTION 5. The City's Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City Manager is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Manager shall bring to the City Council a resolution identifying the Property Interests to be acquired by condemnation, and the City Council shall thereby authorize or deny the exercise of the City's eminent domain power over such Property Interests pursuant to Section 14.4 of the City of Lakewood home rule charter.

SECTION 7. All interested parties are hereby advised that, in the event the City Council approves the exercise of the City's eminent domain power over one or more Property Interests identified in such resolution, the City Attorney, on behalf of the City, shall commence condemnation proceedings with respect to such Property Interests and shall be authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City's Chief Financial Officer and all other officers and agents of the City shall cooperate with the City Attorney in the condemnation action, make any deposits and payments as may be necessary for acquisition of the Property Interests, and pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney shall additionally be authorized to employ such expert witnesses, including appraisers, as the City Attorney determines

necessary for the purposes of the condemnation authorized by this Ordinance and the aforesaid resolution, and the City's Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.

SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of the Ordinance are not determined by the court to be inoperable.

SECTION 10. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of March, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of March, 2025; set for public hearing to be held on the 28th day of April, 2025; read, finally passed and adopted by the City Council on the 28th day of April, 2025; and signed by the Mayor on the ____ day of April, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

EXHIBIT A

Property Interests for the following addresses:

49-124-06-001
5580 W 1ST AVE
LAKEWOOD, CO 80226



CURRENTLY ANTICIPATED

-  PERMANENT EASEMENT
-  TEMPORARY EASEMENT

CITY OF LAKEWOOD ORDINANCE MAP
PROPERTY INTERESTS FOR 1ST AVE & DEPEW DRAINAGE PROJECT
MARCH 2025



CITY OF LAKEWOOD PROPOSED DESIGN MAP
FOR 1ST AVE & DEPEW DRAINAGE PROJECT
MARCH 2025

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 14

To: Mayor and City Council
From: Max Kirschbaum, Director of Public Works
Subject: **Acquiring Property at West 3rd Avenue, East of Depew Street**

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property to construct a local drainage project at W 3rd Avenue, east of Depew Street.

BACKGROUND INFORMATION: The City of Lakewood has budgeted funds to construct a local drainage project on W 3rd Avenue. The project will install a storm drain system with inlets on the north side of W 3rd Avenue and outfall to the south to an existing detention pond. The project will alleviate local drainage flooding problems on W 3rd Avenue.

This ordinance declares the city's intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

A map is attached that conceptually illustrates the property rights that are anticipated to be needed. A permanent easement is required from two properties on the south of W 3rd Avenue to allow for the storm pipe to outfall into the pond. The properties are at 5430 W 3rd Avenue and 5440 W 3rd Avenue. Permanent easements will be located along the eastern edge of these properties to provide future maintenance for the proposed drainage facilities.

BUDGETARY IMPACTS: The costs to obtain property rights will be paid by the Stormwater Enterprise fund. Adequate funds for this project are approved in the 2025 budget.

STAFF RECOMMENDATIONS: Approval of the ordinance.

ALTERNATIVES: If this Ordinance is not approved, the City will not obtain the property rights needed to construct the local drainage project.

PUBLIC OUTREACH: City staff has contacted the affected property owners to present the initiation of the design phase of this project. Notification of City Council's consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there could be no discussion of land value at the City Council hearing about this ordinance because this is the very start of the acquisition process and no land values have yet been determined.

NEXT STEPS: Begin the acquisition process and complete preparation of construction bid documents.

ATTACHMENTS: 1. Ordinance O-2025-13
2. Exhibit to Ordinance O-2025-13

REVIEWED BY: Kathleen E. Hodgson, City Manager

Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

O-2025-13
AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTEREST IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF THE W 3RD AVENUE LOCAL DRAINAGE PROJECT AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND CONDEMNATION OF REAL PROPERTY INTERESTS (SUBJECT TO FURTHER COUNCIL APPROVAL)

WHEREAS, to decrease local flooding along W 3rd Avenue, east of Depew Street, the City of Lakewood (the "City") desires to implement the W 3rd Avenue Local Drainage Project (the "Project"), which will add storm sewer improvements along W 3rd Avenue (the "Improvements");

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Project (the "Property Interests");

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

- a. Declare the City's intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;
- b. Authorize negotiations for, and acquisitions of, the Property Interests;
- c. Accept the instruments of conveyance for the Property Interests; and
- d. Authorize the City Attorney to initiate condemnation proceedings (subject to further Council approval) to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to this proposal identified herein.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:

SECTION 1. The W 3rd Avenue Local Drainage Project (the "Project") will serve a public purpose by improving stormwater runoff collection along W 3rd Avenue and it is

necessary to acquire certain Property Interests from adjacent property owners, further described in Section 2 herein, to advance such public purpose.

SECTION 2. It is the intent of the City of Lakewood to acquire the Property Interests in the form of (i) permanent easements; (ii) temporary construction easements; or (iii) any other interests as may be warranted for the Project, with any improvements contained herein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the "City Manager") confirms that any or all of those parcels identified on Exhibit A are necessary for the Project, the City Manager shall give notice of intent to acquire such Property Interests in conformance with Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports acquired in conformance with Section 38-1-121, C.R.S. or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired pursuant to Section 3 above.

SECTION 5. The City's Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City Manager is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Manager shall bring to the City Council a resolution identifying the Property Interests to be acquired by condemnation, and the City Council shall thereby authorize or deny the exercise of the City's eminent domain power over such Property Interests pursuant to Section 14.4 of the City of Lakewood home rule charter.

SECTION 7. All interested parties are hereby advised that, in the event the City Council approves the exercise of the City's eminent domain power over one or more Property Interests identified in such resolution, the City Attorney, on behalf of the City, shall commence condemnation proceedings with respect to such Property Interests and shall be authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City's Chief Financial Officer and all other officers and agents of the City shall cooperate with the City Attorney in the condemnation action, make any deposits and payments as may be necessary for acquisition of the Property Interests, and pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney shall additionally be authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance and the

aforesaid resolution, and the City's Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.

SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of the Ordinance are not determined by the court to be inoperable.

SECTION 10. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of March, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of March, 2025; set for public hearing to be held on the 28th day of April, 2025; read, finally passed and adopted by the City Council on the 28th day of April, 2025; and signed by the Mayor on the ____ day of April, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

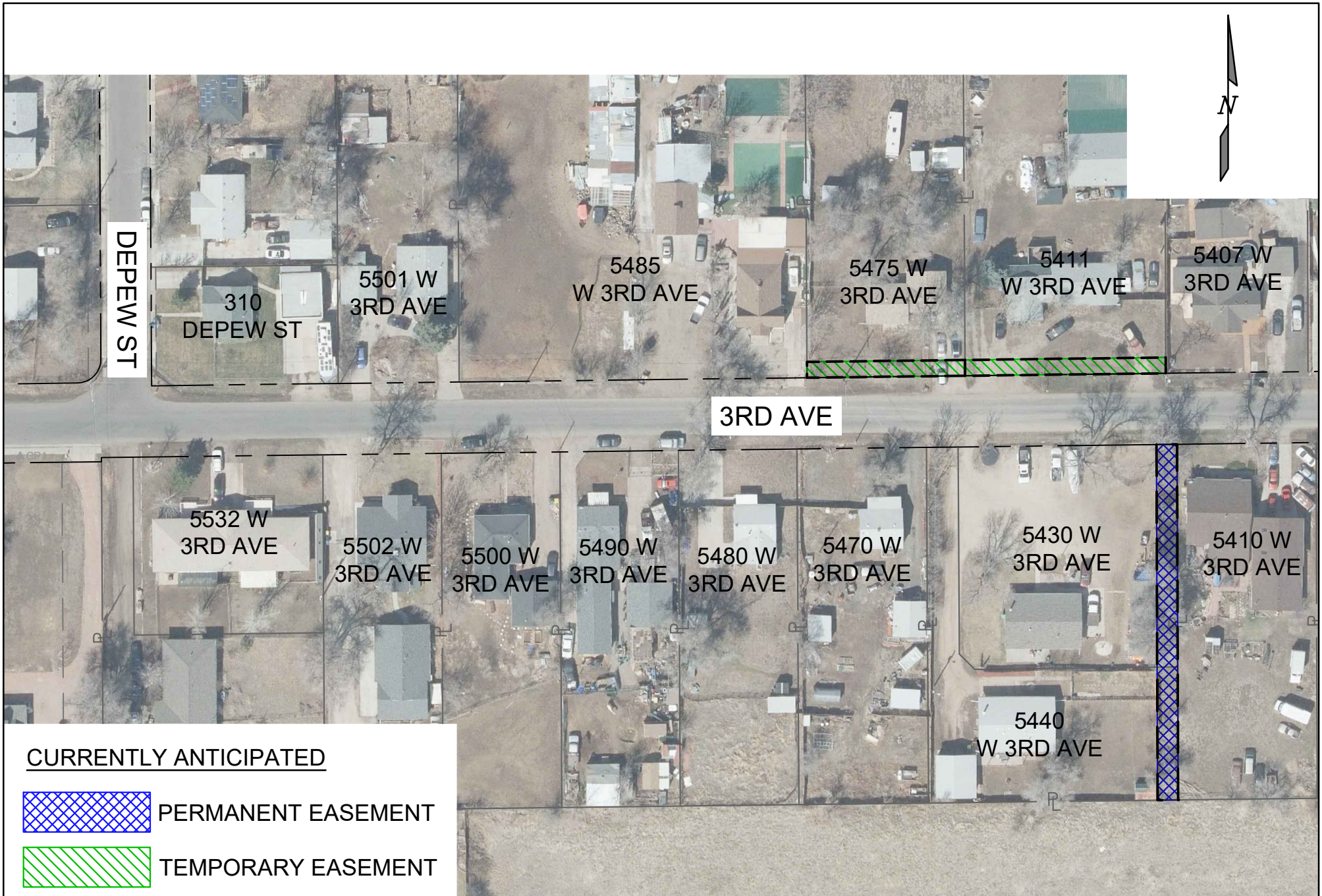
Alison McKenney Brown, City Attorney

EXHIBIT A

Property Interests for the following addresses:

49-121-99-002
5430 W 3RD AVE
LAKEWOOD, CO 80226

49-121-99-004
5440 W 3RD AVE
LAKEWOOD, CO 80226



CITY OF LAKEWOOD ORDINANCE MAP
PROPERTY INTERESTS FOR 3RD AVENUE DRAINAGE PROJECT
MARCH 2025



CITY OF LAKEWOOD PROPOSED DESIGN MAP
FOR 3RD AVENUE DRAINAGE PROJECT
MARCH 2025

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 15

To: Mayor and City Council
From: Cory Peterson, Chief of the Operational Services Branch
Subject: **Update to City Personnel Policies**

SUMMARY STATEMENT: Lakewood Municipal Charter §4.7(a) requires the City Council to adopt, by ordinance, provisions that expand upon the personnel merit system policies set forth within the Charter. Other than modifications to change the titles of the Human Resources Department and the Director, these policies have not been reviewed for compliance with State law since 2014.

BACKGROUND INFORMATION: Lakewood Municipal Charter §4.7(a) requires the City Council to adopt, by ordinance, provisions that expand upon the personnel merit system policies set forth within Charter. These policies were written in 1999. At that time the City incorporated all their human resources policies within the personnel merit system policies. Over time State and Federal law has mandated several changes to personnel matters. The City complies with State and Federal law even when it conflicts with the Personnel Merit System policies of the Lakewood Municipal Code. This has created confusion for employees and challenges in policy administration.

Beginning in 2020, the Human Resources Department undertook a comprehensive review of the Personnel Merit System policies to determine which provisions were required to be included therein and which policies were more appropriately included within the City's Administrative Regulations/Personnel Handbook. The following policies were removed from the Personnel Merit System Policies as being outside the scope of the Personnel Merit System policies to allow for greater flexibility in responding to changes promulgated by State and Federal law, as well as the needs of a changing workplace and changing workforce.

Attached to this item are several support documents. Due to the number of policies removed from this Code and the myriad of staff members who have worked on this project over the past five years, the redline version is not legible. Therefore, to provide a visual description of the proposed changes a copy of the current Title 4 with all policies that have been removed shown in strikeout text has been included. Not all of the general policies have been removed, as several of them were determined to relate back to the intent of the Personnel Merit System requirements.

Additionally, a comparison document is included that compares the remaining policies in their current form to the proposed revised form.

Finally, two historical ordinances have been attached for illustrative purposes. Ordinance 1999-34 shows how few changes had been made to the personnel policy handbook between 1999 and the present. Ordinance 2019-7 shows the scope of the most recent changes to this Code.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approve the revised policies for the City's Personnel Merit System.

ALTERNATIVES: The Council may decide not to approve the revised policies for the City's Personnel Merit System.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: None

ATTACHMENTS:

1. Ordinance O-2025-9
2. Title 4-Personnel Policies_Redline
3. Title 4-Personnel Policies_Policies Comparison
4. Ordinance O-1999-34
5. Ordinance O-2019-24

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

AN ORDINANCE

REPEALING AND REPLACING TITLE 4 OF THE LAKEWOOD MUNICIPAL CODE REGARDING THE PERSONNEL POLICIES CODE FOR THE CITY OF LAKEWOOD, COLORADO

WHEREAS, Section 4.7 of the Lakewood Municipal Charter (Charter §4.7) establishes the personnel merit system for the employment, promotion, and evaluation of employees of the City, and establishes that provisions associated with the personnel merit system will be adopted by Ordinance;

WHEREAS, Title 4 of the Lakewood Municipal Code (Title 4) was originally adopted in 1999, with updates in 2001, 2004, 2007, 2009, 2014 and 2019 to both fulfill the requirements of creating personnel merit system policies as mandated by Charter §4.7 and to serve as a comprehensive personnel policy handbook;

WHEREAS, O-2014-09 was the last review of Title 4 policies in that O-2019-24 was limited to updating the term “Employee Relations” to “Human Resources”;

WHEREAS, the City has historically used the City’s Code to serve as a personnel policy handbook, rather than limiting the Code provisions to those policies arising out of the Personnel Merit System as set forth in Charter §4.7, making it difficult to address the evolving needs of the City’s workforce;

WHEREAS, changes in State and Federal law have superseded many of the general and personnel merit system policies set forth within Title 4 making them invalid;

WHEREAS, the proposed revisions to Title 4 update the personnel merit system policies to conform to current State and Federal law and remove most of the general personnel policies, placing those policies within the administrative regulations where they can be updated and revised on a more regular basis to remain in compliance with applicable law and more quickly respond to the needs of the City’s employees;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Repeal and Replace Title 4 with the following provisions:

TITLE 4 – PERSONNEL MERIT SYSTEM POLICIES

Chapter 4.01 GENERAL PROVISIONS

4.01.000 Requirements of Section 4.7 of the Lakewood Municipal Charter.

Section 4.7 of the Lakewood Municipal Charter (Charter §4.7) establishes the personnel merit system for the employment, promotion, and evaluation of employees of the City. The personnel merit system shall be based upon principles of merit. The personnel merit system, as set forth within this code, shall include but not be limited to provisions regarding the following:

- (1) Procedures for employment and promotion based on merit;
- (2) Procedures for reasonable probationary periods for employment and promotions;
- (3) Procedures for the resolution of grievances of employees;
- (4) Procedures for administrative appeal of disciplinary action, including discharge, taken against a non-probationary employee, which shall include notice, hearing, and the right to be represented; and
- (5) A requirement that any disciplinary action taken against a non-probationary employee (excluding managerial, executive and confidential employees), including but not limited to suspension or discharge from employment, shall be for cause.

4.01.010 Applications and authority.

The Personnel Merit System Policies (“policies” or “personnel polices”) set forth in this Code, in accordance with Charter §4.7, shall be applicable to all employees of the City of Lakewood except as otherwise provided by City Charter, State statute, Federal law, judicial decision, ordinance or these policies. The Director of Human Resources (Director) shall serve as an advisor to the Municipal Court and City Attorney's office in matters involving the personnel merit system. Any policy giving decision-making authority to the City Manager, Presiding Judge, City Attorney, department director, division manager, or other supervisor allows for a designee to act on that individual's behalf.

Unless otherwise noted this Code does not apply to: City Manager, City Attorney, all judges of the Municipal Court or non-employees of the City such as elected officials and members of boards and commissions.

4.01.020 Rules subordinate to applicable law, relevant judicial decisions and rules of court.

These Policies are subordinate to those federal laws, state statutes, or other laws that supersede Charter §4.7, including any relevant judicial decisions and officially adopted rules of court.

4.01.030 Prerogatives reserved.

In accordance with Charter §3.3, the City Manager of the City of Lakewood shall exercise supervision over all administrative departments and employees of the City of Lakewood, in conformance with the City's applicable Charter, Municipal Code, City Administrative Regulations and other relevant laws. This includes authority over the following:

A. Disciplinary Action

B. Employment Status

Includes: Recruitment, Transfers, Promotions, Demotions, Vacancies, Employee Separations, Reduction in Force and Layoffs, and Retirement

Hire, monitor probationary periods, promote, demote, transfer, assign, separate, retire, separate through a reduction in force, and recall employees to work

C. Employee Development

Includes: Education and Training, Performance Evaluations, Recruitment, and Examinations

Judge the skill, ability, efficiency, and qualifications of all employees, and otherwise evaluate employee performance

D. Hours of Work.

Includes: Holiday Pay, On-Call, Call-in, Call-Back and Unscheduled Split Shift, Overtime and Compensatory Time, Shift Differential Pay, Sick Leave Policy, Unexcused Absence, Teleworking, Training and Travel Time, and Personal Leaves of Absence

Determine and change any conditions of employment, including, but not limited to, the starting and ending times, the number of hours on the shift to be worked, days off to be taken, and the number of hours in the employees' work week

E. Compensation

Includes: Pay Plan, Variable Pay Plan, Bonus Program, Attraction and Retention Bonus Pay, Car Allowance, New Employee Hiring Incentives

F. Use of City Equipment

Includes: Vehicles and Equipment, Mobile Device Use, Acceptable Technology Use

G. Workforce Planning

Reduce or expand the operation of the City of Lakewood or its departments

Determine the number, size, location, and operation of facilities and departments, groups, or divisions

Determine work assignments and the size and composition of the workforce

H. Independent Contractors

Determine City of Lakewood services and subcontract for them as required

I. Acceptable Technology Use, Information Technology Procurement, Mobile Device Use

Introduce technological changes and new, improved, or modified services, methods, techniques, and equipment

J. Administrative Regulations

Shall include regulations pertaining to:

Make, change, and enforce rules, policies, guidelines, practices and quality standards

Direct and supervise the workforce

Manage operations

Revise, eliminate, combine, or establish new jobs, benefit plans, and classifications

4.01.040 Amendments to policies; Codification.

The City Manager may from time to time propose amendments to these policies to the City Council. Amendments shall become effective when adopted by the City Council or on an effective date designated by the City Council.

These policies shall be codified in the Lakewood Municipal Code.

4.01.050 Administrative regulations.

Administrative regulations promulgated by the City Manager shall set forth the procedures, rules, and regulations pertaining to the administration of these Policies and also for carrying out the duties and responsibilities of employment with the City. The City Manager shall have the authority to amend such regulations as needed. Additionally, each department may also adopt departmental operating policies/procedures/regulations specific to the needs of and services provided by the department provided such administrative regulations do not conflict with this Code.

4.01.060 Definitions.

As used in these Personnel Merit System Policies, the following terms shall have the following meanings:

Administrative leave. Time off with or without pay, granted at the discretion of a supervisor in consultation with the Department of Human Resources.

Administrative regulations. Regulations setting forth the procedures, rules, and regulations pertaining to the administration of these Personnel Merit System Policies and the general administration of personnel. The City Manager has the authority to amend them as needed.

Appeal. The employee's formal challenge to a disciplinary action.

Appointment. Placing of a person in a regular full-time, regular part-time, provisional full-time, provisional part-time, variable, or seasonal position.

At-will employment. An employee serving at the will of the City of Lakewood may separate employment at any time or be separated at any time, for any or no reason. At-will employees at the City of Lakewood generally include division managers and higher level employees, as well as provisional and variable and seasonal employees. All new employees serving an initial probationary period also serve at-will.

City Manager. The chief administrative officer of the City, appointed by the City Council and invested with those powers and authorities as set forth with the City's Charter, Code, State law and all other applicable laws and regulations. Whenever the term City Manager is used within these policies it shall include the City Manager's Designee.

Classification. Determination of the occupational group, pay level, and exemption status of a position based on the duties performed, authority, responsibilities exercised, and the pay level of comparable positions.

Compensation. Pay, wage, allowance, and all other forms of valuable consideration an employee earns for services to the City of Lakewood.

Demotion. An employee moving from one pay level to a lower pay level. This can be a temporary, involuntary, or voluntary assignment.

Department Director. The head of a distinct department. Department Directors report directly to the City Manager.

Disciplinary action. Action taken by the Disciplinary Authority against an employee for cause, which may include reprimand, suspension, demotion, or termination.

Disciplinary authority. The City Manager, a department director, a division manager, or a supervisor may exercise disciplinary authority as set forth in these policies.

Employee. Someone hired into a paid position. Per the Fair Labor Standards Act elected officials, City Council members, appointees to boards or commissions, and volunteers are not employees of the City.

Employee development. Instruction designed to maintain or increase the proficiency, qualifications, knowledge, skills, and abilities of City of Lakewood employees.

Exempt. An employee who is exempt from certain provisions of the Fair Labor Standards Act (FLSA) as further clarified by the Colorado Department of Labor and Employment COMPS Order, 7 CCR 1103-1. Exempt employees do not receive overtime pay for hours worked more than 40 in one week.

Family and Medical Leave which includes Military Family Leave Entitlement. Job protected leave of absence available to eligible employees that complies with and affords employees the protections of the Family and Medical Leave Act (FMLA).

Grievance. A formal complaint initiated by eligible employees about the work environment.

Job posting. A notice available to City of Lakewood employees outlining the essential functions, requirements, compensation and details of an open position in conformance with State law.

Market data. Wage and pay data obtained from a variety of relevant markets, including the public and private sector.

Medical separation. A separation from employment based upon the determination that, owing to illness or injury, an employee cannot perform the essential functions of such employee's job with or without reasonable accommodation. A medical separation is not disciplinary in nature, so appeal rights do not apply.

Non-exempt. An employee who is paid for hours worked is subject to the overtime provisions of the Fair Labor Standards Act (FLSA).

Pay level. The establishment of a pay range for positions with comparable market data, competency, and authority. For designated positions the pay level is a series of pay steps.

Performance Review. A method for documenting, evaluating, and managing employee performance.

Personnel merit system policies. Title 4 of the Lakewood Municipal Code. May also be referred to herein as Personnel Merit System Policies or these policies.

Position. A specific job in the City of Lakewood within a classification, occupational group, and pay level.

Positional training period. Any regular employee who receives a promotion, demotion, or lateral transfer shall serve a period of positional training during which such employee will be evaluated as to such employee's ability to carry out the duties of the new position but shall otherwise remain entitled to the procedures outlined here for regular employees.

Probationary employee. An employee newly hired, serving a probationary period. An initial probationary employee is at will. Includes employees moving from variable or seasonal to regular or provisional.

Probationary period. The designated period of initial employment which is generally between six to twelve months of time actually worked for the City during which an employee's skills, abilities, performance, and other job-related criteria are evaluated to determine such employee's suitability for their employment. Police agents serve a two-year probationary period. Each employee will be notified of the term of probation associated with such employment at the start of such employment. Certain types of federal or State protected leave will toll the probationary period.

Promotion. The movement of an employee from one pay level to a level with higher pay and increased responsibility. This can be a temporary, permanent, voluntary, or involuntary assignment.

Promotional list. A list of candidates eligible for a promotion. This list expires after a certain period of time, depending on department standards and is carried out in conformance with the Equal Pay for Equal Work Act (Title 8, Article 5, Part 2 (C.R.S. §§

8-5-201 to 8-5-203) (2021) ("Transparency in Pay and Opportunities for Promotion and Advancement"))).

Provisional employee. A full or part-time employee hired for a period of less than two years who receives benefits, but is not entitled to all rights and privileges afforded a regular employee. Provisional employees serve at-will.

Reclassification. A newly assigned classification of a position based on a study of various criteria pertaining to the position. A position classified from full-time to part-time or vice versa is considered a reclassification.

Reduction in force. Non-disciplinary termination of an employee from a position because of a reorganization; completion or alterations of required programs, projects, or services; changes in methodology by which the service is provided; reductions in service levels; budgetary or related economic restraints, restrictions, or decisions; or other situations that alters the need for a position. Also known as RIF.

Regular employee. An employee who has been assigned to a full- or part-time position in the City of Lakewood, receives benefits (including pension contributions), and is afforded the rights and privileges described in the Personnel Merit System Policies.

Resignation. A voluntary separation from employment. An impending resignation should occur in writing when practical. If an employee voices the intent to resign, the supervisor may accept this declaration with a third party as a witness.

Seasonal employee. A full- or part-time hourly employee hired for a designated period, generally less than nine months. Seasonal employees serve at will and are entitled to limited benefits and privileges.

Separation. General term for any employee departure from City of Lakewood employment.

Performance Improvement Plan. A specialized performance review which occurs within a set time period after an employee's overall performance is rated "unsatisfactory." This is a tool to improve or develop an employee's performance. If performance does not improve and remain consistent or is not sustained, the employee may be subject to disciplinary action, up to and including termination.

Step or pay step. The pay allocation within the positions' pay level.

Suspension. A period during which an employee is prohibited from reporting to work. A suspension may be imposed with or without pay as appropriate under the circumstances, and may be imposed during a pending criminal prosecution. The City of Lakewood may delay disciplinary action through the suspension period.

Temporary assignment. A period during which an employee takes on different or additional responsibilities. Compensation may increase temporarily, but position and title remain the same.

Variable employee. An employee who has not been assigned to a regular or provisional position and whose work schedule is generally part-time. Variable employees serve at-will and are entitled to limited benefits and privileges.

Termination. Involuntary separation from employment.

Transfer. The movement of any City of Lakewood employee from one position to another with the same or similar pay level and degree of responsibility, or from one department/division to another department/division. This can be a temporary, permanent, voluntary, or involuntary assignment. Such a transfer will not result in a change in compensation.

Work environment. Any work area on or off City of Lakewood property where City of Lakewood business is conducted.

Chapter 4.02 PAY PLAN

4.02.010 Pay concepts and philosophies.

The City Council has authority over the City of Lakewood's broad compensation concepts and philosophies. The City of Lakewood embraces a market-driven, performance-based pay system that recognizes budgetary influences and constraints, in accordance with all applicable State and Federal law.

At least annually, the Department of Human Resources shall study the factors affecting the level of pay for all positions and make corresponding pay recommendations to the City Manager. The City Manager shall annually review the pay ranges. The pay plan and base pay compensation levels for regular full-time and regular part-time, as well as for provisional and variable/seasonal positions, shall be set forth in Administrative Regulations "Pay Plan" and "Variable/Seasonal Pay Plans." All employees shall be assigned a pay range and paid bi-weekly.

4.02.020 Establishment of classifications.

The City Manager will implement and maintain a classification system, paying positions the appropriate base pay as established by Chapter 4.02. The City Manager shall authorize the classification titles and corresponding occupational category levels.

4.02.030 Maintenance of plan.

The City Manager shall periodically order a study of the duties, responsibilities, and associated factors of all positions within the City of Lakewood. The study shall address the appropriate pay rates and classifications for each position based upon market data, nature of work, duties, responsibilities, and authority within that position. The City Manager shall make amendments to the classification plan whenever data indicates the necessity for a change.

4.02.040 Placement of positions within pay levels.

Positions in the City of Lakewood shall fall within the pay levels prescribed by the City Manager. Final determination of the placement of positions in pay levels and classifications shall be approved by the City Manager after considering the recommendation of the Department of Human Resources.

4.02.050 New positions.

Any position added to the city pay plan shall be assigned an appropriate classification. Managers should develop a job description and consult with Department of Human Resources before submitting the position for approval to the City Manager. New positions should be requisitioned through the annual budget process.

4.02.060 Reclassification.

A reclassification of a position may be considered when a study has shown that the duties and level of responsibilities (especially decision making) of a current position have significantly changed. Additionally, a reclassification may be applicable if the job evolves into a position that currently exists in the pay plan, or when sustained market data indicate the need for a reclassification. (This may include a position that goes from regular part-time to regular full-time or from regular full-time to regular part-time.) A position may move to a higher level, a lower level, or remain at the same level. Requests for reclassification, along with an accurate job description, shall be submitted in writing as directed by the Administrative Regulation "Workforce Planning." This regulation requires a supervisor to list reasons for a reclassification study. The Department of Human Resources may reclassify positions with good and sufficient reason. Reclassifications shall not be proposed solely for the purpose of effecting pay adjustments or individual promotions/demotions.

Reclassifications should be requisitioned through the annual budget process.

4.02.070 Pay.

Employees shall be assigned a base pay rate in conformance with the pay plan. The City Manager shall establish by written order to the Director of Human Resources the base pay rate of each City of Lakewood employee. Relevant factors in establishing or changing base pay rates include competence, diligence, and efficiency. In addition, the City Manager may, at the Manager's discretion, grant pay increases at any time to any employee as long as doing so does not exceed the budget and is in conformance with all applicable laws. The City Manager is authorized to make an exception to the assignment of an employee's pay in the pay plan.

4.02.080 Use of pay ranges/pay steps.

The department director shall, in consultation with the Department of Human Resources, authorize appointments or reinstatements at a rate within the pay range for the position's classification. In addition, appointments or reinstatements for police agents shall be authorized at the appropriate step rate.

4.02.090 Step system.

A movement of established position pay through a determined set of increases scheduled in the pay plan. In addition, appointments or reinstatement of positions shall be authorized at the appropriate step rate.

4.02.100 Pay advancement.

Pay advancement shall be in conjunction with pay plans and dependent upon the budget and employee performance. The City Manager has final authority over recommended pay adjustments.

4.02.110 Bonus plan.

The City Manager may establish a bonus plan to specify criteria for bonus awards. The City Manager has final authority over awards relating to the bonus plan, and shall not grant any bonus award that would compromise the total compensation budget for the fiscal year.

Chapter 4.03 RECRUITMENT

4.03.010 Eligibility for employment.

Applicants may be eligible for employment consideration with the City of Lakewood if they possess the minimum qualifications of the job, meet established selection criteria, and are able to perform the essential functions of the position with or without reasonable accommodation. For emergency personnel only, an eligibility list established in conformance with applicable pay promotion and advancement law may be used in lieu of individual position advertisement.

4.03.020 Announcement of vacancies.

The Department of Human Resources shall prepare and post recruiting notices in venues designed to attract the most qualified candidates. All recruiting notices and other vacancy publicity shall explicitly state that the City of Lakewood is an Equal Opportunity Employer.

Applications for all positions must be submitted through the HRIS (Human Resources Information System) on or before the stated deadline. Jobs are posted to City of Lakewood employees outlining the essential functions, requirements, compensation, and details of an open position in conformance with State Law.

Chapter 4.04 MISCELLANEOUS RULES

4.04.010 Transitional status and medical separations.

A medical separation decision is final and cannot be appealed.

4.04.020 Violation of policies.

Violation of any policy shall be grounds for disciplinary action, including but not limited to reprimand, suspension, demotion, or termination. An employee who has been terminated or suspended for more than two days and believes that no cause for discipline existed may appeal in accordance with Chapter 4.20.

4.04.030 Employee administrative meetings.

Administrative meetings at the City of Lakewood take place with the employee and City of Lakewood personnel only. No representatives, such as family members, friends, or attorneys are allowed.

Chapter 4.05 EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

4.05.010 Policy.

The City of Lakewood provides equal employment opportunities to all persons without regard to an individual's race, color, creed, national origin, religion, ancestry, sex, sexual orientation (including transgender status), age, military service, veteran status, marital status, genetic information, pregnancy or disability, or any other applicable status protected by state or federal law. The City of Lakewood does not tolerate discrimination, harassment, or retaliation and promotes equal pay for equal work.

The City of Lakewood promotes an atmosphere of respect and acceptance in all interactions both internally and externally. The City of Lakewood recognizes that its citizens and employees have varied backgrounds, experiences, and differences; therefore, the City of Lakewood works hard to create a culture of inclusion. The City of Lakewood strives to reflect its community while fostering the development and advancement of qualified individuals.

Any employee who believes such employee has been the subject of a violation of the EEOC are strongly encouraged to refer to applicable administrative regulations to address such violation. Employees may also file claims with the Equal Employment Opportunity Commission or the Colorado Civil Rights Division.

Chapter 4.06 DISCIPLINARY APPEAL PROCEDURE

4.06.010 Appeal of disciplinary action.

Persons terminated, demoted, or suspended for more than two working days, shall be entitled to appeal. An appeal may be initiated only by filing written notification with the Director of Human Resources within ten calendar days of delivery to the employee of written notification of the disciplinary action.

- A. The Director of Human Resources shall maintain a list of impartial and qualified hearing officers. Upon receipt of any notice of appeal of disciplinary action, the Director of Human Resources shall provide the employee with this list, and the employee shall select a hearing officer based on availability. If the employee does not select a hearing officer from this list within ten calendar days after receiving the list, the City of Lakewood will choose a hearing officer.
- B. It is the responsibility of the Department of Human Resources to schedule a hearing within 90 days of the appeal. If the appellant or the appellant's attorney has failed to cooperate in the scheduling of the hearing, the appeal is dismissed. If the hearing is

not set to occur within 90 days of choosing a hearing officer, due to the appellant or the appellant's attorney, the appeal is dismissed.

- C. The hearing officer shall conduct a hearing according to the Administrative Regulation "Conduct of Appeals of Disciplinary Actions," which provides for notice, procedures to be employed during the hearing, and the right of the appellant to be represented by a layperson or attorney.
- D. The hearing officer may issue subpoenas for witnesses, books, records, documents, and other evidence, and shall have the power to administer oaths. The hearing officer shall be responsible for the conduct of the hearing. No subpoena shall be issued for records pertaining to the discipline or the investigation of any other City of Lakewood employee. No parties shall be entitled to subpoena any evidence not admissible at the hearing. Either party may apply to the hearing officer for the issuance of a subpoena. Subpoenas so issued shall be served and, upon application to the District Court of Jefferson County by a party or the hearing officer, enforced in a manner provided by law for the service and enforcement of subpoenas in civil actions. After a party or the hearing officer submits an application to the District Court of Jefferson County, subpoenas shall be served and enforced according to the civil action statutes. No party shall be entitled to subpoena any inadmissible evidence. The hearing officer has no authority to order the taking of depositions, responses to interrogatories, responses to requests for production of documents, or physical or mental examination of any persons.
- E. The City of Lakewood may be represented by anyone of its choice, including the City Attorney. The Director of Human Resources may attend.
- F. The hearing shall be held at a location designated by the City of Lakewood. The hearing officer shall decide the outcome within 30 calendar days after the hearing is completed, unless good cause exists for additional time. The hearing officer's sole purpose is to determine whether or not "cause" for disciplinary action existed; the hearing officer has no authority to modify disciplinary action. Hearings are closed to the public. After considering the evidence, the hearing officer shall make findings of fact and conclusions of law in writing, stating whether "cause" for discipline existed specifically addressing any causes for disciplinary action set forth within the written disciplinary action subject to the appeal.
- G. The findings of the hearing officer shall be sent to the City Manager, the appellant or the appellant's representative, the representative of the City of Lakewood, and the Director of Human Resources.

4.06.020 Administrative determination of appeal.

Within ten (10) days of receiving the findings of fact and conclusions of law the City Manager, or a designee, shall determine whether to uphold the disciplinary action, overturn the disciplinary action, modify the level of discipline imposed by the disciplinary action, or require an additional hearing or limited supplemental hearing to clarify any

information. The City Manager shall notify the appellant, the department director, and the Director of Human Resources of their decision and shall order whatever action, if any, is necessary to implement their decision. Failure to provide this notification within ten (10) days shall be deemed a decision to uphold the disciplinary action.

The City Manager may modify any disciplinary action taken in any instance where "cause" is found for disciplinary action. See Administrative Regulation "Modification of Disciplinary Action by City Manager." Additionally, after the hearing officer's findings and conclusions are distributed, but before the City Manager's final decision is promulgated, the appellant may request a modification of the disciplinary action in writing. This request should include reasons for modification, including discipline imposed upon others; his/her own work and discipline record; and any other mitigating circumstances. This request must be submitted directly to the City Manager within ten calendar days of notification of the hearing officer's findings. This request should be focused on the original cause(s) for disciplinary action as stated within the notice of disciplinary action.

If the findings of fact and conclusions of law fail to address each of the causes for disciplinary action or otherwise fails to address a matter that the City Manager finds necessary to make a final determination, the City Manager may conduct an additional hearing or a limited supplemental hearing. Administrative Regulation "Modification of Disciplinary Action by City Manager" shall provide for notice, procedures to be employed during any hearing, and the right of an employee to representation, with such notice provided within ten (10) days following the City Manager's receipt of the findings and conclusions. The hearing may be heard either by a hearing officer for the City of Lakewood or the City Manager or designee. The City of Lakewood and the appellant may be represented by counsel, or anyone of their choosing, or the hearing officer may review the transcript of the previous hearing and any evidence submitted. Upon receiving the findings of fact and conclusions of law from the additional or supplementary hearing, the City Manager shall conduct the review and render a decision within ten (10) days. The City Manager shall notify the appellant, the department director, and the Director of Human Resources of their decision and shall order whatever action, if any, is necessary to implement their decision.

4.06.030 Time limits.

If the appellant or his/her representative fail to meet the deadlines stated in Chapter 4.20, the disciplinary action and appeal process will be invalidated and the disciplinary action decision will be upheld. City of Lakewood failure to meet any of these time limits shall not invalidate the process or disciplinary action taken.

Chapter 4.07 GRIEVANCE PROCEDURES

4.07.010 Statement of policy.

The City of Lakewood is committed to good employee relations practices and sound human resources management. Circumstances may arise that cause employee dissatisfaction.

An employee shall first identify whether the behavior falls into the harassment and related inappropriate conduct as set for in Chapter 4.15. If not, the employee should consider communicating directly with the other party. After the two parties have, in good faith, attempted to resolve their issue together, they may then ask a supervisor for help. Department of Human Resources is also available to offer informal advice to individuals or parties in conflict.

Employees may not file grievances about reasonable departmental administrative practices, such as flexible scheduling or dress codes. Grievances will not be accepted regarding any disciplinary action; general City of Lakewood policy or procedure; performance review; or classification, pay, and benefits. However, eligible employees may file a grievance without fear of reprisal regarding an aspect of his/her work environment that s/he believes is adversely affecting his/her work. The employee may file a grievance using the following process:

- A. An employee must present the appropriate supervisor with verbal or written information describing his/her grievance, stating the facts and the desired action.
- B. The department director will immediately notify the Department of Human Resources. All grievances must be maintained as a record.
- C. The supervisor should work with the employee as soon as possible to rectify the matter. If the matter remains unresolved, the supervisor must explain to the employee, in writing, the supervisor's position.
- D. If the employee is dissatisfied with the supervisor's explanation, the employee has five working days to submit a written appeal to the department director. The appeal must indicate the employee's reasons for differing with his/her supervisor's decision.
- E. The department director will meet with the employee and the supervisor to discuss the grievance. If discussion does not settle the grievance, the department director will write a decision, which shall be final. The department director may contact the Department of Human Resources for assistance in the resolution.
- F. The department director will notify the Department of Human Resources about the action taken.
- G. This grievance procedure is an internal process and does not allow any outside representation, including friends, family members or attorneys. Grievances do not become part of an employee's personnel file.

- H. If it is determined that the grievance is harassment, then the procedures found in the Administrative Regulations "Harassment" or "Equal Employment Opportunity" will supersede these grievance procedures.

Chapter 4.08 EXECUTIVE PERSONNEL

4.08.010 At-will employment for executive personnel.

Executive personnel (employees who occupy positions in the Executive Occupational Group) are employed at the will of the City of Lakewood and may be terminated, demoted, placed on administrative leave, or suspended without pay for any reason or no reason, with or without notice, or may leave at any point. Neither the City of Lakewood Municipal Code, the City Administrative Regulations, Pay Plan, nor the Benefits Book should be construed by any Executive employee as an express or implied contract guaranteeing the rights of any employee permanently. The City Manager is authorized to terminate Executive personnel.

4.08.020 Severance agreements.

The City Manager may offer a severance agreement to a department director. The City Manager, City Attorney, Presiding Judge or a department director may offer a severance agreement to a division manager. The City Manager will set forth severance agreement policies or procedures. Severance agreements will not exceed three months without approval of the City Manager.

POLICIES APPLICABLE TO ELECTED CITY COUNCIL OFFICIALS

Chapter 4.09 ELECTED OFFICIALS

4.09.010 Benefits.

The City of Lakewood recognizes that Elected Officials are not employees of the City. However, during any elected official's term of office the City may pay limited benefits, such as medical insurance, workers' compensation, travel insurance, and other related benefits.

4.09.020 Pay of elected officials.

- A. Commencing with the new term of office from the November 5, 2019 election, each City Council member shall receive an annual compensation as set by ordinance in compliance with the City's Charter.
- B. Commencing with the new term of office resulting from the November 1, 2011 election, the Mayor shall receive an annual compensation as set by ordinance in compliance with the City's Charter.
- C. The compensation shall be divided into equal payments and paid in accordance with the current payroll procedure for other positions.

- D. During the November prior to each mayoral election, the City Council shall review the mayor's and City Council members' compensation. Any adjustment shall be established by ordinance and take effect according to the Lakewood Home Rule Charter.

4.09.030 Pay of elected officials.

The City Council shall adopt a policy within that body's Policies and Procedures Manual to prevent unlawful harassment in City governance, operations, City-sponsored activities, and related interactions, and to provide a mechanism to accept, investigate, and resolve complaints of unlawful harassment against members of the Lakewood City Council and Appointed Officials

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of February, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of February, 2025; set for public hearing to be held on the 24th day of March, 2025; read, finally passed and adopted by the City Council on the 24th day of March, 2025; and signed by the Mayor on the ____ day of March, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

TITLE 4 PERSONNEL POLICIES

GENERAL POLICIES¹

Chapter 4.01 GENERAL PROVISIONS

4.01.010 Applications and authority.

The Personnel Policies set forth in this chapter shall be applicable to all employees of the City of Lakewood except as otherwise provided by statute, judicial decision, City Charter, ordinance or the policies set forth in this chapter. In accordance with Section 5.10 of the City Charter, all employees of the Municipal Court, except as otherwise provided in the city's Charter, shall be subject to the personnel merit system. The Presiding Judge shall have the power and authority to appoint, promote, suspend, transfer, and remove employees of the Municipal Court subject to the provisions of the Charter and the personnel merit system. Notwithstanding this limitation, the Presiding Judge of the Municipal Court shall have the power and authority to promulgate such rules and orders as may be necessary and proper provided that such rules and orders do not conflict with the requirements of the personnel merit system or Colorado Supreme Court Rules. The City Attorney shall have the power and authority to appoint, promote, suspend, transfer, and remove City of Lakewood employees of the City Attorney's office in accordance with the provisions of the personnel merit system. The Director of Human Resources shall serve as an advisor to the Municipal Court and City Attorney's office in matters involving the personnel merit system.

Any policy giving decision-making authority to the City Manager, Presiding Judge, City Attorney, department director, division manager, or other supervisor allows for a designee to act on that person's behalf in his/her absence. "Administrative Regulations" and the "Employee Benefits Book," which contain further information about policies in this manual, are updated regularly on COLOR, the City of Lakewood's employee intranet.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.01.020 Rules subordinate to relevant judicial decisions and rules of court.

The Personnel Policies are subordinate to relevant judicial decisions and officially adopted rules of court, which shall take precedence in the event of a conflict or inconsistency with the Personnel Policies.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

¹Editor's note(s)—General policies apply to all employees except temporary/seasonal employees or as otherwise specified within each section.

Note(s)—These policies do not apply to: Temporary/seasonal employees. Any others specified within.

4.01.030 Prerogatives reserved.

The administration of the City of Lakewood may manage the City of Lakewood's business using its judgment and following applicable statutes, ordinances, and regulations, to:

- A. Discipline employees as appropriate for cause pursuant to the Personnel Merit System;
- B. Hire, promote, demote, transfer, assign, separate, retire, separate through a reduction in force, and recall employees to work;
- C. Judge the skill, ability, efficiency, and qualifications of all employees, and otherwise evaluate employee performance;
- D. Determine and change any conditions of employment, including, but not limited to, the starting and ending times, the number of hours on the shift to be worked, days off to be taken, and the number of hours in the employee's work week;
- E. Revise, eliminate, combine, or establish new jobs, benefit plans, and classifications;
- F. Establish compensation plans and programs;
- G. Maintain control and regulate the use of City of Lakewood property and equipment;
- H. Reduce or expand the operation of the City of Lakewood or its departments;
- I. Determine the number, size, location, and operation of facilities and departments, groups, or divisions;
- J. Determine City of Lakewood services and subcontract for them as required;
- K. Determine work assignments and the size and composition of the work force;
- L. Make, change, and enforce rules, policies, guidelines and practices;
- M. Establish quality standards;
- N. Introduce technological changes and new, improved, or modified services, methods, techniques, and equipment;
- O. Direct and supervise the work force; and
- P. Manage operations.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.01.040 Amendments to policies.

The City Manager may from time to time propose Personnel Policy amendments to the City Council. Amendments shall become effective when adopted by the City Council or on an effective date designated by the City Council. Current policies and administrative regulations shall be maintained in each department, on the City of Lakewood's intranet, and in the Department of Human Resources. The Personnel Policies shall be public records available for inspection by the public during normal business hours.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.01.050 Administrative regulations.

The City Manager may change written administrative procedures, rules, or regulations, provided they do not conflict with these policies. Administrative regulations specify detailed procedures for administration of broad policy guidelines. These can also be viewed on the City of Lakewood's Intranet or website.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.01.060 Definitions.

As used in these Personnel Policies, the following terms shall have the following meanings:

Administrative leave. Time off with or without pay, granted at the discretion of a supervisor in consultation with the Department of Human Resources.

Administrative regulations. These set forth the procedures, rules, and regulations pertaining to the administration of the Personnel Policies. The City Manager has the authority to amend them.

Alternative duty. In some circumstances, a temporary adjustment to an employee's job duties incorporating physician-ordered medical restrictions may be possible. Such assignments are available at the supervisor's discretion. Alternative duty may include temporary assignment, a different position, temporary limitations on the number of hours worked, or some combination of all alternatives.

Appeal. The employee's formal challenge to a disciplinary action.

Applicant. A person who has filed an application for employment, submitted a résumé, or filed a promotional consideration form for an open job.

Appointment. The placing of a person in a regular full-time, regular part-time, provisional full-time, provisional part-time, temporary, or seasonal position.

At-will employment. An employee serving at the will of the City of Lakewood may separate employment at any time or be separated at any time, for any or no reason. At-will employees at the City of Lakewood generally include division managers and higher, and provisional and temporary/seasonal employees. New employees serving an initial probationary period also serve at-will.

Career ladder. A path for advancement within a profession with expectations and qualifications defined for each level. Each department retains the right to determine, in consultation with the Department of Human Resources, expectations, movement, and distribution on the ladder.

Classification. Determination of the occupational group, pay level, and exemption status of a position based on the duties performed, authority, responsibilities exercised, and the pay level of comparable positions.

Compensation. Pay, wage, allowance, and all other forms of valuable consideration an employee earns for services to the City of Lakewood.

Compensatory time. Time off accrued by an eligible non-exempt employee as compensation in lieu of paid overtime. Also known as "comp time," compensatory time is accrued at a rate of time and one-half of the overtime hours worked. Use of accrued comp time is not required within the pay period in which the time was earned. Time is recorded according to a 40-hour week (or 80 hours in a two-week pay period for police agents, police sergeants, and court marshals).

Contractor or independent contractor. An individual who performs work for the City of Lakewood, but is not a City of Lakewood employee. Contractors must meet classification criteria governed by federal agencies, including the Internal Revenue Service, the federal and state Departments of Labor, and the division of Workers'

Compensation and Unemployment. An independent contractor must also meet the criteria as set forth in Section 4.03.060.

Demotion. An employee moving from one pay level to a lower pay level. This can be a temporary, involuntary, or voluntary assignment.

Department director. The head of a distinct department. Department Directors report directly to the City Manager.

Disciplinary action. Action taken by the Disciplinary Authority against an employee for cause, which may include reprimand, suspension, demotion, or termination.

Disciplinary authority. The City Manager, a department director, a division manager, or a supervisor may exercise disciplinary authority as set forth in these policies.

Employee. Someone hired into a paid position.

Employee development. Instruction designed to maintain or increase the proficiency, qualifications, knowledge, skills, and abilities of City of Lakewood employees.

Employment seniority. The total number of consecutive months of service to the City of Lakewood as of the most recent date of hire to a regular or provisional position, regardless of department or classification. Employment seniority will be represented by the date reflected in the "date started" field in the Human Resources Information System (HRIS).

Exempt. An employee who is exempt from certain provisions of the Fair Labor Standards Act (FLSA). Exempt employees do not receive overtime pay for hours worked more than 40 in one week.

Family and Medical Leave which includes Military Family Leave Entitlement. An unpaid leave of absence available to eligible employees that complies with and affords employees the protections of the Family and Medical Leave Act (FMLA).

Full-time employee. A regular employee who works a minimum of 37 average hours per work week through a one-year period.

Grievance. A formal complaint initiated by eligible employees about the work environment.

Hostile work environment. Unwelcome, unreasonably offensive, severe, or pervasive attacks on an employee's protected status occurring in any place business activities are conducted. It is not a hostile work environment for a supervisor to create legal, ethical expectations or position changes.

Job posting. A minimum five-day notice available to City of Lakewood employees outlining the essential functions, requirements, and details of an open position.

Journey step. The maximum pay step of the Police Agents' pay level.

Market data. Wage and pay data obtained from a variety of relevant markets, including the public and private sector.

Maximum Medical Improvement (MMI). A point at which a physical or mental impairment has stabilized and no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance, which will not significantly improve the condition or the possibility of improvement or deterioration over time, shall not affect a finding of MMI.

Medical separation. A separation from employment based upon the determination that, owing to illness or injury, an employee cannot perform the essential functions of his/her job with or without reasonable accommodation. A medical separation is not disciplinary in nature, so appeal rights do not apply.

Non-exempt. An employee who is subject to the overtime provisions of the Fair Labor Standards Act (FLSA).

Overtime. Authorized recorded time of non-exempt employees in excess of 40 hours per week (or 80 hours in a two-week pay period for police agents, police sergeants, and court marshals). City of Lakewood administrative regulations and the Fair Labor Standards Act (FLSA) offer certain exceptions to overtime.

Part-time employee. A regular employee who normally works an average of 30—36 hours per week through a one-year period.

Pay level. The establishment of a pay range for positions with comparable market data, competency, and authority. For police agents, the pay level is a series of pay steps.

Performance Review and Development System (PRD). A method for documenting, evaluating, and managing employee performance.

Personal leave of absence. A period from 30 days to one year in which an employee is temporarily away from his/her job for authorized personal reasons. This requires using accrued leave (other than sick leave).

Personnel policies. Title 4 of the Lakewood Municipal Code.

Position. A specific job in the City of Lakewood within a classification, occupational group, and pay level. These positions can be regular or provisional (authorized in the budget), or temporary/seasonal.

Positional seniority. The total number of months of service since the last date of appointment to the employee's current regular position. With the authorization of the Director of Human Resources, seniority may be reinstated to an earlier date. Positional seniority will be represented by the date reflected in the "date in current job" field in the Human Resources Information System (HRIS).

Position change. A movement from one specific job in the City of Lakewood to another.

Positional probation. Any regular employee who receives a promotion, demotion, or lateral transfer shall serve a period of positional probation and remains otherwise entitled to the procedures outlined here for regular employees.

Probationary employee. An employee newly hired, serving a probationary period. An initial probationary employee is at will.

Probationary period. The six- to 12-month time during which an employee's skills, abilities, performance, and other job-related criteria are evaluated to determine his/her suitability for appointment to a regular position. Police agents serve a two-year probationary period.

Promotion. The movement of an employee from one pay level to a level with higher pay and increased responsibility. This can be a temporary, permanent, voluntary, or involuntary assignment.

Promotional list. A list of candidates eligible for a promotion. This list expires after a certain period of time, depending on department standards.

Provisional employee. A full- or part-time employee hired for a period of less than two years who receives benefits (except pension contributions), but is not entitled to all rights and privileges afforded a regular employee. Provisional employees serve at will.

Reclassification. A newly assigned classification of a position based on a study of various criteria pertaining to the position. A position classified from full time to part time or vice versa is considered a reclassification.

Reduction in force. Non-disciplinary termination of an employee from a position because of a reorganization; completion or alterations of required programs, projects, or services; changes in methodology by which the service is provided; reductions in service levels; budgetary or related economic restraints, restrictions, or decisions; or other situations that alters the need for a position. Also known as RIF.

Regular employee. An employee who has been assigned to a full- or part-time position in the City of Lakewood, receives benefits (including pension contributions), and is afforded the rights and privileges described in the Personnel Policies.

Resignation. A voluntary separation from employment. An impending resignation should occur in writing when practical. If an employee voices the intent to resign, the supervisor may accept this declaration with a third party as a witness.

Retirement. Separation from the City of Lakewood by an employee who meets specific criteria outlined in the "Employee Benefits Book." A retirement must occur in writing.

Seasonal employee. A full- or part-time hourly employee hired for a designated period, generally less than nine months. Seasonal employees serve at will and are entitled to limited benefits and privileges.

Separation. General term for any employee departure from City of Lakewood employment.

Special review. A set time period after an employee's overall performance is rated "needs improvement" or "unacceptable." This is a tool to improve or develop an employee's performance. If performance does not improve and remain consistent or is not sustained, the employee may be subject to disciplinary action, up to and including termination.

Step or pay step. The pay allocation within the police agents' pay level.

Suspension. A period during which an employee is prohibited from reporting to work. A suspension may be imposed with or without pay as appropriate under the circumstances, and may be imposed during a pending criminal prosecution. The City of Lakewood may delay disciplinary action through the suspension period.

Temporary assignment. A period during which an employee takes on different or additional responsibilities. Compensation may increase temporarily, but position and title remain the same.

Temporary employee. An employee who has not been assigned to a regular or provisional position and whose work schedule is generally part-time. Temporary employees serve at will and are entitled to limited benefits and privileges.

Termination. Involuntary separation from employment.

Transfer. The movement of any City of Lakewood employee from one position to another with the same or similar pay level and degree of responsibility, or from one department/division to another department/division. This can be a temporary, permanent, voluntary, or involuntary assignment. Such a transfer will not result in a change in compensation.

Transitional status. The temporary employment status assigned to an employee after an injury or illness that causes the employee to be unable to perform one or more of the essential functions of the position, with or without reasonable accommodation. An employee may receive FML or need to work an alternative or reduced-hour schedule. Such employee placed on transitional status may be offered alternative duty. Transitional status may be used for up to one year with a possible four-month extension for good cause. The length of transitional status will take into account the number of employees in the unit and is determined by the supervisor or manager of that unit in consultation with Department of Human Resources. The transitional status process is administered in accordance with Section 4.07.030.

Vacancy notice. A five-day minimum posting to City of Lakewood employees outlining the essential functions, requirements, and details of a vacant position. This is also known as a "job posting."

Work environment. Any work area on or off City of Lakewood property where City of Lakewood business is conducted.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

Chapter 4.02 PAY PLAN²

4.02.010 Pay concepts and philosophies.

The City Council has authority over the City of Lakewood's broad compensation concepts and philosophies. At this time, the City of Lakewood embraces a market-driven, performance-based pay system that recognizes budgetary influences and constraints.

At least annually, the Department of Human Resources shall study the factors affecting the level of pay for all positions and make corresponding pay recommendations to the City Manager. The City Manager shall annually review the pay ranges. The pay plan and base pay compensation levels for regular full-time and regular part-time, as well as for provisional and temporary/seasonal positions, shall be set forth in Administrative Regulations "Pay Plan" and "Temporary/Seasonal Pay Plans." All employees shall be assigned a pay range and paid biweekly.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.02.020 Establishment of classifications.

The City Manager is authorized to implement and maintain a classification system, paying positions the appropriate base pay as established by Chapter 4.02. The City Manager shall authorize the classification titles and corresponding occupational category levels.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.02.030 Maintenance of plan.

The City Manager shall periodically order a study of the duties, responsibilities, and associated factors of all positions within the City of Lakewood. The study shall address the appropriate pay rates and classifications for each position based upon market data, nature of work, duties, responsibilities, and authority within that position. The City Manager shall make amendments to the classification plan whenever data indicates the necessity for a change.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.02.040 Placement of positions within pay levels.

Positions in the City of Lakewood shall fall within the pay levels prescribed by the City Manager. Final determination of the placement of positions in pay levels and classifications shall be approved by the City Manager after considering the recommendation of the Department of Human Resources.

²Note(s)—This chapter applies to: Regular full- and part-time employees, Temporary/seasonal employees, Provisional employees. This chapter does not apply to: City Manager, Presiding Judges, City Council, Mayor.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.02.050 New positions.

Any position added to the city pay plan shall be assigned an appropriate classification. Managers should develop a job description and consult with Department of Human Resources before submitting the position for approval to the City Manager. New positions should be requisitioned through the annual budget process.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.02.060 Reclassification.

A reclassification of a position may be considered when a study has shown that the duties and level of responsibilities (especially decision making) of a current position have significantly changed. Additionally, a reclassification may be applicable if the job evolves into a position that currently exists in the pay plan, or when sustained market data indicate the need for a reclassification. (This may include a position that goes from regular part-time to regular full-time or from regular full-time to regular part-time.) A position may move to a higher level, a lower level, or remain at the same level. Requests for reclassification, along with an accurate job description, shall be submitted in writing as directed by the Administrative Regulation "Reclassification/Classification Requests." This regulation requires a supervisor to list reasons for a reclassification study. The Department of Human Resources may reclassify positions with good and sufficient reason. Reclassifications shall not be proposed solely for the purpose of effecting pay adjustments or individual promotions/demotions.

Reclassifications should be requisitioned through the annual budget process.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.02.070 Pay.

Employees shall be assigned a base pay rate in conformance with the pay plan. The City Manager shall establish by written order to the Director of Human Resources the base pay rate of each City of Lakewood employee. Relevant factors in establishing or changing base pay rates include competence, diligence, and efficiency. In addition, the City Manager may, at his/her discretion, grant pay increases at any time to any of the employees as long as doing so does not exceed the budget. The City Manager is authorized to make an exception to the assignment of an employee's pay in the pay plan.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.02.080 Use of pay ranges/pay steps.

The department director shall, in consultation with the Department of Human Resources, authorize appointments or reinstatements at a rate within the pay range for the position's classification. In addition, appointments or reinstatements for police agents shall be authorized at the appropriate step rate.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.02.090 Police step system.

A movement of Police agents' pay through a determined set of increases scheduled in the pay plan. In addition, appointments or reinstatement for Police agents shall be authorized at the appropriate step rate.

(Ord. O-2014-9 § 1, 2014)

4.02.100 Pay advancement.

Pay advancement shall be in conjunction with pay plans and dependent upon the budget and employee performance. The City Manager has final authority over recommended pay adjustments.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.02.110 Bonus plan.

The City Manager may establish a bonus plan to specify criteria for bonus awards. The City Manager has final authority over awards relating to the bonus plan, and shall not grant any bonus award that would compromise the total compensation budget for the fiscal year.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.02.120 Additional regulations.

~~In special circumstances and to the extent allowed by law, the City Manager may issue administrative regulations for the proper implementation of the pay plan.~~

~~(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

Chapter 4.03 RECRUITMENT³

4.03.010 Eligibility for employment.

Applicants may be eligible for employment consideration with the City of Lakewood if they possess the minimum qualifications of the job, meet established selection criteria, and are able to perform the essential functions of the position with or without reasonable accommodation. If an eligibility list has been established, the position does not need to be re-advertised.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2019-24 § 4, 2019; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

³Note(s)—This chapter applies to: Job applicants, regular full- and part-time employees, temporary/seasonal employees, provisional employees. This chapter does not apply to: City Manager, Presiding Judges, City Council, Mayor.

4.03.020 Area for consideration.

~~When appropriate, individuals shall be recruited from a broad geographical area to ensure well-qualified and diverse candidates.~~

~~(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.03.030 Announcement of vacancies.

The Department of Human Resources shall prepare and post recruiting notices in venues designed to attract the most qualified candidates. All recruiting notices and other vacancy publicity shall explicitly state that the City of Lakewood is an Equal Opportunity Employer.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.03.040 Application forms and résumés.

~~The City of Lakewood requires each candidate for employment to submit an online application. An applicant may also submit an electronic résumé with the completed application.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.03.050 Disqualification of applicants.

~~Applicants may be disqualified for employment consideration for reasons including, but not limited to, the following:~~

- ~~A. — They do not possess the minimum qualifications for the job.~~
- ~~B. — They are unable to perform the essential functions of the position with or without reasonable accommodation.~~
- ~~C. — They present an unsatisfactory employment or personal record. Those could include, but are not limited to, reference checks, criminal history, credit history, motor vehicle record, or any City of Lakewood record. See Administrative Regulation "Background Checks."~~
- ~~D. — They have given false or incomplete information on the application or other pertinent documents or have engaged in deception during the selection process. See Administrative Regulation "Background Checks."~~
- ~~E. — They are not in the City of Lakewood's determination, the best fit candidates or their qualifications and abilities do not closely meet the City of Lakewood's current organizational needs.~~
- ~~F. — They are on probation as current employees. Exceptions to this provision may be made by the employee's current department director and the Director of Human Resources.~~
- ~~G. — They are under special review. Exceptions to this provision may be made by the employee's current department director and the Director of Human Resources.~~
- ~~H. — The applicant is on a no-rehire status determined by the Department of Human Resources in consultation with the appropriate department director.~~

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.03.060 Independent contractors.

From time to time, departments may require the services of an independent contractor. The Department of Labor and the Internal Revenue Service oversee many of the laws that govern independent contractors. Because the City of Lakewood may face liability as a result of a misclassification, it is important for department directors to follow the guidelines below and current employment law when employing contractors. Supervisors may consult with the Department of Human Resources to determine if an individual is an independent contractor. See Administrative Regulation "Independent Contractors." The factors tending to show true independent contractor status include, but are not limited to:

- A. — Significant opportunity for loss or profit;
- B. — Substantial investment by the independent contractor in facilities, equipment, tools, materials and vehicles;
- C. — Low degree of control exercised by the City of Lakewood; e.g., the contractor may perform work on his/her own premises, and the City of Lakewood may have the right to control or direct only the result of the work and not the means or method of accomplishing the result;
- D. — Relative impermanency of the relationship with the City of Lakewood;
- E. — Services that are not an integral part of the City of Lakewood's business.
- F. — The contractor earns a living by providing similar or identical service to other entities.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007).

Chapter 4.04 EXAMINATIONS⁴

4.04.010 Nature and type.

Pre-employment examinations may be administered to measure job-related qualifications. Examples of tests include typing, writing, performance, or physical agility. Pre-employment exams may test only functions necessary to the position in question. The Department of Human Resources, in conjunction with the hiring department, shall be responsible for developing, implementing and maintaining examinations, in accordance with applicable laws and regulations.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

⁴Note(s)—This chapter applies to: Regular full- and part-time employees, provisional employees, temporary/seasonal employees. This chapter does not apply to: City Manager, Presiding Judges, Mayor, City Council.

Chapter 4.05 VACANCIES⁵

4.05.010 Applications for vacancies.

A. — Applications for all positions must be submitted to the Department of Human Resources on or before the stated deadline. Promotional and eligibility lists may be used to fill the vacancy, but if no list exists, the following shall occur:

For Non-Exempt Vacancies. City of Lakewood Vacancy notices shall be posted on all official City of Lakewood bulletin boards, including COLOR, for a minimum of five working days. Job shares do not need to be posted if the status changes to a regular full-time position or two regular part-time positions. During this period, eligible non-probationary employees may apply by submitting an online application. Vacancies may also be advertised externally.

For Exempt Vacancies. City of Lakewood vacancy notices may be routed within the City of Lakewood and posted on official City of Lakewood bulletin boards, including COLOR, or advertised externally. A department director, working in conjunction with the Department of Human Resources, may appoint an individual to fill an exempt vacancy without seeking applications if the appointee meets the essential qualifications of the open position. Otherwise, the City of Lakewood follows the procedure explained above in subsection (A) under Non-Exempt Vacancies.

B. — The requirements of Paragraph 4.05.010(A) shall not apply in the event of a reduction in force requiring the transfer of a qualified employee to a vacant position.

C. — The requirements of Paragraph 4.05.010(A) shall not apply in the event of a reclassification. See Section 4.02.060, Reclassification.

(Ord. O 2019-24 § 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, Ord. O 99-18 § 1 (part), 1999).

4.05.020 Eligibility list.

Whenever an adequate pool of qualified applicants exists, the Department of Human Resources may establish an eligibility list as a means of recommending qualified individuals to fill existing or future vacancies. Individuals on this list are not guaranteed placement in a position. The list shall remain active for up to 12 months from the date the related recruitment process closes. If an eligibility list will be established during recruitment, the vacancy notices advertising the position must state this intention.

(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

⁵Note(s)—This chapter applies to: Job applicants, full- or part-time employees, temporary/seasonal employees, provisional employees. This chapter does not apply to: City Manager, Presiding Judges, City Council, Mayor.

4.05.030 Promotional list.

Whenever a position has the potential to become vacant, a promotional list may be considered. If an adequate pool of qualified applicants exists, as determined jointly by the Department of Human Resources and the appropriate department director, a promotional list may be established to recommend qualified employees for promotion to fill existing or future vacancies. Individuals on this list are not guaranteed placement in a position. (Ord. O 2019 24 § 3, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.05.040 Appointment.

The City Manager retains final authority over job appointments. (Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

Chapter 4.06 ~~WORKING HOURS—PAY RATES—LEAVES~~⁶

4.06.010 ~~Work week.~~

All full time employees work a minimum of 37 average hours in a work week during the course of a year. Part time employees normally work an average work week of 30 to 36 hours in one year. The designated work week is Sunday at midnight to 11:59 p.m. the following Saturday. Individual departments may set a maximum amount of hours in a work week to include a maximum amount of hours worked in a 24 hour period.

(Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.06.020 ~~Days off.~~

Employees may have regular days off each week. In the event of an emergency, or when deemed necessary, an employee may be required to work on his/her days off.

(Ord. O 2019 24 § 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.06.030 ~~Overtime, compensatory time, and flex hours.~~

A non-exempt employee who records and is paid for more than 40 hours in a work week (or 80 hours in a two week pay period for police agents, police sergeants, and court marshals) shall be paid time and one half based on his/her hourly rate (overtime), or shall receive compensatory time at a rate of time and one half. Overtime and comp time must be approved in advance by the supervisor, in writing when possible.

⁶Note(s)—This chapter applies to: Regular full- and part-time employees, provisional employees. This chapter does not apply to: City Council, Mayor, Presiding Judges, Temporary employees, except as otherwise noted in section 4.25.050.

Flex time is an hour for hour exchange of time within a work week that can be used when an employee (other than police agents, police sergeants, and court marshals) works 40 hours of regular time in a work week, but some of the time worked may be outside the normal eight hour day. For example, an employee may work a ten-hour day and take off two hours early on another day to avoid overtime for the week. Flex time cannot be banked and must be used in the same work week, or it will revert to overtime pay or comp time if the employee worked more than 40 hours that week. A work week begins on Sunday at 12:00 a.m. and ends on the following Saturday at 11:59 p.m. Police agents, sergeants, and court marshals may flex time in an 80-hour, two-week period. A supervisor must approve, in writing, any flex schedule. See Administrative Regulation "Overtime and Compensatory Time."

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.06.040 Shift differential.

For non-exempt, non-sworn, regular full-time personnel, a shift differential may be authorized via Administrative Regulation "Shift Differential." Shift differential may occur for regular part-time employees working eight-hour shifts.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.06.050 Alternative scheduling.

The City of Lakewood has implemented an alternative scheduling program for employees who meet certain criteria. Alternative schedules may include stretch pay for teachers only, time off without pay, teleworking, flex scheduling, and job sharing. Refer to Administrative Regulations "Alternative Scheduling" and "Teleworking" for detailed information.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).

4.06.060 Attendance.

An employee shall be at his/her place of work as assigned. Prompt and reliable attendance is expected of all employees. Vacations should be requested in advance as much as possible. Outside of FML use, sick leave should be used only if an employee or their immediate family member has medical or dental appointments or is contagious or debilitated. Sick leave should be banked for catastrophic events. A reasonable amount of non-FML sick leave for regular full-time employees is seven days per year.

An employee who is unable to report to his/her place of work is required to notify his/her immediate supervisor prior to the start of a work shift or as designated by specific department directive.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.06.070 Vacation.

All regular and provisional full-time and part-time employees may accrue vacation time based on employment seniority and position.

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- A. *Accrual and usage.* Vacation accrues monthly for active employees who receive paid time through the second pay date of the month. Accruals stop when an employee's total number of vacation hours reaches the maximum allowed. Accrued vacation may be used with supervisory approval. Employees cannot accrue more than the total number of vacation hours allowed pursuant to these policies.
- B. *Maximum accumulation.* Maximum accumulation of vacation is based on hire date and position. Vacation hours in excess of maximum accumulations are not allowed except in rare circumstances, such as when the employee has been denied the opportunity to take vacation time by the City of Lakewood. This must be approved through the Department of Human Resources. Employees who have signed a stretch pay, for teachers only, or time off agreement may take unpaid time according to those agreements. However, all other employees who have no vacation accrued may not take unpaid leave time.
- C. *Records of leave.* The finance department shall maintain vacation and overtime records. Each department director shall maintain vacation schedules for the department's employees.
- D. *Effect of holidays and vacations.* When a holiday falls during an employee's scheduled vacation, the holiday will be recorded as holiday time and vacation will be recorded as vacation time.
- E. *Effect of sick leave.* If an employee becomes ill while on vacation, the time off will be claimed as vacation. The department director may grant exceptions to this rule under extraordinary circumstances; for example, if an employee is hospitalized during a vacation.
- F. *Opportunity for leave and waiving of vacations.* No employee may waive vacation in exchange for additional compensation. If City of Lakewood operations require an employee's presence on the job, the employee shall not lose or forfeit any accrued vacation hours.
- G. *Payment for vacation.* Upon termination, an employee shall be paid for all accrued vacation hours. Vacation hours will be paid at the rate of the average of the last three years of employment. See the "Employee Benefits Book" for further information.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.06.080 Sick leave.

Regular and provisional full and part time employees accrue sick leave hours based on hire date and position. Sick leave shall be used when an employee is ill or injured, or for medical or dental appointments. Generally, medical appointments last less than two hours; therefore, employees must notify their supervisors if an appointment will require more sick leave than expected. The supervisor may request a physician verification to grant additional sick leave. Sick leave may also be used when the employee is needed to care for ill or injured immediate family members.

Additionally, sick leave may be used for the death of an employee's immediate family member. Up to 40 hours of sick leave may be authorized, depending upon the circumstances.

Refer to Administrative Regulations "Sick Leave Usage" and "Family Medical Leave Act," which describe in further detail the usage of sick leave.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.06.090 Workers' compensation (also applies to City Council).

Employees injured on the job are entitled to workers' compensation benefits as provided by the Workers' Compensation Act. This self insurance program offers medical bill payment and salary continuation when work is missed due to the injury. An injured employee must notify his/her supervisor of the injury in writing immediately. Pursuant to Colorado Law, written notice must be given to the Risk Management Division, Department of Human Resources, within four working days of the occurrence of the injury.

(Ord. O 2019 24 § 3, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001).

4.06.100 Military leave.

Military leave may be granted to employees in accordance with applicable state and federal laws. Regular and provisional full time and part time and seasonal employees are allowed 15 paid days off per year for military leave with advance written notice. Reviews and salary increases will not be affected by the amount of time taken. Refer to Administrative Regulation "Military Leaves of Absence."

(Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001).

4.06.110 Personal leave of absence.

A department director, in conjunction with the Department of Human Resources, may grant a personal leave of absence to a regular or a provisional full or part time employee who has been employed by the City of Lakewood for at least 12 consecutive months. The employee must submit a written request describing the reason for the leave. A personal leave of absence may not exceed one year. The City Manager may grant a personal leave of absence to a department director. Reviews and salary increases may be extended by the amount of time taken. See the "Personal Leaves of Absence" Administrative Regulation.

(Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001).

4.06.120 Family and medical leave of absence.

The City of Lakewood complies with the federal Family and Medical Leave Act to allow employees time off for personal or family medical situations. The City of Lakewood will provide eligible employees up to 12 weeks of unpaid leave (military caregiver leave provides up to 26 weeks) during a 12-month period, under certain qualifying circumstances. Qualifying circumstances may include an employee's serious health condition, the birth, placement or adoption of a child, or an employee's need to care for the serious health condition of a qualifying immediate family member. The military family leave provision affords FMLA protections specific to the needs of military families. See the Administrative Regulation "Family and Medical Leave Act Part I and Part 2" for more specific information. The City of Lakewood complies with the Colorado Family Care Act, which allows employees time off to take care of a civil union or domestic partner with a serious health condition.

(Ord. O 2019 24 § 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001).

4.06.130 ~~Non-job-related jury or non-job-related court leave.~~

~~Regular and provisional full- and part-time employees shall be granted time off with pay when performing jury duty. Temporary and seasonal employees will be paid the first three days of jury service. Jury duty will be paid if the time served occurred during the employee's normal work hours, or, if by attending jury duty, the employee was unable to work his/her normal hours. Hours spent performing jury duty will count as hours worked. The employee may keep stipends paid for jury duty.~~

~~An employee subpoenaed to appear before a court, administrative agency, or other official entity as a witness in a non-job-related matter may use accumulated personal leave, except for sick leave.~~

~~Employees who are parties in any non-job-related legal proceeding may use personal leave, except sick leave, when required for court appearances and other absences. Former employees subpoenaed or required to act as a witness on behalf of the City of Lakewood shall not be entitled to any compensation from the City of Lakewood.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

4.06.140 Holidays.

~~The City Manager is authorized to designate City of Lakewood holidays for all employees.~~

~~Designated police department personnel and other City of Lakewood employees who are allowed or required to group holidays shall receive eight hours off with pay for each designated holiday.~~

~~Official City of Lakewood holidays that fall on Sunday shall normally be observed on the following Monday; those that fall on Saturday shall normally be observed on the preceding Friday. Refer to Administrative Regulation "Holiday Pay."~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

4.06.150 Emergency response.

~~Employees may be required to work to support essential services during large-scale emergencies affecting the City of Lakewood. This would normally include employees in essential positions, such as sworn personnel and police communications and records personnel. Essential employees are defined according to the type of emergency and the human resources needed. The supervisor of the areas affected by the emergency shall have the authority for scheduling, deployment, and overtime. Any non-essential employee may also be required to work to support essential services during large-scale emergencies affecting the City of Lakewood, and will be paid at his/her normal rate. See applicable Administrative Regulations "City Closing Policy," "Overtime and Compensatory Time," and "On Call, Call Back and Unscheduled Split Shift Compensation."~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).~~

4.06.160 Hours to vote.

~~An employee registered to vote in a general election may be excused from work to vote on Election Day for up to two hours during polling hours (typically 7:00 a.m. to 7:00 p.m.). The employee must request the time off to vote prior to the day of the election. The supervisor may specify the hours during which an eligible employee may~~

leave the workplace to vote, but if it is more practical for the employee to vote at the beginning or the end of the work shift, the employee may request that time. However, the supervisor may then specify whether the employee may leave at the beginning or end of his/her shift. A supervisor may request, but not mandate, that an employee flex hours on Election Day. An employee who chooses to vote via mail-in ballot is not excused from work on Election Day, and an employee who has at least three consecutive hours off already during polling hours must vote on his/her own time.

(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004).

4.06.170 Domestic violence leave.

The City of Lakewood permits victims of domestic abuse who have been employed with the city for 12 months or more to take up to three working days of leave in any 12-month period to seek a civil protection order to prevent domestic abuse, obtain medical care or counseling for themselves or their children, make their homes secure, or seek legal assistance pertaining to these issues.

Employees will be required to use appropriate personal accrued leave time if it is available; otherwise, the time will be unpaid.

See the "Employee Benefits Book" for further information, and the Administrative Regulation "Leave for victims of Domestic Abuse."

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004).

4.06.180 Pay deductions.

The City of Lakewood makes a good-faith commitment to comply with the Fair Labor Standards Act and avoid improper deductions of hours or pay. Any employee who believes there has been an improper deduction should notify the finance department. The appropriate department shall take prompt action to reimburse the employee if necessary, and to ensure further compliance.

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004).

4.06.190 Recording hours worked.

All non-exempt employees are required to record and submit all hours worked in the actual pay period in which the hours are worked. All hours in excess of 40 in a work week (for police agents, sergeants and court marshals only, for all hours recorded over 80 in a two-week pay period) will be considered overtime and must be accurately recorded as overtime or compensatory time. An employee may be subject to discipline for failure to submit overtime during the week worked or for working overtime without prior approval.

(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004).

4.06.200 Workplace Accommodation for Nursing Mothers Act.

To comply with the Colorado Nursing Mothers Accommodation Act and federal law, the City of Lakewood makes reasonable efforts to provide break times and private rooms in which nursing mothers may express breast milk for up to two years after the child's birth. Breaks will be unpaid if the employee has no available leave. An

employee wishing to express breast milk at work shall work with her supervisor to determine the location and break schedule. Refer to the Administrative Regulation, "Hours of Work."

(Ord. O 2014-9-5-1, 2014; Ord. O 2009-43-5-1, 2009).

4.06.210 Parental Involvement in K-12 Education Act.

To comply with the Parental Involvement in K-12 Education Act, the City of Lakewood entitles non-executive, non-supervisory full-time employees up to 18 hours of leave a year (and not to exceed six hours a month) to attend a child's school activities. Part-time employees take leave on a pro-rated basis. Eligible employees are required to use accrued vacation, holiday, or compensatory time. If no such accrued leave is available, the leave will be unpaid or the employee, with prior approval, may flex his/her time within the work week. Refer to Administrative Regulation, "Parental Involvement in K-12 Education."

(Ord. O 2019-24-5-4, 2019; Ord. O 2014-9-5-1, 2014; Ord. O 2009-43-5-1, 2009).

4.06.220 Communication during leaves of absence.

During a leave of absence addressed by these policies, including FML, employees are required to communicate with their supervisors regarding return-to-work plans and relevant updates. They must provide a working phone number or e-mail address so they can address supervisor concerns and questions, and respond to messages within a reasonable period of time.

(Ord. O 2014-9-5-1, 2014)

Chapter 4.07 EMPLOYEE SEPARATIONS⁷

4.07.010 Reduction in force.

A reduction in force may occur through the elimination of a specific position, program, funding source, or the need to reduce a number of employees. See Administrative Regulation "Reduction in Force," which outlines layoff circumstances and procedures.

(Ord. O 2019-24-5-4, 2019; Ord. O 2014-9-5-1, 2014; Ord. O 2009-43-5-1, 2009; Ord. O 2007-7-5-1, 2007; Ord. O 2004-39-5-1, 2004; Ord. O 2001-49-5-1, 2001; Ord. O 99-34-5-1, 1999; Ord. O 99-18-5-1, (part), 1999).

4.07.020 Resignation.

Written resignations should be submitted at least two weeks prior to the effective resignation date. Provided the supervisor receives two weeks' notice, an employee may request to use accrued compensatory time during any or all of this period. Two weeks of vacation or comp time may be added to the physical last day worked to extend the employment period. The department director, after consultation with the Department of Human Resources, may place an employee on paid administrative leave for any or all of the two-week period. Appropriate notification of the resignation shall be sent to the Department of Human Resources. An exit interview is available

⁷Note(s)—This chapter applies to: Regular full- and part-time employees, provisional employees. This chapter does not apply to: City Manager, Presiding Judges, City Council, Mayor, Temporary/seasonal employees, provisional employees.

through the Department of Human Resources for employee feedback. In most cases, a resignation should be given in writing. If an employee communicates to the supervisor his/her intent to resign, and a third party witnesses the communication, a resignation letter is not necessary.

(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.07.030 Transitional status and medical separations.

An employee who can no longer perform the essential functions of his/her job because of injury, illness, or other medical condition, with or without reasonable accommodation, will be considered for transitional status. Once placed on transitional status, the employee's prognosis, treatment plan, and progress toward Maximum Medical Improvement (MMI) or return to work status will be periodically monitored to determine if and when the employee may return to work and whether the employee requires assignment to Alternative Duty. As part of this process, the Department of Human Resources shall informally review the employee's transitional status every 90 days.

Transitional status may not exceed 12 months, except upon the approval of the Director of Human Resources and the City Manager. If an employee has been on transitional status multiple times over a period of time, including the span of several months for the same or differing injuries or illnesses, the number of months will be added together to determine the length of time the employee has been on transitional status. The time frame will be determined by the circumstances of the illness or injury. When the transitional status time frames reach a total of 12 months or 365 days, the employee will be considered for a medical separation. In some cases, the time frame for transitional status will be less than one year. Each department director chooses one of the following time frames for each work group, depending on the number of employees able to manage the absent employee's workload: the FML period itself, a total of six months or total of one year. FML, when applicable, must be exhausted prior to the medical separation.

An employee placed on transitional status who has exhausted applicable Family Medical Leave hours may be separated from employment at any point if s/he is not able to perform the essential functions of his or her job with or without reasonable accommodation. Transitional status is temporary. Reliability and being present are essential functions of every City of Lakewood job; therefore, teleworking cannot be a reasonable accommodation or an alternative duty. Once transitional status is exhausted, being present, fulfilling a work schedule and able to perform the essential functions of a position is necessary. The ability to perform the essential functions of the job may be determined by a Duty Fitness Examination, as set forth in section 4.08.010 and Administrative Regulation, "Duty Fitness Examinations." A separation under these circumstances will constitute a medical separation. Medical separations are not disciplinary and do not fall within the scope of the disciplinary procedure set forth in Section 4.20.040.

When the Department of Human Resources, in conjunction with a physician's opinion or the employee's department director, determines that a medical separation may be necessary, it shall provide the employee written notice stating the department's rationale and setting a meeting to review the employee's circumstances. This informal, pre-separation review shall be conducted solely for all parties to consider the reasons that have led the Department to initiate a medical separation. The employee shall cooperate with any necessary job related examination.

At this review, the employee may respond, orally or in writing, to the Department's reasons for considering a medical separation. Because this review is informal, the employee is not entitled to legal counsel or any other representation including friends or relatives at any administrative meeting. If, following this informal review, the Department of Human Resources, in conjunction with a designated physician and the employee's department director, determines that a medical separation is necessary, the employee will be notified in writing. This decision is final and cannot be appealed. If a person who was medically separated during a transitional status period is able

to return to his/her previous job before the transitional status period has expired, s/he will not need to apply for the position. Refer to Administrative Regulations "Transitional Status and Med Separation" and "Family Medical Leave Act."

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).

4.07.040 Retirement.

Employees who meet certain age and service requirements are eligible for retirement from the City of Lakewood. Retirees are eligible for certain continued benefits, such as those outlined in the Benefits Book. Retirement terms are governed by applicable City of Lakewood policies, administrative regulations, and state and federal law. See the "Employee Benefits Book" for eligibility information as well as potential retiree benefits.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.07.050 Termination.

Employees may be terminated during their probationary periods, during other at-will employment, without cause or resulting from disciplinary action for cause pursuant to Chapter 4.20.

(Ord. O-2014-9 § 1, 2014).

Chapter 4.08 DUTY FITNESS EXAMS⁸

4.08.010 General.

The City of Lakewood has an obligation to provide a reasonably safe work environment. When the City of Lakewood reasonably believes that an employee may lack the ability to perform the essential functions of his/her job safely or reliably, the City of Lakewood may, at its expense, require the employee be examined by a physician or other licensed health care provider selected by the City of Lakewood. Non-routine evaluations may be required when:

- A. — A physical or mental condition appears to be adversely affecting an employee's ability to perform the essential functions of the job.
- B. — The employee's physical or mental condition may be adversely affected by the requirements of his/her position.
- C. — A safety or liability concern is identified that could be caused by the employee's physical or mental condition.
- D. — Employee involvement in a critical work-related incident could require a Duty for Fitness Exam (either psychological or physical). A critical work-related incident is determined by the department director to include such events as catastrophes resulting in deaths, loss of limbs, belongings or graphic violence and child abuse etc.

⁸Note(s)—This chapter applies to: Regular full- and part-time employees, temporary/seasonal employees, provisional employees. This chapter does not apply to: Presiding Judges, City Council, Mayor.

Refer to Administrative Regulation "Duty Fitness Examination."

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

Chapter 4.09 EMPLOYEE DEVELOPMENT⁹

4.09.010 Policy.

The Department of Human Resources, in consultation with employees and supervisors, determines city-wide training needs. Under the direction of the City Manager, the Department of Human Resources will organize, coordinate, and administer intra-City of Lakewood training programs; advise and assist departments in developing, administering, and evaluating departmental training programs; and evaluate the effectiveness of training efforts. Each department is allotted a training budget for specialized or technical training needs.

(Ord. O 2019-24 §§ 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.09.020 Tuition assistance for employee development of regular employees.

Department of human resources will administer a tuition assistance program, if feasible. See Administrative Regulation "Tuition Assistance." This program is for regular full-time and regular part-time employees only.

(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.09.030 Meeting/training reimbursement.

The City of Lakewood may pay or reimburse the full cost of attendance at business and professional meetings or training sessions as approved by the department director. See Administrative Regulation "Training/Meeting Reimbursement."

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

Chapter 4.10 PERFORMANCE EVALUATIONS¹⁰

4.10.010 General.

Each employee's performance shall be formally reviewed and evaluated at least annually in a format approved by the Department of Human Resources. Performance reviews are not subject to appeal or grievance.

⁹Note(s)—This chapter applies to: Regular full- and part-time employees, provisional employees, City Council, Presiding Judges, Mayor, temporary/seasonal employees.

¹⁰Note(s)—This chapter applies to: All regular part-time and full-time employees, provisional employees, temporary/seasonal employees. This chapter does not apply to City Manager, Presiding Judges, Mayor, City Council.

Reviews and salary changes may be extended in cases of personal leaves of absence. Those out on military leave or FML will receive reviews and increases on schedule. See the "Supervisor's Manual for Performance Review and Development."

(Ord. O 2019-24 §§ 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

Chapter 4.11 EMPLOYEE TRANSPORTATION¹¹

4.11.010 Use of City of Lakewood designated vehicles.

City of Lakewood designated vehicles are to be used for authorized City of Lakewood business only, and shall carry passengers only in connection with official business. An employee authorized to drive a City of Lakewood vehicle must have a current and valid operator's license with appropriate vehicle class designation and a good driving record. Employees are required to observe all traffic laws and City of Lakewood and departmental regulations. All occupants are required to wear seatbelts and must not use tobacco in City of Lakewood vehicles. Drivers must avoid distracting themselves with activities such as using cell phones or eating while driving. Should an employee be considered a risk, lose his/her license, or fail drug or alcohol testing, the employee may be prohibited from using City of Lakewood vehicles and may be terminated. See the Administrative Regulation "Safe Use of Cell Phone While Driving."

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.11.020 Accidents while operating City of Lakewood designated vehicles.

If an employee is involved in an accident resulting in injury or damage to any property while operating a City of Lakewood designated vehicle, the employee shall:

- A. — Notify the local law enforcement agency immediately;
- B. — Make reasonable efforts, while staying safe, to protect the scene until the local law enforcement agency arrives and releases the vehicles. When possible, vehicles should not be moved until released by proper authorities;
- C. — Prepare a vehicle accident report regardless of the degree of fault or damage in a collision, and forward it through his/her supervisor to Risk Management, Department of Human Resources;
- D. — Refrain from discussing the accident with anyone outside the City of Lakewood, other than the investigating police agency. All inquiries shall be directed to Risk Management, Department of Human Resources;
- E. — Report the accident to his/her supervisor no later than the next day. Refer to Administrative Regulation "Report of Accidents with City Vehicles;"
- F. — Be tested for drugs/alcohol as required by city policy or the Department of Transportation.

(Ord. O 2019-24 §§ 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

¹¹Note(s)—This chapter applies to: All employees.

4.11.030 Use of private vehicles.

- A. ~~If an employee is required to use his/her personal car in the performance of his/her duties, the City of Lakewood will either reimburse the employee in accordance with Internal Revenue Service guidelines for the mileage driven or provide a car allowance at the rates specified by the City Manager.~~
- B. ~~Each employee required to use his/her personal car shall maintain automobile insurance as required by state law.~~
- C. ~~If the employee is involved in an accident while using a private vehicle on City of Lakewood business, the employee shall be responsible for damage or injury to others to the extent permitted by law. Risk Management must be notified within 48 hours. The employee is responsible for notifying his/her insurance agent and supervising the settlement of the claim through his/her agent.~~
- D. ~~The City of Lakewood shall not be responsible for the following occurrences to privately owned vehicles:~~
- ~~1. Vehicle theft,~~
 - ~~2. Theft of other private property,~~
 - ~~3. Vandalism, or~~
 - ~~4. Damage to the vehicle.~~
- E. ~~If City of Lakewood property is lost or damaged while under transport in a private vehicle despite the employee's care, the City of Lakewood may accept liability for the damage or loss.~~

~~Risk Management must be notified within 48 hours whenever such damage or loss has occurred. In the case of City of Lakewood property that is stolen or vandalized, a police report must be made with the local police jurisdiction. See Administrative Regulation "Car Allowances."~~

~~(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

4.11.040 Rental cars for business purposes.

Each employee required to use a rental car in the performance of his/her duties shall always elect loss damage waiver (LDW) coverage. For details, contact Risk Management, Department of Human Resources. Requirements may change depending on the state in which a rental car is being secured.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).

4.11.050 Overnight use of City of Lakewood designated vehicles.

~~The City Manager will determine which employees will be authorized to keep City of Lakewood vehicles overnight. City of Lakewood vehicles shall not be used for personal reasons while at the employee's home. Periodic reviews and criteria for justification may be evaluated.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

Chapter 4.12 EMPLOYEE POLITICAL ACTIVITIES¹²

~~4.12.010 Federal and state elections and campaigns.~~

An employee is free, on his/her own time and away from City of Lakewood offices, to participate in federal, state, county, and municipal campaigns and to openly express his/her views and support for candidates. An employee shall refrain, however, from any political activities which give the appearance that s/he represents the City of Lakewood or that interfere with the performance of his/her duties. Any employee whose position is federally funded shall be subject to the provisions of the Hatch Act, which prohibits such employees from running for public office in a partisan election, using official authority or influence to interfere with or affect the results of an election or nomination, and coercing contributions from subordinates in support of a political party or candidate.

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

~~4.12.020 Local elections and campaigns.~~

- A. ~~An employee running for municipal office in the City of Lakewood shall not campaign or conduct political activities during working hours. Successful candidates shall resign from the employ of the City of Lakewood immediately upon election to municipal office.~~
- B. ~~Employees on City of Lakewood time shall not publicly support local candidates or ballot issues in the City of Lakewood, circulate nominating petitions, distribute any campaign literature or advertising, or display on City of Lakewood property any campaign literature or advertising on behalf of any candidate for municipal office in the City of Lakewood.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

~~4.12.030 Solicitation of contributions for political parties or candidates.~~

~~An employee shall not be required to make any contribution to a political party, issue committee, an elected official, or to a candidate. His/her refusal to do so shall not be used to penalize the employee in any way. An employee on City of Lakewood time or in the workplace shall not solicit any such contributions.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

Chapter 4.13 PERSONNEL RECORDS¹³

¹²Note(s)—This chapter applies to: All employees.

¹³Note(s)—This chapter applies to: All employees.

4.13.010 General.

The Department of Human Resources maintains information on each employee pertinent to his/her employment with the city. Every employee shall update his/her name, address, emergency contact information, and home telephone number in the HRIS system. A supervisor shall report any change in an employee's employment status to the Department of Human Resources.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.13.020 Retention and destruction.

The Department of Human Resources shall retain all personnel records and the Finance Department shall maintain all payroll records of present and past City of Lakewood employees according to the direction of the state archivist.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.13.030 Release of personnel information.

- A. During office hours, an employee, former employee, designated representative, or legally designated personal representative of a deceased employee may examine the employee's personnel file as permitted by law. The employee or former employee may designate a representative by filing a signed, notarized document with the Department of Human Resources.
- B. An employee's personnel file shall be available to: 1) supervisors or potential supervisors of that employee, and 2) any employees assigned to the Department of Human Resources.
- C. The Department of Human Resources may verify to any inquirer the dates of employment and the last position title the employee held. This is the only information that can be shared without a signed, notarized employee release form. Other employee information may be released to prospective employers, collection agencies, credit bureaus, loan officers, and other parties who need to know as long as the employee provides a signed, notarized release of information form.
- D. Personal information, such as address, phone number, birthdates, and social security number, will be released only with employee approval when necessary for employment-related business purposes.
- E. In the event of conflict between this paragraph concerning the disclosure of personnel information and the requirements of the Colorado Open Records Act, Chapter 24-72-201 et seq. C.R.S., the provisions of the Colorado Open Records Act shall prevail.
- F. The City of Lakewood will maintain employee medical information regarding each employee and his/her dependents or beneficiaries separate from other personnel records. It shall protect that information from unauthorized disclosure as required by state and federal law, including the Health Insurance Portability and Accountability Act (HIPAA). Refer to Administrative Regulation "Health Insurance Portability and Accountability Act (HIPAA), Privacy Regulation for Protected Health Information."

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

Chapter 4.14 EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT¹⁴

4.14.010 Policy.

The City of Lakewood provides equal employment opportunities to all persons without regard to an individual's race, color, creed, national origin, religion, ancestry, sex, sexual orientation (including transgender status), age, military service, veteran status, marital status, genetic information, pregnancy or disability, or any other applicable status protected by state or federal law. The City of Lakewood does not tolerate discrimination, harassment, or retaliation and promotes equal pay for equal work.

The City of Lakewood promotes an atmosphere of respect and acceptance in all interactions both internally and externally. The City of Lakewood recognizes that its citizens and employees have varied backgrounds, experiences, and differences; therefore, the City of Lakewood works hard to create a culture of inclusion. The City of Lakewood strives to reflect its community while fostering the development and advancement of qualified individuals.

Any employee who believes s/he has been the subject of discrimination for any protected status should immediately file a formal written complaint to report the alleged act to his/her supervisor or department director or to the Department of Human Resources. Supervisors who receive these complaints shall immediately contact the Department of Human Resources. Neither the City of Lakewood nor any of its employees will retaliate against any individual who files such a complaint. Any individual found to have retaliated against an individual for filing such a complaint may be subject to whatever action the City of Lakewood deems appropriate, up to and including termination. The City of Lakewood will act promptly to investigate reported discrimination. Based on its investigation, the City of Lakewood may take whatever action it deems appropriate, up to and including termination, to achieve an immediate remedy when an allegation is determined to be valid. Refer to Administrative Regulation "Equal Employment Opportunity." Employees may also file claims with the Equal Employment Opportunity Commission or the Colorado Civil Rights Division.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § (part), 1999).

Chapter 4.15 ~~HARASSMENT AND RELATED INAPPROPRIATE CONDUCT~~¹⁵

4.15.010 Policy.

~~The City of Lakewood does not tolerate unlawful harassment of any kind. Any harassment or offensive, inappropriate conduct that violates federal, state, or local laws or City of Lakewood policy is a violation of this policy and is grounds for discipline, up to and including termination. Such harassment includes harassment related to an individual's race, color, creed, religion, national origin, ancestry, sex, sexual orientation or gender expression, transgender status, age, military service, veteran status, marital status, pregnancy, genetic information, disability, or any other applicable status protected by state or federal law. It is the responsibility of every employee to avoid~~

¹⁴Note(s)—This chapter applies to: All employees.

¹⁵Note(s)—This chapter applies to: All employees.

offensive or inappropriate conduct and to ensure that the work environment is free from harassment. Any employee who believes s/he has been the subject of harassment should immediately file a formal written complaint to report the alleged act to a supervisor, department director, or the Department of Human Resources. Supervisors who receive these complaints shall immediately contact the Department of Human Resources. Neither the City of Lakewood nor any of its employees will retaliate against any individual who files such a complaint. Any individual found to have retaliated against an individual for filing such a complaint may be subject to whatever action the City of Lakewood deems appropriate, up to and including termination.

The City of Lakewood will act promptly to investigate reported harassment. Based on its investigation, the City of Lakewood may take whatever action it deems appropriate, up to and including termination, to achieve an immediate remedy when an allegation is determined to be valid.

(Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.15.020 Definitions of sexual harassment.

For the purposes of this policy, the term "sexual harassment" refers to any unwelcome sexual attention, sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when:

- A. — Submission to such conduct is made either explicitly or implicitly a condition of an individual's employment, such as quid pro quo or an individual using power of his or her position. Also, using the power of one's position, such as a supervisor with a subordinate, to gain favors or to coerce someone, or when favoritism affects the effective functioning of a work group,
- B. — Submission to or rejection of such conduct is used as the basis for employment decisions,
- C. — Such conduct unreasonably interferes with an individual's work performance, or
- D. — Such conduct creates an intimidating, hostile, or offensive work environment.
- E. — Such conduct creates disruption or disharmony in the workplace.

All employees are expected to conduct themselves in a professional and businesslike manner at all times. Conduct at work or outside of work that may violate this policy includes, but is not limited to, sexually implicit or explicit communications whether in:

- A. — Written form, including but not limited to e-mail, letters, notes, cartoons, posters, or calendars;
- B. — Oral form, including but not limited to comments, jokes, foul or sexually obscene language, gossiping, questions about another's sex life, or repeated unwanted requests for dates;
- C. — Physical gestures and other nonverbal behavior, including but not limited to unwelcome touching, grabbing, fondling, kissing, massaging, and brushing up against another's body;
- D. — Messages of a sexual nature posted on any public forum, including e-mail, social media sites, blogs, and cell phone texts.

(Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.15.030 Harassment.

The City of Lakewood prohibits all types of harassment. This policy applies to applicants, employees, volunteers, supervisors, and others. Classes protected include race, color, creed, national origin, religion, ancestry, sex, sexual orientation (including transgender status), age, military service, veteran status, marital status, genetic

information, pregnancy, disability, or any other applicable status protected by state or federal law. The City of Lakewood does not tolerate retaliation and promotes equal pay for equal work. Unlawful harassment includes verbal or physical conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. Actions based on an individual's age over 40, race, sex, color, religion, ancestry, national origin, disability, or any other applicable status protected by state or local law will not be tolerated. Harassment or bullying, regardless of the victim's protected or unprotected EEO status, will not be tolerated. Prohibited behavior includes not only physical force, but also verbal or abusive behavior, including, but not limited to the following:

- A. Negative cartoons, e-mails, posters, drawings, photographs, or other visual, written, or electronic communication;
- B. Verbal conduct such as derogatory comments, slurs, insults, comments threatening violence, demeaning or hostile remarks, or jokes;
- C. Physical conduct such as assault or aggressive physical contact, tickling, bullying, horseplay that results in physical or emotional harm, or threatening or similar behavior.

Harassing behavior includes intimidating, menacing, tampering, stalking, erratic, explosive, or raging behavior. It may also include acting on negative stereotypes, hostile acts, and demeaning or hostile pranks. See Administrative Regulation "Harassment."

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.15.040 Workplace violence.

All violent conduct is prohibited in the workplace. The City of Lakewood requires a work environment free of threats of violence, intimidation, and violent acts, and all employees and volunteers have the responsibility to report abusive or potentially dangerous conduct to management. In addition, employees must refrain from making bizarre or offensive comments regarding violent events or behavior. Employees should call 911 if they believe there is a serious or immediate threat to the safety and health of themselves or others.

City of Lakewood employees, volunteers or contractors may not openly carry firearms into any workplace that has been posted with notice that the open carrying of firearms is prohibited. Any employee, volunteer, or contractor who has a concealed handgun permit and who desires to carry a concealed firearm into a municipal building that is not protected by security personnel and electronic screening devices must first notify the Department of Human Resources. This restriction does not apply to those employees whose job description includes the carrying of firearms, such as sworn police personnel and court marshals.

In addition, no City of Lakewood employee—except for those whose job description includes the carrying of weapons—volunteer, or contractor shall bring any other deadly weapons into the workplace. See Administrative Regulation "Workplace Violence."

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).

4.15.050 Reporting harassment, sexual harassment, and workplace violence.

The City of Lakewood will act promptly to investigate reported harassment, sexual harassment, bullying, and workplace violence. Based on its investigation, the City of Lakewood may take whatever action it deems appropriate, up to and including termination, upon completion of the disciplinary action process, and may effect an appropriate remedy when an allegation is determined to be valid.

Any employee who believes s/he has been the subject of unlawful harassment should file a formal complaint to report the alleged act immediately to his/her immediate supervisor or department director or to the Department of Human Resources. Supervisors receiving such complaints shall immediately inform the Department of Human Resources. Employees who witness and report wrongdoing shall be protected from retaliation. Refer to the Administrative Regulations "Workplace Violence" and "Harassment." Employees may also file claims with the Equal Employment Opportunity Commission or the Colorado Civil Rights Division.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

Chapter 4.16 MISCELLANEOUS RULES¹⁶

4.16.010 Conflict of interest.

The City of Lakewood prohibits its employees from engaging in any activity, practice, or act which conflicts with or is perceived to conflict with the interest of the City of Lakewood or its citizens. This may include outside employment. Any situation that creates an actual conflict of interest or the appearance of such a conflict must be carefully avoided. An employee should notify his/her supervisor of any possible conflict of interest. Refer to Administrative Regulation "Conflict of Interest and Standards of Conduct."

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.16.020 Drug and alcohol impairment free workplace.

It is the City of Lakewood's intent to maintain a drug-free and alcohol-free, healthy, safe, and secure work environment. The City of Lakewood enforces a zero tolerance policy for drug or alcohol use or impairment at work. Drug and alcohol impairment that negatively affects an employee's ability to work will lead to termination upon confirmed testing. If that is the case and the Department of Human Resources determines that a separation is necessary, it shall provide the employee with written notice. An employee who refuses to take a drug or alcohol test will be disciplined, up to and including termination.

Some positions, depending on job duties and exposure to privileged information, may require a pre-employment drug test. All employees who exhibit behavior indicative of being under the influence of drugs or alcohol may be subject to "reasonable suspicion" tests. Sworn and civilian police employees and court marshals are expected to follow all federal laws, including those regarding drug use. CDL drivers must follow all Federal Motor Carrier Regulations. Refer to Administrative Regulation "Drug and Alcohol Impairment Free Workplace."

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.16.030 Safe work practices.

The efficiency and effectiveness of the City of Lakewood is enhanced by safe work practices. All employees are expected to be aware of and follow safe work practices as part of the job. The City Manager shall require the

¹⁶Note(s)—This chapter applies to: All employees.

Department of Human Resources, Division of Risk Management, to coordinate safety matters with all City of Lakewood departments.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.16.040 Life-threatening illnesses.

The City of Lakewood is committed to equal employment opportunities for all City of Lakewood employees and applicants. The City of Lakewood recognizes that employees and applicants with life-threatening conditions should be treated with compassion and understanding. Harassment or discriminatory practices directed at such employees or applicants will not be tolerated.

The City of Lakewood recognizes that most life-threatening illnesses pose no risk of transmission to co-workers through ordinary workplace contact. Some examples of these conditions are HIV/AIDS, heart disease, and cancer.

The City of Lakewood also recognizes the need for education about life-threatening illnesses. Employees may learn about current practices through the Colorado Department of Public Health and Environment and local health departments. Refer to Administrative Regulation "Life-Threatening Illnesses."

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.16.050 Privacy in the workplace.

Any property belonging to the City of Lakewood, including but not limited to desks, lockers, files, computers, e-mail, voicemail, vehicles, and cell phones, are not private and can be searched without notice at any time. The City of Lakewood reserves the right to inspect any personal property an employee brings into a City of Lakewood building, any property an employee uses on the job, and any property an employee takes out of the workplace.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).

4.16.060 Liability for theft or damage of personal belongings.

The City of Lakewood is not responsible for theft or damage of personal belongings at work, on City of Lakewood property (such as parking garages), or during work-related travel.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007).

4.16.070 Criminal arrests and background checks on current employees.

The City of Lakewood requires any employee to immediately notify his/her supervisor or the Department of Human Resources in the event s/he is arrested or charged with any criminal offense (excluding minor traffic violations such as speeding tickets). Failure to notify may result in disciplinary action. The supervisor, in consultation with the Department of Human Resources, will determine the relevance of the arrest to the employee's position. The Department of Human Resources may initiate a criminal background check on an employee when it is in the interest of the City of Lakewood, such as when there is reason to believe the employee has been arrested or convicted of a crime that could compromise his/her City of Lakewood position or coworkers, or if the crime constitutes cause for discipline.

An employee also must immediately notify his/her supervisor or the Department of Human Resources when s/he is the subject of a restraining order. Only pertinent information about the restraining order will be considered for an employment action. Many job functions will not be affected by a restraining order; this decision needs to be made in consultation with the Department of Human Resources.

An employee in a position of trust may have a background check performed periodically to ensure that the public's trust is being maintained. This includes an employee working in an enforcement position and those working with vulnerable populations. Refer to Administrative Regulation "Background Checks."

(Ord. O-2019-24 § 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007).

4.16.080 Employee administrative meetings.

Administrative meetings at the City of Lakewood take place with the employee and City of Lakewood personnel only. No representatives, such as family members, friends, or attorneys are allowed.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014).

4.16.090 Use of city equipment.

The City of Lakewood prohibits the use of equipment, vehicles, materials or other assets owned by the City of Lakewood, and/or services provided to the City of Lakewood for the conduct of the City of Lakewood's business, for personal purposes or for the conduct of any activity intended to generate personal income, make a personal profit, or result in personal gain or benefit of any kind. See administrative regulation "use of city equipment and services."

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014).

PERSONNEL MERIT SYSTEM POLICIES¹⁷

Chapter 4.17 GENERAL PROVISIONS

4.17.010 Violation of policies.

Violation of any policy shall be grounds for disciplinary action, including but not limited to reprimand, suspension, demotion, or termination. An employee who has been terminated or suspended for more than two days and believes that no cause for discipline existed may appeal in accordance with Chapter 4.20.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

¹⁷Editor's note(s)—Personnel merit system policies apply to all employees except the City Manager, Presiding Judges, department directors, division managers, City Council, provisional employees and all temporary/seasonal employees or as otherwise specified herein.

Note(s)—These chapters apply to: Regular full- and part-time employees. These chapters do not apply to: City Manager, Presiding Judges, City Council, Mayor, temporary/seasonal employees, provisional employees, Department Directors, Division Managers, any others specified herein.

Chapter 4.18 PROBATION

4.18.010 Probation.

Every employee who is newly appointed into a regular full-time or regular part-time position must serve a probationary period of at least six months. When the Department of Human Resources and the department director find that special circumstances exist, an employee may have the probationary period modified or waived. However, employees cannot be taken off an established probation early. During the probationary period, the supervisor shall develop goals for the employee's performance and shall periodically review them with the employee. Employees not meeting the standards or goals may be given an extended probationary period, transferred, demoted, or terminated.

During an initial probationary period, employees are at will. An employee serving positional (transfer or promotional) probationary periods will not be at will and will be subject to Disciplinary Action and Appeal Procedures. See Chapter 4.20. If, in rare instances, an employee is promoted during the initial probation period, s/he must fulfill the full probationary period of the new position.

During any probationary period, an employee may not apply for a transfer, promotion, or demotion. The Department of Human Resources and the employee's department director may jointly make exceptions to this provision if they find that the circumstances warrant an exception. Initial probationary periods will be noted and acknowledged by an employee signature.

(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

Chapter 4.19 TRANSFERS—PROMOTIONS—DEMOTIONS

4.19.010 Transfers, promotions, and demotions.

A department director, after consultation with the Department of Human Resources, may transfer, promote, or demote an employee. Except as provided in these policies, probationary employees may not apply for a transfer or promotion without the approval of the Department of Human Resources and the recommendation of the employee's current department director.

- A. — Qualified employees may transfer to another position at the same pay level, or to another assignment at a similar pay level in a different occupational group within the same or different department. A transferring employee will continue at his/her current pay rate. Transfers may be made involuntarily or when an employee applies for a vacant position. If the position is non-exempt, the position will be posted internally for five working days. In the case of reorganization, the provisions of chapter 4.05, "Vacancies," apply.
- B. — Occasionally, a position will move to a different department. In that case, the person holding that position will be transferred as well. The two relevant Department Directors may choose to transfer an employee to the same position from one department to another.
- C. — Promotions must involve a definite increase in duties and responsibilities, must conform to the performance-based pay principles, and must not be made merely to effect an increase in the

employee's compensation. Movement by an employee from one occupational group to another in a higher range may be considered a promotion. A representative of the Department of Human Resources shall determine whether a change in status is a promotion or transfer using current pay range information. As such, the employee shall receive compensation at an appropriate place in the pay range based upon the recommendation of the department director.

D. — Demotions may occur:

- — When an employee requests a demotion into a vacant position and successfully competes for it;
- — As a result of a reduction in force or reorganization; or
- — For cause as set forth in Section 4.20.020.

An employee may not be demoted into a position for which s/he is unqualified or unable to perform the essential functions. Demoted employees will be expected to serve a positional probationary period, which will typically last at least six months. If the employee previously performed the duties of the position to which s/he was demoted, the probationary period may be waived. Employees not meeting the standards or goals may be given additional probationary time, reassigned to a different classification, or sent through the disciplinary action process. An employee demoted due to a reduction in force may apply for transfers during his/her probationary period. An employee who receives or accepts a demotion will most likely experience a decrease in pay and will be paid within the range assigned to the employee's new position.

A regular employee who has been invited to the oral board (second) interview for another City of Lakewood job must notify his/her current supervisor about the upcoming interview. The employee does not need the supervisor's permission, just acknowledgment. At that time, the Department of Human Resources will make the employee's personnel file available to the hiring supervisor to review and encourage the hiring supervisor to ask the current supervisor for recommendations.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.19.020 Temporary assignments or temporary promotions.

All temporary assignments and pay decisions are made by the department director, in consultation with the Department of Human Resources.

- A. — All employees may occasionally be asked to take on additional duties during another employee's absence or during a period of special need, with no change in pay, pay level, or job title.
- B. — Temporary assignment with pay increase: A temporary assignment occurs when an employee takes on a limited portion of the duties and responsibilities of a higher level position for at least three months, but will return to his/her original assignment within a reasonable period — typically no longer than a year. A temporarily assigned employee should receive a pay increase to reflect his/her increased duties, but may or may not be paid within the range assigned to a higher level position.
- C. — Temporary promotion: A temporary promotion occurs when an employee takes on 100 percent of the duties and responsibilities of a higher level position for at least three months but will be returning to his/her original assignment within a reasonable period of time, typically no longer than one year. During the temporary promotion, the employee will be paid within the range assigned to the higher level position.

(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

Chapter 4.20 DISCIPLINARY ACTION AND APPEAL PROCEDURE

4.20.010 ~~Disciplinary action.~~

The City of Lakewood is committed to providing a productive, safe, and professional work environment. Unacceptable conduct is not tolerated. Disciplinary action may be taken for unacceptable performance or conduct. Discipline need not be progressive, and the City of Lakewood may take any steps appropriate for the circumstances. Each disciplinary action is unique to the situation and the individual employee. Disciplinary action should be consistent, but one action does not set a precedent for any other disciplinary action in any other situation. Medical separations are not considered disciplinary actions and are not subject to the disciplinary action procedure. See Section 4.07.030.

(Ord. O 2019 24 § 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).

4.20.020 ~~Definitions.~~

- A. ~~Disciplinary authority~~ for the City of Lakewood shall be the City Manager, the department director, the division manager, and the appropriate supervisor. A department director shall have the authority to reprimand, demote, suspend without pay, or terminate. Division managers shall have the authority to reprimand or suspend without pay for up to two working days. Supervisors shall have the authority, in consultation with the Department of Human Resources, to reprimand or to effect temporary and immediate administrative leave with pay, to be potentially reviewed every 60 days. Administrative leave is non-disciplinary (see definition in Section 4.01.060).
- B. ~~Disciplinary action~~ refers to action taken by the disciplinary authority against an employee for cause, including reprimand, suspension, demotion, or termination. When a position is eliminated or reduction in force occurs, resulting demotions or terminations shall not be deemed disciplinary action, and therefore the employee is not entitled to any appeal rights under sections 4.20.050 and 4.20.060. See applicable Administrative Regulations "Conduct of Appeals of Disciplinary Actions" and "Modification of Disciplinary Action by City Manager."
- C. The following are causes for disciplinary action:
1. ~~Unsatisfactory work performance, including a failure to demonstrate a reasonable competence, failure to perform the duties of the position in a satisfactory manner, or failure to demonstrate acceptable work conduct and behaviors as determined by management.~~
 2. ~~Violation of work hours or department attendance policies, including job abandonment. Job abandonment results when an employee does not report for work as scheduled or does not give reasonable notice of absence before his/her scheduled work shift. See Administrative Regulation "Unexcused Absence."~~
 3. ~~Unprofessional behavior. This includes the failure or refusal to follow a supervisor's lawful instructions, also known as insubordination; and disrespectful behavior, including but not limited to, abusive language, and a pattern of destructive gossip.~~
 4. ~~Creation of a hostile work environment. Examples of such conduct include: bullying, harassment, physical or verbal abuse, intimidating, menacing, tampering, stalking, erratic or raging behavior, threats~~

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- of violence, horseplay that results in physical or emotional harm, sabotage, and threatening behavior. It may also include, but is not limited to insults; comments or actions based on negative stereotypes; hostile acts, pranks, or remarks; and the circulation of offensive or demeaning materials. See Administrative Regulations "Workplace Violence" and "Harassment."
5. Failure to immediately report an arrest or charge with a crime (excluding minor offenses and traffic offenses) to his/her supervisor as set forth in Section 4.16.070.
 6. Entry of a plea of guilty or nolo contendere or entry into a deferred judgment and sentence or conviction for a felony.
 7. Conviction of a crime that involves moral turpitude, the abuse of public office, or any breach of law consistent with the terms of Section 24-34-402.5, C.R.S.
 8. Conduct outside the workplace that interferes with the employee's ability to properly perform his/her duties or that substantially prejudices the conduct of the City of Lakewood's business. This also pertains to inappropriate conduct outside the workplace that affects the public trust by an employee in a position of authority, including, but not limited to, law enforcement and child care related positions.
 9. Violation of conflict of interest provision as set forth in Section 4.16.010. See Administrative Regulation "Conflict of Interest and Standards of Conduct."
 10. Falsification or material omission in the employment application process or any City of Lakewood-related record, including time entry.
 11. Any conduct demonstrating dishonesty in the workplace, including in verbal or written communication.
 12. Any theft, willful or negligent damage, waste, or unauthorized or improper use of property or assets belonging to the City of Lakewood, an employee, or anyone else. Unauthorized or improper employee use of City of Lakewood services, software, Internet, phone mail, e-mail, or equipment. Refer to Administrative Regulations "E-mail Systems Usage Policy" and "Internet Access and Usage Policy."
 13. Excessive absenteeism. This does not include appropriate FMLA use.
 14. Disclosing sensitive or confidential information.
 15. Possession or use of alcohol or drugs or being under the influence of alcohol or drugs while on duty or on call. Testing positive on a drug or alcohol test, regardless of when or how the alcohol or drugs were consumed. Employees are encouraged to notify their supervisors when taking any medications that could impair the performance of their job duties. See Administrative Regulation, "Drug and Alcohol Impairment Free Workplace."
 16. Any action or condition that poses a direct threat to anyone's health or safety or to City of Lakewood property.
 17. Failure to maintain specified department physical or mental fitness levels.
 18. Conduct that violates any federal or state anti-discrimination law pertaining to employment, including all forms of harassment or discrimination.
 19. Refusal or neglect to work overtime as directed, to work a designated shift or schedule, working overtime without authorization, or to answer cell phones.
 20. Violation of state or federal law or City of Lakewood policies, procedures, ordinances, administrative regulations, or department rules.
 21. Conduct that would compromise or harm the City of Lakewood's or the public's interest, such as damaging a reputation or sabotaging a negotiation.

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22. Any other unsatisfactory performance, breach of confidentiality, or unacceptable conduct which, in the opinion of management, affects the employee's performance or the effective functioning of other employees, or undermines public trust in the integrity of the City of Lakewood.

D. — ~~Administrative leave may be granted by a supervisor. As soon as practical, supervisors should notify and consult with the Department of Human Resources when there is need to remove the employee from the workplace promptly because of a possibility of violence, disruption of work, insubordination, damage to property or persons, and apparent use of intoxicants or drugs, or for any other reason that requires immediate removal. When the City of Lakewood needs to conduct an in-depth investigation, a supervisor may place the employee on administrative leave.~~

~~(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.20.030 Forms of disciplinary action.

A. — *Reprimand.* A disciplinary authority may reprimand an employee in writing.

B. — *Suspension.* A disciplinary authority may suspend an employee from employment without pay.

C. — *Demotion.* A disciplinary authority, upon consultation with the Department of Human Resources, may demote an employee.

D. — *Termination.* A disciplinary authority, upon consultation with the Department of Human Resources, may terminate an employee.

Medical separations are not considered disciplinary and do not fall within the scope of the disciplinary procedure set forth in Section 4.20.040. See Section 4.07.030, Transitional status and medical separations.

E. — ~~*Suspension pending criminal prosecution.* An employee who is charged with a crime may be placed on leave with or without pay, suspended without pay, or terminated at the discretion of the City of Lakewood. While the employee awaits criminal prosecution, the City of Lakewood may keep the employee on administrative leave or suspension and delay the disciplinary process.~~

~~(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.20.040 Disciplinary procedure.

A. — *Reprimand.* A disciplinary authority may reprimand an employee in writing. A written reprimand shall become a permanent record in the employee's personnel file. The employee shall receive a copy of a written reprimand and may write a response, though no follow-up action is required by the City of Lakewood. A copy of any response submitted shall also be kept permanently in the employee's personnel file.

B. — *Suspension of up to two work days.* A division manager, department director may suspend an employee without pay for up to two work days. Before a final determination is made regarding the imposition of a suspension, the disciplinary authority shall meet with the employee to discuss the matter and proposed action. The employee shall have the opportunity to express his/her views of the matter. If a suspension is imposed, the employee shall receive a written suspension notice as a permanent record for his/her personnel file. The employee is also entitled to write a response, which shall also be permanently placed in the personnel file.

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- C. ~~*Suspension of more than two days, demotion and termination.*~~ When an employee, by behavior or performance, shows the supervisor or other disciplinary authority that these disciplinary actions may be required, the following procedures shall be employed:
1. ~~Within a reasonable time period after determining that a disciplinary action is warranted, the supervisor will prepare a "Recommendation of Disciplinary Action" memorandum containing a rationale and recommended action. The supervisor should submit the recommendation through the line of authority to the appropriate department director. This memorandum will not be available to the employee or made part of the employee's personnel file.~~
 2. ~~The department director shall, in consultation with the Department of Human Resources, conduct an appropriate review. If s/he decides that disciplinary action is appropriate, the department director shall notify the employee in writing why s/he is considering disciplinary action. This "Notice of Consideration of Disciplinary Action" outlines the Recommendation of Disciplinary Action memorandum, excluding the recommended action to be taken. It also sets a time and place for the employee to meet with the department director to respond to the notification. It offers the chance for the employee to submit a written or verbal response. This memo and any subsequent response shall be permanently placed in the employee's personnel file.~~
 3. ~~After the employee receives this memorandum, s/he will meet with the department director to review any response. The employee is not entitled to representation, including legal counsel, at this meeting. At the department director's discretion, the employee's supervisor may be present. The department director shall then determine what disciplinary action, if any, shall be taken. If disciplinary action is taken, the employee shall receive a memorandum explaining the discipline. This memo is titled "Notice of (the type of disciplinary action)." This memorandum shall include reasons and the effective dates of the action, and will be placed in the employee's personnel file as a permanent record. If the disciplinary action is termination, demotion, or suspension of more than two days, the notice shall advise the employee of his/her appeal rights. The disciplinary action takes effect as recommended in the memorandum regardless of any subsequent appeal.~~

~~(Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).~~

4.20.050 Appeal of disciplinary action.

Persons terminated, demoted, or suspended for more than two working days, shall be entitled to appeal. An appeal may be initiated only by filing written notification with the Director of Human Resources within ten calendar days of delivery to the employee of written notification of the disciplinary action.

- A. The Director of Human Resources shall maintain a list of impartial and qualified hearing officers. Upon receipt of any notice of appeal of disciplinary action, the Director of Human Resources shall provide the employee with this list, and the employee shall select a hearing officer based on availability. If the employee does not select a hearing officer from this list within ten calendar days after receiving the list, the City of Lakewood will choose a hearing officer. It is the Department of Human Resources responsibility to schedule a hearing within 90 days of the appeal. If the appellant or the appellant's attorney has failed to cooperate in the scheduling of the hearing, the appeal is dismissed. If the hearing is not set to occur within 90 days of choosing a hearing officer, due to the appellant or the appellant's attorney, the appeal is dismissed.
- B. The hearing officer shall conduct a hearing according to the Administrative Regulation "Conduct of Appeals of Disciplinary Actions," which provides for notice, procedures to be employed during the hearing, and the right of the appellant to be represented by a layperson or attorney.

The hearing officer may issue subpoenas for witnesses, books, records, documents, and other evidence, and shall have the power to administer oaths. The hearing officer shall be responsible for the conduct of the hearing. No subpoena shall be issued for records pertaining to the discipline or the investigation of any other City of Lakewood employee. No parties shall be entitled to subpoena any evidence not admissible at the hearing. Either party may apply to the hearing officer for the issuance of a subpoena. Subpoenas so issued shall be served and, upon application to the District Court of Jefferson County by a party or the hearing officer, enforced in a manner provided by law for the service and enforcement of subpoenas in civil actions. After a party or the hearing officer submits an application to the District Court of Jefferson County, subpoenas shall be served and enforced according to the civil action statutes. No party shall be entitled to subpoena any inadmissible evidence. The hearing officer has no authority to order the taking of depositions, responses to interrogatories, responses to requests for production of documents, or physical or mental examination of any persons.

The City of Lakewood may be represented by anyone of its choice, including the City Attorney. The Director of Human Resources may attend.

The hearing shall be held at a location designated by the City of Lakewood. The hearing officer shall decide the outcome within 30 calendar days after the hearing is completed, unless good cause exists for additional time. The hearing officer's sole purpose is to determine whether or not "cause" for disciplinary action existed; s/he has no authority to modify disciplinary action. Hearings are closed to the public. After considering the evidence, the hearing officer shall make findings of fact and conclusions in writing, stating whether "cause" for discipline existed. Those findings shall be sent to the City Manager, the appellant or his/her representative, the representative of the City of Lakewood, and the Director of Human Resources.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.20.060 Modification of disciplinary action.

The City Manager may modify any disciplinary action taken in any instance where "cause" is found for disciplinary action. See Administrative Regulation "Modification of Disciplinary Action by City Manager." If the appellant requests a modification in writing, the City Manager may consider changing the level of discipline. This notification should include reasons for modification, including discipline imposed upon others; his/her own work and discipline record; and any other mitigating circumstances. This request must be submitted directly to the City Manager within ten calendar days of notification of the hearing officer's findings. This request should be focused on the original cause(s) for disciplinary action, but is not to further review whether there was cause for disciplinary action.

After reviewing the findings of fact and conclusions, the City Manager may accept or reject the decision of the hearing officer, or may modify the level of discipline imposed by the department director. In addition, the City Manager may conduct an additional hearing or a limited supplemental hearing. Administrative Regulation "Modification of Disciplinary Action by City Manager" shall provide for notice, procedures to be employed during any hearing, and the right of an employee to representation. The City of Lakewood may be represented by anyone of its choice, including the City Attorney. The City Manager shall conduct the review and render a decision. The City Manager shall notify the person appealing, the department director, and the Director of Human Resources of his/her decision and shall order whatever action, if any, is necessary to implement his/her decision.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

4.20.070 Time limits.

If the appellant or his/her representative fail to meet the deadlines stated in Chapter 4.20, the disciplinary action and appeal process will be invalidated and the disciplinary action decision will be upheld. City of Lakewood failure to meet any of these time limits shall not invalidate the process or disciplinary action taken.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).

Chapter 4.21 GRIEVANCE PROCEDURES

4.21.010 Statement of policy.

The City of Lakewood is committed to good employee relations practices and sound human resources management. Circumstances may arise that cause employee dissatisfaction.

An employee shall first identify whether the behavior falls into the harassment and related inappropriate conduct as set for in Chapter 4.15. If not, the employee should consider communicating directly with the other party. After the two parties have, in good faith, attempted to resolve their issue together, they may then ask a supervisor for help. Department of Human Resources is also available to offer informal advice to individuals or parties in conflict.

Employees may not file grievances about reasonable departmental administrative practices, such as flexible scheduling or dress codes. Grievances will not be accepted regarding any disciplinary action; general City of Lakewood policy or procedure; performance review; or classification, pay, and benefits. However, eligible employees may file a grievance without fear of reprisal regarding an aspect of his/her work environment that s/he believes is adversely affecting his/her work. The employee may file a grievance using the following process:

1. Within five working days of the matter leading to the grievance, an employee must present the appropriate supervisor with a memorandum describing his/her grievance, stating the facts and the desired action.
2. The department director will immediately notify the Department of Human Resources.
3. The supervisor should work with the employee as soon as possible to rectify the matter. If the matter remains unresolved, the supervisor must explain to the employee, in writing, the supervisor's position.
4. If the employee is dissatisfied with the supervisor's explanation, the employee has five working days to submit a written appeal to the department director. The appeal must indicate the employee's reasons for differing with his/her supervisor's decision.
5. The department director will meet with the employee and the supervisor to discuss the grievance. If discussion does not settle the grievance, the department director will write a decision, which shall be final. The department director may contact the Department of Human Resources for assistance in the resolution.
6. The department director will notify the Department of Human Resources about the action taken.
7. This grievance procedure is an internal process and does not allow any outside representation, including friends, family members or attorneys. Grievances do not become part of an employee's personnel file.

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8. If it is determined that the grievance is harassment, then the procedures found in the Administrative Regulations "Harassment" or "Equal Employment Opportunity" will supersede these grievance procedures.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

POLICIES APPLICABLE TO EXECUTIVES¹⁸

Chapter 4.22 GENERAL PROVISIONS

4.22.010 ~~Travel insurance.~~

~~The City of Lakewood may pay the life insurance policy premium for accidental death for Executive personnel traveling on City of Lakewood business. The City of Lakewood shall own the policy, but the executive covered shall designate beneficiary/ies. Other terms, as well as conditions and effective dates, must be approved by the City Manager.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.22.020 ~~Relocation benefits.~~

~~The City Manager is authorized to pay limited temporary housing benefits to any Executive personnel, Department Directors, and division managers relocating to the area. The amount, method, form, and reasons for temporary housing payments shall be set forth in a memorandum executed by the employee and the department director. The department director is authorized to reimburse an Executive employee for all or some of the actual expenses incurred in relocating personal and household belongings to the City of Lakewood.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.22.030 ~~Deferred compensation program.~~

~~The City of Lakewood may commence a deferred compensation program for Department Directors, provided that it not amend or abolish any other ordinance of the City of Lakewood relating to a separate deferred compensation plan for any City of Lakewood employee. The City Manager may approve a contribution plan for Department Directors, not to exceed the limits imposed by IRS regulations.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

¹⁸Note(s)—These policies apply to: City Manager, department directors, division managers. These policies do not apply to: Regular full- and part-time employees below the division manager level, temporary/seasonal employees, provisional employees, City Council, Mayor, Presiding Judges.

Chapter 4.23 REMOVAL OR SUSPENSION

4.23.010 At-will employment for executive personnel.

Executive personnel (employees who occupy positions in the Executive Occupational Group) are employed at the will of the City of Lakewood and may be terminated, demoted, placed on administrative leave, or suspended without pay for any reason or no reason, with or without notice, or may leave at any point. Neither the City of Lakewood Municipal Code, the City Administrative Regulations, Pay Plan, nor the Benefits Book should be construed by any Executive employee as an express or implied contract guaranteeing the rights of any employee permanently. The City Manager is authorized to terminate Executive personnel.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.23.020 Severance agreements.

The City Manager may offer a severance agreement to a department director. A department director may offer a severance agreement to a division manager. The City Manager will set forth severance agreement policies or procedures. Severance agreements will not exceed three months without approval of the City Manager.

(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

Chapter 4.24 ~~CITY MANAGER SALARY~~

4.24.010 ~~Annual salary of City Manager.~~

~~The City Manager's annual salary shall be established by contract between the City Council and the City Manager, and may be revised periodically by City Council resolution. The salary shall be paid according to the current payroll procedure for other positions.~~

~~(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

POLICIES APPLICABLE TO TEMPORARY/SEASONAL EMPLOYEES¹⁹

Chapter 4.25 ~~GENERAL PROVISIONS~~

¹⁹Note(s)—This chapter applies to: Temporary/seasonal employees. This chapter does not apply to: All other employees, City Council, Mayor.

4.25.010 At-will employment.

Seasonal, temporary, probationary, and provisional employees serve at the will of the City of Lakewood and can be terminated at any point without cause. The Disciplinary Action and Appeal Procedure (Chapter 4.20) does not apply to such employees.

(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014)

4.25.020 Pay plan.

Subject to approval by the City Manager, any department may hire temporary or seasonal employees at prevailing rates of pay as set forth in the City of Lakewood pay plan. Refer to Administrative Regulation "Temporary/Seasonal Pay Plans."

(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.25.030 Benefits.

Temporary/seasonal employees are not eligible for benefits, such as vacation, sick leave, injury leave, holidays, group life insurance, disability income insurance, or medical and dental insurance. They are, however, enrolled in a mandatory Social Security replacement pension plan.

(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.25.040 Change of status.

If a temporary/seasonal employee is appointed to a regular or provisional position, the date of that appointment shall constitute the employee's "date started" in the Human Resources Information System (HRIS) for purposes of employment seniority.

(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).

4.25.050 Miscellaneous policies.

The following paragraphs contained in the general policies also apply to temporary/seasonal employees: ;B1; Attendance:

Equal employment opportunity policy statement.

Duty fitness.

Overtime.

Family and medical leave including the military leave entitlement as required by law.

Military leaves of absence.

Workers' compensation.

Pay deductions.

~~Emergency response.~~
~~Hours to vote.~~
~~Communication during leaves of absence.~~
~~Non-job-related jury or court leave.~~
~~Use of city-designated vehicles.~~
~~Accidents while operating city-designated vehicles.~~
~~Use of private vehicles.~~
~~Overnight use of city-designated vehicles.~~
~~Federal and state elections and campaigns.~~
~~Solicitation of contributions for political parties or candidates.~~
~~Personnel records (general).~~
~~Personnel records (retention and destruction).~~
~~Release of personnel information.~~
~~Harassment and related inappropriate conduct.~~
~~Workplace violence.~~
~~Life-threatening illnesses.~~
~~Conflict of interest.~~
~~Safe work practices.~~
~~Domestic violence leave.~~
~~Drug and alcohol impairment free workplace.~~
~~Workplace Accommodation for Nursing Mothers Act.~~
~~Such other programs and policies as are designated by applicable law or provision.~~
~~(Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

POLICIES APPLICABLE TO ELECTED CITY COUNCIL OFFICIALS²⁰

Chapter 4.26 ELECTED OFFICIALS

4.26.010 Benefits.

The City of Lakewood may pay limited benefits, such as medical insurance, workers' compensation, travel insurance, and other related benefits to elected officials.

²⁰Note(s)—This chapter applies to: City Council, Mayor. This chapter does not apply to: All other employees.

(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2004-39 § 1, 2004; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999)

4.26.020 Pay of elected officials.

- A. Commencing with the new term of office resulting from the November 5, 2019, election, each City Council member shall receive an annual compensation of \$15,456.00.
- B. Commencing with the new term of office resulting from the November 1, 2011 election, the Mayor shall receive an annual compensation of \$38,800.00.
- C. The compensation shall be divided into equal payments and paid in accordance with the current payroll procedure for other positions.
- D. During the November prior to each mayoral election, the City Council shall review the mayor's and City Council members' compensation. Any adjustment shall be established by ordinance and take effect according to the Lakewood Home Rule Charter.

(Ord. O-2019-37 § 1, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-14 §§ 1, 2, 2007; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999)

TITLE 4

PERSONNEL MERIT SYSTEM POLICIES

GENERAL POLICIES

Chapter 4.01 GENERAL PROVISIONS

4.01.000 Requirements of Section 4.7 of the Lakewood Municipal Charter.

Section 4.7 of the Lakewood Municipal Charter (Charter §4.7) establishes the personnel merit system for the employment, promotion, and evaluation of employees of the City. The personnel merit system shall be based upon principles of merit. The personnel merit system, as set forth within this code, shall include but not be limited to provisions regarding the following:

- (1) Procedures for employment and promotion based on merit;
- (2) Procedures for reasonable probationary periods for employment and promotions;
- (3) Procedures for the resolution of grievances of employees;
- (4) Procedures for administrative appeal of disciplinary action, including discharge, taken against a non-probationary employee, which shall include notice, hearing, and the right to be represented; and
- (5) A requirement that any disciplinary action taken against a non-probationary employee (excluding managerial, executive and confidential employees), including but not limited to suspension or discharge from employment, shall be for cause.

4.01.010 Applications and authority.

The Personnel Merit System Policies ("policies" or "personnel policies") set forth in this chapterCode, in accordance with Charter §4.7, shall be applicable to all employees of the City of Lakewood except as otherwise provided by City Charter, State statute, Federal law, judicial decision, City Charter, ordinance or the policies set forth in this chapter. In accordance with Section 5.10 of the City Charter, all employees of the Municipal Court, except as otherwise provided in the city's Charter, shall be subject to the personnel merit system. The Presiding Judge shall have the power and authority to appoint, promote, suspend, transfer, and remove employees of the Municipal Court subject to the provisions of the Charter and the personnel merit system. Notwithstanding this limitation, the Presiding Judge of the Municipal Court shall have the power and authority to promulgate such rules and orders as may be necessary and proper provided that such rules and orders do not conflict with the requirements of the personnel merit system or Colorado Supreme Court Rules. The City Attorney shall have the power and authority to appoint, promote, suspend, transfer, and remove City of Lakewood employees of the City Attorney's office in accordance with the provisions of the personnel merit system-these policies. The Director of Human Resources (Director) shall serve as an advisor to the Municipal Court and City Attorney's office in matters involving the personnel merit system.

Any policy giving decision-making authority to the City Manager, Presiding Judge, City Attorney, department director, division manager, or other supervisor allows for a designee to act on that person's behalf in his/her absence. "Administrative Regulations" and the "Employee Benefits Book," which contain further information about policies in this manual, are updated regularly on COLOR, the City of Lakewood's employee intranet.individual's behalf.

(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

Unless otherwise noted this Code does not apply to: City Manager, City Attorney, all judges of the Municipal Court or non-employees of the City such as elected officials and members of boards and commissions.

4.01.020 Rules subordinate to applicable law, relevant judicial decisions and rules of court.

~~The Personnel~~These Policies are subordinate to those federal laws, state statutes, or other laws that supersede Charter §4.7, including any relevant judicial decisions and officially adopted rules of court,~~which shall take precedence in the event of a conflict or inconsistency with the Personnel Policies.~~

~~(Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).~~

4.01.030 Prerogatives reserved.

~~The administration of the City of Lakewood may manage the City of Lakewood's business using its judgment and following applicable statutes, ordinances, and regulations, to:~~

~~A. — Discipline employees as appropriate for cause pursuant to the Personnel Merit System;~~

~~B. Hire~~In accordance with Charter §3.3, the City Manager of the City of Lakewood shall exercise supervision over all administrative departments and employees of the City of Lakewood, in conformance with the City's applicable Charter, Municipal Code, City Administrative Regulations and other relevant laws. This includes authority over the following:

A. Disciplinary Action

B. Employment Status

Includes: Recruitment, Transfers, Promotions, Demotions, Vacancies, Employee Separations, Reduction in Force and Layoffs, and Retirement

Hire, monitor probationary periods, promote, demote, transfer, assign, separate, retire, separate through a reduction in force, and recall employees to work;

C. Employee Development

Includes: Education and Training, Performance Evaluations, Recruitment, and Examinations

Judge the skill, ability, efficiency, and qualifications of all employees, and otherwise evaluate employee performance;

D. Hours of Work.

Incudes: Holiday Pay, On-Call, Call-in, Call-Back and Unscheduled Split Shift, Overtime and Compensatory Time, Shift Differential Pay, Sick Leave Policy, Unexcused Absence, Teleworking, Training and Travel Time, and Personal Leaves of Absence

Determine and change any conditions of employment, including, but not limited to, the starting and ending times, the number of hours on the shift to be worked, days off to be taken, and the number of hours in the ~~employee's~~employees' work week;

~~E. Revise, eliminate, combine, or establish new jobs, benefit plans,~~Compensation

Includes: Pay Plan, Variable Pay Plan, Bonus Program, Attraction and classifications;~~Retention Bonus Pay, Car Allowance, New Employee Hiring Incentives~~

~~F. Establish compensation plans and programs;~~Use of City Equipment

~~G. — Maintain control and regulate the use of City of Lakewood property and equipment;~~

~~H. —~~Includes: Vehicles and Equipment, Mobile Device Use, Acceptable Technology Use

G. Workforce Planning

Reduce or expand the operation of the City of Lakewood or its departments;

~~I. Determine the number, size, location, and operation of facilities and departments, groups, or divisions;~~

~~J. Determine work assignments and the size and composition of the workforce~~

H. Independent Contractors

Determine City of Lakewood services and subcontract for them as required;

~~K. Determine work assignments and the size and composition of the work force;~~

~~L. Make, change, and enforce rules, policies, guidelines and practices;~~

~~M. Establish quality standards;~~

~~N. I. Acceptable Technology Use, Information Technology Procurement, Mobile Device Use~~

Introduce technological changes and new, improved, or modified services, methods, techniques, and equipment;

~~O. J. Administrative Regulations~~

~~Shall include regulations pertaining to:~~

~~Make, change, and enforce rules, policies, guidelines, practices and quality standards~~

~~Direct and supervise the work force; and workforce~~

~~P. Manage operations-~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

Revise, eliminate, combine, or establish new jobs, benefit plans, and classifications

4.01.040 Amendments to policies; Codification.

The City Manager may from time to time propose ~~Personnel Policy~~ amendments to these policies to the City Council. Amendments shall become effective when adopted by the City Council or on an effective date designated by the City Council. ~~Current policies and administrative regulations shall be maintained in each department, on the City of Lakewood's intranet, and in the Department of Human Resources. The Personnel Policies shall be public records available for inspection by the public during normal business hours.~~

~~(Ord. O-2019-24 § 3, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

These policies shall be codified in the Lakewood Municipal Code.

4.01.050 Administrative regulations.

~~The City Manager may change written administrative procedures, rules, or regulations, provided they do not conflict with these policies. Administrative regulations specify detailed procedures for administration of broad policy guidelines. These can also be viewed on the City of Lakewood's Intranet or website.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

Administrative regulations promulgated by the City Manager shall set forth the procedures, rules, and regulations pertaining to the administration of these Policies and also for carrying out the duties and responsibilities of employment with the City. The City Manager shall have the authority to amend such regulations as needed. Additionally, each department may also adopt departmental operating policies/procedures/regulations specific to the needs of and services provided by the department provided such administrative regulations do not conflict with this Code.

4.01.060 Definitions.

As used in these Personnel Merit System Policies, the following terms shall have the following meanings:

Administrative leave. Time off with or without pay, granted at the discretion of a supervisor in consultation with the Department of Human Resources.

Administrative regulations. ~~These set~~Regulations setting forth the procedures, rules, and regulations pertaining to the administration of ~~the~~these Personnel Merit System Policies ~~and the general administration of personnel.~~ The City Manager has the authority to amend them as needed.

~~Alternative duty. In some circumstances, a temporary adjustment to an employee's job duties incorporating physician ordered medical restrictions may be possible. Such assignments are available at the supervisor's discretion. Alternative duty may include temporary assignment, a different position, temporary limitations on the number of hours worked, or some combination of all alternatives.~~

Appeal. The employee's formal challenge to a disciplinary action.

~~Applicant. A person who has filed an application for employment, submitted a résumé, or filed a promotional consideration form for an open job.~~

Appointment. ~~The placing~~Placing of a person in a regular full-time, regular part-time, provisional full-time, provisional part-time, ~~temporary~~variable, or seasonal position.

At-will employment. An employee serving at the will of the City of Lakewood may separate employment at any time or be separated at any time, for any or no reason. At-will employees at the City of Lakewood generally include division managers and higher, ~~and~~ level employees, as well as provisional and ~~temporary~~variable and seasonal employees. ~~New~~All new employees serving an initial probationary period also serve at-will.

~~Career ladder. A path for advancement within a profession with expectations and qualifications defined for each level. Each department retains the right to determine, in consultation with the Department of Human Resources, expectations, movement, and distribution on the ladder.~~

City Manager. The chief administrative officer of the City, appointed by the City Council and invested with those powers and authorities as set forth with the City's Charter, Code, State law and all other applicable laws and regulations. Whenever the term City Manager is used within these policies it shall include the City Manager's Designee.

Classification. Determination of the occupational group, pay level, and exemption status of a position based on the duties performed, authority, responsibilities exercised, and the pay level of comparable positions.

Compensation. Pay, wage, allowance, and all other forms of valuable consideration an employee earns for services to the City of Lakewood.

~~Compensatory time. Time off accrued by an eligible non-exempt employee as compensation in lieu of paid overtime. Also known as "comp time," compensatory time is accrued at a rate of time and one-half of the overtime hours worked. Use of accrued comp time is not required within the pay period in which the time was earned. Time is recorded according to a 40-hour week (or 80 hours in a two-week pay period for police agents, police sergeants, and court marshals).~~

~~Contractor or independent contractor. An individual who performs work for the City of Lakewood, but is not a City of Lakewood employee. Contractors must meet classification criteria governed by federal agencies, including~~

~~the Internal Revenue Service, the federal and state Departments of Labor, and the division of Workers' Compensation and Unemployment. An independent contractor must also meet the criteria as set forth in Section 4.03.060.~~

Demotion. An employee moving from one pay level to a lower pay level. This can be a temporary, involuntary, or voluntary assignment.

Department director. The head of a distinct department. Department Directors report directly to the City Manager.

Disciplinary action. Action taken by the Disciplinary Authority against an employee for cause, which may include reprimand, suspension, demotion, or termination.

Disciplinary authority. The City Manager, a department director, a division manager, or a supervisor may exercise disciplinary authority as set forth in these policies.

Employee. Someone hired into a paid position. Per the Fair Labor Standards Act elected officials, City Council members, appointees to boards or commissions, and volunteers are not employees of the City.

Employee development. Instruction designed to maintain or increase the proficiency, qualifications, knowledge, skills, and abilities of City of Lakewood employees.

~~*Employment seniority.* The total number of consecutive months of service to the City of Lakewood as of the most recent date of hire to a regular or provisional position, regardless of department or classification. Employment seniority will be represented by the date reflected in the "date started" field in the Human Resources Information System (HRIS).~~

Exempt. An employee who is exempt from certain provisions of the Fair Labor Standards Act (FLSA) ~~as further clarified by the Colorado Department of Labor and Employment COMPS Order, 7 CCR 1103-1.~~ Exempt employees do not receive overtime pay for hours worked more than 40 in one week.

Family and Medical Leave which includes Military Family Leave Entitlement. ~~An unpaid~~ job protected leave of absence available to eligible employees that complies with and affords employees the protections of the Family and Medical Leave Act (FMLA).

~~*Full-time employee.* A regular employee who works a minimum of 37 average hours per work week through a one-year period.~~

Grievance. A formal complaint initiated by eligible employees about the work environment.

~~*Hostile work environment.* Unwelcome, unreasonably offensive, severe, or pervasive attacks on an employee's protected status occurring in any place business activities are conducted. It is not a hostile work environment for a supervisor to create legal, ethical expectations or position changes.~~

Job posting. ~~A minimum five-day~~ A notice available to City of Lakewood employees outlining the essential functions, requirements, compensation and details of an open position.

~~*Journey step.* The maximum pay step of the Police Agents' pay level in conformance with State law.~~

Market data. Wage and pay data obtained from a variety of relevant markets, including the public and private sector.

~~*Maximum Medical Improvement (MMI).* A point at which a physical or mental impairment has stabilized and no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance, which will not significantly improve the condition or the possibility of improvement or deterioration over time, shall not affect a finding of MMI.~~

Medical separation. A separation from employment based upon the determination that, owing to illness or injury, an employee cannot perform the essential functions of ~~his/hersuch~~ employee's job with or without reasonable accommodation. A medical separation is not disciplinary in nature, so appeal rights do not apply.

Non-exempt. An employee who is paid for hours worked is subject to the overtime provisions of the Fair Labor Standards Act (FLSA).

~~*Overtime.* Authorized recorded time of non-exempt employees in excess of 40 hours per week (or 80 hours in a two-week pay period for police agents, police sergeants, and court marshals). City of Lakewood administrative regulations and the Fair Labor Standards Act (FLSA) offer certain exceptions to overtime.~~

~~*Part-time employee.* A regular employee who normally works an average of 30—36 hours per week through a one-year period.~~

Pay level. The establishment of a pay range for positions with comparable market data, competency, and authority. For ~~police agents, designated positions~~ the pay level is a series of pay steps.

Performance Review and Development System (PRD). A method for documenting, evaluating, and managing employee performance.

~~*Personal leave of absence.* A period from 30 days to one year in which an employee is temporarily away from his/her job for authorized personal reasons. This requires using accrued leave (other than sick leave).~~

Personnel merit system policies. Title 4 of the Lakewood Municipal Code. May also be referred to herein as Personnel Merit System Policies or these policies.

Position. A specific job in the City of Lakewood within a classification, occupational group, and pay level. ~~These positions can be regular or provisional (authorized in the budget), or temporary/seasonal.~~

~~*Positional seniority.* The total number of months of service since the last date of appointment to the employee's current regular position. With the authorization of the Director of Human Resources, seniority may be reinstated to an earlier date. Positional seniority will be represented by the date reflected in the "date in current job" field in the Human Resources Information System (HRIS).~~

~~*Position change.* A movement from one specific job in the City of Lakewood to another.~~

~~*Positional probation.*~~ *Positional training period.* Any regular employee who receives a promotion, demotion, or lateral transfer shall serve a period of positional probation and remains otherwise training during which such employee will be evaluated as to such employee's ability to carry out the duties of the new position but shall otherwise remain entitled to the procedures outlined here for regular employees.

Probationary employee. An employee newly hired, serving a probationary period. An initial probationary employee is at will. Includes employees moving from variable or seasonal to regular or provisional.

Probationary period. The designated period of initial employment which is generally between six- to 12-month ~~twelve months of time~~ actually worked for the City during which an ~~employee's~~ employee's skills, abilities, performance, and other job-related criteria are evaluated to determine ~~his/hersuch employee's~~ such employee's suitability for ~~appointment to a regular position~~ their employment. Police agents serve a two-year probationary period. Each employee will be notified of the term of probation associated with such employment at the start of such employment. Certain types of federal or State protected leave will toll the probationary period.

Promotion. The movement of an employee from one pay level to a level with higher pay and increased responsibility. This can be a temporary, permanent, voluntary, or involuntary assignment.

Promotional list. A list of candidates eligible for a promotion. This list expires after a certain period of time, depending on department standards. and is carried out in conformance with the Equal Pay for Equal Work Act (Title 8, Article 5, Part 2 (C.R.S. §§ 8-5-201 to 8-5-203) (2021) ("Transparency in Pay and Opportunities for Promotion and Advancement")).

Provisional employee. A full- or part-time employee hired for a period of less than two years who receives benefits ~~(except pension contributions),~~ but is not entitled to all rights and privileges afforded a regular employee. Provisional employees serve at will.

Reclassification. A newly assigned classification of a position based on a study of various criteria pertaining to the position. A position classified from full-time to part-time or vice versa is considered a reclassification.

Reduction in force. Non-disciplinary termination of an employee from a position because of a reorganization; completion or alterations of required programs, projects, or services; changes in methodology by which the service is provided; reductions in service levels; budgetary or related economic restraints, restrictions, or decisions; or other situations that alters the need for a position. Also known as RIF.

Regular employee. An employee who has been assigned to a full- or part-time position in the City of Lakewood, receives benefits (including pension contributions), and is afforded the rights and privileges described in the Personnel Merit System Policies.

Resignation. A voluntary separation from employment. An impending resignation should occur in writing when practical. If an employee voices the intent to resign, the supervisor may accept this declaration with a third party as a witness.

~~*Retirement.* Separation from the City of Lakewood by an employee who meets specific criteria outlined in the "Employee Benefits Book." A retirement must occur in writing.~~

Seasonal employee. A full- or part-time hourly employee hired for a designated period, generally less than nine months. Seasonal employees serve at will and are entitled to limited benefits and privileges.

Separation. General term for any employee departure from City of Lakewood employment.

~~*Special Performance Improvement Plan.* A specialized performance review. A which occurs within a set time period after an employee's overall performance is rated "needs improvement" or "unacceptableunsatisfactory." This is a tool to improve or develop an employee's performance. If performance does not improve and remain consistent or is not sustained, the employee may be subject to disciplinary action, up to and including termination.~~

Step or pay step. The pay allocation within the police agents' positions' pay level.

Suspension. A period during which an employee is prohibited from reporting to work. A suspension may be imposed with or without pay as appropriate under the circumstances, and may be imposed during a pending criminal prosecution. The City of Lakewood may delay disciplinary action through the suspension period.

Temporary assignment. A period during which an employee takes on different or additional responsibilities. Compensation may increase temporarily, but position and title remain the same.

~~*TemporaryVariable employee.* An employee who has not been assigned to a regular or provisional position and whose work schedule is generally part-time. TemporaryVariable employees serve at-will and are entitled to limited benefits and privileges.~~

Termination. Involuntary separation from employment.

Transfer. The movement of any City of Lakewood employee from one position to another with the same or similar pay level and degree of responsibility, or from one department/division to another department/division. This can be a temporary, permanent, voluntary, or involuntary assignment. Such a transfer will not result in a change in compensation.

~~*Transitional status.* The temporary employment status assigned to an employee after an injury or illness that causes the employee to be unable to perform one or more of the essential functions of the position, with or without reasonable accommodation. An employee may receive FML or need to work an alternative or reduced hour schedule. Such employee placed on transitional status may be offered alternative duty. Transitional status may be used for up to one year with a possible four month extension for good cause. The length of transitional status will take into account the number of employees in the unit and is determined by the supervisor or manager of that unit in consultation with Department of Human Resources. The transitional status process is administered in accordance with Section 4.07.030.~~

~~Vacancy notice. A five day minimum posting to City of Lakewood employees outlining the essential functions, requirements, and details of a vacant position. This is also known as a "job posting."~~

~~Work environment. Any work area on or off City of Lakewood property where City of Lakewood business is conducted.~~

~~{Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999}.~~

Chapter 4.02 PAY PLAN

4.02.010 Pay concepts and philosophies.

The City Council has authority over the City of Lakewood's broad compensation concepts and philosophies. ~~At this time, the~~The City of Lakewood embraces a market-driven, performance-based pay system that recognizes budgetary influences and constraints, in accordance with all applicable State and Federal law.

At least annually, the Department of Human Resources shall study the factors affecting the level of pay for all positions and make corresponding pay recommendations to the City Manager. The City Manager shall annually review the pay ranges. The pay plan and base pay compensation levels for regular full-time and regular part-time, as well as for provisional and ~~temporary~~variable/seasonal positions, shall be set forth in Administrative Regulations "Pay Plan" and "~~Temporary~~Variable/Seasonal Pay Plans." All employees shall be assigned a pay range and paid ~~biweekly.~~

~~{Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999}.~~

bi-weekly.

4.02.020 Establishment of classifications.

The City Manager ~~is authorized to~~will implement and maintain a classification system, paying positions the appropriate base pay as established by Chapter 4.02. The City Manager shall authorize the classification titles and corresponding occupational category levels.

~~{Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999}.~~

4.02.030 Maintenance of plan.

The City Manager shall periodically order a study of the duties, responsibilities, and associated factors of all positions within the City of Lakewood. The study shall address the appropriate pay rates and classifications for each position based upon market data, nature of work, duties, responsibilities, and authority within that position. The City Manager shall make amendments to the classification plan whenever data indicates the necessity for a change.

~~{Ord. O 2019 24 § 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999}.~~

4.02.040 Placement of positions within pay levels.

Positions in the City of Lakewood shall fall within the pay levels prescribed by the City Manager. Final determination of the placement of positions in pay levels and classifications shall be approved by the City Manager after considering the recommendation of the Department of Human Resources.

~~(Ord. O 2019-24 §§ 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).~~

4.02.050 New positions.

Any position added to the city pay plan shall be assigned an appropriate classification. Managers should develop a job description and consult with Department of Human Resources before submitting the position for approval to the City Manager. New positions should be requisitioned through the annual budget process.

4.02.060 Reclassification.

A reclassification of a position may be considered when a study has shown that the duties and level of responsibilities (especially decision making) of a current position have significantly changed. Additionally, a reclassification may be applicable if the job evolves into a position that currently exists in the pay plan, or when sustained market data indicate the need for a reclassification. (This may include a position that goes from regular part-time to regular full-time or from regular full-time to regular part-time.) A position may move to a higher level, a lower level, or remain at the same level. Requests for reclassification, along with an accurate job description, shall be submitted in writing as directed by the Administrative Regulation "~~Reclassification/Classification Requests~~Workforce Planning." This regulation requires a supervisor to list reasons for a reclassification study. The Department of Human Resources may reclassify positions with good and sufficient reason. Reclassifications shall not be proposed solely for the purpose of effecting pay adjustments or individual promotions/demotions.

Reclassifications should be requisitioned through the annual budget process.

~~(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001).~~

4.02.070 Pay.

Employees shall be assigned a base pay rate in conformance with the pay plan. The City Manager shall establish by written order to the Director of Human Resources the base pay rate of each City of Lakewood employee. Relevant factors in establishing or changing base pay rates include competence, diligence, and efficiency. In addition, the City Manager may, at ~~his/her~~the Manager's discretion, grant pay increases at any time to any ~~of the employees~~employee as long as doing so does not exceed the budget and is in conformance with all applicable laws. The City Manager is authorized to make an exception to the assignment of an employee's pay in the pay plan.

~~(Ord. O 2019-24 §§ 3 and 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001).~~

4.02.080 Use of pay ranges/pay steps.

The department director shall, in consultation with the Department of Human Resources, authorize appointments or reinstatements at a rate within the pay range for the position's classification. In addition, appointments or reinstatements for police agents shall be authorized at the appropriate step rate.

~~(Ord. O 2019-24 § 3, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; (Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001).~~

4.02.090 ~~Police-step~~ Step system.

A movement of ~~Police agents'~~established position pay through a determined set of increases scheduled in the pay plan. In addition, appointments or reinstatement ~~for Police agents of positions~~ shall be authorized at the appropriate step rate.

~~{Ord. O-2014-9 § 1, 2014}~~

4.02.100 Pay advancement.

Pay advancement shall be in conjunction with pay plans and dependent upon the budget and employee performance. The City Manager has final authority over recommended pay adjustments.

~~{Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001}.~~

4.02.110 Bonus plan.

The City Manager may establish a bonus plan to specify criteria for bonus awards. The City Manager has final authority over awards relating to the bonus plan, and shall not grant any bonus award that would compromise the total compensation budget for the fiscal year.

~~{Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001}.~~

Chapter 4.03 RECRUITMENT

4.03.010 Eligibility for employment.

Applicants may be eligible for employment consideration with the City of Lakewood if they possess the minimum qualifications of the job, meet established selection criteria, and are able to perform the essential functions of the position with or without reasonable accommodation. ~~#~~For emergency personnel only, an eligibility list has been established, the in conformance with applicable pay promotion and advancement law may be used in lieu of individual position does not need to be re-advertised advertisement.

~~{Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; {Ord. O-2019-24 § 4, 2019; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999}.~~

4.03.~~030020~~ Announcement of vacancies.

The Department of Human Resources shall prepare and post recruiting notices in venues designed to attract the most qualified candidates. All recruiting notices and other vacancy publicity shall explicitly state that the City of Lakewood is an Equal Opportunity Employer.

~~{Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999}.~~

Applications for all positions must be submitted through the HRIS (Human Resources Information System) on or before the stated deadline. Jobs are posted to City of Lakewood employees outlining the essential functions, requirements, compensation, and details of an open position in conformance with State Law.

Chapter 4.04 MISCELLANEOUS RULE

4.07.03004.010 Transitional status and medical separations.

~~An employee who can no longer perform the essential functions of his/her job because of injury, illness, or other medical condition, with or without reasonable accommodation, will be considered for transitional status. Once placed on transitional status, the employee's prognosis, treatment plan, and progress toward Maximum Medical Improvement (MMI) or return to work status will be periodically monitored to determine if and when the employee may return to work and whether the employee requires assignment to Alternative Duty. As part of this process, the Department of Human Resources shall informally review the employee's transitional status every 90 days.~~

~~Transitional status may not exceed 12 months, except upon the approval of the Director of Human Resources and the City Manager. If an employee has been on transitional status multiple times over a period of time, including the span of several months for the same or differing injuries or illnesses, the number of months will be added together to determine the length of time the employee has been on transitional status. The time frame will be determined by the circumstances of the illness or injury. When the transitional status time frames reach a total of 12 months or 365 days, the employee will be considered for a medical separation. In some cases, the time frame for transitional status will be less than one year. Each department director chooses one of the following time frames for each work group, depending on the number of employees able to manage the absent employee's workload: the FML period itself, a total of six months or total of one year. FML, when applicable, must be exhausted prior to the medical separation.~~

~~An employee placed on transitional status who has exhausted applicable Family Medical Leave hours may be separated from employment at any point if s/he is not able to perform the essential functions of his or her job with or without reasonable accommodation. Transitional status is temporary. Reliability and being present are essential functions of every City of Lakewood job; therefore, teleworking cannot be a reasonable accommodation or an alternative duty. Once transitional status is exhausted, being present, fulfilling a work schedule and able to perform the essential functions of a position is necessary. The ability to perform the essential functions of the job may be determined by a Duty Fitness Examination, as set forth in section 4.08.010 and Administrative Regulation, "Duty Fitness Examinations." A separation under these circumstances will constitute a medical separation. Medical separations are not disciplinary and do not fall within the scope of the disciplinary procedure set forth in Section 4.20.040.~~

~~When the Department of Human Resources, in conjunction with a physician's opinion or the employee's department director, determines that a medical separation may be necessary, it shall provide the employee written notice stating the department's rationale and setting a meeting to review the employee's circumstances. This informal, pre-separation review shall be conducted solely for all parties to consider the reasons that have led the Department to initiate a medical separation. The employee shall cooperate with any necessary job-related examination.~~

~~At this review, the employee may respond, orally or in writing, to the Department's reasons for considering a medical separation. Because this review is informal, the employee is not entitled to legal counsel or any other representation including friends or relatives at any administrative meeting. If, following this informal review, the Department of Human Resources, in conjunction with a designated physician and the employee's department director, determines that a medical separation is necessary, the employee will be notified in writing. This decision is final and cannot be appealed. If a person who was medically separated during a transitional status period is able to return to his/her previous job before the transitional status period has expired, s/he will not need to apply for the position. Refer to Administrative Regulations "Transitional Status and Med Separation" and "Family Medical Leave Act."~~

~~(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004).~~

~~4.17.010A medical separation decision is final and cannot be appealed.~~

4.04.020 Violation of policies.

Violation of any policy shall be grounds for disciplinary action, including but not limited to reprimand, suspension, demotion, or termination. An employee who has been terminated or suspended for more than two days- and believes that no cause for discipline existed may appeal in accordance with Chapter 4.20.

~~(Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 1, 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § 1, (part), 1999).~~

4.16.08004.030 Employee administrative meetings.

Administrative meetings at the City of Lakewood take place with the employee and City of Lakewood personnel only. No representatives, such as family members, friends, or attorneys are allowed.

~~(Ord. O 2019 24 § 4, 2019; Ord. O 2014 9 § 1, 2014).~~

Chapter 4.05 EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

4.1405.010 Policy.

The City of Lakewood provides equal employment opportunities to all persons without regard to an individual's race, color, creed, national origin, religion, ancestry, sex, sexual orientation (including transgender status), age, military service, veteran status, marital status, genetic information, pregnancy or disability, or any other applicable status protected by state or federal law. The City of Lakewood does not tolerate discrimination, harassment, or retaliation and promotes equal pay for equal work.

The City of Lakewood promotes an atmosphere of respect and acceptance in all interactions both internally and externally. The City of Lakewood recognizes that its citizens and employees have varied backgrounds, experiences, and differences; therefore, the City of Lakewood works hard to create a culture of inclusion. The City of Lakewood strives to reflect its community while fostering the development and advancement of qualified individuals.

Any employee who believes ~~s/he~~such employee has been the subject of discrimination for any protected status should immediately file a formal written complaint to report the alleged act to ~~his/her~~such employee's supervisor or department director or to the Department of Human Resources. Supervisors who receive these complaints shall immediately contact the Department of Human Resources. Neither the City of Lakewood nor any of its employees will retaliate against any individual who files such a complaint. ~~Any individual found to have retaliated against an individual for filing such a complaint may be subject to whatever action the City of Lakewood deems appropriate, up to and including termination.~~ The City of Lakewood will act promptly to investigate reported discrimination. Based on its investigation, the City of Lakewood may take ~~whatever action it deems appropriate~~ disciplinary action, up to and including termination, to achieve an immediate remedy when an allegation is determined to be valid. Refer to Administrative Regulation "Equal Employment Opportunity."

Employees may also file claims with the Equal Employment Opportunity Commission or the Colorado Civil Rights Division.

~~(Ord. O 2019 24 §§ 3 and 4, 2019; Ord. O 2014 9 § 1, 2014; Ord. O 2009 43 § 1, 2009; Ord. O 2007 7 § 2007; Ord. O 2004 39 § 1, 2004; Ord. O 2001 49 § 1, 2001; Ord. O 99 34 § 1, 1999; Ord. O 99 18 § (part), 1999).~~

Chapter 4.06 DISCIPLINARY ACTION AND APPEAL PROCEDURE

4.20.05006.010 Appeal of disciplinary action.

Persons terminated, demoted, or suspended for more than two working days, shall be entitled to appeal. An appeal may be initiated only by filing written notification with the Director of Human Resources within ten calendar days of delivery to the employee of written notification of the disciplinary action.

- ~~A.~~ A. The Director of Human Resources shall maintain a list of impartial and qualified hearing officers. Upon receipt of any notice of appeal of disciplinary action, the Director of Human Resources shall provide the employee with this list, and the employee shall select a hearing officer based on availability. If the employee does not select a hearing officer from this list within ten calendar days after receiving the list, the City of Lakewood will choose a hearing officer.
- B. It is the responsibility of the Department of Human Resources ~~responsibility~~ to schedule a hearing within 90 days of the appeal. If the appellant or the appellant's attorney has failed to cooperate in the scheduling of the hearing, the appeal is dismissed. If the hearing is not set to occur within 90 days of choosing a hearing officer, due to the appellant or the appellant's attorney, the appeal is dismissed.
- ~~BC.~~ The hearing officer shall conduct a hearing according to the Administrative Regulation "Conduct of Appeals of Disciplinary Actions," which provides for notice, procedures to be employed during the hearing, and the right of the appellant to be represented by a layperson or attorney.
- D. The hearing officer may issue subpoenas for witnesses, books, records, documents, and other evidence, and shall have the power to administer oaths. The hearing officer shall be responsible for the conduct of the hearing. No subpoena shall be issued for records pertaining to the discipline or the investigation of any other City of Lakewood employee. No parties shall be entitled to subpoena any evidence not admissible at the hearing. Either party may apply to the hearing officer for the issuance of a subpoena. Subpoenas so issued shall be served and, upon application to the District Court of Jefferson County by a party or the hearing officer, enforced in a manner provided by law for the service and enforcement of subpoenas in civil actions. After a party or the hearing officer submits an application to the District Court of Jefferson County, subpoenas shall be served and enforced according to the civil action statutes. No party shall be entitled to subpoena any inadmissible evidence. The hearing officer has no authority to order the taking of depositions, responses to interrogatories, responses to requests for production of documents, or physical or mental examination of any persons.
- E. The City of Lakewood may be represented by anyone of its choice, including the City Attorney. The Director of Human Resources may attend.
- F. The hearing shall be held at a location designated by the City of Lakewood. The hearing officer shall decide the outcome within 30 calendar days after the hearing is completed, unless good cause exists for additional time. The hearing officer's sole purpose is to determine whether or not "cause" for disciplinary action existed; ~~s/he~~ the hearing officer has no authority to modify disciplinary action. Hearings are closed to the public. After considering the evidence, the hearing officer shall make findings of fact and conclusions of law in writing, stating whether "cause" for discipline existed. ~~Those findings shall be sent specifically addressing any causes for disciplinary action set forth within the written disciplinary action subject to the City Manager, the appellant or his/her representative, the representative of the City of Lakewood, and the Director of Human Resources appeal.~~

(Ord. O-2019-24 § 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).

4.20.060 Modification of disciplinary action.

G. The findings of the hearing officer shall be sent to the City Manager, the appellant or the appellant's representative, the representative of the City of Lakewood, and the Director of Human Resources.

4.06.020 Administrative determination of appeal.

Within ten (10) days of receiving the findings of fact and conclusions of law the City Manager, or a designee, shall determine whether to uphold the disciplinary action, overturn the disciplinary action, modify the level of discipline imposed by the disciplinary action, or require an additional hearing or limited supplemental hearing to clarify any information. The City Manager shall notify the appellant, the department director, and the Director of Human Resources of their decision and shall order whatever action, if any, is necessary to implement their decision. Failure to provide this notification within ten (10) days shall be deemed a decision to uphold the disciplinary action.

The City Manager may modify any disciplinary action taken in any instance where "cause" is found for disciplinary action. See Administrative Regulation "Modification of Disciplinary Action by City Manager."
~~If Additionally, after the hearing officer's findings and conclusions are distributed, but before the City Manager's final decision is promulgated, the appellant requests may request~~ a modification of the disciplinary action in writing, ~~the City Manager may consider changing the level of discipline.~~ This ~~notification request~~ should include reasons for modification, including discipline imposed upon others; his/her own work and discipline record; and any other mitigating circumstances. This request must be submitted directly to the City Manager within ten calendar days of notification of the hearing officer's findings. This request should be focused on the original cause(s) for disciplinary action, ~~but is not to further review whether there was cause for~~ as stated within the notice of disciplinary action.

~~After reviewing~~ If the findings of fact and conclusions, of law fail to address each of the causes for disciplinary action or otherwise fails to address a matter that the City Manager ~~may accept or reject the decision of the hearing officer, or may modify the level of discipline imposed by the department director. In addition finds necessary to make a final determination,~~ the City Manager may conduct an additional hearing or a limited supplemental hearing. Administrative Regulation "Modification of Disciplinary Action by City Manager" shall provide for notice, procedures to be employed during any hearing, and the right of an employee to representation, with such notice provided within ten (10) days following the City Manager's receipt of the findings and conclusions. ~~The City of hearing may be heard either by a hearing officer for the City of Lakewood or the City Manager or designee. The City of Lakewood and the appellant may be represented by counsel, or anyone of its choice, including the City Attorney. The their choosing, or the hearing officer may review the transcript of the previous hearing and any evidence submitted. Upon receiving the findings of fact and conclusions of law from the additional or supplementary hearing, the~~ City Manager shall conduct the review and render a decision, within ten (10) days. The City Manager shall notify the ~~person appealing appellant,~~ the department director, and the Director of Human Resources of ~~his/her their~~ decision and shall order whatever action, if any, is necessary to implement ~~his/her their~~ decision.

~~(Ord. O-2019-24 § 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

4.20.070

4.06.030 Time limits.

If the appellant or his/her representative fail to meet the deadlines stated in Chapter 4.20, the disciplinary action and appeal process will be invalidated and the disciplinary action decision will be upheld. City of Lakewood failure to meet any of these time limits shall not invalidate the process or disciplinary action taken.

~~(Ord. O-2019-24 § 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001).~~

Chapter 4.07 GRIEVANCE PROCEDURES

4.2107.010 Statement of policy.

The City of Lakewood is committed to good employee relations practices and sound human resources management. Circumstances may arise that cause employee dissatisfaction.

An employee shall first identify whether the behavior falls into the harassment and related inappropriate conduct as set for in Chapter 4.15. If not, the employee should consider communicating directly with the other party. After the two parties have, in good faith, attempted to resolve their issue together, they may then ask a supervisor for help. Department of Human Resources is also available to offer informal advice to individuals or parties in conflict.

Employees may not file grievances about reasonable departmental administrative practices, such as flexible scheduling or dress codes. Grievances will not be accepted regarding any disciplinary action; general City of Lakewood policy or procedure; performance review; or classification, pay, and benefits. However, eligible employees may file a grievance without fear of reprisal regarding an aspect of his/her work environment that s/he believes is adversely affecting his/her work. The employee may file a grievance using the following process:

1. ~~Within five working days of the matter leading to the grievance, an~~ employee must present the appropriate supervisor with ~~a memorandum~~ verbal or written information describing his/her grievance, stating the facts and the desired action.
2. The department director will immediately notify the Department of Human Resources. All grievances must be maintained as a record.
3. The supervisor should work with the employee as soon as possible to rectify the matter. If the matter remains unresolved, the supervisor must explain to the employee, in writing, the supervisor's position.
4. If the employee is dissatisfied with the supervisor's explanation, the employee has five working days to submit a written appeal to the department director. The appeal must indicate the employee's reasons for differing with his/her supervisor's decision.
5. The department director will meet with the employee and the supervisor to discuss the grievance. If discussion does not settle the grievance, the department director will write a decision, which shall be final. The department director may contact the Department of Human Resources for assistance in the resolution.
6. The department director will notify the Department of Human Resources about the action taken.
7. This grievance procedure is an internal process and does not allow any outside representation, including friends, family members or attorneys. Grievances do not become part of an employee's personnel file.
8. If it is determined that the grievance is harassment, then the procedures found in the Administrative Regulations "Harassment" or "Equal Employment Opportunity" will supersede these grievance procedures.

~~(Ord. O-2019-24 §§ 3 and 4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

Chapter 4.08 EXECUTIVE PERSONNEL

4.2308.010 At-will employment for executive personnel.

Executive personnel (employees who occupy positions in the Executive Occupational Group) are employed at the will of the City of Lakewood and may be terminated, demoted, placed on administrative leave, or suspended without pay for any reason or no reason, with or without notice, or may leave at any point. Neither the City of Lakewood Municipal Code, the City Administrative Regulations, Pay Plan, nor the Benefits Book should be construed by any Executive employee as an express or implied contract guaranteeing the rights of any employee permanently. The City Manager is authorized to terminate Executive personnel.

~~(Ord. O 2019-24 § 4, 2019; Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).~~

4.23

4.08.020 Severance agreements.

The City Manager may offer a severance agreement to a department director. ~~A~~The City Manager, City Attorney, Presiding Judge or a department director may offer a severance agreement to a division manager. The City Manager will set forth severance agreement policies or procedures. Severance agreements will not exceed three months without approval of the City Manager.

~~(Ord. O 2014-9 § 1, 2014; Ord. O 2009-43 § 1, 2009; Ord. O 2007-7 § 1, 2007; Ord. O 2004-39 § 1, 2004; Ord. O 2001-49 § 1, 2001; Ord. O 99-34 § 1, 1999; Ord. O 99-18 § 1, (part), 1999).~~

POLICIES APPLICABLE TO ELECTED CITY COUNCIL OFFICIALS

Chapter 4.09 ELECTED OFFICIALS

4.~~2609~~.010 Benefits.

~~The City of Lakewood~~The City of Lakewood recognizes that Elected Officials are not employees of the City. However, during any elected official's term of office the City may pay limited benefits, such as medical insurance, workers' compensation, travel insurance, and other related benefits ~~to elected officials~~.

~~(Ord. O-2019-24 §~~

~~4, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2004-39 § 1, 2004; Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 1, 2007; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.~~26~~.09.020 Pay of elected officials.

- A. Commencing with the new term of office ~~resulting~~ from the November 5, 2019, election, each City Council member shall receive an annual compensation ~~of \$15,456.00, as set by ordinance in compliance with the City's Charter.~~
- B. Commencing with the new term of office resulting from the November 1, 2011 election, the Mayor shall receive an annual compensation ~~of \$38,800.00, as set by ordinance in compliance with the City's Charter.~~
- C. The compensation shall be divided into equal payments and paid in accordance with the current payroll procedure for other positions.
- D. During the November prior to each mayoral election, the City Council shall review the mayor's and City Council members' compensation. Any adjustment shall be established by ordinance and take effect according to the Lakewood Home Rule Charter.

~~(Ord. O-2019-37 § 1, 2019; Ord. O-2014-9 § 1, 2014; Ord. O-2009-43 § 1, 2009; Ord. O-2007-14 §§ 1, 2, 2007; Ord. O-2007-7 § 1, 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § 1, (part), 1999).~~

4.09.030 Harassment Policy.

The City Council shall adopt a policy within that body's Policies and Procedures Manual to prevent unlawful harassment in City governance, operations, City-sponsored activities, and related interactions, and to provide a mechanism to accept, investigate, and resolve complaints of unlawful harassment against members of the Lakewood City Council and Appointed Officials

0-99-34

AMENDED AS OF
SEPTEMBER 13, 1999

A BILL FOR AN

ORDINANCE REPEALING ORDINANCE 0-99-18, AND REENACTING TITLE 4 OF THE
LAKEWOOD MUNICIPAL CODE PERTAINING TO THE CITY'S PERSONNEL POLICIES

WHEREAS, due to a word processing error, the Personnel Policies approved on June 14, 1999 by Ordinance 0-99-18 were an earlier draft of those policies and did not reflect all the intended revisions; and

WHEREAS, the ordinance repealing and reenacting Title 4 of the Lakewood Municipal Code contains revisions primarily regarding form as opposed to content; and

WHEREAS, the substantive revisions to Title 4 of the Lakewood Municipal Code are as discussed with the City Council at the May 17, 1999 Study Session; and

WHEREAS, it is necessary to repeal Ordinance 0-99-18 and reenact the correct and final version of the City's Personnel Policies.

Now, Therefore, Be It Ordained by the City Council of the City of Lakewood, Colorado, that.

SECTION 1. Title 4 of the Lakewood Municipal Code is hereby repealed and reenacted as follows:

TITLE 4

PERSONNEL POLICIES

GENERAL POLICIES*

Chapters:

- 4.01 General Provisions**
- 4.02 Classification Plan****
- 4.03 Pay Plan****
- 4.04 Fringe Benefits*****
- 4.05 Recruitment******
- 4.06 Examinations******
- 4.07 Vacancies******
- 4.08 Working Hours – Pay Rates – Leaves*****
- 4.09 Terminations****
- 4.10 Medical Examinations*******
- 4.11 Employee Development**
- 4.12 Performance Evaluations******
- 4.13 Employee Transportation**
- 4.14 Employee Political Activities**
- 4.15 Personnel Records**
- 4.16 Miscellaneous Rules**

PERSONNEL MERIT SYSTEM POLICIES*****

Chapters:

- 4.17 General Provisions**
- 4.18 Probation**
- 4.19 Transfers – Promotions - Demotions**
- 4.20 Disciplinary Action And Appeal Procedures**
- 4.21 Grievance Procedures**

POLICIES APPLICABLE TO EXECUTIVES

Chapters:

- 4.22 Removal Or Suspension**
- 4.23 General Provisions**
- 4.24 Salaries**

**POLICIES APPLICABLE TO TEMPORARY/
SEASONAL EMPLOYEES**

Chapters:

4.25 General Provisions

OTHER

Chapters:

4.26 Police Retirement

- * (General Policies apply to all employees except Temporary/Seasonal employees or as otherwise specified herein.)
- ** (This Chapter does not apply to the City Manager, City Treasurer, Municipal Judges, City Council or Provisional Employees.)
- *** (This Chapter does not apply to the City Treasurer or City Council except as otherwise noted.)
- **** (This Chapter does not apply to the City Manager, City Treasurer, Municipal Judges or City Council.)
- ***** (This Chapter does not apply to Municipal Judges or City Council.)
- ***** (Personnel Merit System Policies apply to all employees except the City Manager, City Treasurer, Court Administrator, Municipal Judges, Department Directors, Division Managers, City Council, Provisional employees and all Temporary/Seasonal employees or as otherwise specified herein.)

GENERAL POLICIES

**(GENERAL POLICIES DO NOT APPLY TO TEMPORARY/SEASONAL EMPLOYEES
OR AS OTHERWISE SPECIFIED HEREIN)**

CHAPTER 4.01

GENERAL PROVISIONS

Sections:

- 4.01.010 Principles.**
- 4.01.020 Applications – Authority.**
- 4.01.030 Employees Included.**
- 4.01.040 Rules Subordinate To State Law And Rules Of Court.**
- 4.01.050 Policies On Equal Employment Opportunity.**
- 4.01.060 Prerogatives Reserved.**
- 4.01.070 Amendments To Policies.**
- 4.01.080 Administrative Procedures.**
- 4.01.090 Definitions.**

4.01.010 Principles.

The City of Lakewood subscribes to the following principles:

- A. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- B. Providing compensation in accordance with an employee's job duties, qualifications, and performance;
- C. Training employees, as needed, to maintain and increase quality of performance;
- D. Retaining employees on the basis of the adequacy of their performance, attempting to correct inadequate performance, and terminating employees whose performance is inadequate;
- E. Assuring non-discriminatory treatment of applicants and employees in all aspects of personnel administration without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability; and
- F. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4.01.020 Applications - Authority.

The Personnel Policies set forth in this Chapter shall be applicable to all employees of the City to the extent of and according to the provisions hereinafter set forth, except as otherwise noted herein or provided by ordinance or statute or the City Charter. Unless provided otherwise, the authority and responsibility vested in the City Manager by the terms of the City Charter are vested in the Presiding Municipal Judge with respect to the Municipal Court. The Director of Employee Relations shall serve as an advisor to the Municipal Court in matters involving the Personnel Merit System. The Presiding Judge of the Municipal Court shall continue to have the power and authority to promulgate such court rules and orders as may be necessary and proper, providing, however, that such rules and orders do not conflict with the requirements of the Personnel Merit System or Colorado Supreme Court Rules.

4.01.030 Employees Included.

The General Policies set forth herein apply to all employees except temporary/seasonal employees; or as otherwise specified herein.

4.01.040 Rules Subordinate To Rules Of Court.

Notwithstanding any other provisions of this Chapter, the Personnel Policies will be subject to and subordinate to controlling judicial decisions.

4.01.050 Policies On Equal Employment Opportunities.

A. All City personnel practices shall be conducted without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability.

B. The City Manager shall have published the City's Equal Employment Opportunity Policy. The City's Equal Employment Opportunity Policy shall apply to all employees and departments of the City. An administrative regulation may be promulgated regarding such administrative procedures as are necessary.

4.01.060 Prerogatives Reserved.

The City of Lakewood has and retains all rights to manage its business whether heretofore or hereafter exercised and regardless of the frequency or infrequency of its exercise, including but not limited to the exclusive right in accordance with its judgment and subject to applicable statutes, ordinances, and regulations, to:

- A. Discipline Personnel Merit System employees for cause;
- B. Hire, promote, retire, demote, transfer, assign, lay off, and recall employees to work;
- C. Judge the employee's skill, ability, efficiency, qualifications, and otherwise evaluate performance;
- D. Determine and change the starting and quitting times, the number of hours on the shift to be worked, days off to be taken, and the number of hours in the employee's workweek;
- E. Revise, eliminate, combine, or establish new jobs and classifications;
- F. Establish compensation plans and programs;
- G. Maintain the efficiency of employees, control and regulate the use of equipment and other property of the City;
- H. Reduce or expand the operation of the City or any department thereof;
- I. Determine the number, size, location, and operation of facilities and departments, groups, or divisions thereof;
- J. Subcontract and determine the services to be rendered, bought, or sold;
- K. Determine the assignment of work and the size and composition of the work force;
- L. Make, change, and enforce rules, policies, and practices not in conflict with the provisions of these policies;
- M. Establish quality standards; and
- N. Introduce technological changes, new, improved, or modified services, methods, techniques, and equipment, and otherwise generally manage the operation and direct and supervise the work force.

4.01.070 Amendments To Policies.

Amendments to these Personnel Policies may be proposed by the City Manager to the City Council as required. All amendments shall become effective upon adoption by the City Council or on such date as the City Council shall designate.

4.01.080 Administrative Procedures.

The City Manager, at any time deemed necessary or proper for the purpose of enforcement or implementation of these policies, may adopt, amend, or rescind written administrative procedures, rules, or regulations consistent with these policies. Such procedures, rules, or regulations shall be effective on the dates specified by the City Manager, provided that such procedures, rules, or regulations shall be circulated to all Department Directors prior to the effective date thereof. Copies of such procedures, rules, or regulations shall be located with each division within the City and placed on record in the Employee Relations Department of the City, together with these Policies, the same to be open to public inspection during normal office hours.

4.01.090 Definitions.

The following terms wherever used in this Chapter shall have the following meaning:

A. "Advancement" means a pay step increase within the range of the Police Agents' pay level.

B. "Appeal" means the employee's challenge to a disciplinary action in accordance with prescribed procedures as outlined in the Personnel Policies.

C. "Applicant" means a person who has filed a completed application for employment, submitted a resume, or filed a promotional consideration form for a specific job for which the City is currently receiving applications within established Personnel Policies.

D. "Appointing power" means the official whom possesses the final authority to make an appointment to a position.

E. "Appointment" means the placing of a person in a position on a regular full-time, regular part-time, provisional full-time, provisional part-time, temporary, or seasonal basis.

F. "Classification" means determination of the occupational group and pay level of a position based on the duties performed, authority, and responsibilities exercised, and the pay level of comparable positions.

G. "Compensation" means pay, wage, allowance, and all other forms of valuable consideration, earned by or paid to any employee for service in any position.

H. "Compensatory time" means the accrual of time by an eligible non-exempt employee as compensation in lieu of paid overtime. Said compensatory time is accrued at a rate of time and one-half of the overtime hours worked.

I. "Demotion" means the change of an employee from one pay level to a lower pay level.

J. "Department Directors" means heads of distinct departments (such as police department and public works department). Department Directors report directly to the City Manager and, for all purposes herein, include the Deputy City Manager and Director of Citizen Relations.

K. "Discharge" means involuntary separation from employment with the City of any person subject to these policies.

L. "Disciplinary action" means action taken by the disciplinary authority against an employee for cause, which may include reprimand, suspension, demotion, or discharge.

M. "Disciplinary authority" means the City Manager or his or her designee, Department Directors, Division Managers, and Supervisors, within limits of authority.

N. "Employee development" means any form of instruction designed to maintain or increase the proficiency, qualifications, knowledge, skills, and abilities of City employees.

O. "Exempt" means an employee who is exempt from the overtime provisions of the Fair Labor Standards Act.

P. "Family and Medical Leave" means a period of time in which an employee is temporarily away from his/her job due to a serious health condition for the employee; for the employee's spouse, child or parent; or for the birth, adoption, or foster care placement of the employee's child.

Q. "Full-time employee" means an employee who works a 40 hour workweek.

R. "Grievance" means a complaint initiated by an employee concerning working conditions.

S. "Immediate family" means spouse, parents, brothers and sisters, grandparents, children, grandchildren, stepchildren, stepparents, step-grandparents, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law of an employee.

T. "Journey step" means the maximum pay step of the Police Agents' pay level.

U. "Layoff" means non-disciplinary termination of an employee from a position because of reorganization; lack of work; budgetary or related economic restraints, restrictions or decisions; abolishment of a position; or reductions or modifications of programs, projects, or services.

V. "Non-exempt" means an employee who is subject to the overtime provisions of the Fair Labor Standards Act.

W. "Overtime" means authorized recorded time in excess of 40 hours per week subject to certain exceptions as promulgated by administrative regulation and the Fair Labor Standards Act.

X. "Part-time employee" means an employee who is paid on an hourly basis and whose average workweek is less than 40 hours. 'Regular part-time employees' must work at least 20 hours per week on a continuous year-round basis.

Y. "Pay level" means the establishment of a pay range for positions with comparable market rates, competency and authority. For Police Agents, the pay level is a series of pay steps.

Z. "Personal Leave of Absence" means a period of time from 30 days to one year in which an employee is temporarily away from his/her job for personal reasons.

AA. "Position" means a specific job in the City, within a classification authorized by appropriate City ordinance and assigned the appropriate occupational group and pay level.

BB. "Probationary employee" means an employee hired, promoted, transferred or removed from a position and placed in a different position, serving a probationary period.

CC. "Probationary period" means the length of time, minimally 6 months, during which an employee's skills, abilities, performance and other job-related criteria are evaluated to determine his/her suitability for appointment to a regular position.

DD. "Promotion" means the movement of an employee from one pay level to a higher pay level.

EE. "Provisional employee" means an employee, either full-time or part-time, hired for a period of time not to exceed two (2) years who receives benefits (except pension contributions) but who is not entitled to the same rights and privileges afforded a regular employee.

FF. "Reclassification" means a newly assigned classification of a position based on a study of various criteria pertaining to the position.

GG. "Regular employee" means an employee who has been assigned to a position in the City, either full-time or part-time, that has a total benefit package (including pension contributions) and is afforded the rights and privileges described herein.

HH. "Seasonal employee" means an employee hired for a designated period of time generally not to exceed nine (9) months who is paid on an hourly basis and whose work schedule may be part-time or full-time. These employees have no benefits nor the same rights and privileges afforded a regular employee.

II. "Seniority" means the total number of months of service since the last date of appointment to a given regular position. With the authorization of the Director of Employee Relations, seniority may be reinstated to a date earlier than that of the last date of appointment to the given regular position. Seniority will be represented by the anniversary date.

JJ. "Step" or "Pay step" means the pay allocation within the Police Agents' pay level.

KK. "Suspension" means the temporary separation of a City employee for disciplinary purposes. This excludes exempt employees except as provided by applicable law.

LL. "Temporary employee" means an employee who has not been assigned to a regular or provisional position in the City, and whose work schedule is generally part-time. These employees have no benefits nor the same rights and privileges afforded a regular employee.

MM. "Tenure" means the total number of consecutive months of service to the City as of the most recent date of hire to a regular position, regardless of department or classification. Tenure will be represented by the hire date or adjusted hire date, if applicable.

NN. "Termination" means separation of an employee from City employment.

OO. "Transfer" means the movement of any City employee from one position to another position having the same or similar pay level, and/or from one department/division to another department/division.

PP. "Working conditions" means those factors, which comprise an employee's work environment.

CHAPTER 4.02

CLASSIFICATION PLAN (THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES, CITY COUNCIL OR PROVISIONAL EMPLOYEES)

Sections:

4.02.010 Establishment Of Classifications.

4.02.020 Maintenance Of Plan.

4.02.030 Placement Within Positions.

4.02.040 New Positions.

4.02.050 Reclassification.

4.02.010 Establishment Of Classifications.

In conjunction with the compensation levels set forth in this Chapter, the City Manager is directed and authorized to implement and maintain a classification system, paying positions the appropriate biweekly base salary as established by this Chapter. The City Manager shall issue the classification titles and corresponding occupational category levels.

4.02.020 Maintenance Of Plan.

The City Manager shall periodically direct the initiation of a study of the duties and responsibilities and associated factors of all positions within the City. The study shall address itself to the principle of appropriate pay rates and classifications for each position based upon market data, nature of work, duties, responsibilities, and authority within that position. The City Manager shall make amendments to the classification plan whenever factual data indicates the necessity for a change in the plan.

4.02.030 Placement Within Positions.

Positions in the City shall fall within the pay levels prescribed by the City Council. Final determination with respect to the placement of employees in pay levels and classifications shall be recommended by the Department of Employee Relations with approval by the City Manager.

4.02.040 New Positions.

A. Any new position added to the City shall be assigned an appropriate classification upon recommendation by the Department of Employee Relations and approval by the City Manager or designee.

B. Any individual employed by the City shall be assigned an appropriate classification upon recommendation by the Department of Employee Relations and approval by the City Manager or designee.

4.02.050 Reclassification.

When a study has shown that the duties and responsibilities of a position have changed, a reclassification of the position shall be considered. Requests for reclassification shall be submitted in writing according to procedures as set forth in administrative regulation. The City Manager may reclassify positions where good and sufficient reason warrants such reclassification. Reclassifications may also be initiated by the Department of Employee Relations. No reclassification shall be proposed solely for the purpose of effecting demotions or promotions.

CHAPTER 4.03

PAY PLAN

(THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES, CITY COUNCIL, OR PROVISIONAL EMPLOYEES.)

Sections:

- 4.03.010 Basis of Pay Plan.**
- 4.03.020 Proposals For Changes To The Pay Plan.**
- 4.03.030 Establishment of Pay Levels.**
- 4.03.040 Salaries.**
- 4.03.050 Use Of Pay Ranges.**
- 4.03.060 Salary Advancement.**
- 4.03.070 Bonus Plan.**
- 4.03.080 Additional Regulations.**

4.03.010 Basis Of Pay Plan.

The pay plans for regular full-time and regular part-time positions shall be adopted and amended by City resolution. Pay plans for provisional and temporary/seasonal positions may be set forth in administrative regulation as promulgated by the City Manager.

4.03.020 Proposals For Changes To The Pay Plan.

The Department of Employee Relations shall at least annually make a comparative study of the factors affecting the level of pay prescribed for positions within the City and make recommendations to the City Manager for changes thereto. All regular employees shall be assigned a salary range. The City Manager shall annually review the salary ranges. The City Manager may propose to the City Council recommended changes in the pay plan whenever such changes are deemed necessary. The base salary compensation levels shall be effective as determined by the City Council.

4.03.030 Establishment of Pay Levels.

There are established the following annual Pay Levels for the City which shall be retroactive to March 21, 1999:

OCCUPATIONAL GROUP EXECUTIVES

X10 - \$63,700 - 110,900	X09 - \$57,766 - 86,649	X08 - \$52,753 - 79,132
X07 - \$48,178 - 72,264	X06 - \$43,998 - 65,996	X05 - \$40,181 - 60,269

OCCUPATIONAL GROUP MANAGEMENT/SUPERVISORY

M09 - \$48,648 - 72,972	M08 - \$44,427 - 66,641	M07 - \$40,572 - 60,857
M06 - \$37,052 - 55,577	M05 - \$33,837 - 50,756	M04 - \$32,685 - 45,758
M03 - \$29,848 - 41,789	M02 - \$27,260 - 38,163	M01 - \$24,894 - 34,852

OCCUPATIONAL GROUP ADMINISTRATIVE/PROFESSIONAL/TECHNICAL

A10 - \$48,684 - 68,158	A09 - \$44,257 - 61,960	A08 - \$40,233 - 56,328
A07 - \$36,575 - 51,207	A06 - \$33,250 - 46,553	A05 - \$30,228 - 42,320
A04 - \$27,482 - 38,471	A03 - \$24,982 - 34,976	A02 - \$22,710 - 31,795
A01 - \$20,645 - 28,905	A00 - \$10,712 - 20,645	

OCCUPATIONAL GROUP OFFICE/SECRETARIAL

005 - \$25,885 - 34,943	004 - \$22,905 - 30,922	003 - \$20,271 - 27,366
002 - \$18,282 - 24,684	001 - \$15,874 - 21,430	000 - \$10,712 - 15,874

OCCUPATIONAL GROUP LABOR/TRADES

L07 - \$35,433 - 47,835	L06 - \$31,637 - 42,709	L05 - \$28,247 - 38,133
L04 - \$25,222 - 34,049	L03 - \$22,519 - 30,399	L02 - \$20,105 - 27,143
L01 - \$17,951 - 24,234	L00 - \$10,712 - 17,951	

OCCUPATIONAL GROUP CHILDREN SERVICES

C08 - \$27,775 - 38,918	C07 - \$25,250 - 35,380	C06 - \$22,960 - 32,160
C05 - \$20,880 - 29,240	C04 - \$18,970 - 26,540	C03 - \$17,240 - 24,150
C02 - \$15,680 - 21,960	C01 - \$14,250 - 19,950	C00 - \$10,712 - 14,250

OCCUPATIONAL GROUP ENFORCEMENT

E07 - \$67,439 - 77,121	E06 - \$53,362 - 66,771	E05A - \$34,590	E05B - \$36,411
E05C - \$37,359	E05D - \$38,257	E05E - \$40,304	E05F - \$442,350
E05G - \$44,671	E05H - \$46,618	E05I - \$48,789	E05J - \$49,612
E05K - \$50,411	E05L - \$51,186	E05M - \$51,984	E05N - \$52,833

Police Agents paid in accordance with these biweekly pay levels are required to have attained a 4-year bachelor's degree in any discipline from an accredited college, or a course of study from an institution of higher learning that would be accepted by an accredited institution/college of the City of Lakewood's choice as meeting the requirements for conveying a bachelor's degree from that college/institution in order to be eligible for pay at the pay steps above pay step I. (An accredited institution shall be one that is listed in the "Accredited Institution of Post Secondary Education," published for the Council for Higher Education (CHEA)).

4.03.040 Salaries.

No employee shall be assigned a base pay rate not in conformance with the pay plan resolution. The City Manager is authorized and directed to establish by written order to the Director of Employee Relations, the annual salary of each of the City employees. The City Manager shall take into consideration factors relating to the competence, diligence and efficiency in the

performance of duty, together with other relevant factors, in establishing, changing and fixing such salaries, and may in his/her discretion grant pay increases at any time during any budget year to any of the employees provided, however, that the City Manager shall not grant any increase in an amount which would cause the total budget for such fiscal year to be exceeded.

Salaries shall be paid on a biweekly basis in accordance with administrative regulation as promulgated by the City Manager.

4.03.050 Use Of Pay Ranges.

The City Manager may authorize appointments or reinstatements at a rate within the pay range for the position's classification.

4.03.060 Salary Advancement.

Salary advancement of employees shall be in conjunction with appropriate pay plans and dependent upon performance. The City Manager shall have final authority with respect to the approval or disapproval of all recommended salary movements.

4.03.070 Bonus Plan.

The City Manager may establish a bonus plan, which shall specify criteria for bonus awards. The City Manager or his/her designee shall have final authority with respect to the approval or disapproval of all awards relating to the bonus plan. The City Manager shall not grant any bonus award, which would cause the total compensation budget for the fiscal year to be exceeded.

4.03.080 Additional Regulations.

The City Manager is authorized to issue such administrative regulations for the proper implementation of the pay plan set out in this Chapter as may be necessary or proper, and within the spirit and intent of and not contrary to the provisions of this Chapter or any other ordinance of this City or state law.

CHAPTER 4.04

FRINGE BENEFITS

(THIS CHAPTER DOES NOT APPLY TO THE CITY TREASURER OR CITY COUNCIL, EXCEPT AS OTHERWISE NOTED.)

Sections:

4.04.010 Fringe Benefits.

4.04.020 Regular Part-Time Employees.

4.04.030 Provisional Employees.

4.04.010 Fringe Benefits.

The following fringe benefits are adopted and authorized to be paid to the employees of the City:

A. Pension. The City shall provide pension benefits by making employer contributions to the Lakewood Employees Money Purchase Pension Plan for all eligible employees who make contributions to the Plan, in accordance with the terms and provisions of such Plan, as may be amended. The City shall make contributions to the Police Money Purchase Pension Plan as provided in Chapter 4.26. Provisional employees shall be enrolled in the OBRA 457 pension program.

B. Group Life Insurance and Disability Income Insurance. The City shall pay the employee's cost of group life insurance, the amount of which being equal to one and one-half an employee's annual salary, rounded up to the nearest thousand. The City shall also pay the cost of disability income insurance. Both plans shall be in accordance with a plan adopted and approved by the City, through its City Manager, for each eligible City employee.

C. Medical Insurance (applies to City Treasurer and City Council also). The City shall pay a portion of the cost of medical insurance according to a plan adopted and approved by the City, through its City Manager, for each eligible City employee. Each employee obtaining such hospital and medical insurance may, at the employee's option and election, elect to carry family coverage. Those employees who elect to carry the family option for hospital and medical insurance under the plan adopted by the City may receive a monthly contribution from the City toward such family coverage.

D. Dental Insurance (applies to City Treasurer and City Council also). The City shall pay a portion of the cost of dental insurance according to a plan adopted and approved by the City, through the City Manager, for each eligible City employee. Each employee obtaining such dental insurance may elect to carry dependent coverage. Those employees who elect to carry the dependent option for dental insurance under the plan adopted by the City may receive a monthly contribution from the City.

E. Automobile Allowance. The City, in the discretion of the City Manager, may pay exempt personnel an automobile allowance for the use of personal automobiles on City business, in an amount to be fixed by the City Manager.

F. Business and Professional Organizations Membership (applies to City Treasurer and City Council also). The City may pay the full cost of membership in business and professional societies and associations, as recommended by the Department Director and approved by the City Manager.

G. Meetings/Training Attendance Reimbursement (applies to City Treasurer and City Council also). The City may pay or reimburse the full cost of attendance at business and professional meetings/training sessions, as recommended by the Department Director and approved by the City Manager or the Mayor, which payment or reimbursement shall be in accordance with rules and regulations promulgated by the City Manager.

4.04.020 Regular Part-Time Employees.

Regular part-time employees are those employees assigned to a position in the City that has a total benefit package (including pension contributions) and is afforded the rights and privileges described herein. Regular part-time employees must work less than 40 hours but at least 20 hours per week on a continuous year-round basis. The City Manager may promulgate an administrative regulation setting forth a fringe benefit schedule for regular part-time employees.

4.04.030 Provisional Employees.

Provisional employees may be eligible to participate in certain City benefit programs. In the event a provisional employee becomes a regular employee without a break in service, the hire date will revert to the initial date of the provisional appointment. The time in service shall also be allowed toward City tenure and seniority; however, not toward years of service for pension purposes.

CHAPTER 4.05

RECRUITMENT

**(THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER,
CITY TREASURER, MUNICIPAL JUDGES OR CITY COUNCIL.)**

Sections:

- 4.05.010 Eligibility For Employment.**
- 4.05.020 Area For Consideration.**
- 4.05.030 Announcement Of Vacancies.**
- 4.05.040 Application Forms And Resumes.**
- 4.05.050 Disqualification Of Applicants.**

4.05.010 Eligibility For Employment.

Applicants shall be eligible for employment with the City when they possess the minimum qualifications as contained in the appropriate job description and established selection criteria and are able to perform the essential functions of the position or, if a person with a disability, is able to perform the essential functions of the position with or without reasonable accommodation.

4.05.020 Area For Consideration.

Individuals shall be recruited from a geographical area sufficiently broad to assure obtaining well-qualified candidates for the position to be filled.

4.05.030 Announcement Of Vacancies.

The Department of Employee Relations shall prepare recruiting notices using such publicity as deemed appropriate to reach prospective applicants for the position to be filled. All recruiting notices and other publicity material concerning position vacancies shall explicitly state that the City is an Equal Opportunity Employer.

4.05.040 Application Forms And Resumes.

The City requires an application for employment from applicants prior to employment with the City. An applicant may also submit a resume.

4.05.050 Disqualification Of Applicants.

Applicants may be disqualified for consideration for employment for reasons including but not limited to the following factors:

- A. They do not possess the minimum qualifications for the job;
- B. They are not physically or mentally fit to perform the essential functions of the position or, if a person with a disability, is unable to perform the essential functions of the position with or without reasonable accommodation;
- C. They have demonstrated an unsatisfactory employment record or personal record as a result of a reference, background, or any other investigation;
- D. They have given false information in their application or practiced deception during the selection process;
- E. They are not the best candidate for the position; or
- F. They are an employee serving a probationary period. Exceptions to this may be made by the City Manager upon the recommendation of the Department Director and the Director of Employee Relations.

CHAPTER 4.06

EXAMINATIONS

(THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES OR CITY COUNCIL.)

Sections:

4.06.010 Nature And Type.

4.06.020 Promotional Examination List.

4.06.010 Nature And Type.

In order to measure qualifications, performance, physical fitness, or any combination thereof, an examination for a position may be administered through written, oral, or other means. Examinations shall consist of material that test the capacity and fitness of an applicant to perform effectively the functions of the position for which the examination is given. The necessity for an examination and the type thereof shall be determined by the Department of Employee Relations in coordination with the Department Director. Development, implementation, and maintenance of examinations shall be the responsibility of the Department of Employee Relations, in accordance with applicable laws and regulations.

4.06.020 Promotional Examination List.

Whenever an adequate pool of qualified applicants is available, as determined jointly by the Department of Employee Relations and the appropriate Department Director, a promotional examination list may be established as a means of recommending qualified employees for promotion to fill existing or future vacancies. Such lists shall be maintained by the Department of Employee Relations.

CHAPTER 4.07

VACANCIES

(THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES OR CITY COUNCIL.)

Sections:

- 4.07.010 Applications For Vacancies.**
- 4.07.020 Vacancy Selection List.**
- 4.07.030 Appointment.**

4.07.010 Applications For Vacancies.

A. Except as provided in Paragraph 4.070.010(B), whenever a job vacancy occurs in any existing job classification or as a result of the establishment of a new job classification, and approval for hiring is obtained, it shall be filled with the most qualified applicant available. Promotional lists and vacancy selection lists may be used to fill the vacancy. If no such list is maintained, the following shall occur:

For Non-Exempt Vacancies

* A notice of such vacancy shall be posted on all official bulletin boards for five working days. During such period, employees currently in the employment of the City who wish to do so may apply for the position. The applications shall be submitted to the Department of Employee Relations on or before the deadline date.

* Vacancies may also be advertised externally and a person not presently employed by the City may apply for the position by submitting an application or resume to the Department of Employee Relations on or before the deadline date.

For Exempt Vacancies

* A notice of such vacancy may be, but is not required to be, posted on official bulletin boards. It may be alternatively or additionally advertised externally. All applicants, internal and external, must apply to the Department of Employee Relations on or before the deadline date.

Qualified employees now in the employment of the City shall be given appropriate consideration. In the event two or more applicants who are currently City employees are the best candidates and have equal qualifications, the employee with the longest tenure, or in the case of temporary/seasonal employees, the longest service, shall be selected to fill the vacancy or new position.

B. In the event of a reorganization, reclassification, or reduction in force requiring the transfer of an employee to a position at or below such employee's current classification, the requirements of Paragraph 4.070.010(A) shall not apply.

4.07.020 Vacancy Selection List.

Whenever an adequate pool of qualified external applicants is available, or a combination of internal and external applicants as determined jointly by the Department of Employee Relations and the appropriate Department Director, a vacancy selection list may be established, prior to the recruitment process, as a means of recommending qualified individuals to fill existing or future vacancies. Such list shall be maintained by the Department of Employee Relations, and will expire six months from the date of determination.

4.07.030 Appointment.

Notwithstanding other provisions of this Chapter, the City Manager shall be the final appointing authority for all employees within the City.

CHAPTER 4.08

WORKING HOURS – PAY RATES – LEAVES (THIS CHAPTER DOES NOT APPLY TO THE CITY TREASURER OR CITY COUNCIL EXCEPT AS OTHERWISE NOTED.)

Sections:

- 4.08.010 Workweek.**
- 4.08.020 Days Off.**
- 4.08.030 Overtime.**
- 4.08.040 Out-of-Class Pay.**
- 4.08.050 Compensatory Time.**
- 4.08.060 Shift Differential.**
- 4.08.070 Police Pay Step Eligibility.**
- 4.08.080 Attendance.**
- 4.08.090 Vacation.**
- 4.08.100 Sick Leave.**
- 4.08.110 Workers' Compensation.**
- 4.08.120 Injury Leave.**
- 4.08.130 Military Leave.**
- 4.08.140 Personal Leave Of Absence.**
- 4.08.150 Family and Medical Leave of Absence.**
- 4.08.160 Non-Job-Related Jury Or Court Leave.**
- 4.08.170 Holidays.**

4.08.010 Workweek.

All full-time employees shall work at least a 40-hour workweek. Part-time employees shall normally work less than a 40-hour workweek.

4.08.020 Days Off.

Employees shall have specified regular days off each week in conjunction with work schedules. In the event of an emergency, or when deemed necessary, an employee may be required to work on the days such employee is normally off.

4.08.030 Overtime.

An employee who is not exempt from overtime pay and who reports in excess of 40 hours in a workweek (or 80 hours in a two-week pay period for Police Agents, Police Sergeants, and Court Marshals), shall be paid time and one-half based on such employee's hourly rate or receive compensatory time at a rate of time and one-half of the overtime hours worked, subject to certain limitations as promulgated by administrative regulation. Overtime shall be approved in advance by the Department Director or his/her designee. The plan for administration of overtime may be promulgated by administrative regulation.

4.08.040 Out-Of-Class Pay.

A non-exempt employee required to perform duties substantially above those of his/her current level, for other than training purposes, may be eligible for out-of-class pay. The City Manager may promulgate an administrative regulation regarding out-of-class pay.

4.08.050 Compensatory Time.

The City Manager may promulgate by administrative regulation, a plan or plans for the administration and use of compensatory time for those full-time, non-exempt employees subject to the provisions of this Chapter and in accordance with the Fair Labor Standards Act.

4.08.060 Shift Differential.

For non-exempt, non-sworn personnel, a shift differential may be authorized for specific positions via administrative regulation promulgated by the City Manager.

4.08.070 Police Pay Step Eligibility.

Police agents paid in accordance with the biweekly salary base compensation levels contained in Section 4.03.030 are required to have attained a four year college degree from an accredited college or university in order to be eligible for pay at the pay steps above Enforcement Level V, pay step I.

4.08.080 Attendance.

A. Employees shall be at their place of work in accordance with the Personnel Policies regarding hours of work, holidays, leaves, and departmentally designated work schedules.

B. Employees who are unable to report to their place of work are required to notify their immediate supervisor prior to the start of a work shift or as designated by specific department directive.

4.08.090 Vacation.

Vacation is provided to enable employees to enjoy periodic respite from their regular duties. All regular and provisional full-time and part-time employees shall be afforded the opportunity to take vacation.

A. Amount. Employees with the following years of tenure shall accrue the following amount of vacation.

	<u>Full-Time</u> <u>(Except Department Directors)</u>	<u>Part-Time</u>
Up to 5 years:	8 hours/month	4 hours/month
5-10 years:	10 hours/month	5 hours/month
10-15 years:	11.3 hours/month	5.6 hours/month
15-20 years:	12 hours/month	6 hours/month
Over 20 years:	13.3 hours/month	6.7 hours/month

Department Directors accrue 12 hours of vacation per month. After 20 years of tenure, Department Directors accrue 13.3 hours of vacation per month.

B. Accrual and Usage. Vacation is accrued on a monthly basis and accorded to the employee who receives paid time through the last pay date of the month. Accrual will not occur when an employee's total number of hours is at the maximum allowed per Section 4.08.090(C) below. Vacation may be used once accrued and with supervisory approval.

C. Accumulation. Maximum accumulation of vacation for non-exempt employees is as follows:

	<u>Full-Time</u>	<u>Part-Time</u>
Up to 5 years:	160 hours	80 hours
5-10 years:	176 hours	88 hours
10-15 years:	192 hours	96 hours
15-20 years:	200 hours	100 hours
Over 20 years:	216 hours	108 hours

Exempt employees' (other than Department Directors) maximum accumulation is 240 hours. Department Directors' maximum accumulation is 360 hours.

Vacation accumulation in excess of the above shall be subject to forfeit except where the employee has been denied the opportunity to take vacation time or where special circumstances exist and approval to exceed the limits has been authorized by the City Manager.

D. Records of Leave. The Department of Employee Relations shall maintain records of vacation and its use. Each Department Director shall develop and maintain a vacation schedule for employees.

E. Effect of Holidays and Vacations. When a designated holiday falls during an employee's scheduled vacation, such holiday shall not be charged against vacation.

F. Effect of Sick Leave. In most cases, if any employee becomes ill while on vacation, the time off will be claimed as vacation. Exceptions to this rule may be granted by the City Manager under extraordinary circumstances, for example, in a situation wherein an employee is hospitalized during a planned vacation.

G. Opportunity for Leave and Waiving of Vacations. Every employee shall be afforded the opportunity to take vacation. No employee shall lose any vacation for which he/she is entitled when, at management discretion, City operations require his or her presence on the job. No employee shall be permitted to waive vacation for the purpose of receiving extra compensation.

H. Payment for Vacation. Upon termination of employment from the City, an employee shall be paid at the regular hourly rate for all vacation accumulated to the date of termination. If an employee's position is reclassified to a lower pay level, the employee is involuntarily demoted or otherwise has his or her pay reduced, not as a result of discipline, payment upon termination shall be based on the average of the three highest hourly base rates paid during his/her employment. The City Manager may promulgate administrative regulations regarding payment.

4.08.100 Sick Leave.

A. Accrual. Full-time employees, excluding Department Directors, hired prior to 1/1/92 shall accrue sick leave at the rate of 10 hours per month. Department Directors hired prior to 1/1/92 shall accrue sick leave at the rate of 12 hours per month. All full-time employees hired after 1/1/92 shall accrue sick leave at the rate of 8 hours per month. Part-time employees hired prior to 1/1/92 shall accrue sick leave at the rate of 5 hours per month. Part-time employees hired after 1/1/92 shall accrue sick leave at the rate of 4 hours per month.

B. Usage. Sick leave shall be used when an employee is ill or incapacitated for work, or for medical or dental appointments. Sick leave may also be used for an illness or injury within the employee's immediate family, when it is necessary for the welfare of the employee's family.

Additionally, sick leave may be used for the death of an immediate family member. Normally, up to 40 hours will be authorized for such purposes.

In the event of questions concerning sick leave usage, supervisors may require written documentation. Sick leave is a benefit provided to all regular and provisional employees. However, usage not related to FMLA or an approved absence, which affects an employee's performance or ability to be relied upon, whether or not in excess of the accumulation rate, may be a factor of consideration in potential transfers, promotions, pay increases, disciplinary action, or any personnel transactions.

C. Accumulation. Full-time employees, excluding Department Directors, hired prior to 1/1/92, may accumulate a maximum of 960 hours of sick leave. Department Directors hired prior to 1/1/92, may accumulate 2400 hours of sick leave. Employees, excluding Department Directors, hired after 1/1/92, may accumulate a maximum of 840 hours of sick leave. Department Directors hired after 1/1/92 may accumulate 1400 hours of sick leave. Part-time employees hired prior to 1/1/92 may accumulate 480 hours of sick leave. Part-time employees hired after 1/1/92 may accumulate 420 hours of sick leave.

D. Opportunity for Conversion of Sick Leave. After accrual of 480 hours of sick leave, an employee hired before 1/1/92 shall be allowed the option of converting sick leave to vacation on a two-for-one basis. The balance of 480 hours must be maintained in order to continue to exercise the conversion privilege. Employees hired after 1/1/92, must accrue 600 hours of sick leave before conversion of sick leave to vacation on a two-for-one basis. The balance of 600 hours must be maintained in order to continue to exercise the conversion privilege. Conversion of sick leave is authorized four times per year. A yearly schedule of conversion dates shall be provided.

E. Payment for Unused Sick Leave. Upon termination, any exempt employee hired prior to 1/1/92 shall be paid at his or her final hourly rate for one-half or one-third of his or her unused sick leave (depending on position). Upon termination, a Department Director or Division Manager hired after 1/1/92 shall be paid at his or her final hourly rate for one-third of his or her unused sick leave. Upon retirement only, all employees shall be paid at their final hourly rate for one-half of their unused sick leave. If an employee's position is reclassified to a lower pay level, the employee is involuntarily demoted or otherwise has his or her pay reduced, not as a result of discipline, payment upon retirement shall be based on the average of the three highest hourly base rates paid during his/her employment. The City Manager may promulgate administrative regulations regarding payment.

4.08.110 Workers' Compensation (applies to City Treasurer and City Council also).

Employees injured on the job are entitled to workers' compensation benefits provided by the Workers' Compensation Act.

4.08.120 Injury Leave.

Regular and provisional full-time employees shall receive their full salaries from the City for a period of 720 hours from the date of on-the-job injury/illness. Regular and provisional part-time employees shall receive their full salaries from the City for a period of 360 hours from the date of on-the-job injury/illnesses. Any Workers' Compensation payments received by the employee for said period shall be the property of the City. Time off due to on-the-job injuries/illness apply toward Family and Medical Leaves of Absence. Furthermore, guidelines, procedures and regulations (i.e., alternate duty) deemed necessary for the administration of this policy may be promulgated by the City Manager.

4.08.130 Military Leave.

Full-time public employees eligible for military leave are authorized 120 hours with pay by Section 28-3-601, Colorado Revised Statutes. Part-time employees are authorized paid military leave by Section 28-3-601, Colorado Revised Statutes, for a period of time as promulgated by administrative regulation.

4.08.140 Personal Leave Of Absence.

A. Department Directors, upon approval of the City Manager, may grant a personal leave of absence to a regular full-time or regular part-time employee for a period of at least 30 days but not to exceed one year. The City Manager may grant a personal leave of absence to Department Directors for a period of at least 30 days but not to exceed one year. Such leave may be granted upon written request by the employee. Such request shall set forth the reasons for the proposed absence.

B. During the employee's leave of absence, the vacant position may be filled by a new appointment, temporary promotion, or temporary reassignment. Upon expiration of the approved leave, the employee shall be reinstated to the position or to any other vacant position in the same pay level for which the employee is qualified.

C. Employees on a personal leave of absence may use accrued vacation, compensatory time, holiday leave or may take unpaid time off.

D. Vacation, sick, holiday leave, seniority and tenure shall not accrue during any unpaid portion of a leave of absence nor will the City make any contributions during any unpaid portion of the period for retirement or group insurance programs. However, the employee may participate in group insurance programs during the leave of absence, provided the proper premium amount is deposited by the employee with the City.

E. Service prior to the leave of absence shall be counted toward seniority and tenure.

F. The City Manager may promulgate administrative procedures regarding personal leaves of absence, as well as the effect of leaves of absence on performance reviews.

G. Provisional and temporary/seasonal employees shall not be eligible for a personal leave of absence.

4.08.150 Family And Medical Leave Of Absence.

A. All employees, including temporary employees, with at least one year of service and with 1250 hours of service in the previous twelve months shall, after meeting certain criteria, be eligible for Family Medical Leaves of Absence.

B. During the employee's leave of absence, the vacant position may be filled by a new appointment, temporary promotion, or temporary reassignment. Upon expiration of the approved leave, the employee shall be reinstated to the position vacated by the employee or to any other equivalent vacant position in the same pay level for which the employee is qualified.

C. Employees must use sick time, vacation, injury leave, or holiday time during the leave. If available, accrued compensatory time may also be used if desired by the employee. Short-term disability may be available in some cases of non-work-related personal illness or injury. Long-term disability may also be available. All other time will be unpaid.

D. Benefits and accruals of leave time will continue during the Family and Medical leave, and the City will continue to pay the City's portion of medical benefits and dental benefits. If applicable, the employee must pay the employee portion.

E. Employees will receive credit for continuing service for purposes of pension vesting, seniority, and tenure.

F. The City Manager has promulgated an administrative regulation regarding Family Medical Leaves incorporating the provisions of the Family and Medical Leave Act of 1993. The administrative regulation should be reviewed for more specific information.

G. Employees on short-term disability are subject to all provisions of FMLA. However, once FMLA has been exhausted, benefits may continue at the employee's total expense and accruals of leave time will discontinue.

4.08.160 Non-Job-Related Jury Or Court Leave.

All employees, including temporary employees, shall be granted time off with pay when performing jury duty or when subpoenaed as a witness before any court of law during the employee's normal work hours. It is intended that hours spent performing jury duty will count as hours worked. Any payments made by the court or otherwise paid as witness compensation to the employee for said leave shall become the property of the City. Any travel reimbursements may be kept by the employee providing that a City vehicle is not used. Parking reimbursements may be kept by the employee. This Paragraph does not apply to employees who are parties in any legal proceeding, except in the event the lawsuit arises out of actions within the person's scope of employment.

4.08.170 Holidays.

A. The following have been designated by the City Council as official City holidays for all employees, except those responsible for emergency operations.

New Year's Day	First Day of January
Martin Luther King Day	Third Monday of January
Presidents' Day	Third Monday of February
Memorial Day	Last Monday in May
Independence Day	Fourth Day of July
Labor Day	First Monday of September
Veterans Day	Eleventh Day of November
Thanksgiving Day	Fourth Thursday of November
Christmas Day	Twenty-fifth Day of December

B. In addition to the above-named holidays, the City Manager is authorized to designate two additional holidays per year, which may be called floating holidays.

C. Regular and provisional full-time and part-time employees receiving any pay on the normal working day immediately prior to and immediately after the holiday shall receive full pay for the holiday.

D. Designated Police Department personnel and other City employees who are allowed or required to group their holidays shall receive eight hours off with pay for each designated holiday. For purposes of usage, these hours may be grouped.

E. Official City holidays which fall on Sunday shall normally be observed on the following Monday; those which fall on Saturday shall normally be observed on the preceding Friday.

F. The City Manager may promulgate an administrative regulation to describe in further detail the usage of holidays and holiday pay.

CHAPTER 4.09

TERMINATIONS

(THIS CHAPTER DOES NOT APPLY TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES, CITY COUNCIL, OR PROVISIONAL EMPLOYEES.)

Sections:

4.09.010 Reduction In Force.

4.09.020 Resignation.

4.09.030 Retirement.

4.09.010 Reduction In Force.

A. The City Manager, after consulting with the Department Director and the Director of Employee Relations, may abolish any position in the City. If it becomes necessary to reduce the number of employees by the City at any time, the City Manager may lay off employees as required.

B. In the event of a reduction in force, the City Manager shall promulgate administrative procedures for such reduction in force that shall comply with applicable laws and regulations.

4.09.020 Resignation.

An employee resigning his or her position shall submit a written resignation to his or her Department Director at least two weeks prior to the effective date of such resignation. Provided two weeks' notice is given, an employee may request or be directed to use accrued compensatory time during any or all of this period, with approval of the supervisor, after consultation with the Department of Employee Relations. The Department Director, after consultation with the Department of Employee Relations, may place an employee on paid administrative leave for any or all of the two-week notice period. Appropriate notification of the resignation shall be sent to the Department of Employee Relations.

4.09.030 Retirement.

Retirement terms are governed by applicable City policies pension plans, state statute and federal law.

CHAPTER 4.10

MEDICAL EXAMINATIONS

(THIS CHAPTER DOES NOT APPLY TO MUNICIPAL JUDGES OR CITY COUNCIL.)

Sections:

4.10.010 Medical Examinations.

4.10.020 Evaluation Factors In Determining Fitness For Duty.

4.10.010 Medical Examinations.

A. Employees or candidates applying for any position within the City may be required to undergo periodic employment or post-offer physical/drug/psychological examinations.

B. In addition, when in the judgment of a Department Director or the City Manager, an employee's physical or mental condition is such that it appears to adversely affect safety considerations or the employee's ability to perform the duties of the employee's position, the City may require the employee to undergo examination by a physician or drug/alcohol testing in accordance with administrative procedure as promulgated by the City Manager.

C. In cases involving unfitness due to a physical or mental condition, the employee may be subject to an involuntary personnel action, including but not limited to alternative duty assignment, transfer, demotion, leave of absence or termination. In the event of demotion or termination the Personnel Merit System employee shall be entitled to invoke the procedures applicable for disciplinary action under Section 4.20.050.

4.10.020 Evaluation Factors In Determining Fitness For Duty.

Employees examined under the provisions of this article shall be considered unfit for duty if their disease, physical or mental condition, or disability, interferes with the performance of the essential function of their job with or without reasonable accommodation, or creates an undue health or safety risk to the employee or others, or creates an undue hardship to the City.

CHAPTER 4.11

EMPLOYEE DEVELOPMENT

Sections:

4.11.010 Policy.

4.11.020 Reimbursement For Employee Development.

4.11.010 Policy.

Consistent with the City policy, it shall be the responsibility of the Department of Employee Relations to determine Citywide training needs. Under the direction of the City Manager, the Department of Employee Relations will be responsible for organizing, coordinating and administering intra-city training programs; for advising and assisting departments in the development, administration, and evaluation of departmental training programs; for administering a tuition reimbursement program, if available; and for evaluating the effectiveness of training efforts.

4.11.020 Reimbursement For Employee Development.

Employees desiring to enroll in college courses for employee development may be reimbursed for the tuition costs provided all requirements are met as set forth through administrative regulation and federal law.

CHAPTER 4.12

PERFORMANCE EVALUATIONS

(THIS CHAPTER IS NOT APPLICABLE TO THE CITY MANAGER, CITY TREASURER, MUNICIPAL JUDGES OR CITY COUNCIL.)

Sections:

4.12.010 General.

4.12.010 General.

Each employee's performance shall be reviewed and evaluated on at least an annual basis. Such performance reviews are not subject to appeal or grievance.

CHAPTER 4.13

EMPLOYEE TRANSPORTATION

Sections:

4.13.010 Use Of City-Designated Vehicles.

4.13.020 Accidents With City Designated Vehicles.

4.13.030 Use of Private Vehicles.

4.13.040 Overnight Use Of City Designated Vehicles.

4.13.010 Use Of City-Designated Vehicles.

City-designated vehicles are to be used for authorized City business only, and shall carry no passenger other than on or in connection with official business. An employee authorized to drive a City vehicle must have a current and valid operator's license with appropriate vehicle class designation. Employees operating City vehicles are required to observe all traffic laws and City and departmental regulations to exercise due care. Should an employee be considered a risk, lose their license, or not pass drug/alcohol testing, the use of City vehicles may be denied and the employee may be disciplined.

4.13.020 Accidents With City-Designated Vehicles.

If, while operating a City-designated vehicle, an employee is involved in an accident resulting in any injury to others or damage to any property belonging to others, the employee shall:

A. Make every effort to protect the scene until the local law enforcement agency arrives and releases the vehicles. Wherever possible, vehicles should not be moved until released by proper authorities.

B. Notify the local police department.

C. Prepare a vehicle accident report regardless of the degree of fault or damage in a collision, and forward it through his/her supervisor to Risk Management.

D. Refrain from discussing the accident with anyone outside the City, other than the investigating police agency. All inquiries received by the employee for information shall be directed to Risk Management, Department of Employee Relations.

E. Report the accident to his or her Department Director no later than the next day.

F. Be tested for drugs/alcohol as required by City policy or the Department of Transportation.

4.13.030 Use Of Private Vehicles.

A. If an employee is required to use his/her personal car in the performance of his/her duties, he/she shall be reimbursed by the City for the mileage driven at the rates specified by the City Manager, in accordance with the Internal Revenue guidelines.

B. If, while using a privately owned vehicle on City business, the employee is involved in an accident, the responsibility for any damage or injury to others is with the employee. Risk Management must be notified within 48 hours of the accident. The employee is responsible for notifying his/her insurance agent and supervising the settlement of the claim through his/her agent.

C. The City shall not be responsible for the following occurrences to privately owned vehicles:

1. vehicle theft;
2. theft of other private property;
3. vandalism; and
4. any other damage to the vehicle.

D. If City property is lost or damaged while under transport in a private vehicle, and the employee has exercised due care in such transport, the City may accept liability for the damage or loss.

Risk Management must be notified within 48 hours whenever such damage or loss has occurred. In the case of City property that is stolen or vandalized, a police report must be made with the local police jurisdiction.

4.13.040 Overnight Use Of City-Designated Vehicles.

The City Manager or a designee will determine which City employees will be authorized to keep City vehicles in their possession overnight. Periodic reviews and criteria for justification may be established in administrative regulation as promulgated by the City Manager.

CHAPTER 4.14

EMPLOYEE POLITICAL ACTIVITIES

Sections:

4.14.010 Federal And State Elections And Campaigns.

4.14.020 Local Elections And Campaigns.

4.14.030 Solicitation Of Contributions For Political Parties Or Candidates.

4.14.010 Federal And State Elections And Campaigns.

Employees are free, on their own time and away from any office of the City, to participate in all federal, state, county, and municipal campaigns and to openly express their views and support for candidates. Employees shall refrain from any political activities which give the appearance that they are endorsed by the City or which interfere with the performance of their normal duties. Any employee whose position is funded by a federal program and/or monies shall be subject to the provisions of 5 United States Code, Section 1501, et seq., as amended, commonly known as the Hatch Act.

4.14.020 Local Elections And Campaigns.

A. Candidates for Office. Any employee desiring to be a candidate for municipal office in the City of Lakewood shall submit a request for a leave of absence commencing on the date of filing and ending the day following election day. Candidates who are elected to such office shall resign from the employ of the City.

B. Activities. Employees while on City time shall not publicly support or endorse any candidates for municipal office in the City of Lakewood, shall not circulate or cause to be circulated any nominating petitions for such office, shall not distribute any campaign literature nor display on City property or premises any campaign buttons or car stickers or placards on behalf of any candidate for municipal office in the City of Lakewood.

4.14.030 Solicitation Of Contributions For Political Parties Or Candidates.

Employees shall not be required to make any contribution to a political party, to an elected official or to a candidate, and their refusal to do so shall not be used to penalize them in any way. An employee, while on City time or in the workplace, shall not make any solicitation of any such contributions from any other person.

CHAPTER 4.15

PERSONNEL RECORDS

Sections:

4.15.010 General.

4.15.020 Retention And Destruction.

4.15.030 Release Of Personnel Information.

4.15.010 General.

The Employee Relations Department shall maintain information on each employee pertinent to his/her employment with the City.

An employee shall report all changes of name, address, and home telephone number to the Employee Relations Department. Department Directors or designees shall report any change, in an employee's employment status to the Employee Relations Department.

4.15.020 Retention And Destruction.

The Department of Employee Relations shall retain all personnel and payroll records of City employees according to the direction of the State Archivist. Records of former employees shall be retained as the State Archivist directs. Applications for employment, unless renewed, shall be considered active for a period of six months. Applications for employment may be destroyed, according to the direction of the State Archivist.

4.15.030 Release Of Personnel Information.

A. During office hours, an employee, former employee, or a designated representative thereof may examine the employee's personnel file as permitted by law. Designation of a representative shall be an original, in writing and notarized, signed by the employee or former employee, and filed with the Department of Employee Relations before the representative may examine the employee's file.

B. Personnel files shall be available to all officials who supervise or may supervise the work of the employee whose records they wish to review, and any employees assigned to the Department of Employee Relations.

C. The Department of Employee Relations may verify to a prospective employer of a present or former employee the dates of such individual's employment with the City and the latest or last position title held and such other information permitted by law to be released. Other information concerning an employee may be released to prospective employers, collection agencies, credit bureaus, etc., when the employee has designated them as his/her representatives in accordance with Section 4.15.030(A).

D. In the event of conflict between this Paragraph concerning the disclosure of personnel information and the requirements of the Colorado Open Records Act, Section 24-72-201, et seq., C.R.S. 1973, the provisions of the Colorado Open Records Act shall prevail.

CHAPTER 4.16

MISCELLANEOUS RULES

Sections:

- 4.16.010 Outside Employment.**
- 4.16.020 Conflict Of Interest.**
- 4.16.030 Safety Program.**
- 4.16.040 Drug Free Work Place.**
- 4.16.050 Employee Assistance Program.**
- 4.16.060 EEO Policy Statement.**
- 4.16.070 Sexual Harassment Policy.**

4.16.010 Outside Employment.

Employees shall file notice to their Department Director in writing prior to the commencement of any such additional employment in which he or she engages with a copy being placed in the employee's personnel file. The Department Director in consultation with the Director of Employee Relations, may prohibit such outside employment to avoid a conflict of interest or the appearance of a conflict of interest with any of the employee's responsibilities to the City.

4.16.020 Conflict Of Interest.

A. As a matter of policy, the City shall strive to assure that every effort is made to promote public confidence in government by assuring the impartiality, integrity and honesty of City employees. As such, all employees will ensure that their actions present neither a conflict of interest nor the appearance of a conflict with the public trust. Activities which could be construed as a conflict of interest, include but are not limited to:

1. Any employment, activity, or enterprise which involves the use for private gain of the City's time, facilities, equipment, supplies, prestige, influence, badge, uniform, or privileged or confidential information;
2. Receipt or acceptance by employees of any money or other consideration from anyone other than the City for performance of an act or function which employees would be required or expected to render in the regular course of City employment, or as part of their duties as City employees;
3. Performance of an act in other than one's capacity as a City employee which may later be subject, directly or indirectly, to control, inspection, review or audit by such employee or by the City;
4. Use or give permission to any other person to use any equipment, vehicle, materials or other asset owned by the City, and/or services provided to or by the City for the conduct of the City's business, for personal purposes of the employee or another person or for the conduct of any activity intended to generate income, make a profit, or for bartering purposes, except as detailed in administrative regulations.

B. Employees and members of their families shall not accept or solicit personal gifts offered because of the employee's duties, functions, or responsibilities as an employee of the City.

C. The City and employees shall comply with Colorado Civil and Criminal Statutes dealing directly with conflict of interest situations, including C.R.S. § 24-34-402.5.

D. Employees shall contact their Department Director before engaging in an activity which may be construed as a conflict of interest, before commencing outside employment as set forth in Section 4.16.010. The City Manager or a designee shall make the final decision regarding interpretation of conflict of interests.

E. An employee may be disciplined for engaging in activities during non-working hours, which create a conflict of interest or the appearance of a conflict of interest with any of the employee's responsibilities to the City.

F. The City Manager may promulgate administrative regulations dealing with guidelines, reporting, and other appropriate items regarding this Paragraph.

4.16.030 Safety Program.

The efficiency and effectiveness of the City organization is enhanced by a viable safety program. All employees are expected to be aware of and follow safety requirements as part of their jobs. The City Manager shall require the Department of Employee Relations to coordinate safety matters with all departments of the City.

4.16.040 Drug Free Work Place.

It is the City's intent to maintain a drug free, healthful, safe and secure work environment. The City Manager may promulgate administrative regulations regarding a drug free work place.

4.16.050 Employee Assistance Program.

Recognizing that an employee or a member of his or her family may have personal problems which adversely affect job performance, the City has contracted to make available to all employees and their families a free, completely confidential counseling and referral service. Usage of this service may be initiated through self-referral or by supervisor referral. While the City recognizes that resolution of personal problems is in the best interest of both the employee and the City, such problems remain the employee's responsibility. The employee's job evaluations are based upon performance in his or her position notwithstanding outside influences. Therefore, it is incumbent upon the employee to take advantage of the assistance offered and ensure that personal problems do not have a detrimental effect on job performance.

4.16.060 EEO Policy Statement.

It is the policy of the City of Lakewood to work continually to provide equal employment opportunities to all persons without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability. In compliance with state and federal statutes, the City hereby reaffirms its commitment.

In fair employment practices, the City will:

A. Recruit, hire, promote, and train individuals in all job classifications without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability.

B. Make employment decisions upon an individual's qualifications and job related requirements of the position, giving due consideration to the meaning of the phrase, "The City of Lakewood is an equal opportunity employer." This means that minority candidates who are equally qualified for positions are strongly considered for hire. The City shall seek out qualified minorities and females and people of varied backgrounds in order to encourage their application for vacant positions within the City.

C. Ensure that all personnel practices and actions will be administered without regard to race, color, creed, national origin, religion, sex, sexual orientation, age or disability.

D. Ensure that all individuals, receive equal opportunity for training and management development programs.

E. Communicate this policy of equal employment opportunity to all supervisors and employees. Ensure that all advertisements state the policy of the City.

The City Manager is responsible for initiating and promulgating procedures and practices to ensure equal employment opportunity for all applicants and employees. It is intended that all City employees support the City's commitment to promote this policy.

The City of Lakewood will act promptly to investigate alleged discrimination. Based on its investigation, the City may take whatever action it deems appropriate, up to and including discharge, and to effect immediate remedy when an allegation is determined to be valid.

Any employee who believes he or she has been the subject of discrimination should report the alleged act immediately to his/her immediate supervisor or Department Director; or the Department of Employee Relations.

4.16.070 Sexual Harassment Policy.

Sexual harassment is not condoned and will not be tolerated under any circumstances within any City of Lakewood work place. The City supports the proposition that sexual harassment generates a harmful atmosphere, so it is our position to affirmatively promote an atmosphere free of sexual harassment and intimidation.

Sexual harassment is a violation of State and Federal Law. It is a form of employee misconduct, which undermines the integrity of the employment relationship and negatively impacts upon the morale and productivity of our employees.

Sexual harassment can be expressed in various ways, such as sexual remarks, subtle or overt sexual demands and physical assault. As defined by the Equal Employment Opportunity Commission (EEOC), sexual harassment is any "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" when:

A. Submission is an explicit or implicit condition of employment.

B. Submission to or rejection of advances are the basis for an employment decision affecting such individual.

C. The conduct has the purpose or effect of substantially interfering with a worker's performance, creating an intimidating, hostile, or offensive working environment.

The City of Lakewood will act promptly to investigate alleged harassment. Based on its investigation, the City may take whatever action it deems appropriate, up to and including discharge, and to effect immediate remedy when an allegation is determined to be valid.

Any employee who believes he or she has been the subject of sexual harassment should report the alleged act immediately to his/her immediate supervisor or Department Director; or the Department of Employee Relations.

PERSONNEL MERIT SYSTEM POLICIES

(Personnel Merit System Policies Apply To All Employees Except The City Manager, City Treasurer, Court Administrator, Municipal Judges, Department Directors, Division Managers, City Council, Provisional Employees And All Temporary/Seasonal Employees Or As Otherwise Specified Herein.)

CHAPTER 4.17

GENERAL PROVISIONS

Sections:

4.17.010 Employees Included.

4.17.020 Violation Of Policies.

4.17.010 Employees Included.

The Personnel Merit System applies to all employees except the City Manager, City Treasurer, Court Administrator, Municipal Judges, Department Directors, Division Managers, City Council, Provisional Employees and all Temporary/Seasonal employees, or as otherwise specified herein.

4.17.020 Violation Of Policies.

Violation of any policy shall be grounds for disciplinary action, including, but not limited to, reprimand, suspension, demotion, or discharge for non-exempt employees. Exempt employees may be reprimanded, suspended in accordance with applicable law, demoted or discharged. An employee who believes that he or she has been unjustly disciplined may file an appeal in accordance with procedures established within these policies.

CHAPTER 4.18

PROBATION

Sections:

4.18.010 Probation.

4.18.010 Probation.

Every employee who is appointed into a regular full-time or regular part-time position must serve a probationary period. Employees who have occupied the position may have the probationary period modified or waived upon approval of the City Manager. The probationary period will last at least six months. During said probationary period, goals pertaining to the employee's performance and other job-related criteria should be presented to the probationary employee and periodic reviews should take place during the period. Employees not meeting the standards or goals established for the position may be given additional probationary time, transferred, demoted or discharged. A newly hired employee serving the initial probationary period with the City is employed at the will of the City and may be discharged or demoted for any reason or no reason, with or without notice, and without application of Chapter 4.20. An employee promoted, transferred, or demoted from a regular position to a new position occupies the new position at the will of the City and may be removed from the position and placed in a different position for any reason or no reason, with or without notice, during the probationary period without application of Chapter 4.20, but any discharge must be for cause. While serving a probationary period, an employee may not apply for a transfer, promotion or demotion. Exceptions to this may be made by the City Manager upon the recommendation of the Department Director and the Director of Employee Relations.

CHAPTER 4.19

TRANSFERS - PROMOTIONS - DEMOTIONS

Sections:

4.19.010 Transfers.

4.19.020 Promotions.

4.19.030 Temporary Transfers Or Promotions.

4.19.040 Demotions.

4.19.010 Transfers.

A. Department Directors, upon consultation with the Director of Employee Relations, may transfer an employee who possesses the necessary qualifications to another classification at the same pay level or to another assignment at a different pay level within the same or another department. The City Manager shall have final authority with respect to approval of all transfers.

B. An employee transferring to a position having different duties and responsibilities than the position being vacated is subject to serving a probationary period, which will last a minimum of six months. During said probationary period, goals pertaining to the employee's job and other job-related criteria should be presented to the probationary employee and periodic reviews should take place during this period. Employees not meeting the standards or goals may be given additional probationary time, reassigned to a different classification, or disciplined without application of Chapter 4.20. Discharge can only be for cause.

C. Employees currently serving a probationary period may not apply for a transfer. Exceptions to this may be made by the City Manager upon the recommendation of the Department Director and the Director of Employee Relations.

4.19.020 Promotions.

A. Promotions must involve a definite increase in duties and responsibilities, conform to the merit system principles, and shall not be made merely to effect an increase in the employee's compensation. The City Manager shall have final authority with respect to approval of all promotions.

B. An employee receiving a promotion within the same occupational group in which he or she is assigned at the time of promotion shall move to an appropriate place in the higher pay range, based upon the recommendation of the Department Director and the Director of Employee Relations.

C. Movement by an employee from one occupational group to another may be considered either a transfer or a promotion. As such, the employee shall receive compensation at an appropriate place in the pay range based upon the recommendation of the Department Director and the Director of Employee Relations.

D. For promotions, a probationary period will last for a minimum of 6 months. During said probationary period, goals pertaining to the employee's performance and other job-related criteria should be presented to the probationary employee and periodic reviews should take place during the period. Employees not meeting the standards or goals may be given additional probationary time, reassigned to a different classification or disciplined without application of Chapter 4.20. Discharge can only be for cause.

E. Employees currently serving a probationary period may not apply for promotion. This restriction does not apply to employees on promotion lists. Exceptions to this may be made by the City Manager upon the recommendation of the Department Director and the Director of Employee Relations.

4.19.030 Temporary Transfers Or Promotions.

If an employee is temporarily transferred or promoted to another classification, for reasons other than training purposes, the employee may move to an appropriate place in the pay range for that classification upon the recommendation of the Department Director and the Department of Employee Relations. The City Manager shall have final authority with respect to the approval of all recommended temporary transfers or promotions.

4.19.040 Demotions.

A Department Director, upon consultation with the Director of Employee Relations, may demote an employee:

- A. Who voluntarily requests a demotion;
- B. As a result of a reduction in force or reorganization; or
- C. For cause as set forth in Section 4.20.030.

An employee so demoted will serve at least a 6-month probationary period and will not be considered for promotion or transfer during this period, except where the demotion was a result of a reduction in force or reorganization. No City employee shall be demoted to any position for which he or she does not possess the necessary qualifications or for which he or she cannot perform the essential functions. Written notice of the demotion shall be given to the employee at least ten working days prior to the effective date of the demotion.

An employee receiving a demotion shall be moved to an appropriate place in the pay range of the classification to which the employee was demoted.

For demotions, a probationary period will last for a minimum of 6 months. During said probationary period, goals pertaining to the employee's performance and other job-related criteria should be presented to the probationary employee and periodic reviews should take place during the period. Employees not meeting the standards or goals may be given additional probationary time, reassigned to a different classification or disciplined without application of Chapter 4.20. Discharge can only be for cause.

CHAPTER 4.20

DISCIPLINARY ACTION AND APPEAL PROCEDURE

Sections:

- 4.20.010 Disciplinary Action.**
- 4.20.020 Definitions.**
- 4.20.030 Forms Of Disciplinary Action.**
- 4.20.040 Disciplinary Procedure.**
- 4.20.050 Appeal Of Disciplinary Action.**
- 4.20.060 Time Limits.**

4.20.010 Disciplinary Action.

Employees subject to these rules or any departmental regulation duly promulgated, may be disciplined for cause.

4.20.020 Definitions.

A. "Disciplinary authority" for the City of Lakewood shall be the City Manager or his or her designee, Department Directors, Division Managers, Section Heads, and Supervisors, within the limits of authority as herein set forth.

Department Directors shall have the authority to discharge, demote, suspend with or without pay, and reprimand. No suspension shall exceed sixty (60) working days. Division Managers shall have the authority to suspend, with or without pay, for up to two (2) working days and to reprimand. Certain section heads, upon approval by their Department Directors, may suspend, with or without pay, for one (1) day. Section heads and first line supervisors shall have the authority to reprimand and to effect temporary and immediate suspensions pursuant to Section 4.20.040(C)(1).

B. "Disciplinary action" refers to action taken by the disciplinary authority against an employee for cause, including reprimand, suspension, demotion, or discharge. Demotions or terminations necessary because of elimination of any position or reduction in force shall not be deemed a disciplinary action.

C. "Cause" for disciplinary action includes, but is not limited to:

1. Unsatisfactory work performance, including a failure to demonstrate a reasonable competence, or failure to perform the duties of the position in a satisfactory manner.

2. Violation of work hours or attendance policies of the department, including job abandonment.

3. Illness, physical or mental disability or condition which prohibits employee from performing the essential functions of the position with or without reasonable accommodation, or creates an undue health or safety risk to the employee or others, or creates an undue hardship to the City, or which prevents the person from being at the work place to the extent that it interferes with the duties of the position, consistent with the Family and Medical Leave Act whether the employee's absences are within sick leave available or in excess thereof or otherwise excused. The City shall comply with the Family and Medical Leave Act.

4. Insubordination, including, but not limited to, failure to follow instructions given by a supervisor.

5. Physical or verbal altercations and related misconduct in the work place, and/or during work time.

6. Entry of a plea of guilty or nolo contendere or entry into a deferred judgment and sentence or conviction for a felony, a crime of moral turpitude, or any other crime which involves the abuse of public office; or consistent with the terms of Section 24-34-402.5, C.R.S., any other conduct outside the work place which interferes with the employee's ability to properly perform his/her duties or which substantially prejudices the conduct of the City's business, including conflicts of interest.

7. Violation of conflict of interest provision as set forth in 4.16.020.

8. Falsification or material omission in the application process for employment, or falsification or material omission of any City-related record.

9. Any conduct demonstrating dishonesty in the work place.

10. Any theft or unauthorized use of property belonging to the City or to an employee of the City or other person.

11. Negligent or willful damage or waste of City property.

12. Possession of, or the use of, or being under the influence of alcohol or any illegal or illegally consumed drugs when reporting for duty or while on duty.

13. Failure to maintain specified departmental or other physical fitness levels.

14. Conduct which violates any federal or state anti-discrimination law pertaining to employment, including sexual harassment.

15. Improper use of City assets, property or services as set forth through administrative regulation.

16. Refusal to work overtime, or to work a designated shift or schedule.

17. Testing positive on a drug or alcohol test.

18. Violation of any of the provisions of the City policies, procedures, ordinances, administrative regulations or any department rules.

19. Conduct which would prejudice the City's or the public's interest.

4.20.030 Forms Of Disciplinary Action.

A. Reprimand. A disciplinary authority may reprimand an employee orally or in writing.

B. Suspension. A disciplinary authority may suspend an employee from employment, with or without pay. Exempt employees may not be suspended without pay except in accordance with applicable law and with approval of the Director of Employee Relations. No suspension shall exceed sixty (60) working days.

C. Demotion. A disciplinary authority, upon consultation with the Director of Employee Relations, may demote an employee.

D. Discharge. A disciplinary authority, upon consultation with the Director of Employee Relations, may discharge an employee.

4.20.040 Disciplinary Procedure.

A. Reprimand. A disciplinary authority may reprimand an employee orally or in writing. If such reprimand is in writing, a copy of the reprimand shall become a permanent record in the employee's personnel file. The employee shall be provided a copy of any written reprimand and shall be entitled to make a written response which shall be kept in the employee's personnel file.

B. **Suspensions of Two Work Days or Less.** A Division Manager or Department Director may suspend a non-exempt employee for two (2) work days or less. Certain section heads, upon approval by their Department Directors, may suspend a non-exempt employee for one (1) work day. Prior to imposing the suspension, the disciplinary authority shall meet with the employee to discuss the matter and any proposed action. If the decision to suspend is made by the Division Manager or the section head, the employee may request a review of the action by the Department Director. The decision of the Department Director shall be final.

C. **Suspension, Demotion and Discharge.**

1. A temporary and immediate suspension may be effected by a disciplinary authority when there is need to remove the employee from the work place promptly because of a possibility of violence, disruption of work, insubordination, damage to property or persons or if any employee is under the apparent influence of intoxicants or drugs or for any other reason which requires prompt removal. A suspension may also be effected in order to conduct a thorough investigation. A temporary and immediate suspension may be imposed by the City Manager, Department Director, Division Manager, section head or a first line supervisor. A temporary and immediate suspension shall be with pay until such time as there is compliance with procedures established herein.

2. When an employee, by behavior or performance, evidences to the supervisor or other disciplinary authority that disciplinary action other than a reprimand or suspension of two days or less may be required, the following procedures shall be employed:

a. Within ten (10) calendar days of the event or of learning of the event, the Supervisor will prepare a written recommendation that disciplinary action be considered, which recommendation shall include a statement of the reasons therefor and may include a recommended action and submit the recommendation up through the line of authority to the appropriate Department Director. Recommendations for disciplinary action shall not be made a part of the employee's personnel file and shall not be available to the employee.

b. Within five (5) working days of receipt of the recommendation, or upon his/her own initiative, the Department Director shall conduct whatever review he/she considers necessary and appropriate. In the event he/she determines that disciplinary action may be appropriate, the Department Director shall notify the employee in writing that he/she is considering disciplinary action and state the reasons therefor. The written notification shall also advise the employee of a time and place to meet with the Department Director in order to respond to the written notification and that the employee may submit any written response as well.

c. Within five (5) working days of the employee's receipt of the written notification, the Department Director shall meet with the employee and review any written response submitted by the employee, and shall give consideration to the oral and/or written responses. The employee is not entitled to any representation, including legal counsel, at this meeting. At the Department Director's discretion, Supervisors will be present. Thereafter, and within five (5) working days, the Department Director shall determine what disciplinary action, if any, shall be taken. Within this five (5) day period, in the event disciplinary action is taken, the employee shall be notified in writing, including a statement of reasons therefor and the effective date of the action. If a temporary and immediate suspension was previously imposed, the Department Director may convert it to a suspension without pay for non-exempt employees as part or all of the disciplinary action. If the disciplinary action is discharge, demotion or suspension of more than two days, the notice of disciplinary action shall advise the employee of his/her appeal rights. The disciplinary action shall be effective as of the stated effective date in the notice of disciplinary action without regard to any subsequent appeal.

4.20.050 Appeal Of Disciplinary Action.

Persons discharged, demoted or suspended for more than two work days shall be entitled to appeal. An appeal may only be initiated by filing written notification with the Director of Employee Relations within ten (10) calendar days of receiving written notification of the disciplinary action.

A. The Director of Employee Relations shall maintain a list of impartial and qualified hearing officers. Upon receipt of any notice of appeal of disciplinary action, the Director of Employee Relations shall provide the employee with this list and the employee shall select a hearing officer, based on availability. If the employee does not select a hearing officer from this list within seven (7) calendar days after receiving the list, the City Manager shall appoint a hearing officer from the list, on a rotating basis, subject to the availability of the hearing officer. If the hearing officer selected is not available, the selection process shall be repeated until a hearing officer is selected and is available.

B. The hearing officer shall conduct a hearing. There shall be administrative regulations promulgated which provide for notice, procedures to be employed during the hearing and the right of the appellant to be represented by any person of his/her choice willing to serve, including an attorney at law. The City may be represented by any person of its choice, including the City Attorney or his/her designee. The City shall also have present the Director of Employee Relations and/or his/her designee. The hearing officer shall be responsible for the conduct of the hearing, including application of procedure as established by ordinance and administrative regulation.

The hearing officer shall conduct a hearing within ninety (90) calendar days after the written notice of appeal is received by the Director of Employee Relations, unless good cause is shown that additional time is necessary. The hearing officer's role is to conduct a hearing. The hearing officer may issue or cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and upon application to the District Court of Jefferson County by a party or the hearing officer, enforced in a manner provided by law for the service and enforcement of subpoenas in civil actions. No party shall be entitled to subpoena any evidence not admissible at the hearing. The hearing officer has no authority to order the taking of any depositions, responses to interrogatories, responses to requests for production of documents or the physical or mental examination of any persons. The hearing officer shall endeavor to render his/her decision within thirty (30) calendar days after the hearing is completed. The hearing officer's sole purpose is to determine whether or not cause for any disciplinary action existed. The hearing officer has no authority to modify any disciplinary action taken. Hearings conducted under the provisions of these policies are not open to the public.

The hearing officer shall consider the evidence and shall make findings of fact and conclusions in writing, stating whether there was or was not cause. The findings of fact and conclusions shall be transmitted to the City Manager, the appellant or his/her representative, the representative of the City, and the Director of Employee Relations.

C. The City Manager, which includes his/her designee, may accept, reject or modify the findings of fact and conclusions. Prior to any decision, the City Manager shall review the findings of fact and conclusions and may make such other review of the record as necessary. In addition, the City Manager, in his/her discretion, may conduct a hearing de novo or may conduct a hearing supplemental to that conducted by the hearing officer limited to such matters

as he/she deems necessary. There shall be administrative regulations promulgated, which provide for notice, procedures to be employed during any hearing and the right of any employee to be represented by any person of his/her choice, including an attorney at law. The City may be represented by any person of its choice, including the City Attorney. The City Manager shall conduct the review and any hearing and render a decision within forty-five (45) calendar days after receipt of the hearing officer's findings of fact and conclusions unless good cause is shown that additional time is necessary. The City Manager may modify the disciplinary action taken in any instance where cause is found. For the sole purpose of determining whether to modify the disciplinary action taken, the City Manager may consider any information from any source, including appellant, and need not conduct any hearing. If requested, the City Manager shall meet with the appellant and permit appellant to state his/her reasons for any modification of the disciplinary action. There shall be administrative regulations, which establish the conditions of the meeting. The City Manager shall render a decision in writing accepting, rejecting or modifying the findings of fact and conclusions of the hearing officer and stating any modification of the disciplinary action. He/she shall order whatever action is necessary, if any, to implement his/her decision and shall notify the appellant, the Department Director and the Director of Employee Relations accordingly.

4.20.060 Time Limits.

With the exception of the requirement that an appeal of disciplinary action shall be filed within ten (10) calendar days of receipt of written notification, the failure to meet any of the time limits contained in the disciplinary procedures in Chapter 4.20 shall not invalidate the process or any action taken.

CHAPTER 4.21

GRIEVANCE PROCEDURES

Sections:

4.21.010 Statement Of Policy.

4.21.020 Time Limits.

4.21.010 Statement Of Policy.

The City of Lakewood is interested in the establishment of good employee relations practices and the promotion of sound personnel management. Circumstances may arise, apart from disciplinary actions, which cause employee dissatisfaction. Therefore, the following grievance procedures are established whereby employees are entitled to present their complaints without fear of reprisal. All non-exempt regular full-time and regular part-time employees may utilize the grievance procedures.

A. Whenever an employee believes that a working condition, other than a disciplinary action, general City policy or procedure, performance review, or the establishment of classification, pay and fringe benefits, has developed which is adversely affecting his/her working conditions, the employee has a right to file a grievance. Any grievance shall be processed in the following manner:

1. The Department Director will immediately notify the Director of Employee Relations concerning the filing of a grievance.
2. Within five (5) work days of the matter causing the dissatisfaction, an employee must present the appropriate supervisor with a memorandum describing his/her grievance, stating the facts and the desired action.
3. If the matter is not resolved within ten (10) calendar days, the supervisor must respond to the employee in writing by the tenth (10th) calendar work day explaining the position taken by the supervisor.
4. If the employee is dissatisfied with the supervisor's explanation, the employee within five (5) work days of receipt of the supervisor's written response may appeal the decision to the Department Director. The appeal must be in writing and indicate the employee's reasons for differing with his/her supervisor's decision.
5. The Department Director will meet with the employee and the employee's supervisor to discuss the grievance. If the grievance is not settled through discussion, the Department Director's written reply must be made within five (5) work days of receipt of the employee's grievance. The decision of the Department Director is final.
6. The Department Director will notify the Director of Employee Relations concerning the action taken.
7. This grievance procedure is an internal process and does not involve or allow any outside representation, including attorneys.

4.21.020 Time Limits.

With the exception of the requirement that a grievance shall be filed within five (5) work days of the matter advising the dissatisfaction, the failure to meet any of the time limits contained in the grievance procedures in Chapter 4.21 shall not invalidate the process or any action taken.

POLICIES APPLICABLE TO EXECUTIVES

CHAPTER 4.22

REMOVAL OR SUSPENSION

Sections:

4.22.010 At-Will Employment.

4.22.020 Severance Agreements.

4.22.030 Suspension Without Pay of Department Directors/Executive Personnel.

4.22.010 At-Will Employment.

Executive Personnel (employees who occupy positions in the Executive Occupational Group) are employed at the will of the City and may be discharged, demoted, or suspended with pay for any reason or no reason, with or without notice. Removal of Executive Personnel is vested in the City Manager.

4.22.020 Severance Agreements.

As a matter of policy, the City Manager may provide a severance agreement to Department Directors. A Department Director may provide a severance agreement to a Division Manager. Such policies or procedures as are necessary for the utilization of severance agreements will be promulgated by the City Manager. Severance agreements will not exceed three (3) months in length without approval of the City Manager.

4.22.030 Suspension Without Pay of Department Directors/Executive Personnel.

Suspension of Department Directors of the City is vested in the City Manager and may be only in accordance with applicable law. Other exempt executive employees may be suspended without pay only in accordance with applicable law.

CHAPTER 4.23

GENERAL PROVISIONS

Sections:

4.23.010 Physical Examinations.

4.23.020 Physical Fitness Programs.

4.23.030 Travel Insurance.

4.23.040 Relocation Benefits.

4.23.050 Deferred Compensation Annuity Program.

4.23.010 Physical Examinations.

Department Directors may have an approved annual physical examination, the cost and expense thereof to be borne by the City.

4.23.020 Physical Fitness Programs.

The City may establish and provide a physical fitness program and pay the cost of the participation of Department Directors in such program, for the purpose of maintenance of executive health.

4.23.030 Travel Insurance.

The City shall pay the premium cost of a life insurance policy for accidental death when such death occurs while management personnel may be engaged in travel. The City shall be the owner of such policy and those covered shall designate the beneficiary or beneficiaries under such policy. Notwithstanding the provisions of this Paragraph, the terms, conditions, and effective date of such insurance policy shall be subject to approval by the City Manager.

4.23.040 Relocation Benefits.

The City Manager is authorized to pay temporary relocation benefits to any executive employee relocating to the City of Lakewood subject to the requirements hereinafter set forth. Such benefits shall be limited to reimbursement for temporary relocation expenses for housing. The amount, the method, the form and the reasons for such payments shall be set forth in a memorandum executed by the employee and the City Manager. The City Manager is authorized to reimburse any executive employee for all or any portion of the actual expenses incurred in relocating personal and household belongings to the city.

4.23.050 Deferred Compensation Annuity Program.

The City may commence a deferred compensation annuity program for Department Directors; provided, however, that nothing in this Paragraph shall amend or abrogate any other ordinance of the City relating to a separate deferred compensation plan for any City employee. The City Manager may approve a program to contribute to the plan for Department Directors, not to exceed three percent of the employee's base salary and contingent upon an equivalent employee contribution.

CHAPTER 4.24

SALARIES

Sections:

4.24.010 Annual Salary Of City Manager.

4.24.020 Salary Of Elected Officials.

4.24.010 Annual Salary Of City Manager.

The annual salary of the City Manager shall be established by contract between the City Council and the City Manager, which may be revised from time to time by City Council resolution. The salary shall be paid on either a monthly, semimonthly, or biweekly basis in accordance with the current payroll procedure for other positions.

4.24.020 Salary Of Elected Officials.

A. Commencing with the new term of office resulting from the regular election held on November 4, 1997, the compensation for the City Councilmembers shall be an annual compensation of Nine Thousand One Hundred Twenty-six and No/100 Dollars (\$9,126.00).

B. Commencing with the new term of office resulting from the regular election held on November 3, 1999, the compensation for the Mayor shall be an annual compensation of Twenty-four Thousand and No/100 Dollars (\$24,000.00).

C. The compensation shall be divided into as equal as possible payments and paid monthly.

D. During the month of November in the year preceding the year in which each mayoral election is conducted, the City Council shall review the compensation provided for the Mayor and City Council to determine whether said compensation should be adjusted. Any such adjustment shall be established by ordinance and take effect pursuant to the Lakewood Home Rule Charter.

**POLICIES APPLICABLE TO TEMPORARY/
SEASONAL EMPLOYEES**

CHAPTER 4.25

GENERAL PROVISIONS

Sections:

- 4.25.010 Pay Plan.**
- 4.25.020 Fringe Benefits.**
- 4.25.030 Change Of Status.**
- 4.25.040 Miscellaneous Policies.**

4.25.010 Pay Plan.

Subject to approval by the City Manager, persons may be employed by the City in any department on a temporary/seasonal basis, at prevailing rates of pay to be agreed upon between the City and such employee, which may be below rates of pay to regular or provisional personnel performing the same or comparable services.

4.25.020 Fringe Benefits.

A. Notwithstanding other provisions of this Chapter, temporary/seasonal employees shall not be eligible to receive any fringe benefits, such as vacation, sick leave, military leave with pay, holidays, group life insurance, disability income insurance, and hospital and medical insurance.

B. Temporary/seasonal employees shall be eligible to receive 180 hours injury leave for on-the-job injuries/illnesses.

4.25.030 Change Of Status.

In the event any temporary/seasonal employee shall be appointed to a regular or provisional position, the date of such appointment shall constitute the employee's date of hire for purposes of tenure and seniority.

4.25.040 Miscellaneous Policies.

The following paragraphs contained in the General Policies also apply to temporary/seasonal employees: Principles, Policies On Equal Employment Opportunities, Overtime, Attendance, Family and Medical Leave as required by law, Workers' Compensation and limited injury leave, Non-Job-Related Jury Or Court Leave, Use Of City-Designated Vehicles, Accidents With City-Designated Vehicles, Use Of Private Vehicles, Overnight Use Of City-Designated Vehicles, Federal And State Elections And Campaigns, Solicitation Of Contributions For Political Parties Or Candidates, General (Personnel Records), Retention And Destruction, Release Of Personnel Information, Conflict Of Interest, Safety Program, Drug Free Work Place, EEO Policy Statement, Sexual Harassment Policy and such other programs and policies as are designated by applicable law or provision.

OTHER

CHAPTER 4.26

POLICE RETIREMENT

Sections:

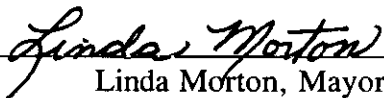
4.26.010 Police Retirement and Disability Benefits.

4.26.010 Police Retirement and Disability Benefits.

The City shall provide, for the sworn police officers, agents and recruits of the City of Lakewood, both pension benefits and disability benefits by sponsoring and making employer contributions to the City of Lakewood Police Pension Plan and by sponsoring the Police Duty, Death and Disability Trust, in accordance with the terms and provisions of such plans, as were in effect under this code on December 31, 1992, and as may be subsequently adopted, amended or restated pursuant to the terms of the plans.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

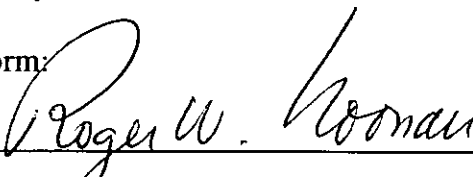
I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 23rd day of August, 1999; published in full in the Lakewood Sentinel on the 26th day of August, 1999; set for public hearing on the 13th day of September, 1999; read, finally passed and adopted by the City Council on the 13th Day of September, 1999; and signed and approved by the Mayor on the 14th Day of September, 1999.


Linda Morton, Mayor

ATTESTED AND CERTIFIED:


Karen Goldman, City Clerk

Approved as to form:

City Attorney  Date September 7, 1999

Approved as to content:

City Clerk _____ Date _____
Finance _____ Date _____
City Manager _____ Date _____
Police Dept. _____ Date _____
Comm. Resources _____ Date _____
Public Works _____ Date _____
Employee Relations _____ Date _____
Community Planning
& Development _____ Date _____

AN ORDINANCE

AMENDING CHAPTER 2.08 OF THE LAKEWOOD MUNICIPAL CODE TO CHANGE THE NAME OF THE DEPARTMENT OF EMPLOYEE RELATIONS TO "DEPARTMENT OF HUMAN RESOURCES," MAKING CORRESPONDING CHANGES TO ANY REFERENCES TO THE DEPARTMENT OF EMPLOYEE RELATIONS IN THE LAKEWOOD MUNICIPAL CODE, AND AUTHORIZING CITY STAFF TO MAKE FURTHER REVISIONS TO THE LAKEWOOD MUNICIPAL CODE AS NECESSARY TO CORRECTLY IDENTIFY ALL CITY DEPARTMENTS IN A UNIFORM MANNER

WHEREAS, the City Council of the City of Lakewood, a home rule city of the state of Colorado, has full authority pursuant to Section 4.4 of the Lakewood home rule charter and Section 2.04 of the Lakewood Municipal Code to establish, alter and abolish the City's operating departments;

WHEREAS, the City Council had previously adopted Section 2.08.220 establishing the Department of Employee Relations (the "Department"), which is responsible for the administration of all personnel and employment services of the City and for the maintenance of all City personnel records;

WHEREAS, in recent years, the trend in the corporate world has been to use the term "Human Resources" when referring to a company's personnel function, and that term has become the generally recognized standard in the industry;

WHEREAS, the Department would like to be known by the more familiar "Human Resources," and the City Council agrees;

WHEREAS, while preparing for implementation of this Ordinance, the City Clerk's Office reviewed the Lakewood Municipal Code (the "Code") for references to "Employee Relations" and has identified those locations where the new name would replace the existing name;

WHEREAS, in reviewing the Code, staff further noticed that for other prior department name changes not all references to the new department name or staff positions had been updated, and the Code now contains numerous references to departments that no longer exist or have different names;

WHEREAS, because divisions within departments are occasionally created or abolished, and because responsibility for certain functions might shift from one division or department to another, staff seeks authorization to further revise the Code by replacing all references to divisions with references to the departments in which the divisions are currently located, with the goal being a consistent and uniform system of references to departments, divisions and staff positions; and

WHEREAS, the City Council desires to authorize the City Clerk, with assistance as needed from the Lakewood City Attorney's Office, to make the aforementioned changes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The recitals set forth above are incorporated herein.

SECTION 2. Title 2 of the Lakewood Municipal Code is hereby amended by the repeal and reenactment of Part VI to read in full as follows:

VI. Department of Human Resources

2.08.220 Establishing Department of Human Resources and position of Director of Human Resources

There is established a Department of Human Resources and the position of Director of Human Resources, who shall be and is designated as the Personnel Officer of the city, and who shall have charge of the Department of Human Resources.

2.08.230 Duties of Department of Human Resources

The Department of Human Resources and the Director of Human Resources shall be responsible for the administration of all personnel and employment services of the city and for the maintenance of all city personnel records and shall perform such other duties as may be assigned from time to time by the City Manager.

SECTION 3. The City Clerk, with assistance as needed from the City Attorney's Office, is hereby authorized to locate and change all references to the "Department of Employee Relations" currently in the Lakewood Municipal Code to read "Department of Human Resources," without the need for further approval by the City Council.

SECTION 4. The City Clerk is hereby further authorized to locate and change any and all references in the Lakewood Municipal Code to departments, department heads, divisions, division managers and other positions and titles where such references are now inaccurate, incomplete or out of date as a result of prior amendments to the Code, changes in department or division responsibilities, or the creation of new departments or divisions.

SECTION 5. This Ordinance shall take effect thirty (30) days after final public

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 10th day of June, 2019; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 13th day of June, 2019; set for public hearing on the 24th day of June, 2019; read, finally passed and adopted by the City Council on the 24th day of June, 2019; and signed and approved by the Mayor on the 25th day of June, 2019.



ATTEST:

Adam Paul, Mayor

Margy Greer, City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 16

To: Mayor and City Council
From: Max Kirschbaum, Director of Public Works
Subject: **North Dry Gulch Internal Loan from General Fund to the Stormwater Enterprise Fund**

SUMMARY STATEMENT: This ordinance authorizes an internal loan agreement in the form of a transfer from the General Fund to the Stormwater Enterprise Fund in the amount of \$19,682,727 for fiscal year 2025. These funds will support major drainageway improvements in the North Dry Gulch area of Lakewood. The ordinance sets forth the terms of the loan, including a 2% fixed interest rate over 20 years, with the first annual payment of \$1,203,731 due on December 31, 2026, and each year thereafter until the final payment due on December 31, 2045.

BACKGROUND INFORMATION: The North Dry Gulch 100-year floodplain is generally within one block of Colfax Avenue from Dover Street to Newland Street. The area includes approximately 150 properties, 130 buildings, and 36 residences. The primary goal of this project is to mitigate flooding, improve storm sewer infrastructure, and remove properties and structures from the 100-year floodplain.

The North Dry Gulch Project is divided into four major phases:

- **Phase 1:** Located along West 14th Avenue from Wadsworth Boulevard to Lamar Street. Completed in Fall 2024.
- **Phase 2:** Located along Colfax Avenue from the detention pond at Newland Street west to Pierce Street. Construction is underway and is anticipated to be completed by the end of 2025.
- **Phase 3:** Located north of Colfax Avenue along Pierce Street to Lakewood Place, then west through private properties south of 16th Avenue to Teller Street. Construction is expected to begin at the end of 2025.
- **Phase 4:** Located along 16th Avenue from Wadsworth Boulevard to Dover Street. Construction is anticipated in 2026.

The total projected funding for the project is **\$60,041,763**, while the total project cost estimate is **\$59,550,361**. Funding sources include:

- **\$28,680,273 from Stormwater Enterprise Funds** (\$20,617,273 already transferred to MHFD through 2024 and an additional \$8,063,000 anticipated by 2027).
- **\$10,325,000 contribution from MHFD** (\$8,000,000 already contributed through 2024 and an additional \$2,325,000 anticipated by 2027).
- **\$19,682,727 loan transfer from the Lakewood General Fund in 2025** (pending City Council approval of this ordinance).
- **\$1,353,743 accrued in MHFD's project account through 2024.**

BUDGETARY IMPACTS: This transfer was anticipated in the 2025 Budget. Adequate funds are available to complete this transfer. The Stormwater Enterprise Fund has adequate revenue to fund loan repayment, current operations and capital improvement programs.

STAFF RECOMMENDATIONS: Approval of the ordinance.

ALTERNATIVES: If this Ordinance is not approved, the North Dry Gulch Project will continue until available funds are expended. The City and the Mile High Flood District will continue to partner according to the existing IGA. City Staff will continue to review and pursue funding alternatives for the North Dry Gulch project. Without these storm sewer improvements, flooding will continue to be a problem and properties and structures will remain in the 100-year floodplain.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If this ordinance is approved, the funds will be transferred from the General Fund to the Stormwater Enterprise Fund and the Stormwater Enterprise will begin repayment in 2026.

ATTACHMENTS:

1. Ordinance O-2025-10
2. Internal Loan Agreement

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

AN ORDINANCE

AUTHORIZING AN INTERNAL LOAN AGREEMENT IN THE FORM OF A TRANSFER OF GENERAL FUNDS IN THE AMOUNT OF \$19,682,727 TO THE STORMWATER ENTERPRISE FUND AND AUTHORIZING THE EXPENDITURE OF SUCH FUNDS BY THE DIVISION OF PUBLIC WORKS IN CONJUNCTION WITH THE MILE HIGH FLOOD DISTRICT FOR MAJOR DRAINAGEWAY IMPROVEMENTS IN THE NORTH DRY GULCH AREA OF LAKEWOOD

WHEREAS, Section 7.1 of the City Charter allows City Council to authorize the borrowing of money by ordinance;

WHEREAS, on October 21, 2024, City Council approved the City's revised budget, which included the internal loan in the form of a transfer from the General Fund to the Stormwater Fund of \$9,682,727 in 2024 and \$10,000,000 in 2025 for major drainageway improvements in the North Dry Gulch area of Lakewood;

WHEREAS, due to the timing of the projects in the North Dry Gulch area of Lakewood, the transfer of the internal loan was unnecessary in 2024, and the complete transfer of all approved funds will occur in 2025;

WHEREAS, the terms of the loan agreement is a 2% fixed interest rate over a 20-year period with an annual repayment by the Stormwater Enterprise Fund of \$1,203,731, which includes principal and interest;

WHEREAS, the Stormwater Enterprise Fund shall make its first annual repayment to the General Fund on December 31st, 2026, and its final repayment on December 31st, 2045;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects, or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

Section 1. Appropriation and Expenditure. The City Council hereby appropriates and authorizes the internal loan agreement in the form of a transfer in the amount of nineteen million six hundred and eighty-two thousand seven hundred and twenty-seven dollars (\$19,682,727) from the City's General Fund to the City's Stormwater Enterprise Fund for fiscal year 2025 for the purpose of major drainageway improvements in the North Dry Gulch area of Lakewood.

Section 2. This Ordinance shall become effective thirty (30) days after final publication.

Section 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of February, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of February, 2025; set for public hearing to be held on the 24th day of March, 2025; read, finally passed and adopted by the City Council on the 24th day of March, 2025; and signed by the Mayor on the ____ day of March, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

Approved as to form:

Alison McKenney Brown, City Attorney



LOAN AGREEMENT AND PROMISSORY NOTE

THIS LOAN AGREEMENT AND PROMISSORY NOTE (“the Note”), is made this ____ day of January, 2025, by and between the City of Lakewood, Colorado (“Lender”) and City of Lakewood Stormwater Fund (“Borrower”) for purposes of funding a portion of the North Dry Gulch Floodplain Project in the City of Lakewood, Colorado. BORROWER and LENDER shall be known herein as “the Parties”.

PROMISSORY NOTE

FOR VALUE RECEIVED, BORROWER promises to repay to the of LENDER, the sum of nineteen million six hundred eighty-two thousand seven hundred seven dollars (\$19,682,727) with interest thereon at a rate of two (2) percent per annum.

ADDITIONAL LOAN TERMS

The BORROWER and LENDER hereby agree to be legally bound and set forth the rights and obligations to one another under this Loan Agreement, as follows:

1. PRINCIPAL LOAN AMOUNT \$19,682,727

In return for any loans that have been received, Stormwater Fund (“Borrower”) promises to pay the aggregate unpaid principal amount from time to time outstanding under this Agreement to the order of the General Fund of the City of Lakewood (“Lender”).

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. Borrower will pay interest at the annual rate specified on Schedule I, which is attached to this document and incorporated as if fully set forth herein.

3. PAYMENTS

Borrower will make payments as set forth on Schedule II, which is attached to this document and incorporated as if fully set forth herein.

4. RIGHT TO PREPAY

Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When making a prepayment, Borrower will give advance notice to Lender of its intent to prepay.

Borrower may make a full prepayment or partial prepayments without penalty. The Lender may require that any partial prepayments be made on the date monthly payments are due under this Agreement.

The Lender shall use all principal prepayments to reduce the amount of principal that Borrower owes under this Agreement. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless agreed to by the Lender.

5. FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments.

If the Borrower is transferring payment to the Lender for the payment of principal and interest and if the Lender has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, Lender may assess a penalty to the Borrower. The amount of such penalty will be 1% of any overdue payment of principal and interest. Borrower shall promptly transfer sufficient payment to cover the outstanding payment due plus any penalty assessed.

(B) Acceleration of Loan.

If the Borrower does not pay the full amount of each monthly payment on the date it is due, the Lender may notify the Borrower that if the overdue amount is not paid by a certain date, the Lender may require Borrower to pay immediately the full amount of principal which has not been paid and all the interest that Borrower owes on that amount.

6. RIGHT OF SET-OFF

In the event the Borrower fails to pay on the loan as required under the agreement, the Lender may withhold monies due to the Borrower from the Lender under any other agreement with the City of Lakewood and apply such monies to the amounts due to the Lender under this loan.

7. REQUEST FOR DOCUMENTS

The Lender may request from time to time, and the Borrower shall furnish, certain documents that are required for the Lender to either satisfy compliance requirements or assess the on-going conditions of the loan.

8. ACCEPTANCE OF LOAN TERMS

By executing this Agreement the Borrower is agreeing to the loan terms as specified in Schedule I, Schedule II, and Exhibit 1.

9. INTEGRATION

This Agreement, including the attachments mentioned in the body as incorporated by reference, sets forth the entire agreement between the Parties with regard to the subject matter hereof. All prior agreements, representations and warranties, express or implied, oral or written, with respect to the subject matter hereof, are superseded by this agreement. This is an integrated agreement.

10. SEVERABILITY

In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

11. MODIFICATION

Except as otherwise provided in this document, this agreement may be modified, superseded, or voided only upon the written and signed agreement of the Parties and as authorized by the Lakewood City Council.

12. CHOICE OF LAW

This Agreement shall be interpreted under, and governed by, the laws of the State of Colorado and the City of Lakewood, Colorado.

Accepted and Agreed to:

Borrower

Name: _____
Title: _____
Date: _____

Lender

Name: Holly Bjorklund
Title: Chief Financial Officer
Date: _____

Name: _____
Title: _____
Date: _____

Internal Bank – Internal Borrowing Program

Loan Term Sheet

Loan Information	
Project Title	North Dry Gulch
Borrower	Stormwater Fund, City of Lakewood

Loan Terms	
Loan Type	20 Year, Fixed Rate Loan
Interest Rate	2%
Loan Start Date	January 1st, 2026
First Payment Date	December 31st, 2026
Loan Maturity Date	December 31st, 2045
Payment Frequency	Annually
Capitalization of Interest	
Loan Amount Requested	\$19,682,727
Cost of Issuance	\$0
Total Loan Amount	\$19,682,727

Loan Conditions	
Collateral Requirements	N/A
Other Conditions	N/A



Internal Borrowing Program Loan

Repayment Schedule

Debt Schedule @ 2% For 20 Years					
Period Ending	Principal	Interest	Coupon	Total	Remaining Principal Balance
12/31/2025			2.00%		19,682,727
12/31/2026	810,076	393,655	2.00%	1,203,731	18,872,651
12/31/2027	826,278	377,453	2.00%	1,203,731	18,046,373
12/31/2028	842,804	360,927	2.00%	1,203,731	17,203,569
12/31/2029	859,660	344,071	2.00%	1,203,731	16,343,909
12/31/2030	876,853	326,878	2.00%	1,203,731	15,467,057
12/31/2031	894,390	309,341	2.00%	1,203,731	14,572,667
12/31/2032	912,278	291,453	2.00%	1,203,731	13,660,389
12/31/2033	930,523	273,208	2.00%	1,203,731	12,729,866
12/31/2034	949,134	254,597	2.00%	1,203,731	11,780,732
12/31/2035	968,116	235,615	2.00%	1,203,731	10,812,616
12/31/2036	987,479	216,252	2.00%	1,203,731	9,825,137
12/31/2037	1,007,228	196,503	2.00%	1,203,731	8,817,909
12/31/2038	1,027,373	176,358	2.00%	1,203,731	7,790,536
12/31/2039	1,047,920	155,811	2.00%	1,203,731	6,742,616
12/31/2040	1,068,879	134,852	2.00%	1,203,731	5,673,737
12/31/2041	1,090,256	113,475	2.00%	1,203,731	4,583,481
12/31/2042	1,112,061	91,670	2.00%	1,203,731	3,471,420
12/31/2043	1,134,303	69,428	2.00%	1,203,731	2,337,117
12/31/2044	1,156,989	46,742	2.00%	1,203,731	1,180,128
12/31/2045	1,180,128	23,603	2.00%	1,203,731	-

Internal Borrowing Program Loan Application

Supporting Information Required with Loan Application:

- I. Project Initiation Form
- II. Project Business Plan/Draw Schedule
- III. Schedule of Cash Flows for Debt Service Payments
- IV. Source and Schedule for Collateral (if Required)

General Information	
Project Title	North Dry Gulch
Borrower	Stormwater Fund, City of Lakewood
Project Description (including use and benefit derived by the University)	
Contact (name, phone, email)	
Submitted by	

Loan Information	
Loan Amount Requested	\$19,682,727
Loan Term Requested	20 Years
Estimated Loan Start Date	1/1/2026
Other Desired Terms Regarding the Treatment of Principal, Interest, or Term	
GL Account string for Principal	
GL Account string for Interest	
Contingency Account for loan deficits	

Supporting Information	
If any of the supporting information requested above is not being provided, please explain why and provide similar info to the extent possible.	

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 17

To: Mayor and City Council
From: Phillip Smith, Chief of Police
Subject: **Amendments to Chapter 10 of the Lakewood Municipal Code to Comply with Recent State Legislation**

SUMMARY STATEMENT: Recent legislation amending state law has created discrepancies between the Colorado Revised Statutes and the Lakewood Municipal Code. The proposed amendments to the Lakewood Municipal Code contemplated in this ordinance will ensure municipal laws more closely align with state law.

BACKGROUND INFORMATION: This ordinance contemplates revisions and/or amendments to three sections of the Lakewood Municipal Code – 10.60.240, 10.60.210, 10.60.190 – which respectively address: (1) misuse of a mobile electronic device, (2) use of earphones while driving and (3) required child restraint systems. Recent legislation adopted amendments to the laws governing the use of mobile electronic devices while driving and to the age and weight restrictions regarding child restraint systems; there have not been recent changes to state law regulating the use of earphones while driving, but the mobile electronic device statute references and incorporates the earphone statute which is less restrictive than the Lakewood Municipal code counterpart.

The following state laws were adopted with the described updates:

SB2024-065: Mobile electronic devices and motor vehicle driving

- Extends the prohibition on persons under 18 using wireless telephones to *all* persons over 18 also; updates the term "wireless telephone" to "mobile electronic device." To cite an individual for a violation, a law enforcement officer must see the individual use a mobile electronic device in a manner that caused the individual to drive in a careless and imprudent manner.
- The following uses of mobile electronic devices are exempted:
 - By an individual contacting a public safety entity;
 - By an individual during an emergency;
 - By an employee or contractor of a utility when responding to a utility emergency;
 - By an employee or city/county contractor acting within the scope of duties as a code enforcement/animal protection officer; or
 - By a first responder.
 - When motor vehicles are at rest on the shoulder or lawfully parked.
 - Does not apply to an individual with a commercial motor vehicle ("CDL") operating a commercial vehicle.
- Establishes schedule of penalties/fines
- Provides that a violation will be dismissed if the individual produces proof of purchase of a hands-free accessory and affirms, under penalty of perjury, that they have not previously claimed this option to dismiss.
- This state law became effective August 7, 2024; January 1, 2025, for offenses occurring on or after this date.

HB24-1055: Child passenger safety and education

- Changes to existing law on child restraint requirements:
 - Increases required age for child restraint system from under 8yrs to under 9yrs.
 - Increases the age from under 1yr to under 2yrs, and the weight, from under 20lbs to under 40lbs, of children who must be restrained in a rear-facing child restraint system in a rear seat of the vehicle.
 - Requires that children who are under 2yrs but over 40lbs be restrained in a rear-facing or forward-facing restraint system.
 - Increases the age from 1yr+ to 2yrs+ (but less than 4yrs), of children who must be restrained in a rear/forward facing child restraint system, depending on child's weight, in a rear seat of the vehicle, if a rear seat is available.
 - Adds the requirement that children who are at least 4yrs but under 9yrs and who weigh at least 40lbs use a child restraint system or booster seat, which must be in a rear seat of the vehicle, if a rear seat is available.
 - Increases the age at which children must be restrained in a safety belt or child restraint system from under 16yrs to under 18yrs.
- Effective January 1, 2025

The proposed revisions in this ordinance amend the existing Lakewood Municipal Code on these issues to align with the state law as described above. Regarding the use of earphones while driving, both the state law on electronic mobile devices and the existing Lakewood Municipal Code regulating wireless phones incorporate laws governing the use of earphones. Under current state law, an individual may use earphones that cover only one or part of one ear; Lakewood Municipal Code is more restrictive and does not permit the use of earphones while driving. The proposed change would amend Lakewood Municipal Code to mirror that of the Colorado Revised Statutes.

BUDGETARY IMPACTS: Adopting this ordinance is not expected to impact the budget.

STAFF RECOMMENDATIONS: Staff recommends that the City of Lakewood adopt the proposed ordinance.

ALTERNATIVES: If the City Council chooses not to approve the revisions to Chapter 10 of the Lakewood Municipal Code, the provisions governing the use of wireless phones, use of earphones while driving and the requirements for the use of child restraint systems would remain as currently written and would conflict with state law.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If adopted by the Council, staff will implement the enforcement of these code revisions, once the ordinance take effect thirty days after final publication.

ATTACHMENTS:

1. Ordinance O-2025-11
2. Ordinance O-2025-11_Redline

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

AN ORDINANCE

AMENDING TITLE 10 OF THE MUNICIPAL CODE TO ALIGN WITH RECENT STATE LEGISLATION ON USE OF ELECTRONIC MOBILE DEVICES AND CHILD RESTRAINT SYSTEMS

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

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce criminal laws through a municipal court is clearly within the Constitutional grant of power to the City and is necessary and proper for the government and administration of local and municipal matters relating to the City;

WHEREAS, pursuant to such authority, the City has created a municipal court and adopted and enacted criminal codes whose enforcement is administered through the municipal court;

WHEREAS, the City prosecutes traffic offenses;

WHEREAS, the State of Colorado has enacted legislation amending the laws related to use of electronic mobile devices while driving and requirements for child restraint systems;

WHEREAS, the City desires to amend its Code to conform with recently passed State laws and those laws referenced therein;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Amending Section 10.60 of the Lakewood Municipal Code.
10.60.240 of the Lakewood Municipal Code shall be amended as follows:

~~10.60.240 - Misuse of a wireless telephone.~~ Misuse of a mobile electronic device.

- A. ~~A person under 18 years of age shall not use a wireless telephone.~~ No person shall use a mobile electronic device while operating a motor vehicle. This subsection does not apply to acts specified in subsection (B) of this section.
- B. ~~A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle.~~ Subsection (A) shall not apply to a person who is using a mobile electronic device:

1. To contact a public safety entity;
 2. During an emergency;
 3. When an employee or contractor of a utility is acting within the scope of the employee's or contractor's duties when responding to a utility emergency;
 4. When an employee or contractor of a city or county is acting within the scope of the employee's or contractor's duties as a code enforcement officer or animal protection officer; or
 5. During the performance of a first responder's official duties.
- C. ~~Subsection (A) or (B) shall not apply to a person who is using a wireless telephone: (1) to contact a public safety entity; or (2) during an emergency.~~ Except as provided in subsection (E) of this section, a person who violates this section commits a class 3 traffic offense, and the court shall assess a penalty as follows:
1. A fine of seventy-five dollars and a surcharge of ten dollars for the first offense within the immediately preceding twenty-four months;
 2. A fine of one hundred fifty dollars and a surcharge of ten dollars for the second offense within the immediately preceding twenty-four months;
 3. A fine of two hundred fifty dollars and a surcharge of ten dollars for the third or subsequent offense within the immediately preceding twenty-four months.
- D. ~~A person who operates a motor vehicle in violation of subsection (A) commits a Class 3 traffic offense. A person who operates a motor vehicle in violation of subsection (B) of this section commits a Class 2 traffic offense.~~ For purposes of this section:
1. "Emergency" is defined as a situation in which a person:
 - a. Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a mobile electronic device while driving a motor vehicle; or
 - b. Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or unsafe manner.

2. "Hands-free accessory" means an accessory with a feature or function that enables a person to use a mobile electronic device without using either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.
3. "Mobile electronic device" means a handheld or portable electronic device capable of providing voice communication between two or more persons, amusement, or the wireless transfer of data, but does not include:
 - a. A radio, citizens band radio, or citizens band radio hybrid;
 - b. A commercial two-way radio communication device or its functional equivalent;
 - c. A subscription-based emergency communication device;
 - d. A prescribed medical device;
 - e. An amateur or ham radio device; or
 - f. Systems that are designed for and installed within the vehicle's electronics, such as an in-vehicle security, navigation, communications, or remote diagnostics system.
4. "Operating a motor vehicle" means driving a motor vehicle on a public highway or street. "Operating a motor vehicle" shall not mean maintaining the instruments of control of a motor vehicle while the motor vehicle is at rest in a shoulder lane or lawfully parked.
5. "Use" or "using" means:
 - a. Physically holding a mobile electronic device in the driver's hand or pinning a mobile electronic device to a driver's ear to conduct voice-based communication; except that a person may use a speaker or other listening device that is built into protective headgear or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone as provided in section 10.60.210;
 - b. Watching a video or movie on a mobile electronic device, other than watching data related to the navigation of the motor vehicle; or
 - c. Writing, sending, or reading text-based communication, including a text message, instant message, e-mail, or internet data, on a mobile electronic device; except that text-based communication does not include:
 - i. A voice-based communication that is automatically converted by the mobile electronic device to be sent as a message in written form; or
 - ii. Communication concerning the navigation of a motor vehicle.

E. For purposes of this section:

1. ~~"Emergency" is defined as a situation in which a person:~~
 - a. ~~Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a wireless telephone while the car is moving; or~~
 - b. ~~Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.~~
 2. ~~"Operating a motor vehicle" means driving a motor vehicle on a public highway, but "operating a motor vehicle" shall not mean maintain the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked.~~
 3. ~~"Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission.~~
 4. ~~"Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones. An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless a law enforcement officer saw the operator use, as defined in paragraph (5) of subsection (D) of this section, a mobile electronic device in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by section 10.18.020.~~
- F.
1. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless the operator was under 18 years of age and a law enforcement officer saw the operator use, as defined in paragraph (3) of subsection (E) of this section, a wireless telephone.~~
 2. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (B) of this section unless a law enforcement officer saw the operator use a wireless telephone for the purpose or engaging in text messaging or other forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 10.18.020. The provisions of this section do not authorize the seizure and forfeiture of a mobile electronic device, unless otherwise provided by law.~~
- G. The provisions of this section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law. do not apply to a person with a commercial driver's license who is operating a commercial vehicle.

- H. ~~This section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.~~

10.60.210 of the Lakewood Municipal Code shall be amended as follows:

10.60.210 - Use of earphones while driving.

- A. No person shall operate a motor vehicle while wearing earphones.
- B. For purposes of subsection (A), "earphones" includes any headset, radio, tape player, or other similar device, which provides the listener with radio programs, music, or other recorded information through a device attached to the head and which covers all of or a portion of the ears. "Earphones" does not include speakers or other listening devices which are built into protective headgear or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone.
- C. Any person who violates this section commits a Class 4 traffic offense.

10.60.190 of the Lakewood Municipal Code shall be amended as follows:

10.60.190 - Child restraint system required.

- A. As used in this section, unless the context otherwise requires:

1. "Child care center" means a facility required to be licensed under the ~~"Child Care Licensing Act," Article 6 of Title 26, C.R.S~~ "Foster Care, Residential, Day Treatment, and Agency Licensing Act," part 9 of article 6 of title 26, or the "Child Care Licensing Act," part 3 of article 5 of title 26.5.
2. "Child restraint system" means a specially designed seating system that is designed to protect, hold, or restrain a child in a motor vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident that is either permanently affixed to a motor vehicle or is affixed to such vehicle by a safety belt or a universal attachment system, and that meets the federal motor vehicle safety standards set forth in Section 49 CFR 571.213, as amended.
3. "Motor vehicle" means a passenger car; a pickup truck; or a van, minivan, or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds. "Motor vehicle" does not include motorcycles that are not autocycles low-power scooters, ~~motorscooters, motorbicycles, motorized bicycles,~~ and farm tractors and implements of husbandry deigned primarily or exclusively for use in agricultural operations.

4. "Safety belt" means a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, except any such belt which is physically a part of a child restraint system. "Safety belt" includes the anchorages, the buckles and all other equipment directly related to the operation of safety belts. Proper use of a safety belt means the shoulder belt, if present, crosses the shoulder and chest and the lap belt crosses the hips, touching the thighs.
5. "Seating position" means any motor vehicle interior space intended by the motor vehicle manufacturer to provide seating accommodations while the motor vehicle is in motion.

B.

1. Unless exempted pursuant to subsection (C) of this section, and except as otherwise provided in subparagraphs ~~(a) and (b)~~ (a), (b), and (c) of this paragraph, every child, who is under ~~eight~~ nine years of age and who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a child restraint system, according to the manufacturer's instructions.
 - a. If the child is ~~less than one year of age and weighs less than 20 pounds, the child shall be properly restrained in a rear-facing child restraint system in a rear seat of the vehicle.~~ under two years of age, the child shall be properly restrained in a rear seat of the vehicle, if a rear seat is available, and:
 - i. In a rear-facing child restraint system if the child weighs under forty pounds; or
 - ii. In a rear-facing or forward-facing child restraint system if the child weighs forty pounds or more.
 - b. If the child is ~~one year of age or older, but less than four years of age, and weighs less than 40 pounds, but at least 20 pounds, the child shall be properly restrained in a rear-facing or forward-facing child restraint system.~~ two years of age or older, but under four years of age, and weighs at least twenty pounds, the child shall be properly restrained:
 - i. In a rear-facing or forward-facing child restraint system; and
 - ii. In the rear seat of a vehicle, if a rear seat is available.
 - c. If the child is four years of age or older, but under nine years of age, and weighs at least forty pounds, the child shall be properly restrained:
 - i. In a child restraint system or booster seat; and
 - ii. In the rear seat of a vehicle, if a rear seat is available.

2. Unless excepted pursuant to subsection (C) of this section, every child, who is at least ~~eight~~ nine years of age but ~~less than 16~~ under 18 years of age who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a safety belt or child restraint system according to the manufacturer's instructions.
 3. If a parent is in the motor vehicle, it is the responsibility of the parent to ensure that his or her child or children are provided with and that they properly use a child restraint system or safety belt system. If a parent is not in the motor vehicle, it is the responsibility of the driver transporting a child or children, subject to the requirements of this section, to ensure that such children are provided with and that they properly use a child restraint system or safety belt system.
- C. Except as provided in Section 42-2-105.5(4), C.R.S., subsection (B) of this section does not apply to a child who:
1. Is ~~less than eight~~ under nine years of age and is being transported in a motor vehicle as a result of a medical or other life-threatening emergency and a child restraint system is not available;
 2. Is being transported in a commercial motor vehicle as defined in Section 42-2-402(4)(a), C.R.S., that is operated by a child care center;
 3. Is the driver of a motor vehicle and is subject to the safety belt requirements provided in Section 42-4-237, C.R.S.; or
 4. Is being transported in a motor vehicle that is operated by the business of transporting persons for compensation or hire by or on behalf of a common carrier or a contract carrier as those terms are defined in Section 40-10.1-101, C.R.S., or an operator of a luxury limousine service as defined in Section 40-10.1-301, C.R.S.
- D. No person shall use a safety belt or child restraint system, whichever is applicable under the provisions of this section, for children under 16 years of age in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.
- E. Any person who violates any provision of this section commits a Class 4 traffic offense.
- F. The fine may be waived if the defendant presents the court with satisfactory evidence of the acquisition, purchase, or rental of a child restraint system by the time of the court appearance.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of February, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of February, 2025; set for public hearing to be held on the 24th day of March, 2025; read, finally passed and adopted by the City Council on the 24th day of March, 2025; and signed by the Mayor on the ____ day of March, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

AN ORDINANCE

AMENDING TITLE 10 OF THE MUNICIPAL CODE TO ALIGN WITH RECENT STATE LEGISLATION ON USE OF ELECTRONIC MOBILE DEVICES AND CHILD RESTRAINT SYSTEMS

WHEREAS, the City of Lakewood (“Lakewood” or “City”) is a home rule municipality organized and existing under Article XX, Section 6 of the Colorado Constitution;

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce criminal laws through a municipal court is clearly within the Constitutional grant of power to the City and is necessary and proper for the government and administration of local and municipal matters relating to the City;

WHEREAS, pursuant to such authority, the City has created a municipal court and adopted and enacted criminal codes whose enforcement is administered through the municipal court;

WHEREAS, the City prosecutes traffic offenses;

WHEREAS, the State of Colorado has enacted legislation amending the laws related to use of electronic mobile devices while driving and requirements for child restraint systems;

WHEREAS, the City desires to amend its Code to conform with recently passed State laws and those laws referenced therein;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Amending Section 10.60 of the Lakewood Municipal Code. 10.60.240 of the Lakewood Municipal Code shall be amended as follows:

10.60.240 - ~~Misuse of a wireless telephone.~~ Misuse of a mobile electronic device.

- A. ~~A person under 18 years of age shall not use a wireless telephone~~ **No person shall use a mobile electronic device** while operating a motor vehicle. This subsection does not apply to acts specified in subsection (B) of this section.
- B. ~~A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle.~~ **Subsection (A) shall not apply to a person who is using a mobile electronic device:**

1. To contact a public safety entity;

2. During an emergency;

3. When an employee or contractor of a utility is acting within the scope of the employee's or contractor's duties when responding to a utility emergency;
 4. When an employee or contractor of a city or county is acting within the scope of the employee's or contractor's duties as a code enforcement officer or animal protection officer; or
 5. During the performance of a first responder's official duties.
- C. ~~Subsection (A) or (B) shall not apply to a person who is using a wireless telephone: (1) to contact a public safety entity; or (2) during an emergency.~~ Except as provided in subsection (E) of this section, a person who violates this section commits a class 3 traffic offense, and the court shall assess a penalty as follows:
1. A fine of seventy-five dollars and a surcharge of ten dollars for the first offense within the immediately preceding twenty-four months;
 2. A fine of one hundred fifty dollars and a surcharge of ten dollars for the second offense within the immediately preceding twenty-four months;
 3. A fine of two hundred fifty dollars and a surcharge of ten dollars for the third or subsequent offense within the immediately preceding twenty-four months.
- D. ~~A person who operates a motor vehicle in violation of subsection (A) commits a Class 3 traffic offense. A person who operates a motor vehicle in violation of subsection (B) of this section commits a Class 2 traffic offense.~~ For purposes of this section:
1. "Emergency" is defined as a situation in which a person:
 - a. Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a mobile electronic device while driving a motor vehicle; or
 - b. Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or unsafe manner.
 2. "Hands-free accessory" means an accessory with a feature or function that enables a person to use a mobile electronic device without using either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

3. "Mobile electronic device" means a handheld or portable electronic device capable of providing voice communication between two or more persons, amusement, or the wireless transfer of data, but does not include:
 - a. A radio, citizens band radio, or citizens band radio hybrid;
 - b. A commercial two-way radio communication device or its functional equivalent;
 - c. A subscription-based emergency communication device;
 - d. A prescribed medical device;
 - e. An amateur or ham radio device; or
 - f. Systems that are designed for and installed within the vehicle's electronics, such as an in-vehicle security, navigation, communications, or remote diagnostics system.
 4. "Operating a motor vehicle" means driving a motor vehicle on a public highway or street. "Operating a motor vehicle" shall not mean maintaining the instruments of control of a motor vehicle while the motor vehicle is at rest in a shoulder lane or lawfully parked.
 5. "Use" or "using" means:
 - a. Physically holding a mobile electronic device in the driver's hand or pinning a mobile electronic device to a driver's ear to conduct voice-based communication; except that a person may use a speaker or other listening device that is built into protective headgear or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone as provided in section 10.60.210;
 - b. Watching a video or movie on a mobile electronic device, other than watching data related to the navigation of the motor vehicle; or
 - c. Writing, sending, or reading text-based communication, including a text message, instant message, e-mail, or internet data, on a mobile electronic device; except that text-based communication does not include:
 - i. A voice-based communication that is automatically converted by the mobile electronic device to be sent as a message in written form; or
 - ii. Communication concerning the navigation of a motor vehicle.
- E. For purposes of this section:
1. ~~"Emergency" is defined as a situation in which a person:~~
 - a. ~~Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a wireless telephone while the car is moving; or~~
 - b. ~~Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.~~

2. ~~"Operating a motor vehicle" means driving a motor vehicle on a public highway, but "operating a motor vehicle" shall not mean maintain the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked.~~
3. ~~"Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission.~~
4. ~~"Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones.~~ **An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless a law enforcement officer saw the operator use, as defined in paragraph (5) of subsection (D) of this section, a mobile electronic device in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by section 10.18.020.**

F.

1. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless the operator was under 18 years of age and a law enforcement officer saw the operator use, as defined in paragraph (3) of subsection (E) of this section, a wireless telephone.~~
2. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (B) of this section unless a law enforcement officer saw the operator use a wireless telephone for the purpose or engaging in text messaging or other forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 10.18.020.~~ **The provisions of this section do not authorize the seizure and forfeiture of a mobile electronic device, unless otherwise provided by law.**

G. ~~The provisions of this section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law.~~ **do not apply to a person with a commercial driver's license who is operating a commercial vehicle.**

H. ~~This section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.~~

10.60.210 of the Lakewood Municipal Code shall be amended as follows:

10.60.210 - Use of earphones while driving.

- A. No person shall operate a motor vehicle while wearing earphones.
- B. For purposes of subsection (A), "earphones" includes any headset, radio, tape player, or other similar device, which provides the listener with radio programs, music, or other recorded information through a device attached to the head and which covers all of or a portion of the ears. "Earphones" does not include speakers or other listening devices which are built into protective headgear **or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone.**
- C. Any person who violates this section commits a Class 4 traffic offense.

10.60.190 of the Lakewood Municipal Code shall be amended as follows:

10.60.190 - Child restraint system required.

- A. As used in this section, unless the context otherwise requires:
 - 1. "Child care center" means a facility required to be licensed under the ~~"Child Care Licensing Act," Article 6 of Title 26, C.R.S.~~ **"Foster Care, Residential, Day Treatment, and Agency Licensing Act," part 9 of article 6 of title 26, or the "Child Care Licensing Act," part 3 of article 5 of title 26.5.**
 - 2. "Child restraint system" means a specially designed seating system that is designed to protect, hold, or restrain a child in a motor vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident that is either permanently affixed to a motor vehicle or is affixed to such vehicle by a safety belt or a universal attachment system, and that meets the federal motor vehicle safety standards set forth in Section 49 CFR 571.213, as amended.
 - 3. "Motor vehicle" means a passenger car; a pickup truck; or a van, minivan, or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds. "Motor vehicle" does not include motorcycles that are not autocycles low-power scooters, ~~motorsecooters, motorbicycles, motorized bieceles,~~ and farm tractors and implements of husbandry deigned primarily or exclusively for use in agricultural operations.
 - 4. "Safety belt" means a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, except any such belt which is physically a part of a child restraint system. "Safety belt" includes the anchorages, the buckles and all other equipment directly related to the operation of safety belts. Proper use of a safety belt means the shoulder belt, if present, crosses the shoulder and chest and the lap belt crosses the hips, touching the thighs.

5. "Seating position" means any motor vehicle interior space intended by the motor vehicle manufacturer to provide seating accommodations while the motor vehicle is in motion.

B.

1. Unless exempted pursuant to subsection (C) of this section, and except as otherwise provided in subparagraphs (a) and (b) of this paragraph, every child, who is under ~~eight~~ **nine** years of age and who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a child restraint system, according to the manufacturer's instructions.
 - a. ~~If the child is less than one year of age and weighs less than 20 pounds, the child shall be properly restrained in a rear-facing child restraint system in a rear seat of the vehicle.~~ **under two years of age, the child shall be properly restrained in a rear seat of the vehicle, if a rear seat is available, and:**
 - i. **In a rear-facing child restraint system if the child weighs under forty pounds; or**
 - ii. **In a rear-facing or forward-facing child restraint system if the child weighs forty pounds or more.**
 - b. ~~If the child is one year of age or older, but less than four years of age, and weighs less than 40 pounds, but at least 20 pounds, the child shall be properly restrained in a rear-facing or forward-facing child restraint system.~~ **two years of age or older, but under four years of age, and weighs at least twenty pounds, the child shall be properly restrained:**
 - i. **In a rear-facing or forward-facing child restraint system; and**
 - ii. **In the rear seat of a vehicle, if a rear seat is available.**
 - c. **If the child is four years of age or older, but under nine years of age, and weighs at least forty pounds, the child shall be properly restrained:**
 - i. **In a child restraint system or booster seat; and**
 - ii. **In the rear seat of a vehicle, if a rear seat is available.**
2. Unless excepted pursuant to subsection (C) of this section, every child, who is at least ~~eight~~ **nine** years of age but ~~less than 16~~ **under 18** years of age who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a safety belt or child restraint system according to the manufacturer's instructions.
3. If a parent is in the motor vehicle, it is the responsibility of the parent to ensure that his or her child or children are provided with and that they properly use a child restraint system or safety belt system. If a parent is not in the motor vehicle, it is the responsibility of the driver transporting a child or children, subject to the requirements of this section, to ensure that such children are

provided with and that they properly use a child restraint system or safety belt system.

- C. Except as provided in Section 42-2-105.5(4), C.R.S., subsection (B) of this section does not apply to a child who:
1. Is ~~less than eight~~ **under nine** years of age and is being transported in a motor vehicle as a result of a medical or other life-threatening emergency and a child restraint system is not available;
 2. Is being transported in a commercial motor vehicle as defined in Section 42-2-402(4)(a), C.R.S., that is operated by a child care center;
 3. Is the driver of a motor vehicle and is subject to the safety belt requirements provided in Section 42-4-237, C.R.S.; or
 4. Is being transported in a motor vehicle that is operated by the business of transporting persons for compensation or hire by or on behalf of a common carrier or a contract carrier as those terms are defined in Section 40-10.1-101, C.R.S., or an operator of a luxury limousine service as defined in Section 40-10.1-301, C.R.S.
- D. No person shall use a safety belt or child restraint system, whichever is applicable under the provisions of this section, for children under 16 years of age in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.
- E. Any person who violates any provision of this section commits a Class 4 traffic offense.
- F. The fine may be waived if the defendant presents the court with satisfactory evidence of the acquisition, purchase, or rental of a child restraint system by the time of the court appearance.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of

this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of February, 2025; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the ____ day of _____, 2025; read, finally passed and adopted by the City Council on the ____ day of _____, 205; and signed by the Mayor on the ____ day _____ of _____, 2025.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: MARCH 24, 2025 / AGENDA ITEM NO. 18

To: Mayor and City Council

From:

Subject:

SUMMARY STATEMENT:

BACKGROUND INFORMATION:

BUDGETARY IMPACTS:

STAFF RECOMMENDATIONS:

ALTERNATIVES:

PUBLIC OUTREACH:

NEXT STEPS:

ATTACHMENTS: None

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney