

AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
FEBRUARY 22, 2021
7:00 P.M.

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

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>

or

Lakewood Speaks: <https://lakewoodspeaks.org/>

Phone Number for Public Comment: 1-669-900-9128

Webinar ID: 964 1044 5595

(press # after entering the webinar id then press # once more to join the meeting)

Press *9 to Request to Speak

(You will be prompted when to speak. After speaking, you can hang up or hold to speak
on a different agenda item)

Press *6 to Unmute

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – 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 5 – EXECUTIVE REPORT

CITY MANAGER

**CONSENT AGENDA
ORDINANCES ON FIRST READING**

(Ordinances are on first reading for notice and publication
only; public hearings are held on second reading)

ITEM 6 – [RESOLUTION 2021-8](#) – ENDORSING THE 2021-2022 HEAD START GRANT APPLICATION FOR THE PURPOSE OF SUBMITTING A REQUEST TO THE FEDERAL GOVERNMENT FOR GRANT FUNDS AVAILABLE TO PROVIDE HEAD START AND EARLY HEAD START PROGRAMS

ITEM 7 – [RESOLUTION 2021-9](#) – AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM QUANTOVATIONS, L.L.C, FOR OPEN SPACE AND PARK PURPOSES, INCLUDING ACCEPTANCE OF A DEED THEREFOR

ITEM 8 – [ORDINANCE O-2021-2](#) – AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

ITEM 9 – [ORDINANCE O-2021-3](#) – TO REZONE LAND LOCATED AT 8600 & 8650 W. COLFAX AVENUE, LAKEWOOD, CO 80215, COUNTY OF JEFFERSON, STATE OF COLORADO

ITEM 10 – [ORDINANCE O-2021-4](#) – AN ORDINANCE AMENDING TITLE 3 OF THE LAKEWOOD MUNICIPAL CODE TO MODIFY CERTAIN SALES AND USE TAX EXEMPTIONS AND TO ADOPT CERTAIN CHANGES TO SECTIONS 3.03.310 AND 3.01.320 AND CHAPTERS 3.02 AND 3.03 THEREOF

ITEM 11 – [ORDINANCE O-2021-5](#) – AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF \$12,500,000 TO THE 2021 ANNUAL BUDGET AND AUTHORIZING EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO ASSIST THE CITY OF LAKEWOOD IN IMPROVING SAFETY ON COLFAX AVENUE BETWEEN WADSWORTH AND SHERIDAN BOULEVARDS

ITEM 12 – [ORDINANCE O-2021-6](#) – AUTHORIZING SUPPLEMENTAL APPROPRIATIONS TO THE 2021 CITY OF LAKEWOOD ANNUAL BUDGET IN THE AMOUNTS OF \$135,000 AND \$20,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO PROVIDE TRANSPORTATION SERVICES THROUGH THE LAKEWOOD RIDES PROGRAM

ITEM 13 – APPROVING MINUTES OF CITY COUNCIL MEETINGS

City Council Meeting
City Council Meeting
City Council Study Session

[January 11, 2021](#)
[January 25, 2021](#)
[February 1, 2021](#)

ITEM 14 – APPROVING MINUTES OF LAKEWOOD ADVISORY COMMITTEE MEETINGS

LAC Executive Committee Meeting

[January 6, 2021](#)

END OF CONSENT AGENDA

RESOLUTIONS

NONE

ORDINANCES ON SECOND READING AND PUBLIC HEARINGS

NONE

ITEM 15 – GENERAL BUSINESS

MOTION TO EXTEND EMERGENCY DECLARATION: I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL MARCH 22, 2021, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

ITEM 16 – MAYOR AND CITY COUNCIL REPORTS

- A. MAYOR
- B. MAYOR PRO TEM
- C. COUNCIL MEMBERS

ITEM 17 – ADJOURNMENT

STAFF REPORT

DATE OF MEETING: February 22, 2021 / AGENDA ITEM NO. 6

To: Mayor and City Council

From: Kit Newland, Department Director (x7822)

Subject: RESOLUTION ENDORSING THE 2021-2022 HEAD START GRANT APPLICATION FOR THE PURPOSE OF SUBMITTING A REQUEST TO THE FEDERAL GOVERNMENT FOR GRANT FUNDS AVAILABLE TO PROVIDE HEAD START AND EARLY HEAD START PROGRAMS

SUMMARY STATEMENT: The Family Services Division within the Community Resources Department requests permission to apply for Head Start funding in the amount of \$1,386,197 to continue offering Head Start programs to income-qualifying families in Lakewood.

BACKGROUND INFORMATION: The City of Lakewood has offered Head Start classes through a grant from the Office of Head Start since 1979. Grant funding is awarded for a five-year period, but grantees are required to resubmit an application each year during that period to ensure they still meet the eligibility criteria. The 2021-2022 school year is year two of the City's most recent grant period, and the requested amount will cover operating expenses from July 1, 2021, through June 30, 2022.

BUDGETARY IMPACTS: If approved, the City would accept \$1,386,197 from the Office of Head Start to provide programming specifically to Lakewood residents.

STAFF RECOMMENDATIONS: Staff recommends approving the attached resolution thereby allowing staff to proceed with the grant application for the 2021-2022 school year.

ALTERNATIVES: City Council could deny approval which would mean the City will no longer be able to offer Head Start programs in Lakewood or would need to find alternative funding to cover program expenses.

PUBLIC OUTREACH: The Head Start Policy Council consisting of parent representatives from each school, as well as Early Head Start parents, and the Head Start Advisory Committee have reviewed the information provided and support staff moving forward with the Head Start grant application.

NEXT STEPS: Pending approval, Family Services Division staff will complete the grant application and submit it to the Office of Head Start by the April 1, 2021 deadline.

ATTACHMENTS: Resolution 2021-8
2021-2022 Head Start Budget and Funding Guidance Letter

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

2021-8

A RESOLUTION

ENDORSING THE 2021-2022 HEAD START GRANT APPLICATION FOR THE PURPOSE OF SUBMITTING A REQUEST TO THE FEDERAL GOVERNMENT FOR GRANT FUNDS AVAILABLE TO PROVIDE HEAD START AND EARLY HEAD START PROGRAMS

WHEREAS, the City of Lakewood (the "City") is a provider of the Federal Head Start program to qualifying Lakewood children;

WHEREAS, Head Start funds are appropriated by the U.S. Administration of Children and Families, Office of Head Start (the "Head Start Office");

WHEREAS, the City's Mayor or designee, as the City's official representative, is authorized to submit documents and assurances as required to administer the programs and expend Head Start funds;

WHEREAS, the Lakewood City Council (the "City Council") has reviewed the City's 2021-2022 Grant application (the "Head Start Grant Application") presented to the appointed Head Start Advisory Committee and the program budget; and

WHEREAS, the City Council hereby finds and determines that endorsing the City's 2021-2022 Head Start Grant Application is in the best interest 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 endorses the City's 2021-2022 Head Start Grant Application in the amount of One Million Three Hundred Eighty-six Thousand One Hundred Ninety-seven Dollars (\$1,386,197).

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

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the City Council on February 22, 2021, at 7 o'clock p.m.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Head Start | 330 C St., SW, 4th Floor, Washington DC 20201 | eclkc.ohs.acf.hhs.gov

December 16, 2020

Grant No. 08CH011641

Dear Head Start Grantee:

A grant application must be completed for the upcoming budget period. The application for the Head Start grant is due April 1, 2021.

The following table reflects the annual funding and enrollment levels for Fiscal Year 2021.

Funding Type	Head Start	Early Head Start
Program Operations	\$1,167,130	\$201,876
Training and Technical Assistance	\$12,999	\$4,192
Total Funding		\$1,386,197

Program	Head Start	Early Head Start
Federal Funded Enrollment	90	20

Period of Funding: 07/01/2021 - 06/30/2022

Application Submission Requirements

The application must be prepared and submitted in accordance with the *Head Start Grant Application Instructions with Guidance, Version 3 (Application Instructions)* for a continuation application. It must be submitted on behalf of the Authorizing Official registered in the HSES.

The *Application Instructions* are available on the home page of HSES. Please review the instructions carefully prior to preparing the application. Submission guidance can be found in the "Instructions" section of the HSES.

Incomplete applications will not be processed.

Please ensure the application contains all of the required information. For additional questions or guidance regarding the application instructions, please contact Rebecca Wilson, Head Start Program Specialist, at 303-844-1199 or rebecca.wilson@acf.hhs.gov or Marilyn Carlino, Grants Management Specialist, at 303-844-1247 or marilyn.carlino@acf.hhs.gov.

For technical assistance in submitting the application in HSES, contact the Help Desk at help@hsesinfo.org or 1-866-771-4737.

Funding is contingent upon the availability of federal funds and satisfactory performance under the terms and conditions of the current award, including the submission of all required financial and real property reports.

Enrollment and funding levels are subject to change prior to or during the period of funding for failure to comply with the terms and conditions of the award, including the full enrollment initiative.

Sincerely,

/Cheryl Lutz/

Cheryl Lutz
Regional Program Manager
Office of Head Start

STAFF MEMO

DATE OF COUNCIL MEETING: February 22, 2021/ AGENDA ITEM NO. 7

To: Mayor and City Council

From: Kit Newland, Director Department of Community Resources, 303-987-7822

Subject: **A Resolution Authorizing the Purchase of Real Property from Quantovations, L.L.C., for Open Space and Park Purposes, Including Acceptance of a Deed Therefor**

SUMMARY STATEMENT: A resolution declaring the intent to purchase of 6.92 acres of land adjacent to the Bear Creek Greenbelt from Quantovations, L.L.C., for open space and park purposes.

BACKGROUND INFORMATION: The City of Lakewood has been acquiring land along Bear Creek since 1974 to preserve the flood plain, protect wildlife habitat and provide recreational opportunities to the Lakewood Community. Most of the desired acquisitions have been accomplished, with a few remaining opportunities.

The Quantovations acquisition is one of the remaining opportunities. This parcel is the remainder of an earlier acquisition where the then-landowner had desired to keep a portion of the property for their residence. It has since changed hands several times and is currently available for acquisition.

The Bear Creek Greenbelt improvement project, www.LakewoodTogether.org/BearCreekTrail, identified this parcel as an opportunity to remedy trail issues that impact safety along the heavily used and popular Bear Creek Trail.

The Department of Community Resources has been in negotiations with the current property owner for several months and believes the terms of the purchase are in the best interest of the City.

BUDGETARY IMPACTS: The City Council has appropriated \$8,500,000 for park acquisitions from the first installment of TABOR refund recaptures.

Plans for the use of the property will require removal of structures and other site clean-up. There will also be costs associated with the construction of improvements. These costs will be covered by the funds budgeted for the Bear Creek Greenbelt improvement project.

Ongoing maintenance will be minimal following construction and will include mowing, snow removal and enforcement activities aligning with the adjacent Bear Creek Greenbelt.

STAFF RECOMMENDATIONS: The Department of Community Resources recommends the adoption of the attached resolution and approval for acquisition of this parcel of land for open space or park property.

ALTERNATIVES: The alternative to this proposal would be to let the property be sold to a private entity. The current owner is not interested in selling the property in pieces. The property is currently zoned R-1-43, One Acre Lot-Residential.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels for an item coming before City Council.

NEXT STEPS: Upon adoption of the resolution, the City will proceed with the acquisition of the property and begin plans for clearing and development of trails.

ATTACHMENTS: Resolution 2021-9
Site map

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

2021-9

A RESOLUTION

AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM QUANTOVATIONS, L.L.C., FOR OPEN SPACE AND PARK PURPOSES, INCLUDING ACCEPTANCE OF A DEED THEREFOR

WHEREAS, the City of Lakewood (the "City") desires to purchase approximately 6.92 acres of land generally located in the southeast quarter of the northwest quarter of Section 34, Township 4 South, Range 69 West of the 6th P.M., County of Jefferson, State of Colorado, and as generally depicted in Exhibit "A" attached hereto (the "Property"), for the purpose of preserving the Property for open space and park purposes;

WHEREAS, the City will acquire the Property in accordance with the terms of that certain Purchase and Sale Agreement between the City and Quantovations, L.L.C. (the "Purchase Agreement");

WHEREAS, the City has unallocated balances in the TABOR Fund for park and open space acquisition, and the City Council desires to authorize expenditures therefrom to purchase the Property;

WHEREAS, the purchase price for the Property is not to exceed One Million Seven Hundred Forty-five Thousand dollars (\$1,745,000);

WHEREAS, City staff has performed a "due diligence" inspection of the Property that includes a title commitment, survey, environmental reports and an appraisal, and the City Attorney's Office will review and approve the Purchase Agreement as to form; and

WHEREAS, the City Council hereby finds and determines that authorizing the purchase of the Property using funds from the TABOR Fund for park and open space acquisition is and shall be in the best interest 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 of the City of Lakewood hereby declares its intent to purchase the Property in fee simple for open space and park purposes.

SECTION 2. The City Council hereby finds that the purchase of the Property will serve a public purpose and further the health and welfare of the citizens of Lakewood.

SECTION 3. The City Council hereby authorizes the City Manager or designee to execute the Purchase Agreement and all other documents necessary to facilitate or complete the acquisition of the Property, following the review and approval of all such documents by the City Attorney.

SECTION 4. The City Council hereby authorizes the expenditure of up to One Million Seven Hundred Forty-five Thousand dollars (\$1,745,000) from the TABOR Fund for fiscal year 2021 for the purchase of the Property.

SECTION 5. The City's Chief Financial Officer is hereby authorized and directed to pay amounts not to exceed One Million Seven Hundred Forty-five Thousand dollars (\$1,745,000) for the acquisition of the Property upon receipt of appropriate documentation.

SECTION 6. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ AND ADOPTED, by a vote of __ for and __ against, at a virtual regular meeting of the Lakewood City Council held on _____, 2021, at 7 o'clock p.m.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Allison McKenney Brown, City Attorney



STAFF MEMO

DATE OF MEETING: FEBRUARY 22, 2021 / AGENDA ITEM NO. 8

To: Mayor and City Council

From: Robert Smith, Economic Development Director, 303-987-7732

Subject: **ORDINANCE O-2021-2 SALE OF THE CITY-OWNED WESTLAND TOWN CENTER PARKING LOT TO RCG VENTURES I, LLC PER EXISTING OPTION CONTRACT**

SUMMARY STATEMENT: RCG Ventures, I, LLC (“RCG”), the current owner of the Westland Town Center and successor in interest to all rights and liabilities of the previous owners of such real property, has asked to exercise an option to purchase the Westland Town Center parking lot (“Parking Lot”) from the City for the pre-established price of one million dollars (\$1,000,000).

BACKGROUND INFORMATION: The City of Lakewood (the “City”) acquired by condemnation the 21.54-acre Parking Lot at the Westland Town Center located at 10425-10755 West Colfax Avenue (identified by Parcel ID 39-333-11-002 & 39-334-11-026). In 2016, RCG acquired the Westland Town Center property (identified by Parcel ID 39-334-11-021 & 39-334-11-027), which includes the Lowe’s building and retail strip. The adjacent former Sears property (identified by Parcel ID 39-333-11-003), is now owned by Seritage Growth Properties.

- In the 1960s, the above properties, generally between Colfax & 17th Avenues and Owens & Miller Streets, were developed into the Westland Mall and included some additional retail pad sites.
- For the better part of three decades, the Westland Mall played a top tier role in the commercial success of Lakewood. By the late 1980s/early 1990s, the properties were experiencing greatly declining sales, high vacancy and the deterioration of buildings.
- Because a significant share of the operating revenue of the City at that time was derived from sales tax revenue, the City worked with the owner of the retail center to redevelop the Westland Mall into the Westland Town Center in an effort to restore its status as an economic driver within the City and to avoid the material and adverse negative social and public consequences of allowing the continued deterioration of the property.
- Through eminent domain the City acquired the Parking Lot. While eminent domain does not involve a willing seller, the owners of the Westland Mall agreed not to contest the condemnation action if the compensation to be paid by the City was at least \$5,000,000, and the City agreed to such value contingent upon payments being made in accordance with the completion of critical steps toward redevelopment of the Mall property.
- A Construction, Operation, and Reciprocal Easement Agreement entered into by all owners of real property associated with the redeveloped mall provided that the owners of the adjacent retail property would assume responsibility for the maintenance and insurance of the Parking Lot while the City agreed to never use the property for anything other than public parking.
- For the two decades following, the Westland Town Center again played a significant role in Lakewood’s commercial success. However, by the late 2010s, the property was struggling to maintain commercial viability.

The City entered into numerous agreements with the owners of the retail center to facilitate the redevelopment in the 1990s. Some of those agreements strictly limit the use of the City-owned parcel to a parking lot for the use of the adjacent retail properties. Another one of those agreements was an Option Contract, which gave the owners of the Westland Town Center the option to buy back the Parking Lot from the City for the greater of the remaining balance of the Sales Tax and Revenue Bonds (“Bonds”) or one million dollars (\$1,000,000), whichever is greater. The Bonds (which were issued to finance the acquisition and improvement of the Parking Lot) were paid off in 2012. Therefore, the transfer value of the Parking Lot pursuant to the Option Contract is one million dollars (\$1,000,000). The City has administratively executed various estoppel certificates over the years representing to successors in ownership, including RCG, that the Option Contract was and remains valid.

With their purchase of the Westland Town Center, RCG became the successors in interest to all of the previously executed agreements. RCG has notified the City that it wishes to exercise their rights under Option Contract and reacquire the Parking Lot. By reuniting it with the balance of the Westland Towne Center property the opportunities for re-use or redevelopment of the whole area are greatly enhanced. Despite the commitments made under the Option Contract, to comply with the mandatory provisions of the City’s Charter, transfer of City-owned property requires the approval of the City Council via Ordinance.

BUDGETARY IMPACTS: In alignment with the Option Contract, the City will receive one million dollars (\$1,000,000) for the transfer of the Parking Lot. Additionally, the currently tax-exempt, city-owned property, will generate income to the City when it becomes subject to property tax.

STAFF RECOMMENDATIONS: Staff recommends approving Ordinance O-2021-2

ALTERNATIVES: If this Ordinance is not approved, the transfer back to previous ownership would not take place, and the City would retain ownership of the Parking Lot under the various agreements, requiring the property to be used solely for pedestrian and vehicular access and parking for the Westland Town Center. According to RCG, this would make redevelopment or reuse of the Westland Town Center impractical, and RCG would have to decide whether to accept the Council’s decision or take other action.

PUBLIC OUTREACH: Proper notice of this Council consideration of O-2021-2 was given.

ATTACHMENTS: Ordinance O-2021-2
Parking Lot Option Contract
Property Map

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

AN ORDINANCE

AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

WHEREAS, in the early 1990s, the Westland Mall, located on the north side of Colfax Avenue between Miller and Owens Streets in Lakewood, Colorado (the "Westland Mall"), was suffering from declining sales, high vacancy rates and building deterioration, negatively impacting its ability to generate the funding necessary to pay for the public services required by the Westland Mall;

WHEREAS, the City of Lakewood (the "City") determined the most feasible method to restore economic viability to the Westland Center and the surrounding area was to condemn a parking lot of the mall (the "Westland Parking Lot") as an initial step toward encouraging the owner of Westland Mall to redevelop;

WHEREAS, CenterMark agreed not to contest the condemnation if such lot was valued at \$5,000,000, and City agreed that such monies would be disbursed to CenterMark upon substantial completion of critical steps of the redevelopment project;

WHEREAS, the current owner of the Westland Town Center, RCG Ventures, I, LLC ("RCG"), has notified the City that it would like to reacquire the parking lot in accordance with the terms of a series of agreements approved by administrative staff between 1992 and 1995, including a redevelopment agreement, subsequent amendments to the redevelopment agreement, and an option contract setting forth the terms by which the owner of the Mall could reacquire the Westland Parking Lot;

WHEREAS, pursuant to the §14.3 of the City's home rule charter, any transfer of real property held by the City must be accomplished by ordinance;

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. The transfer of the Westland Parking Lot to RCG for \$1,000,0000, all in accordance with the terms of a 1992 redevelopment agreement, amendments to that agreement, and a 1994 option contract is hereby approved.

SECTION 2. The City Manager is hereby authorized to take all actions necessary to complete the sale of the Westland Parking Lot to RCG.

SECTION 3. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. 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 virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 15th day of March, 2021; read, finally passed and adopted by the City Council on the 15th day of March, 2021; and signed by the Mayor on the ____ day of _____, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

EXHIBIT A

OPTION CONTRACT

THIS OPTION CONTRACT is entered into effective as of the ____ day of _____, 199__, between the City of Lakewood, a municipal corporation of the State of Colorado ("Lakewood") and CenterMark Properties, Inc. a Missouri corporation ("CenterMark").

WITNESSETH:

WHEREAS, Lakewood is the owner of that certain real property located in the City of Lakewood, Colorado as are more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Lakewood Property"); and

WHEREAS, CenterMark is the owner of that certain real property located in the City of Lakewood, Colorado, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Westland Town Center"); and

WHEREAS, Lakewood has acquired the Lakewood Property by eminent domain proceedings;

WHEREAS, Lakewood, CenterMark and Sears Roebuck and Company have entered into a First Amendment to the Amended and Restated Construction, Operating and Reciprocal Easement Agreement (the "First Amendment") pursuant to which, among other things, Lakewood has granted certain rights to the use of the Lakewood Property in consideration for the assumption of certain obligations by CenterMark; and

WHEREAS, CenterMark desires to obtain from Lakewood and Lakewood is willing to grant to CenterMark an option to buy the Lakewood Property from Lakewood on the terms and conditions set forth in this Contract (the "Option").

NOW, THEREFORE, in consideration of the premises and the following mutual covenants and agreements, the parties hereto hereby agree as follows:

ARTICLE I THE OPTION

1.01 **Grant of Option.** Lakewood hereby grants to CenterMark the right and option to purchase the Lakewood Property from Lakewood upon and subject to the terms and conditions set forth in this Contract. The sale of the Lakewood Property shall include the interest of Lakewood as fee simple owner of the Lakewood Property in: (i) any rights-of-way, easements, improvements, structures and other property rights appurtenant to the Lakewood Property, (ii) any right, title and interest in adjoining or adjacent streets, roads, or rights-of-way and vacated alleys, appurtenant to the Lakewood Property, and (iii) any and all contracts rights, agreements, rights of use, permits, licenses or other benefits which are appurtenant to, or for the benefit of, the Lakewood Property.

1.02 **Statement of Intent.** Lakewood and CenterMark expect that the Lakewood Property shall remain the property of the City for the term of this Option and CenterMark has no present intent to exercise the Option.

1.03 **Consideration for Option.** This Option is granted as additional consideration for, and as an inducement to CenterMark to enter into, the First Amendment. Lakewood hereby acknowledges and confesses the adequacy and sufficiency of the consideration received by it for granting the Option.

1.04 **Term and Exercise of Option.** Unless sooner exercised or unless earlier terminated by the other provisions of this Contract, this Contract and the Option to buy the Lakewood Property granted hereby shall terminate at 5:00 p.m. Mountain Standard Time June 15, 2082. At any time prior to expiration of the Option, CenterMark may exercise the Option to purchase the Lakewood Property by delivering written notice of exercise of the Option to Lakewood in accordance with the provisions of Section 9.11 of this Contract. Notwithstanding the preceding sentence, the Option may not be exercised prior to six months following the stated maturity date of the Bonds (as defined in Section 1.05(a) below) unless the City shall have received an opinion, dated the date of the exercise of the Option, of an attorney or firm of attorneys of nationally recognized standing in the field of municipal financing agreed upon by CenterMark and the City, to the effect that exercise of the Option will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. CenterMark shall not exercise the Option if such exercise would cause the interest on the Bonds to lose its exclusion from gross income for federal income purposes.

1.05 **Exercise Price.** The consideration payable by CenterMark to Lakewood shall be the greater of the following:

a. The outstanding principal balance at the time of exercise of the Option of any municipal bonds (the "Bonds") issued by Lakewood to provide the funds required for performance of its obligations to (i) reimburse CenterMark for costs of construction of public improvements on the Lakewood Property and at the Westland Town Center (the "Public Improvements") plus and (ii) finance the cost of acquisition of the Lakewood Property, together with all interest accrued but unpaid under the Bonds and any and all costs and expenses, including attorneys fees reasonably anticipated to be incurred in connection with payment or defeasance of the Bonds, or

b. \$1,000,000.

The parties agree that the initial principal balance of the Bonds will be an amount equal to the actual funding by Lakewood to CenterMark for acquisition of the Public Improvements and the Lakewood Property (anticipated to be approximately \$10,000,000) regardless of whether the actual funding is derived from a larger bond issue or a series of bonds.

ARTICLE II TERMS OF PURCHASE

The following provisions shall apply to the purchase of the Lakewood Property pursuant to this Agreement.

2.01 **Right of Purchase.** On the Closing Date, as hereinafter defined, CenterMark shall purchase from Lakewood, and Lakewood shall sell and convey to CenterMark, the Lakewood Property in accordance with the terms and conditions contained in this Article.

2.02 **Purchase Price.** The purchase price to be paid by CenterMark to Lakewood at closing shall be the price described in Section 1.04 of this Contract.

2.03 **Payment of Purchase Price.** Subject to the full and timely performance by Lakewood hereunder, the purchase price for the Lakewood Property shall be payable to Lakewood by CenterMark on the Closing Date by certified check or cashier's check or wire transfer.

2.04 **Closing and Closing Date.** The transaction shall be closed at the offices of the Title Insurance Company providing title insurance in accordance in Section 3.01 below on or before the expiration of forty-five (45) days after the exercise of the Option by CenterMark as set forth in Section 1.03 above. If the parties are unable to agree on a Closing Date, the Closing Date shall be determined by CenterMark.

ARTICLE III TITLE INFORMATION AND CONVEYANCE

3.01 **Evidence of Title.** On or before thirty (30) days prior to closing, Lakewood shall furnish to CenterMark, at Lakewood's expense, a current commitment for an owner's title insurance policy in an amount equal to the purchase price (the "Title Commitment") from a title insurance company (the "Title Insurance Company") reasonably acceptable to CenterMark. Lakewood shall cause the Title Insurance Company to furnish CenterMark copies of instruments shown of record in the office of the clerk and recorder of Jefferson County, Colorado, as affecting title to the Lakewood property or listed as exceptions to title in the Title Commitment (the "Exceptions"). The Title Commitment, together with any copies of instruments which comprise the Exceptions constitute the title documents (the "Title Documents"). Lakewood shall cause the Title Insurance Company to deliver to CenterMark copies of instruments listed as exceptions no later than five (5) calendar days after CenterMark's receipt of the Title Commitment. Lakewood shall have the title insurance policy delivered to CenterMark as soon as practicable after closing and pay the premium at closing.

3.02 **Title.**

a. **Title Review.** CenterMark shall have the right to inspect the Title Documents. The Title Documents shall be satisfactory to CenterMark in all material respects. If the Title Documents reveal any matters which are objectionable to CenterMark, CenterMark shall notify Lakewood of such objection in writing. Written notice by CenterMark of unmerchantability of title or of any other unsatisfactory title conditions shown by the Title Documents shall be signed by or on behalf of CenterMark and given to Lakewood on or before twenty (20) calendar days after the receipt of Title Documents or within ten (10) calendar days after receipt by CenterMark of any Title Documents or endorsements adding new Exceptions to the Title Commitment together with a copy of the Title Documents adding new Exceptions to title. If Lakewood does not receive CenterMark's notice by the date(s) specified above, CenterMark shall be deemed to have accepted the condition of title as disclosed by the Title Documents as satisfactory.

b. **Matters Not Shown by the Public Records.** Lakewood shall deliver to CenterMark at least twenty (20) days prior to closing, true copies of all leases and surveys in Lakewood's possession pertaining to the Lakewood Property and shall disclose to CenterMark all easements, liens or other title matters not known by the public records of which Lakewood has actual knowledge. CenterMark shall have the right to inspect the Lakewood Property to determine if any third party has any right in the Lakewood Property not shown by the public records (such as an unrecorded easement, unrecorded lease, of boundary line discrepancy). Written notice of any unsatisfactory conditions disclosed by Lakewood or revealed by such inspection shall be signed by or on behalf of CenterMark and given to the Seller on or before five (5) days prior to closing. If Lakewood does not receive CenterMark's notice by said date, CenterMark shall be deemed to have accepted title subject to such rights, if any, of third parties of which CenterMark has actual knowledge.

c. **Right to Cure.** If Lakewood receives notice of unmerchantability of title or any other unsatisfactory title conditions as provided in subparagraphs (a) or (b) above, Lakewood shall use reasonable

efforts to correct said unsatisfactory title conditions within thirty (30) days following delivery of notice thereof. In addition, if the objection to title arises from a lien securing a monetary obligation of Lakewood or a grant or conveyance of an interest by Lakewood in violation of Section 5.02 with respect to the Lakewood property ("Lakewood Encumbrances"), Lakewood shall cause such objection to title to be removed at or prior to the closing. If Lakewood fails to correct said unsatisfactory title conditions within such thirty (30) days period, CenterMark shall have the right to terminate this contract, provided, however, CenterMark may, by written notice received by Lakewood prior to expiration of the Option Period, waive objection to said unsatisfactory title conditions. Notwithstanding the foregoing, Lakewood shall have no obligation to undertake any cure of an objection to title other than a Lakewood Encumbrance. Lakewood may use the proceeds from the sale of the Lakewood Property at closing to satisfy any title objections based upon monetary encumbrances, including, without limitation, the Lakewood Encumbrances.

3.03 **Conveyance.** Subject to due exercise of the option and compliance with the other terms and conditions hereunder by CenterMark, Lakewood shall convey the Lakewood Property to CenterMark at closing upon payment of the Purchase Price to Lakewood in accordance with Section 4.02 below. Conveyance shall be made by special warranty deed. The title to the Lakewood Property at the time of conveyance shall be transferred subject to (a) easements, rights-of-way, restrictions, covenants, liens and other encumbrances of record as of the date of closing, other than the Lakewood Encumbrances, and (b) those matters approved by CenterMark, or to which CenterMark did not object, pursuant to the provisions of Section 3.02 of this agreement. The allowable exceptions to titles described in clauses (a) and (b) of this section are referred to herein as the "Permitted Exceptions".

ARTICLE IV CLOSING

4.01 **Conditions Precedent to Closing.** If the Option is exercised, CenterMark's obligation to purchase the Lakewood Property shall be conditioned upon satisfaction prior to closing of the following condition:

a. The Title Commitment (as modified and/or endorsed pursuant to Article III above) shall be satisfactory to CenterMark in form and substance. The Title Commitment shall be deemed satisfactory to CenterMark provided that there are no exceptions to title other than the Permitted Exceptions.

b. All representations and warranties of Lakewood in this Contract shall be true and correct as of the Closing Date.

4.02 **Closing.** At closing the following shall occur:

a. CenterMark shall deliver to Lakewood the purchase price in the form of a cashier's check, certified funds or wire transfer, as adjusted by closing costs and prorations, if any.

b. Lakewood shall deliver to CenterMark a duly executed acknowledged special warranty deed conveying title to the Lakewood Property to CenterMark free and clear of all liens and encumbrances except for the Permitted Exceptions.

c. CenterMark and Lakewood shall execute and deliver to each other or for the benefit of the Title Insurance Company, as appropriate, such other documents as may be reasonably requested by the other party or the Title Insurance Company to facilitate or effectuate the conveyance contemplated by this Contract.

ARTICLE V COVENANTS AND AGREEMENTS OF LAKEWOOD

5.01 **CenterMark's Access to Property.** Lakewood covenants and agrees that from and after the date of Lakewood's execution hereof, CenterMark and its agents and/or employees may enter upon the Lakewood Property for the purpose of making surveys, engineering studies, soil tests, obtaining topographical information and for similar information concerning the Lakewood Property; provided, however, that such activities shall not be conducted in a manner which unreasonably restricts public access to the Lakewood Property. CenterMark hereby agrees to indemnify, defend and hold Lakewood harmless from (a) any claims of any nature against Lakewood arising from CenterMark's activities on the Lakewood Property, and (b) any mechanic's liens which might be filed against the Lakewood Property by reason of any of such activities of CenterMark on such properties.

5.02 **Lakewood's Use of the Property Prior to Closing Date.** From and after the date of Lakewood's execution hereof, Lakewood shall not grant or convey any easement, lease, encumbrance, license, permit or any other legal or beneficial interest in or to the Lakewood Property, without the prior written consent of CenterMark which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lakewood may grant or convey, without CenterMark's prior written consent, any of the foregoing title encumbrances so long as they are terminable upon closing of the Option or are customary easements for utility services.

5.03 **Delivery of Materials to CenterMark.** Lakewood hereby covenants and agrees to make available to CenterMark, at no expense to CenterMark, from time to time during the term of this Option, any and all engineering studies, zoning information, soil investigations and reports, water and sewer studies, topographic maps, platting and other materials in Lakewood's possession or control concerning the Lakewood Property. Lakewood makes no representations or warranties of any nature concerning the accuracy, validity of suitability for CenterMark's use of any such information furnished to CenterMark.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF LAKEWOOD

6.01 **Representations and Warranties.** Lakewood hereby represents and warrants to CenterMark as follows:

a. Lakewood is a municipality and governmental entity duly organized and validly existing under the laws of the State of Colorado. Lakewood has the authority to enter into this Contract and to consummate the transactions contemplated hereby. The making and performance of this Contract and the agreements and other instruments required hereunder to be executed by Lakewood have been, or on the Closing Date will have been, duly authorized by all necessary municipal and other governmental action and will not violate any provision of the City Charter or any other City laws, ordinances and regulations, or violate any provision of any license, permit, loan or other type of agreement to which the Lakewood is or will be subject.

b. When executed and delivered, this Contract will constitute a legal and binding obligation of Lakewood, and will be valid and enforceable against Lakewood in accordance with the terms hereof except that (i) the enforcement of certain rights and remedies created by this Contract is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of parties, and (ii) the enforceability of any particular provision of this Contract under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies is subject to the discretion of courts of competent jurisdiction.

c. The consummation by Lakewood of the transactions contemplated by this Contract will not result in a breach of any material term or provision of, or constitute a material default under, any other agreement or instrument to which Lakewood is a party and there are no conditions, obligations, or judicial or regulatory orders which prevent, prohibit or constrain the City's ability to perform under this Contract.

6.02 **Closing Certificates.** If requested by CenterMark, Lakewood shall, on the Closing Date, execute a certificate stating that, to the best of its knowledge and belief, Lakewood has performed all of, and there exists no non-performance or breach in respect of, any of the foregoing representations and warranties.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF CenterMark

7.01 **Representations and Warranties.** CenterMark hereby represents and warrants to Lakewood as follows:

a. CenterMark is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri. CenterMark has corporate power to enter into this Contract and to consummate the transactions contemplated hereby. The making and performance of this Contract and the agreements and other instruments required hereunder to be executed by CenterMark have been, or on the Closing Date will have been, duly authorized by all necessary corporate action and by all required action by the shareholders of the CenterMark and will not violate any provision of the Articles of Incorporation or Bylaws of the CenterMark or violate any provision of any license, permit, loan or other type of agreement to which the CenterMark is or will be subject.

b. When executed and delivered, this Contract will constitute a legal and binding obligation of CenterMark, and will be valid and enforceable against CenterMark in accordance with the terms hereof except that (i) the enforcement of certain rights and remedies created by this Contract is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of parties, and (ii) the enforceability of any particular provision of this Contract under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies is subject to the discretion of courts of competent jurisdiction.

c. The consummation by CenterMark of the transactions contemplated by this Contract will not result in a breach of any material term or provision of, or constitute a material default under, any other agreement or instrument to which the CenterMark is a party.

7.02 **Closing Certificates.** If requested by Lakewood, CenterMark shall, on the Closing Date, execute a certificate stating that, to the best of its knowledge and belief, CenterMark has performed all of, and there exists no non-performance or breach in respect of, any of the foregoing representations and warranties.

ARTICLE VIII DEFAULT: REMEDIES

8.01 **Default.** Time is of the essence hereof, and if any payment or any other condition hereof is not made, tendered or performed as herein provided, the party who has failed to make or tender payment or

performance as required under this Contract shall be deemed to have defaulted under this Contract and the provisions of this Article shall apply.

8.02 **CenterMark's Failure to Close.** If CenterMark exercises the Option but wrongfully fails to close in accordance with the terms of this Contract, Lakewood shall have the remedies of specific performance, damages or both, in addition to any other rights at law for breach of this Contract by CenterMark.

8.03 **Lakewood's Failure to Close.** If CenterMark exercises the Option and Lakewood fails to close in accordance with this Contract, CenterMark shall have the remedies of specific performance, damages or both in addition to any other rights at law for breach of this Contract by Lakewood.

8.04 **Other Remedies.** The remedies described in this Article are in addition to, and not in lieu of, any other remedies the CenterMark or Lakewood may have at law or in equity by reason of the default of the other party.

ARTICLE IX PROVISIONS OF GENERAL APPLICATION

9.01 **Recordation.** Neither Lakewood nor CenterMark shall record this Contract without the consent of the other party. If either party records this Contract without the consent of the other party, such recordation shall be deemed a material breach of this Contract. CenterMark shall have the right to record a memorandum of option setting forth the principal terms of this Contract if it so desires. Upon request by CenterMark, Lakewood shall execute a memorandum of option reasonably acceptable to Lakewood to facilitate recording thereof by CenterMark.

9.02 **Commissions.** CenterMark hereby represents that no brokerage commission or other compensation is due to any real estate broker, agent, or salesman by reason of CenterMark's entry into or performance of this Contract. CenterMark agrees to indemnify, defend and hold Lakewood harmless against any and all claims based in whole or in part on any act of CenterMark for commissions, fees, or other compensation made by any real estate broker, agent, or salesman as the result of the sale of the Lakewood Property by Lakewood to CenterMark contemplated hereby.

Lakewood hereby represents that no brokerage commission or other compensation is due to any real estate broker by reason of Lakewood's entry into or performance under this Contract. Lakewood agrees to indemnify, defend and hold CenterMark harmless against any and all claims based in whole or in part on any act of Lakewood for commissions, fees, or other compensation made by any real estate broker, agent, or salesman as the result of the sale of the Lakewood Property by Lakewood to CenterMark contemplated hereby.

9.03 **Risk of Loss.** In the event any of the Lakewood Property is substantially damaged by fire, flood or other casualty between the date of exercise of the Option and Closing Date, this Contract may, at the option of the CenterMark, be declared null and void.

9.04 **Condemnation.** In the event that any portion of the Lakewood Property shall be taken in condemnation or under the right of eminent domain after CenterMark's exercise of the Option for the Lakewood Property and before the Closing Date for the sale of the Lakewood Property to CenterMark, the obligation of CenterMark to purchase the Lakewood Property, at the option of CenterMark, may either: a) be declared null and void and all funds deposited or paid by CenterMark, shall then immediately be returned to CenterMark; or b) continued with respect to the Lakewood Property with an abatement in purchase price for the Lakewood Property based on the reduced value from the condemnation.

9.05 **Further Instruments.** Each party hereto shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Contract.

9.06 **Governing Law.** The parties hereto hereby expressly agree that the terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled by the laws of the State of Colorado.

9.07 **Headings.** Article and Section headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract.

9.08 **Compliance With Laws, Ordinances and Regulations.** In performing the obligations, covenants and conditions of this Contract, Lakewood and CenterMark shall comply with all applicable laws, ordinances and regulations.

9.09 **Entire Agreement -- Alteration or Amendment.** The entire agreement of the parties is set forth in this Contract and in the First Amendment and the parties are not bound by any agreements, understandings, conditions, or inducements otherwise than are expressly set forth and stipulated hereunder and thereunder. No change, alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same is in writing and signed by the parties.

9.10 **Assignment.** This Contract shall be binding upon, and shall inure to the benefit of, Lakewood and CenterMark and their respective successors and assigns. CenterMark may assign its rights under this Contract only to a purchaser of all or substantially all of CenterMark's interest in the property commonly known as the Westland Town Center and CenterMark may not sell all or substantially all of CenterMark's interest in the Westland Town Center without assignment of this Contract. CenterMark shall promptly notify Lakewood of any such assignment. Lakewood may assign its rights under this Contract to any municipal or quasi-municipal or other governmental agency or organization in connection with the transfer of the Lakewood Property to such entity. Lakewood shall promptly notify CenterMark of any such assignment. Except for the assignment rights set forth in this section, neither party may assign its rights under this Contract without the express written consent of the other party.

9.11 **Notices.** All notices provided for hereunder shall be deemed given and received when (a) personally delivered during business hours on a business day or (b) two days after the same is deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or as to each party, at such other address as shall be designated by such party in a written notice to the other party:

TO CenterMark:

James F. Dausch
Sr. Vice President
CenterMark Properties, Inc.
611 Olive Street
St. Louis, Missouri 63101-1797

WITH A COPY TO:

CenterMark Properties, Inc.
611 Olive Street
St. Louis, Missouri 63101-1797
Attn: General Counsel

TO Lakewood:

City of Lakewood
445 South Allison Parkway
Lakewood, Colorado 80226

Attention: City Manager

WITH A COPY TO:

Gorsuch, Kirgis, Campbell, Walker and Grover
1401 - 17th Street, Suite 1100
Denver, CO 80202
Attention: Lakewood City Attorney

9.12 **Nonbusiness Day.** If the Closing Date is to occur on a holiday or other nonbusiness day, or if any period of time set forth in this Contract expires on a holiday or other nonbusiness day, then such Closing Date or expiration date shall be the next business day.

9.13 **Survival; Condition Precedent.** The agreements, representations, covenants and warranties on the part of Lakewood and CenterMark contained in this Contract or any amendment or supplement hereto shall survive the Closing and delivery of deed for the Lakewood Property and shall not be merged thereby.

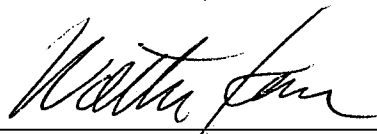
9.14 **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

9.15 **Municipal Rights and Duties.** Nothing contained in this Contract is intended or shall be construed to affect any rights, duties, interests or property of Lakewood in its municipal capacity but only the proprietary interests of Lakewood as fee simple owner of the Lakewood Property.

IN WITNESS WHEREOF, the parties hereto have caused this Option Contract to be executed and delivered as of the day and year first above written.

LAKEWOOD:

CITY OF LAKEWOOD, COLORADO

By: 
Walter C. Kane, City Manager

CENTERMARK:

CENTERMARK PROPERTIES, INC., a Missouri corporation


By: 
William E. Grafstrom, Chairman mg

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 16th day of June, 1992 by Walter C. Kane, as City Manager of the City of Lakewood, Colorado.

Witness my hand and official seal.

My commission expires: My Commission Expires
December 3, 1994

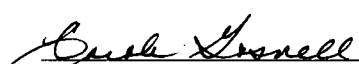

Notary Public
Address: 445 S. Allison Parkway
Lakewood Co. 80226

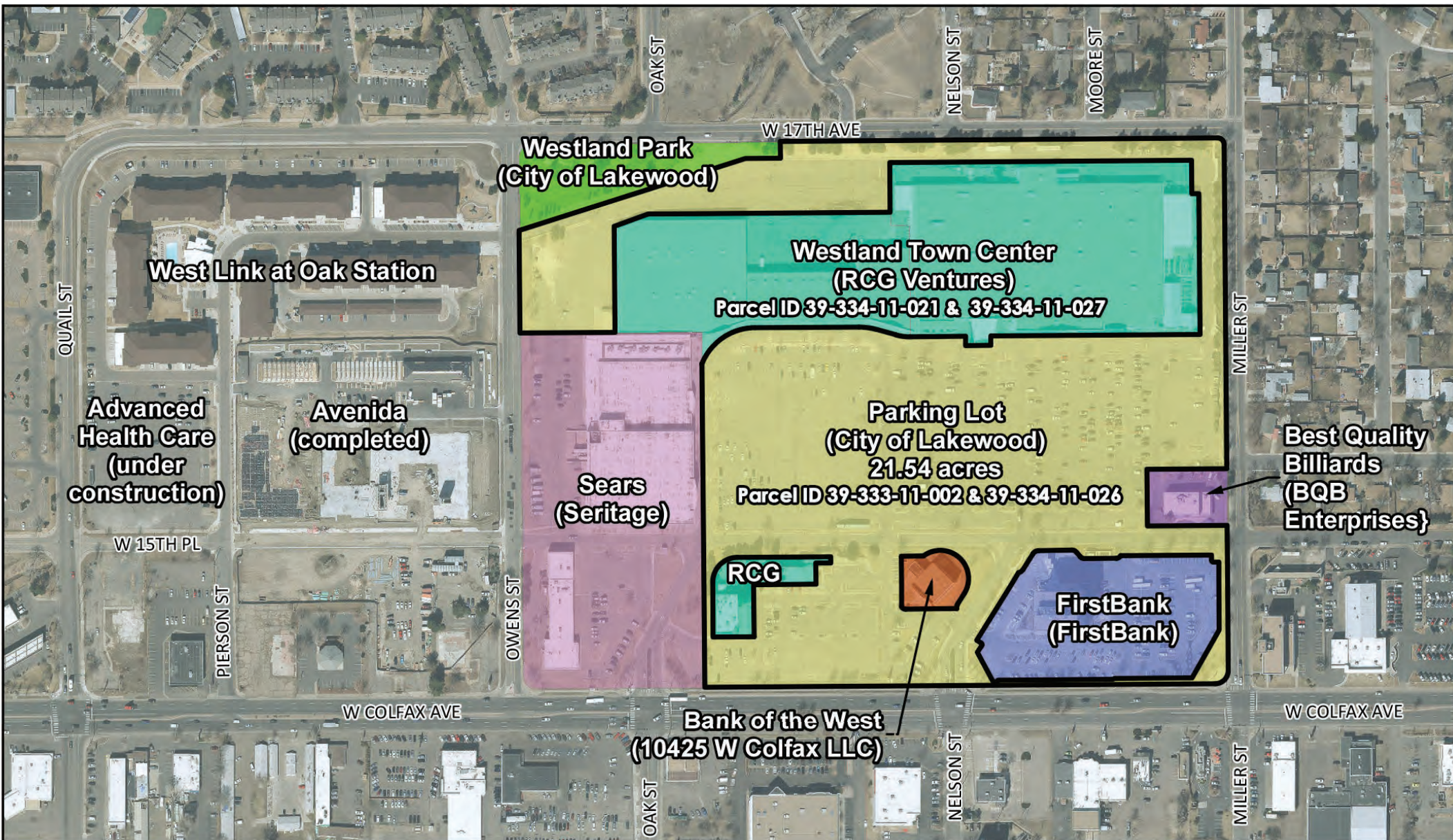
STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 16th day of June, 1992 by William E. Grafstrom, as Chairman of CenterMark Properties, Inc.

Witness my hand and official seal.

My commission expires: My Commission Expires
December 3, 1994


Notary Public
Address: 445 S. Allison Parkway
Lakewood Co. 80226



WESTLAND PARKING LOT



STAFF REPORT

DATE OF MEETING: FEBRUARY 22, 2021 / AGENDA ITEM NO. 9

To: Mayor and City Council

From: Travis Parker, Department Director 303-987-7908

Subject: **8600 W Colfax Avenue Rezoning - CASE RZ-20-001**

SUMMARY STATEMENT: The applicant, David Leibowitz, is proposing to rezone the properties at 8600 and 8650 W. Colfax Avenue from the Mixed-Use Neighborhood Urban (M-N-U) zone district to Mixed-Use General Suburban (M-G-S). The land area is approximately 2.3 acres in size and comprised of three metes and bounds parcels.

Planning Commission held a public hearing on January 20, 2021 and approved Resolution RZ-20-001, which adopted the Findings of Fact and Order with a recommendation that City Council approve the rezoning request. Rezoning applications are a quasi-judicial process, and the role of the City Council is to review the Planning Commission recommendation and make a final determination on the application.

BACKGROUND INFORMATION: Prestige Imports is currently leasing the site and using it for overflow vehicle storage pursuant to a long-term temporary use that was approved by the Planning Commission in 2018. The existing zoning does not allow motor vehicle sales, minor motor vehicle service or outdoor storage land uses, and a rezoning is necessary for the applicant to continue using the site once the temporary use approval expires. The proposed rezoning to Mixed-Use General Suburban (M-G-S) is appropriate to accommodate the applicant's desired land uses for this site.

The rezoning proposal is supported by the West Colfax Community Association, West Colfax Business Improvement District and the 40 West Arts Creative District. If rezoned, the applicant also intends to proceed with additional site improvements, including the demolition of an existing building that is no longer habitable and screening the outdoor vehicle storage area.

The topic of neighborhood walkability and pedestrian connectivity along Colfax Avenue was discussed during the Planning Commission hearing. The property owner has signed a Development Agreement committing to a formal site plan submittal following a rezoning approval. This formal land development application will address the proposed and required site improvements along with all required public improvements adjacent to W. Colfax Avenue. The owner-signed agreement and draft resolution are included with this packet for Council's consideration. City Council may approve the agreement by resolution following an approval of the rezoning request.

BUDGETARY IMPACTS: N/A

STAFF RECOMMENDATIONS: The Planning Commission and staff recommend approval because the proposed rezoning satisfies the review criteria.

ALTERNATIVES: The City Council may approve, deny or continue the rezoning application. More specifically, the City Council may approve the rezoning application because the Council agrees with the findings of the Planning Commission. And, City Council may have additional reasons why the application satisfies the review criteria.

Or, the City Council may deny the rezoning application based on a determination that the application does not satisfy the rezoning review criteria. A determination that the review criteria is not satisfied could be based on findings discovered during the public hearing or based on the proposal *not* promoting the purpose of the Zoning Ordinance or *not* having compatibility with existing surrounding land uses (or the land uses envisioned in the Comprehensive Plan) or *not* meeting one of the additional review criteria (promoting implementation of the Comprehensive Plan, material change in neighborhood, or zoned in error).

The City Council may also continue the public hearing because additional information is needed. If continued, staff recommends picking a date certain for the (new) public hearing. Please note that it is staff's understanding that the rezoning may not be approved with conditions because it would be contrary to case law.

PUBLIC OUTREACH: As required by the Zoning Ordinance, a neighborhood meeting was held last February, prior to the formal application submittal, and then a public hearing was held before the Lakewood Planning Commission in January. Support for the rezoning was expressed at the neighborhood meeting and through written letters of support.

NEXT STEPS: The 1st reading is scheduled for February 22nd and the public hearing is scheduled for March 22nd.

ATTACHMENTS: Planning Commission Staff Report and attachments
Planning Commission Resolution
Planning Commission Meeting Minutes (DRAFT)
Rezoning Ordinance
Development Agreement Resolution
Development Agreement

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

0-2021-3

AN ORDINANCE

TO REZONE LAND LOCATED AT 8600 & 8650 W. COLFAX AVENUE,
LAKEWOOD, CO 80215, COUNTY OF JEFFERSON, STATE OF COLORADO.

BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Upon application by David Leibowitz, Applicant and duly authorized representative of the Owner, in Rezoning Case RZ-20-001, and upon a recommendation of approval by the Lakewood Planning Commission following a duly noticed public hearing on January 20, 2021, Lakewood Zoning Maps are hereby amended to exclude from the Mixed-Use Neighborhood Urban (M-N-U) zone district and to include in the Mixed-Use General Suburban (M-G-S) the properties described in Exhibit A attached hereto and made a part hereof.

SECTION 2. The Mayor and City Clerk are hereby authorized and directed to certify the within and foregoing approval and record with the Clerk and Recorder of Jefferson County a certified copy of this Ordinance attached thereto, pursuant to the effective date thereof, and upon satisfaction of the conditions for recording relating to the property described in Exhibit A.

SECTION 3. This Ordinance shall take effect forty-five (45) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 22nd day of March, 2021; read, finally passed and adopted by the City Council on the 22nd day of March, 2021; and signed by the Mayor on the ____ day of _____, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

Exhibit ALEGAL DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH RECORD INFORMATION DENOTED BY PARENTHESIS ():

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 3 WHENCE THE NORTH QUARTER CORNER THEREOF BEARS S 89°44'34" W, 2641.40 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE NORTH LINE OF SAID SECTION S 89°44'34" W, 685.82 FEET TO THE TRUE POINT OF BEGINNING;

THENCE S 0°15'26" E, 40.00 FEET TO THE SOUTH RIGHT-OF-WAY OF COLFAX AVENUE;

THENCE S 0°25'40" W (SOUTH), 187.25 FEET; THENCE N 89°44'37" E (EAST), 92.28 (92.04) FEET;

THENCE S 89°36'21" E. 25.00 FEET TO THE CENTERLINE OF DOVER WAY; THENCE ALONG SAID CENTERLINE S 0°23'39" W (SOUTH), 74.39 FEET;

THENCE CONTINUE ALONG SAID CENTERLINE S 33°25'46" W, 176.90 FEET; THENCE N 72°43'51" W, 26.03 FEET TO THE COMMON LINE WITH RUTHSHER SUBDIVISION;

THENCE ALONG SAID COMMON LINE S 89°45'53" W (WEST), 368.41 FEET;

THENCE N 0°32'49" E (NORTH), 108.64 (108.6) FEET TO THE SOUTH LINE OF THE PARCEL RECORDED AT RECEPTION NO. 2017016592;

THENCE ALONG THE COMMON LINE WITH SAID PARCEL N 89°44'34" E (EAST), 193.07 (193.7) FEET;

THENCE CONTINUING ALONG SAID COMMON LINE N 0°32'49" E (NORTH), 286.49 FEET TO THE SOUTH RIGHT-OF WAY OF COLFAX AVENUE;

THENCE N 0°15'26" W, 40.00 FEET;

THENCE N 89°44'34" E, 174.52 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2.66 ACRES MORE OR LESS.



PLANNING COMMISSION STAFF REPORT

REZONING CASE NO. RZ-20-001

REPORT DATE: Dec.18, 2020

CASE NAME: 8600 W Colfax Avenue Rezoning

PC DATE: Jan. 20, 2021

ADDRESS OF REZONING:

8600 & 8650 W. Colfax Avenue
Lakewood, CO 80215

Parcel ID: 49-031-00-011, 49-031-00-021 and 49-031-00-020

APPLICANT:

David Leibowitz
2060 Biscayne Blvd. 2nd Floor
Miami, FL 33137

PROPERTY OWNER:

Tanweer Malik
1129 Broadway Street
Denver, CO 80203

REQUEST:

The request is to rezone 8600 & 8650 W. Colfax Ave from the Mixed-Use Neighborhood Urban (M-N-U) to Mixed-Use General Suburban (M-G-S) zone district.

CITY STAFF:

Development Review Planning
Development Review Engineering
Transportation Engineering
Property Management

Brea Pafford, Case Planner
Ben Mehmen, Case Engineer
Toni Bishop, Engineering Technician
Spencer Curtis, Right-of-Way Agent

STAFF RECOMMENDATION:

That the Planning Commission recommends that the City Council approve Case No. RZ-20-001.



Brea Pafford, Case Planner
Planning – Development Assistance



Paul Rice, Manager
Planning – Development Assistance

CONTENTS OF THE REPORT:

Attachment A – Conceptual Land Use Plan
Attachment B – Applicant's Written Description
Attachment C – Aerial Map
Attachment D – Zoning Map
Attachment E – Neighborhood Meeting Summary
Attachment F – Letters in Support
Attachment G – Rezoning Boundary Legal Description
Attachment H – Draft Resolution

SUMMARY OF REQUEST

The applicant, David Leibowitz, is requesting to rezone the properties at 8600 & 8650 W. Colfax Avenue from the Mixed-Use Neighborhood Urban (M-N-U) to Mixed-Use General Suburban (M-G-S) zone district. Combined, the three existing metes and bounds parcels are approximately 2.3 acres in size.

As depicted in Figure 1 below, the subject site is located south of W. Colfax Avenue and west of Dover Way. This area is identified in the Lakewood Comprehensive Plan as part of the Garrison Station West Rail Line Growth Area.

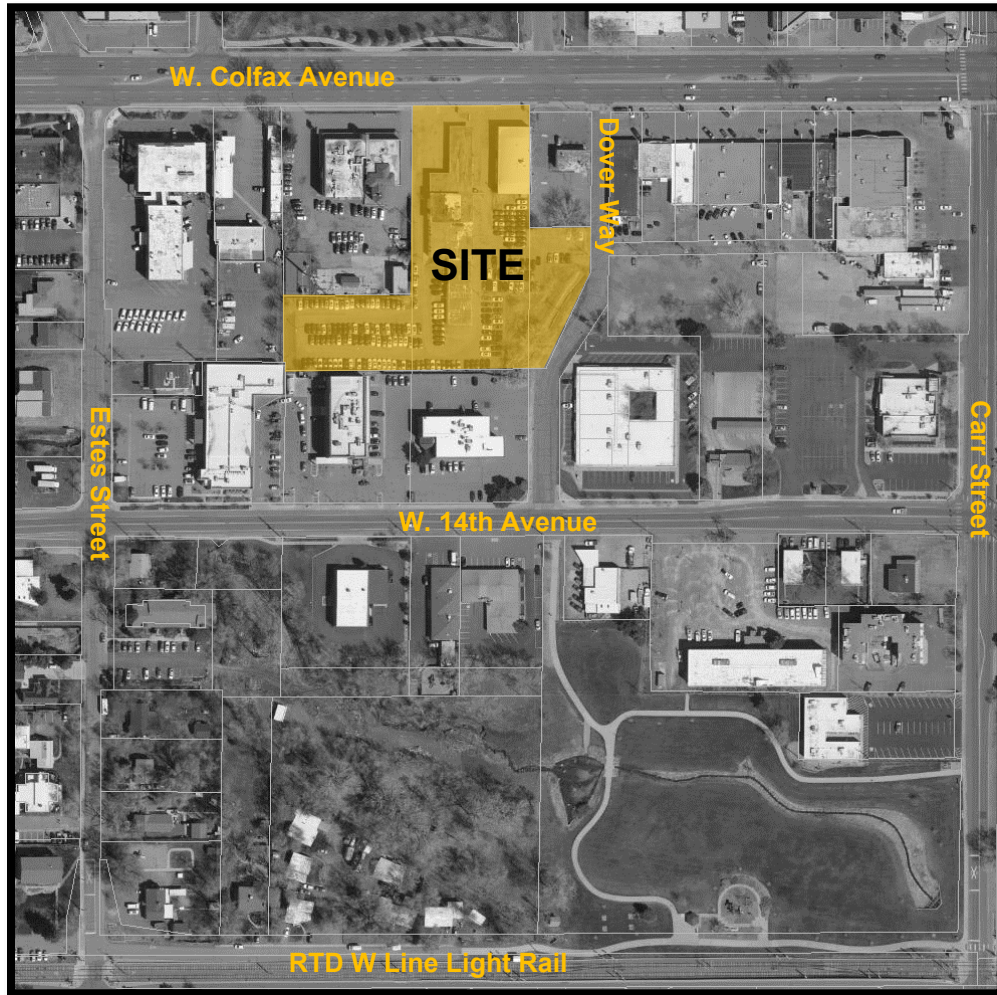


Figure 1 – Aerial Image

PROCESS – REQUIRED CITY APPROVALS

Overview: The purpose of the rezoning request is to allow for minor motor vehicle service, motor vehicle sales with outdoor display and outdoor storage land uses on the project site. Prestige Imports is currently leasing and using the site for overflow vehicle storage associated with the dealership at 9201 W. Colfax Avenue and wishes to purchase the property. A special use permit (SU-18-003) was approved by the Lakewood Planning Commission to allow outdoor storage as a long-term temporary land use that is set to expire in 2021. Prestige Imports is requesting this rezoning so that the site can continue to be utilized as a satellite property to the existing automobile dealership.

The rezoning process includes a neighborhood meeting, formal application, public hearing with the Lakewood Planning Commission and a public hearing with the Lakewood City Council. The Planning Commission reviews the rezoning request at a public hearing and then make its recommendation to City Council. The City Council will review the Planning Commission recommendation, meeting minutes, staff report, and then hold a second public hearing, after which they will make a final decision on the rezoning application. If the rezoning application is approved, a 45-day referendum period is required.

Plans: All rezoning applications are required to submit a Conceptual Land Use Plan, included as Attachment A to this staff report. The Conceptual Land Use Plan outlines the specific elements that are unique to the site. It is intended to supply enough information about the rezoning request for the Planning Commission to make its recommendation and the City Council to make a decision.

A major site plan and final plat (which are not a part of the rezoning process) may be required with future redevelopment of the site. The major site plan is a review of the proposed layout of new buildings, site circulation, open space configuration, building architecture, landscape design and other site elements. A site plan or subdivision plat is reviewed for compliance with the Zoning Ordinance, Subdivision Ordinance and Engineering Regulations as well as the Conceptual Land Use Plan. A site plan and plat are administrative approvals, provided the proposal complies with the applicable development standards.

ZONING AND LAND USE

	North	South	East	West
Adjacent Zoning Designation	Mixed-Use General Suburban (M-G-S)	Mixed-Use Neighborhood Urban (M-N-U)	Mixed-Use Neighborhood Urban (M-N-U)	Mixed-Use Neighborhood Urban (M-N-U)
Adjacent Land Uses	Park (Charles Whitlock Park & Recreation Center)	Community Building (Action Center)	Office	Office & Retail

(See Attachment C - Aerial Map and Attachment D - Zoning Map)

Existing Conditions: The existing site is comprised of three parcels under a single ownership. Access to the site is taken from W. Colfax Avenue and Dover Way. Existing improvements include two structures. The building addressed as 8630 W. Colfax Avenue is vacant, in poor condition and proposed to be demolished following rezoning approval. Most of the site is paved with asphalt surface for the purpose of parking/storing the overflow vehicles. The condition of the previously vacant property has improved under the Prestige Imports tenancy. This includes removing illegally dumped items, installing security fencing around the property perimeter and mowing landscape areas on a regular basis during the growing season.

AGENCY REVIEW AND NOTIFICATION

Notice of the Planning Commission public hearing for the rezoning request was mailed to 281 tenants and owners of property within 500 feet and 9 registered neighborhood organizations within a 1/2 mile of the subject property, as required by the Lakewood Zoning Ordinance. The rezoning application was also sent to 7 outside referral agencies for review, as indicated in the table below.

Agency	Notification for Neighborhood Meeting	Notification for PC Hearing	Referral Sent	Comments Received
West Metro Fire Protection District			X	X
Consolidated Mutual Water			X	X
Xcel Energy			X	X
Century Link			X	
Comcast Cable			X	
Lakewood Police Department			X	X
Regional Transportation District			X	
Property Owners within 500 feet	X	X		
Eiber Neighborhood Association	X	X		
Pine Place Condominiums	X	X		
Lakewood Green Homes	X	X		
Holbrook Park Neighborhood Association	X	X		
West Colfax Community Association	X	X		
Morse Park Neighborhood Organization	X	X		
Balsam Manor Condominium Association	X	X		
Estes Square HOA	X	X		
North Lakewood Advocates		X		

Referral Agencies' Comments: The City received four responses from referral agencies. The following is a summary of the comments received in response to the agency referral documented in the chart above.

1. West Metro Fire Protection District had no objection to the proposed rezoning and stated fire service will be provided as long as the provisions in the 2015 International Fire Code are satisfied. A Service and Emergency Vehicle Access (SEVA) easement is required, and the approved alignment is reflected in the CLUP.
2. Consolidated Mutual Water Company had no objection to the proposed rezoning and stated that water services may continue to be provided subject to compliance with company rules, regulations, and requirements.
3. Xcel Energy had no objection to the proposed rezoning, contingent upon their ability to maintain all existing rights.
4. RTD had not comments on the rezoning but may have comments with future development on the site.

Neighborhood Comments: A neighborhood meeting was held on February 19, 2020 to introduce the proposal and gather feedback. Neighborhood stakeholders were supportive of the proposal and there was discussion with the applicant and staff on the following topics:

- Future improvements to the property
- Subdivision (parcel consolidation)
- Comparison of land uses and zone districts

Letters of Support: Staff also received letters of support for this rezoning from the 40 West Arts Creative District, West Colfax Business Improvements District, and the West Colfax Community Association.

See Attachment E for summary of the neighborhood meeting and Attachment F for the letters of support.

PROJECT ANALYSIS

Overview: The subject site is currently zoned Mixed-Use Neighborhood Urban (M-N-U) and the zoning does not allow motor vehicle sales, minor motor vehicle service or outdoor storage as proposed by the applicant. A rezoning is necessary for the applicant to continue using the site for outdoor vehicle storage once the long-term temporary use approval expires. The proposed rezoning to Mixed-Use General Suburban (M-G-S) is appropriate to accommodate the applicant's desired land uses for this site.

Comprehensive Plan - The primary document for guiding land use decisions is the *Lakewood 2025: Moving Forward Together Comprehensive Plan*. The Comprehensive Plan is a long-range plan that looks 10 years into the future. It is a policy document that provides guidance to City Council, Planning Commission, City staff, residents, businesses, and developers to make informed decisions about the current and future needs of the community. The Comprehensive Plan is available on the City's website under the following URL:

<http://www.lakewood.org/CommunityPlans/>

The purpose of the Comprehensive Plan is to identify and articulate the residents' values and goals to help the community achieve its desired future through a vision statement, guiding principles, goals and actions steps. The City's Vision Statement is articulated on pages 3-5 & 3-6 of the Comprehensive Plan and it is intended to set a direction for the future of Lakewood rather than being simply a prediction.

The Comprehensive Plan has a Land Use Vision Map (Map 3-d, page 3-21) that indicates Growth Areas, Neighborhood and Community Activity Areas. The Growth Areas are intended to accommodate the vast majority of the employment, retail and residential growth anticipated for the City. This property is located within the Garrison Street West Rail Station Growth Area and is designated as Mixed-Use Commercial future land use.

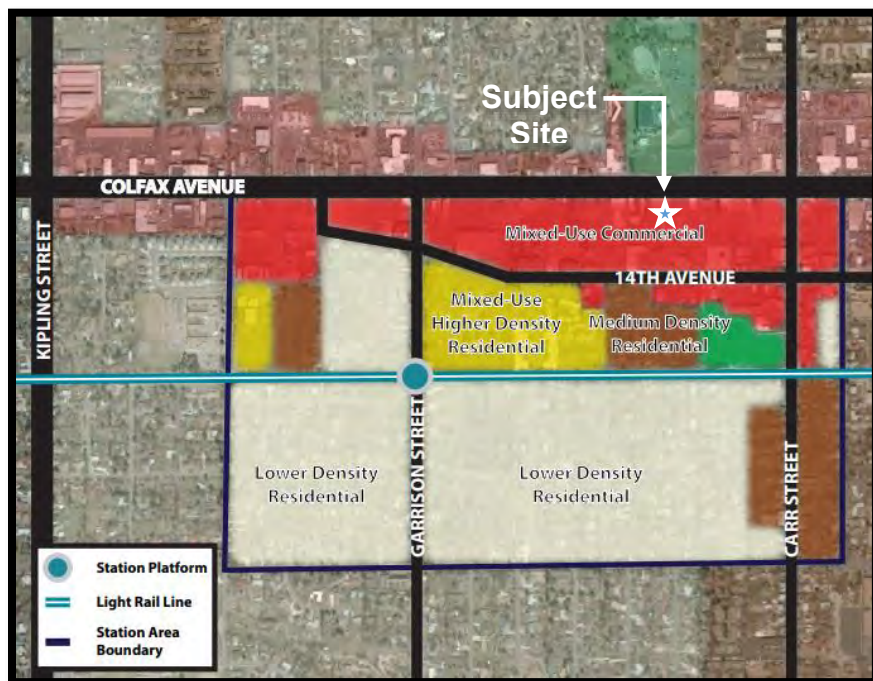


Figure 3 – Garrison Station Growth Area Land Use Map

Staff has evaluated the rezoning proposal and found that it is consistent with the Comprehensive Plan Growth Area Land Use, Mixed-Use Commercial Land Use Designation, and the M-G-S zoning designation along Colfax Avenue.

Lakewood Zoning Ordinance: The Lakewood Zoning Ordinance provides information about zone district standards, specific development regulations and the planning process. As stated in Article 3 - Zone Districts:

- The M-G zone district is intended to allow for mixed-use and community commercial development generally along arterial streets. The district is intended to accommodate a higher level of motor vehicle activity, although pedestrian activity will still be accommodated and encouraged.

The proposed suburban context reflects a more auto-oriented environment. For a comparison of the M-N-U and M-G-S zone district standards, see Attachment A.

Review Criteria: The review criteria for rezoning requests are outlined in Section 17.2.3.3.A of the Lakewood Zoning Ordinance. Staff's analysis of the rezoning request against these standards is provided below in Section A.

A. Conformance with Standards for Rezoning Criteria §17.2.3.3.A:

1. The proposed rezoning promotes the purposes of the Zoning Ordinance as stated in Section 17.1.2.

The proposed rezoning will support the purpose and intent of the Zoning Ordinance as follows:

- Maintaining/improving public health, safety, and welfare of the citizens of the City of Lakewood by repurposing and improving a vacant and run-down site.
- Implementing the vision, goals and recommendations of the Comprehensive Plan through maintenance and reinvestment of underutilized commercial properties.
- Promoting orderly development through a public process.
- Accommodating the effective integration of a mixture of uses and redevelopment with surrounding land uses.
- Enhancing the appearance of the City through quality site and building design.
- Ensuring the economic vitality of the City of Lakewood by supporting existing businesses and industries that expand the primary employment base and contribute to the City's sales tax revenue.

2. The proposed rezoning is compatible with existing surrounding land uses or the land uses envisioned in the Comprehensive Plan.

- The proposed rezoning is compatible with the existing surrounding land uses that include office, personal service, retail.
- The proposed rezoning is also compatible with the land uses envisioned in the Comprehensive Plan. The property is located within the Garrison Station Growth Area with a land use designation of Mixed-Use Commercial.

3. The proposed rezoning meets at least one of the following:

The zoning ordinance requires that one of the following three factors must exist.

i. The proposed rezoning promotes implementation of the Comprehensive Plan.

The proposed rezoning will promote the implementation of Lakewood Comprehensive Plan as follows:

- The proposed rezoning will support the community's guiding principles, goals, and actions steps by:
 - Goal I-CS1 – Encourage investment that creates new employment opportunities and advances the City's economic goals.
 - Supporting growth of an existing and established Lakewood Business (Action Step f)
 - Goal I-CS3 – Enhance commercial and mixed-use district to create quality working, living, shopping and dining experiences.
 - Working with owners of older commercial properties to accommodate reinvestment and redevelopment. (Action step b)
 - Promoting commercial and mixed-use investment and reinvestment in designated Growth Areas. (Action Step c).
 - Goal I-CS7 – Continue to diversify Lakewood's economy to strengthen and stabilize the tax base and maintain viability through fluctuating economic cycles.
 - Supporting business retention efforts for strategic industries that are important to Lakewood.
 - The Goal L-PS6 – Ensure adequate utilities are available for Lakewood's current and future residents and businesses.
 - Ensuring coordination of services with applicable utility and service providers is occurring early in the development process. (Action Step a)

ii. There has been a material change in the character of the neighborhood or in the City generally, such that the proposed rezoning would be in the public interest and consistent with the change.

There has not been a material change in the neighborhood or City that would affect this rezoning proposal.

iii. The property was rezoned in error.

Not applicable.

B. Engineering Analysis. Engineering plans were not required as part of this rezoning request; however, pursuant to the Colorado Department of Transportation (CDOT) Access Code, the proposed change in land use will require the closure of the eastern site access from W. Colfax Avenue. Public improvements along the Colfax Avenue frontage will be required for the access closure. Additional site and public improvements may also be required with future development or redevelopment of the site and would be reviewed with a Major Site Plan application.

FINDINGS OF FACT AND ORDER

Based upon the information and materials, the neighborhood meeting, and this staff report, staff supports the rezoning request. Therefore, City of Lakewood staff recommends that the Planning Commission find that:

- A. The applicant, David Leibowitz, is proposing to rezone 8600 and 8650 W. Colfax Avenue from Mixed-Use Neighborhood Urban (M-N-U) zone district to Mixed-Use General Suburban (M-G-S).
- B. Notice of the Public Hearing was provided to the fee owners of property and residents within 500 feet; and registered neighborhood organizations within a 1/2 mile as required by the Lakewood Zoning Ordinance; and
- C. Notice was published in the official City newspaper at least six days prior to the hearing; and
- D. Notice was posted at the property at least 14 days prior to the hearing; and
- E. The request was reviewed by the appropriate referral agencies; and
- F. The proposed rezoning promotes the purposes of this Zoning Ordinance as stated in Section 17.1.2.; and
- G. The proposed rezoning is compatible with existing surrounding land uses and the land uses envisioned in the Comprehensive Plan; and
- H. The proposed rezoning promotes the implementation of the Comprehensive Plan;

AND

The Planning Commission adopts the findings of fact and order, A through H, as presented in this staff report and recommends that the City Council **APPROVE** Rezoning Case No. RZ-20-001.

cc: Case File- RZ-20-001
David Leibowitz, Applicant

**LAKEWOOD PLANNING COMMISSION
REGULAR MEETING
MINUTES
January 20, 2021**

COMMISSIONERS PRESENT:

Alex Bartlett
Johann Cohn
Alan Heald
Cathy Kentner
Dale Miller
Rhonda Peters
Theresa Stone

STAFF PRESENT:

Paul Rice, Manager, Planning-Development Assistance
Brea Pafford, Planner
Toni Bishop, Transportation Engineering Technician II
Ben Mehmen, Civil Engineer III
Aaron Schultz, Secretary to the Planning Commission

Following are the minutes of the January 20, 2021 Lakewood Planning Commission Special Meeting. A permanent set of these minutes is retained in the office of the City Clerk.

Minutes are not a verbatim transcription, but rather an attempt by the Secretary to capture the intent of the speakers.

ITEM 1: CALL TO ORDER

ITEM 2: ROLL CALL

The roll having been called, a quorum was declared and the following business was conducted:

ITEM 3: CASE RZ-20-001 – 8600 W. COLFAX AVE. REZONING

COMMISSIONER HEALD provided information about public comment for online meetings and contact information for call-in comments.

BREA PAFFORD, Planner, introduced the applicants.

SCOTT WEST, Prestige Imports General Manager, applicant, introduced himself and provided the applicant presentation for case RZ-20-001 – 8600 W. Colfax Ave.

MS. PAFFORD provided the staff presentation for case RZ-20-001 – 8600 W. Colfax Ave.

COMMISSIONER STONE inquired about how the proposed redevelopment would impact adjacent properties and the impact of the development onto the adjacent ditch.

MR. WEST stated that the dilapidated building would be demolished, and the applicants would add landscaping that he believed would improve the view from neighboring properties.

BEN MEHMEN, Civil Engineer III, stated that he believed that Rocky Mountain Ditch Company or a similar group owned the ditch, and that he did not believe the proposed changes would considerably impact the ditch. He stated that the ditch owner would be contacted to review any proposed changes if staff determines that future site improvements would impact the existing ditch.

COMMISSIONER COHN inquired about the connectivity of the site and whether the City had right-of-way over the sidewalk or could require sidewalk at this location.

MR. MEHMEN stated that sidewalk upgrades to meet current standards would be required with redevelopment. He stated that the right-of-way did not usually extend past the curb, but that staff sought easements for sidewalks to ensure sidewalks could be added where needed.

COMMISSIONER COHN inquired whether Dover Way could be improved, widened, or eliminated. He inquired about beautifying the ditch and whether the applicant could assist in improving the aesthetics of the ditch. He inquired about a section of property to the east of the subject site that appeared to be fenced and inaccessible.

MR. MEHMEN stated that there were no plans for modifying Dover Way beyond its current alignment.

MR. WEST stated that he could not speak to the beautifying neighboring sites, but that he intends to work with the 40 West Arts District to add a mural to the site that represents the history of Colfax.

COMMISSIONER COHN inquired about the zone districts in the area and how the subject became a part of the urban context.

PAUL RICE, Manager, Planning Development Assistance, stated that following mixed-use transit zoning surrounding light rail stations, there was a desire to apply a mixed-use concept along the Colfax Corridor in 2009. He stated that the Comprehensive Planning group met with stakeholders along Colfax and came up with several zone districts with boundaries based on right-of-way or other clear delineators. He stated that when updating the zone district, urban, suburban, and transit contexts were assigned to create a like-for-like replacement of the previous Colfax mixed-use zoning designations.

COMMISSIONER COHN provided background information about former tenants of the building.

COMMISSIONER MILLER stated that he was familiar with the area and that he appreciated the applicants' support of local community organizations. He stated that the existing Urban context seemed odd for this site and stated that he did not have any concerns with the proposal.

COMMISSIONER KENTNER inquired about the sidewalk improvements and whether the improvements would extend beyond the boundaries for subject property. She inquired if the applicant could quantify the growth of the business if the site was currently in use in a similar way to the proposed use under the rezoning.

MR. MEHMEN stated that the ability to require sidewalk improvements was limited by the degree of site redevelopment and that staff did not typically require improvements beyond the boundaries of the site.

MR. WEST stated that rezoning was tied to a redevelopment of the applicants' new Porsche Dealership at 9151 W. Colfax Ave., and utilizing the subject site was necessary to move forward with construction on the new dealership. He stated that the use of the subject site would not change considerably, but that demolishing the dilapidated building would allow for more efficient use of space and avoided needing to acquire additional space.

COMMISSIONER KENTNER encouraged the individual who provided comments online to reach out to the commission if she did not believe her question had been answered. She inquired whether access to the site would only be from Dover Way.

MS. PAFFORD stated that there were three existing access points, including two on Colfax Avenue and one on Dover Way. She stated that the change of use from a vacant site would trigger the closure of the eastern Colfax access, but that further redevelopment would determine the extent of required public improvements. She stated that access to Dover Way might be required for emergency access.

MR. WEST stated his desire to be a good neighbor and willingness to answer questions from neighbors. He noted that West Metro Fire was able to access the site previously to provide emergency services.

AARON SCHULTZ, Secretary to the Planning Commission, stated that no new public comments had been received online, but that he would send a link to the Commission to access existing comments.

COMMISSIONER PETERS stated that comments had been read and addressed by members of the Commission and inquired whether a sidewalk would be required with the rezoning.

MS. PAFFORD stated whether sidewalk would be required would be determined by the extent of redevelopment of the site, but that the determination would be made with more concrete plans that would be provided as a part of site plan review. She stated that the rezoning was specific to a change in use, but that the closure of an access due to the change in use would require the sidewalk to be improved in the location of the closed access.

MR. WEST stated that the applicant would construct all improvements as required during the redevelopment.

COMMISSIONER HEALD confirmed that online public comments had been addressed and thanked the applicant.

COMMISSIONER MILLER made a MOTION to adopt the findings of fact and order as presented in the staff report and recommends that the City Council approve Rezoning Case No. RZ-20-001.

The motion was SECONDED by COMMISSIONER HEALD.

COMMISSIONER BARTLETT stated that he recalled the applicant appearing before the Commission previously for a long-term temporary use permit and stated that he was glad to see the applicant appear before the Commission again.

COMMISSIONER COHN stated that he was glad to see improvements in the area and that he would like to see the City help to create a more appealing place along the corridor.

COMMISSIONER KENTNER stated that she supported the development but was concerned about the possibility of not requiring public improvements along Colfax. She stated that the development honors the history of Colfax as outlined in the Lakewood Comprehensive Plan, but that the Comprehensive Plan also intended to create walkable neighborhoods. She noted that the site is a single-use development not far from the Garrison Light Rail Station and that a Mini-Storage development was also located close to the station. She posed a question to the commission about what uses would create a walkable neighborhood. She stated that she believed the benefits of the proposal outweighed the negatives.

COMMISSIONER HEALD stated his appreciation for the applicants' continued support of the neighborhood and his hope that the redevelopment would serve as a catalyst for walkable development in the area.

VOTE TAKEN –

Seven Ayes – Commissioners BARTLETT, COHN, HEALD, KENTNER, MILLER,
PETERS and STONE
No Nays

MOTION PASSED unanimously.

ITEM 4: APPROVAL OF MINUTES OF THE OCTOBER 21, 2020 PLANNING COMMISSION REGULAR MEETING

COMMISSIONER STONE made a MOTION to approve the minutes of the October 21, 2020 Planning Commission Regular Meeting.

The motion was SECONDED by COMMISSIONER HEALD.

COMMISSIONER MILLER noted a typographical error and proposed that the minutes be amended to correct the error.

The motion-maker and the second supported approving the minutes as amended.

VOTE TAKEN –

Seven Ayes – Commissioners BARTLETT, COHN, HEALD, KENTNER, MILLER, PETERS and STONE
No Nays

MOTION PASSED unanimously.

ITEM 5: APPROVAL OF MINUTES OF THE NOVEMBER 18, 2020 PLANNING COMMISSION REGULAR MEETING

COMMISSIONER MILLER made a MOTION to approve the minutes of the November 18, 2020 Planning Commission Regular Meeting.

The motion was SECONDED by COMMISSIONER STONE.

COMMISSIONER BARTLETT stated that he intended to abstain as he was not present during the November 18, 2020 meeting and did not have a chance to review the minutes prior to the meeting.

COMMISSIONER MILLER noted that a Commissioner may vote on the minutes for a given meeting even when the Commissioner was not present at that meeting.

VOTE TAKEN –

Six Ayes – Commissioners COHN, HEALD, KENTNER, MILLER, PETERS and STONE
No Nays
One Abstention – Commissioner BARTLETT.

MOTION PASSED.

ITEM 6: GENERAL BUSINESS

COMMISSIONER HEALD stated that he had spoken with MR. RICE regarding the Planning Commission's priorities and stated that the agenda for the upcoming study session for January 27, 2021 replaced the scheduled presentation with continued discussion of the Planning Commission's rules and regulations. He stated that the calendar would be amended to reflect to Commission's priorities

MR. RICE stated that staff would provide a revised schedule to the Commission.

COMMISSIONER KENTNER inquired about online comment on Lakewood Speaks during study sessions and whether comments were open outside of cases for general business or general comments to the Commission during a regular meeting.

MR. RICE stated that the public was welcome to attend study sessions, and that there was not a period for public comment. He stated that the Commission had allowed limited interaction with the public during an in-person study sessions if there was a large turnout. He stated that this was at the Commission's discretion and noted that the intent of holding a study session was for the Commission to discuss a given topic in a public setting and did not include public comment unless specifically requested by the Commission.

MR. RICE stated that the Planning Commission did not include public comment on non-agenda items as the Planning Commission is a review body for planning and zoning matters and made recommendations to City Council. He stated that for policy decisions or general comments the public would provide comments directly to City Council, and City Council could then direct the Planning Commission to discuss the topic. He stated that City Council was responsible for initiating action relating to policy decisions and planning and zoning related items.

COMMISSIONER HEALD inquired about clarifying the process and suggested utilizing Chairperson announcements during study sessions to notify the public of City Council action resulting from Planning Commission discussion. He inquired whether a policy change would be required and the process for doing so.

MR. RICE stated that the process would be at the discretion of the Commission, and that the current online meeting format presented difficulties. He stated that the Commission was responsible for discussing the topics of the agenda during a study session and would need to be careful to ensure equitability and fairness in a study session setting.

ADJOURNMENT

Meeting adjourned at 8:23 PM.

Date Approved

Aaron Schultz, Secretary
to the Planning Commission

ATTACHMENT B

Re: 8600, 8630 and 8650 W. Colfax Avenue Rezoning—Detailed Written Description of Request

With the authorization of the current property owner, we are seeking to rezone the above referenced property from Mixed-Use-Neighborhood-Urban (M-N-U) to Mixed Use-General-Suburban (M-G-S).

The proposed M-G-S zone district would allow Prestige Imports to continue to use this property for the outdoor storage of overflow vehicles from the current 9201 W. Colfax Avenue dealership.

Currently, Prestige Imports is using the property for the temporary storage of vehicles under a Long-Term Temporary Use Permit. The permit was first approved by the Lakewood Planning Commission in 2016 and was most recently extended in December of 2018 through January 20, 2021.

The purpose of the Long-Term Temporary Use Permit was to allow for the parking of inventory automobiles while a permanent solution for Prestige's need for excess storage was developed. The proposed rezoning is a follow through on that commitment to seek a permanent solution and would also allow for further improvements to be made to the property.

The proposed zone district would also allow for Prestige to provide minor vehicle service on the site, such as minor detailing and car washing. The site would also be used for the display of for-sale vehicles for test drives, although no financial transactions would actually take place on this property.

In all, the proposed rezoning promotes the implementation of Lakewood's Comprehensive Plan for the reasons laid out below from Lakewood 2025: Moving Forward Together.

The Comprehensive Plan projects an increase in employment within the City of 107,000 jobs by 2035 which will "require a significant amount of new or redeveloped commercial space." (Lakewood 2025: Moving Forward Together, 3-7). Not only will the proposed rezoning allow for increased commercial space on this site, but the outdoor storage will directly support the increased employment opportunities from the new investment planned at 9201 W. Colfax Avenue.

The Comprehensive Plan also notes that "The city's image and character also depends on the maintenance and reinvestment in older portions of the community" and that "revitalization and redevelopment of underutilized and underdeveloped commercial properties will be key to improving the overall image of the city and attracting new residents and businesses" (3-11). Currently, a dilapidated building sits on the site and while Prestige has already greatly increased the maintenance of the property, the rezoning would allow them to go a step further to make investments as property owners while also ensuring the site is fully in line with the City's standards for the proposed zone district.

It is also important to note that the property is designated as a Growth Area in the Comprehensive Plan, which are "locations within the city that have been planned and zoned for higher density employment, retail and residential growth" and "are typically designated as Mixed Use with Transit or Urban contexts on the Zoning Map" (3-29). The rezoning would certainly support increased employment and retail growth, both at this site and at Prestige's 9201 W. Colfax Avenue location. Additionally, while the proposed zone district is Mixed Use as called for in the Plan, the Suburban context is appropriate both due to the same zoning being found to the east and northeast of the property, but also because it is the only Mixed-Use zone district where all the proposed uses would be allowed.

The Comprehensive Plan also calls for a number of economic goals which would be served by rezoning this site as proposed. The Plan calls for Lakewood to "have a strong, competitive, and diverse economic base with a mix of locally owned, national and international employers" (5-3) and notes that "Lakewood's economic base is its lifeblood" and that "economic and residential growth is critical to the health of the

city, as both generate taxes to pay for municipal services” while “employment growth also provides necessary jobs for the residents of Lakewood” (5-3). This rezoning directly supports Prestige’s efforts to expand its business in Lakewood, generating taxes to pay for municipal services and providing jobs for Lakewood residents.

Importantly, the Plan also notes that “Sales tax revenue is an important component of the City’s budget, as this revenue is the single largest contributor to the general fund. Therefore, it is vital to continue to strengthen the city’s retail market and encourage new sales tax producing businesses to locate in Lakewood” (5-7). The proposed rezoning would allow for the City to collect even greater sales tax revenue as it will give Prestige the ability to sell more vehicles in the City of Lakewood and also expand their minor motor vehicle service operations.

While the Comprehensive Plan makes attracting new businesses a priority, it also specifically states that “The City will also focus on growing existing businesses and industries to help expand the primary employment base” (5-8). This proposed rezoning would allow a business which has been in the community for decades to grow and help expand the City’s primary employment base.

In terms of the specific area plan, the site sits within the Garrison Street West Rail Station Area which the Plan calls for maintaining “as a smaller-scale, neighborhood-oriented district in accordance with the Growth Area Land Use Map and transit-oriented development principles” (5-29). As noted in the map of the area, the site, which sits north of 14th Avenue is designated as “Mixed-Use Commercial.” To that end, the M-G-S zone district is in line with this vision for the site while the requirements associated with the proposed uses of the site will ensure a smaller-scale, neighborhood oriented development in line with the overarching goal for the area.

Prestige has demonstrated a commitment to improving the property by cleaning-up items that were dumped illegally, mowing the weeds and installing security fencing, all to the betterment of the public health, safety and welfare of the citizens of the City of Lakewood.

To further improve the site, Prestige plans on demolishing the dilapidated building on the west side of the property which is on the verge of potentially collapsing and poses a potential public safety risk. Prestige would then repave the site for the parking of inventory vehicles, as well as provide lighting and make additional landscaping improvements as dictated by the Lakewood Zoning Ordinance. With the planned improvements and those which have already been made, the appearance of the City of Lakewood will be enhanced through quality site and building design.

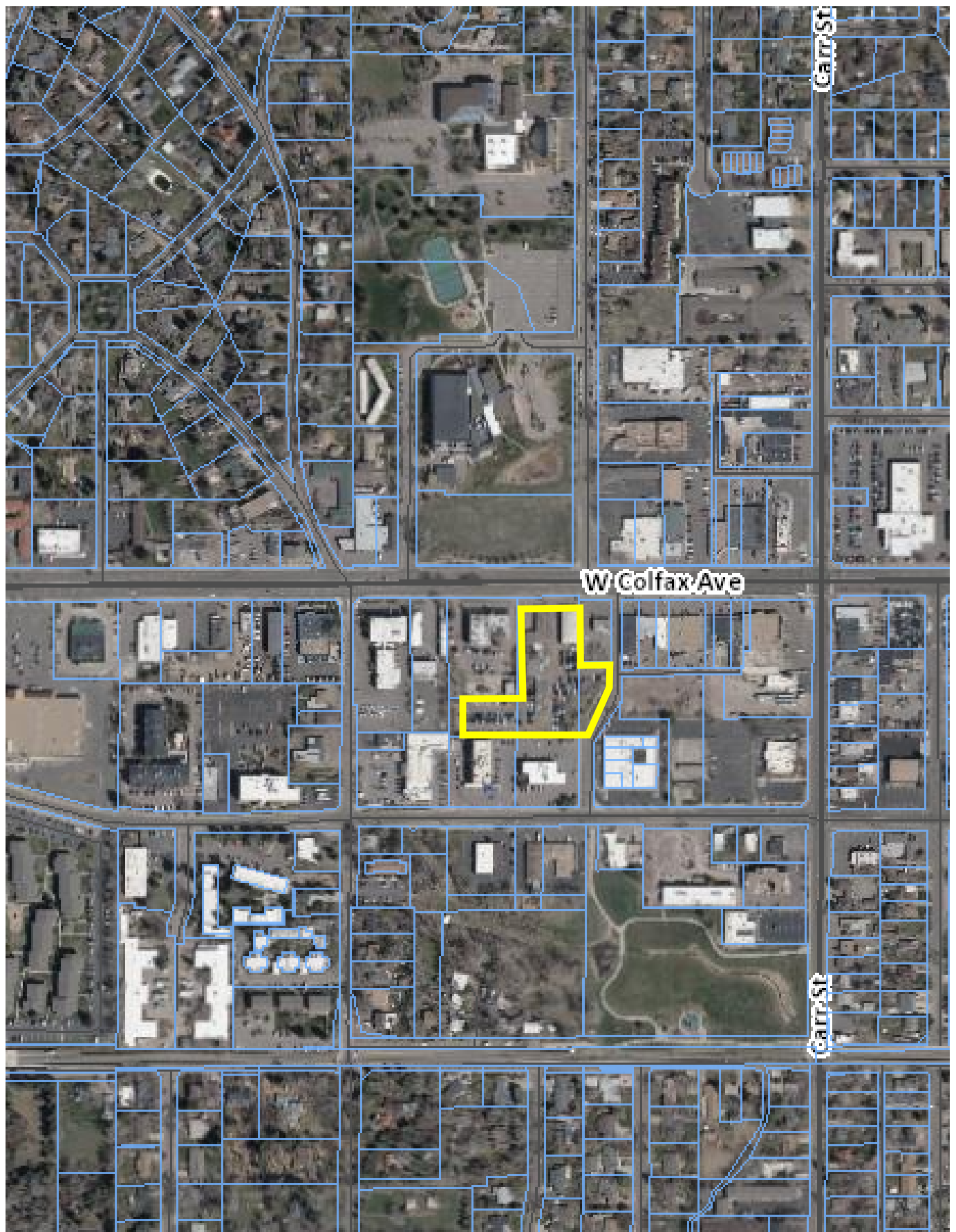
The proposed zone district also protects and enhances the natural environment including the conservation of natural features, land and energy by requiring a minimum of 20% open space on the site. This is greater than the 15% minimum open space required under the existing M-N-U zone district.

Finally, the proposed rezoning of the site would help ensure the economic vitality of the City of Lakewood through supporting a business which has been a community member for decades by allowing them to expand their business operations in the City. This site is being purchased to ensure Prestige has the capacity to expand their operations at their dealership at 9201 W. Colfax Avenue, which would bring additional tax revenue and jobs to the City.

We believe this rezoning application is firstly aligned with the criteria laid out in Section 17.2.3.3. of the Lakewood Zoning Ordinance and ask for your support as we seek to increase our investment in the City of Lakewood and its citizens.

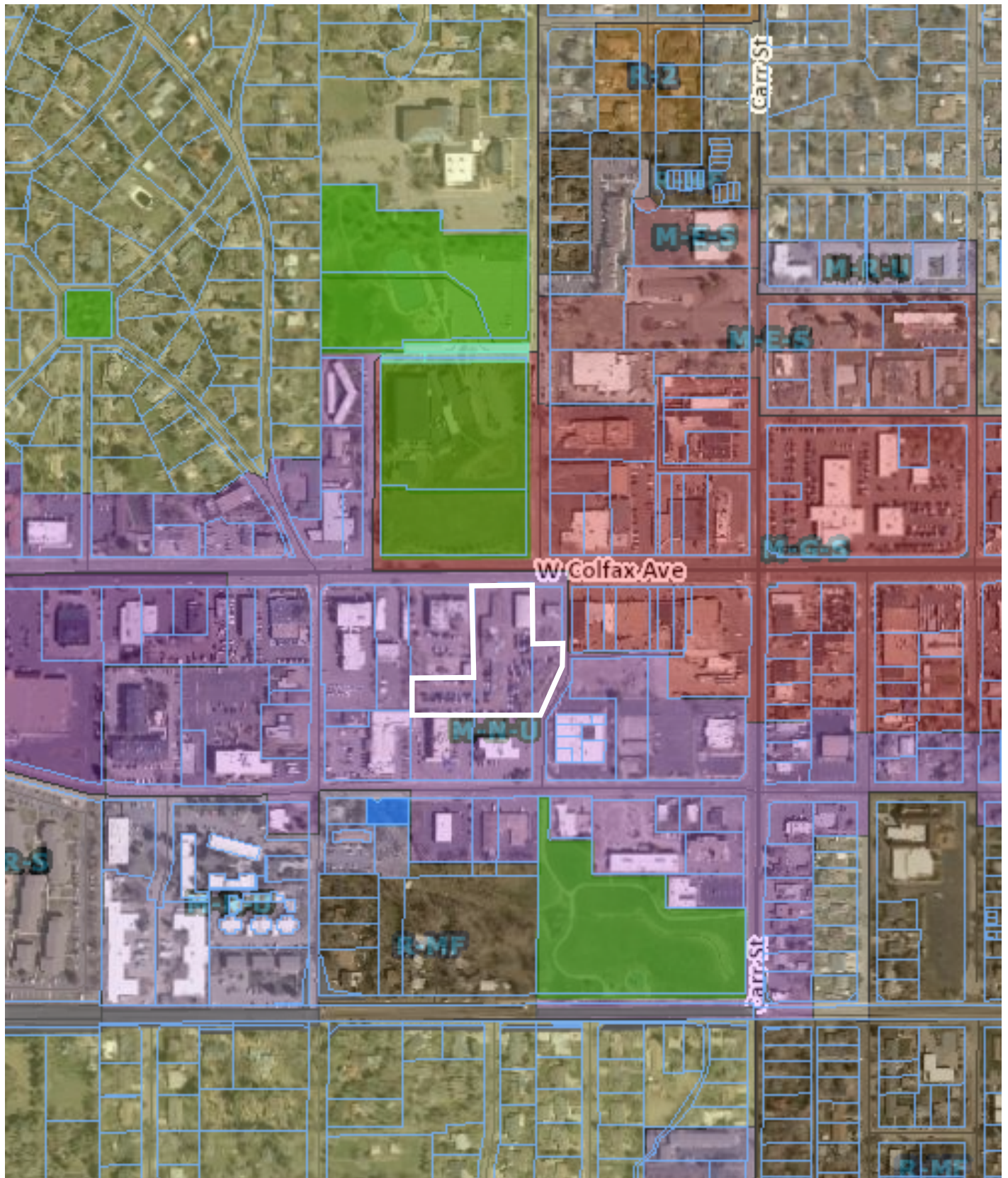
Aerial

8600 W Colfax Ave, Lakewood, CO 80215, 8630 W Colfax Ave, Lakewood, CO 80215, 8650 W Colfax Ave, Lakewood, CO 80215



Zoning

8600 W Colfax Ave, Lakewood, CO 80215, 8630 W Colfax Ave, Lakewood, CO 80215, 8650 W Colfax Ave, Lakewood, CO 80215




ATTACHMENT E – NEIGHBORHOOD MEETING NOTES

CASE NUMBER: ZP-19-070 – Preplanning application for a proposed rezoning
Project Manager: Brea Pafford
Applicant: David Leibowitz, 8600 West Colfax Avenue, LLC
Owners: Tanweer Malik
Case Address: 8600, 8630 & 8650 W. Colfax Ave.
Request: The applicant has expressed an interest in rezoning the property from M-N-U to M-G-S.
Date: February 19, 2020
Time: 6:00PM – 7:00PM
Location: 1615 Reed Street
 Lakewood, CO 80214
Neighborhood Groups Notified: Eiber Neighborhood Association, Pin Place Condominiums, Lakewood Green Homes, Holbrook Park Neighborhood Association, West Colfax Community Association, Morse park Neighborhood Association, Estes Square HOA
City Staff: Brea Pafford, Planning - Development Assistance
 Paul Rice, Planning Manager - Development Assistance
In Attendance: **6 Lakewood residents/business owners, 2 members from the applicant's team, and 2 City Staff members were in attendance.**

This is a summary of the neighborhood meeting. It is not inclusive of all the details, but rather a summary of the main points discussed at the meeting.

Meeting Agenda:

- Introduction
- Purpose of Meeting
- Explanation of the Rezoning Process
- Presentation by the Applicant
- Questions and Discussion with Citizens
- Closing Comments and Next Steps

At 6:00 PM Staff opened the meeting with an explanation of the purpose, notice requirements, and an overview of the rezoning application process. Then staff turned the meeting over to Scott West and Joe Stanoch for the applicant's presentation.

Following staff's introduction, the applicant presented information about the Prestige Porsche, the proposed new dealership at the northeast corner of Colfax Avenue and Garrison Street, and the reason for the proposed rezoning. Prestige is currently leasing the site for vehicle storage and minor motor vehicle service under an existing Long-term temporary use permit, which expires in January

2021. The rezoning will allow the current temporary land use to continue. Under the new zoning, Prestige Imports will be in a position to purchase the property and complete necessary site improvements, including the demolition of the existing structure at 8630 W Colfax Ave.

Following the presentation, the applicant opened the floor for questions/comments. The following lists the questions and comments that were received by those in attendance.

Question (Q): Will the improvements help the appearance of the property and the Colfax frontage?

Answer(A): Yes, once the property is purchased, Prestige will work with 40W Arts District to paint a mural on the building. Some clean-up work has already been done, including site lighting. Demolishing the building will be a significant investment in the property.

Q: What is the existing zoning?

A: M-N-U, does not permit outdoor storage of vehicles or minor motor vehicle servicing.

Q: Will the three parcels be consolidated?

A: At this time, the applicant is not planning to consolidate the lots.

Q: Wouldn't this be considered spot zoning, with the M-N-U zoning remaining on the corner lot?

A: The planning director does not look at a rezoning from one mixed use zone district to another as spot zoning. Similar uses are allowed in both the neighborhood and general, however, the mixed-use general accommodate the land uses that are proposed.

Comment: Think this a good idea to go from an urban context (M-N-U) to a suburban context (M-G-S). It is better when buildings are not as close to the street, especially when the sidewalk is located to the north of a higher profile building.

The meeting ended at 6:55PM. Staff provided a summary of the applicant's 'next steps':

- Submit formal application
- Notification
- Public Hearing

CC: Case File ZP-19-070
Case File RZ-20-001



Lakewood-West Colfax BID
1560 Teller Street | Lakewood, CO 80214
303.275.3430 | billmarino@westcolfax.org



Working Together to ENERGIZE Historic West Colfax

June 8, 2020

To Brea Pafford, Planning Dept. - City of Lakewood:

Please accept this letter on behalf of the Lakewood-West Colfax Business Improvement District in support of Prestige Imports' rezoning application (RZ-20001).

The Lakewood-West Colfax Business Improvement District was formed by petition and special election by commercial property owners and local business tenants in November of 2011. Its mission is to work collaboratively with its community partners to energize Lakewood's historic West Colfax corridor by advocating for economic development and capital investment and by supporting programs and organizations that elevate awareness and appreciation of local West Colfax businesses.

Prestige Imports is a valued member of the West Colfax business community and has been since 1984. The team at Prestige has been an active and engaged partner with the City of Lakewood and our local West Colfax organizations. We fully support this application and offer the following in support:

Prestige Imports has been a good neighbor. While using this property under a Long-Term Temporary Use Permit, they helped clean up the property, removing illegally dumped items, cutting down overgrown vegetation, installing security fencing, and keeping the site secure and well maintaining during its use. With this rezoning, Prestige has plans to further improve the site, demolishing the dilapidated building, repaving the site, providing new lighting to increase security, and installing landscaping improvements. These improvements will be a benefit to public and add to the positive perception of Lakewood's West Colfax corridor.

In addition, Prestige has plans to beautify the building at 8600 W. Colfax with a public art project. If approved, Prestige will work with the community, 40 West Arts, WCCA, and the BID to bring this art project to fruition. Moreover, Prestige Imports is still amid its planning for a major investment in its current West Colfax dealership site. The proposed multi-million investment will help continue the positive momentum along Lakewood's historic West Colfax Avenue. The rezoning of this site is essential for Prestige to maintain its current operations as well as undertake in the investment in new, state-of-art construction.

We support the approval of this rezoning application. Prestige Imports is a longtime community partner with an enduring positive impact on West Colfax. This rezoning would allow an established business to grow and reinvest in the City's oldest commercial corridor, expanding our tax base and employment base. Please approval this application and keep Prestige Imports in our City.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Yoshida".

Kevin Kazuhiro Yoshida
Board President

A handwritten signature in blue ink, appearing to read "William P. Marino".

William P. Marino
Executive Director

cc: Board of Directors



WCCA
West Colfax Community Association

West Colfax Community Association
1560 Teller Street | Lakewood, CO 80214
303.275.3430 | info@westcolfax.org

Working Together to ENERGIZE Historic West Colfax

June 10, 2020

Dear Ms. Pafford:

As the Board Chair the West Colfax Community Association, please accept this letter on behalf our organization in support of approval of Prestige Imports' rezoning application for 8600, 8630 and 8650 W. Colfax Ave,

WCCA is a coalition of citizens, business owners, community leaders, and local organizations working together to foster and sustain an engaged community and economic vitality of the West Colfax corridor. WCCA exists to serve the West Colfax Community—its businesses, residents, and partner organizations—by providing reliable information, a forum for community dialogue, and a unified voice for local advocacy for the quality of life and economic vibrancy of our historic commercial corridor.

Prestige Imports is an active member of our association. They have been an engaged partner with us and with our local West Colfax-based organizations. We support their application and ask for the approval of this rezoning application.

Prestige has been a part of the West Colfax business landscape since 1984. They are a premier business destination in this corridor for new and used Audi and Porsche luxury automobiles. Their management team serves on board and committees and support of goals of our West Colfax Vision 2040 Action Plan.

Prestige Imports is still amid its planning for a major investment in its current West Colfax dealership site. The proposed multi-million investment will help continue the positive momentum along Lakewood's historic West Colfax Avenue. The rezoning of this site is essential for Prestige to maintain its current operations as well as undertake in the investment in new construction of a new dealership.

It is important to note that while using this property as Temporary Use, they significantly improved the site, removing trash and illegally dumped items, cutting down overgrown brush, installing security fencing, and keeping the site well-managed and maintained during their use. Furthermore, if the rezoning is approved, Prestige has plans to further improve the site by removing the dilapidated building, repaving the lot, providing new security lighting, and installing new landscaping. These improvements will be a benefit to public and add to the positive perception of Lakewood's West Colfax corridor.

We support the approval of this rezoning application. Prestige Imports is a longtime community partner with an enduring positive impact on West Colfax. This rezoning would allow an established business to grow and reinvest in the City's oldest commercial corridor, expanding both our tax base and employment base. Please approve this application and keep Prestige Imports in our City.

Sincerely,

Ronald L. Seigneur
WCCA Board Chair

cc: Board of Directors



40 WEST ARTS
Creative District

40 West Arts District
1560 Teller Street | Lakewood, CO 80214
303.275.3430 | info@40WestArts.org



Working Together to ENERGIZE Historic West Colfax

June 14, 2020

To the City of Lakewood Planning Department Staff :

We are writing this letter on behalf of 40 West Arts District in support of Prestige Imports' application for RZ-200001. Our district supports this request and recommends approval of this application.

40 West Arts, a 501(c)3 nonprofit, is Lakewood's state-certified creative district, one of only 25 such districts in Colorado. The district's nonprofit mission is to enrich the community and enhance the creative, cultural and economic vitality of the historic West Colfax corridor by creating community arts spaces and community arts events and by supporting creative enterprises and activities in the district.

Prestige Imports is a valued partner of 40 West Arts and a long-established member of the West Colfax business community. The management team at Prestige has been instrumental in helping 40 West Arts by supporting and promoting our arts and cultural activities and even providing us facilities for special events. As an nonprofit, we depend a great deal on companies like Prestige Imports, who recognize the value of our mission and are willing to support it.

We understand that Prestige has been using this property under a Long-Term Temporary Use Permit. During their ongoing use they helped clean up the property and improve the site. At a recent community meeting they explained that with the rezoning they have additional plans for site improvements, which will further enhance the property and the image of the West Colfax corridor. In addition, Prestige has plans to beautify the building at 8600 W. Colfax with a public art project. If approved, Prestige will work with the community and 40 West Arts to bring this art project to fruition.

Moreover, Prestige Imports is planning for a major investment in its current West Colfax dealership site. This multi-million investment will bolster the economic vitality along Lakewood's historic West Colfax Avenue. Furthermore, the rezoning of this property is critical for its current operations and a prerequisite to their investment in new construction for a state-of-art dealership adjacent to their existing facility.

Prestige Imports is a longtime community partner on West Colfax. This rezoning would allow an established business to reinvest in Lakewood's oldest commercial corridor. In this current environment, this new investment is not only important to West Colfax, but also to Lakewood at large. We need active, engaged businesses like Prestige to grow employment and our tax base. Please help Prestige Imports reinvest and stay in Lakewood. Please approve this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Liz Black".

Liz Black
Executive Director

A handwritten signature in blue ink, appearing to read "William P. Marino".

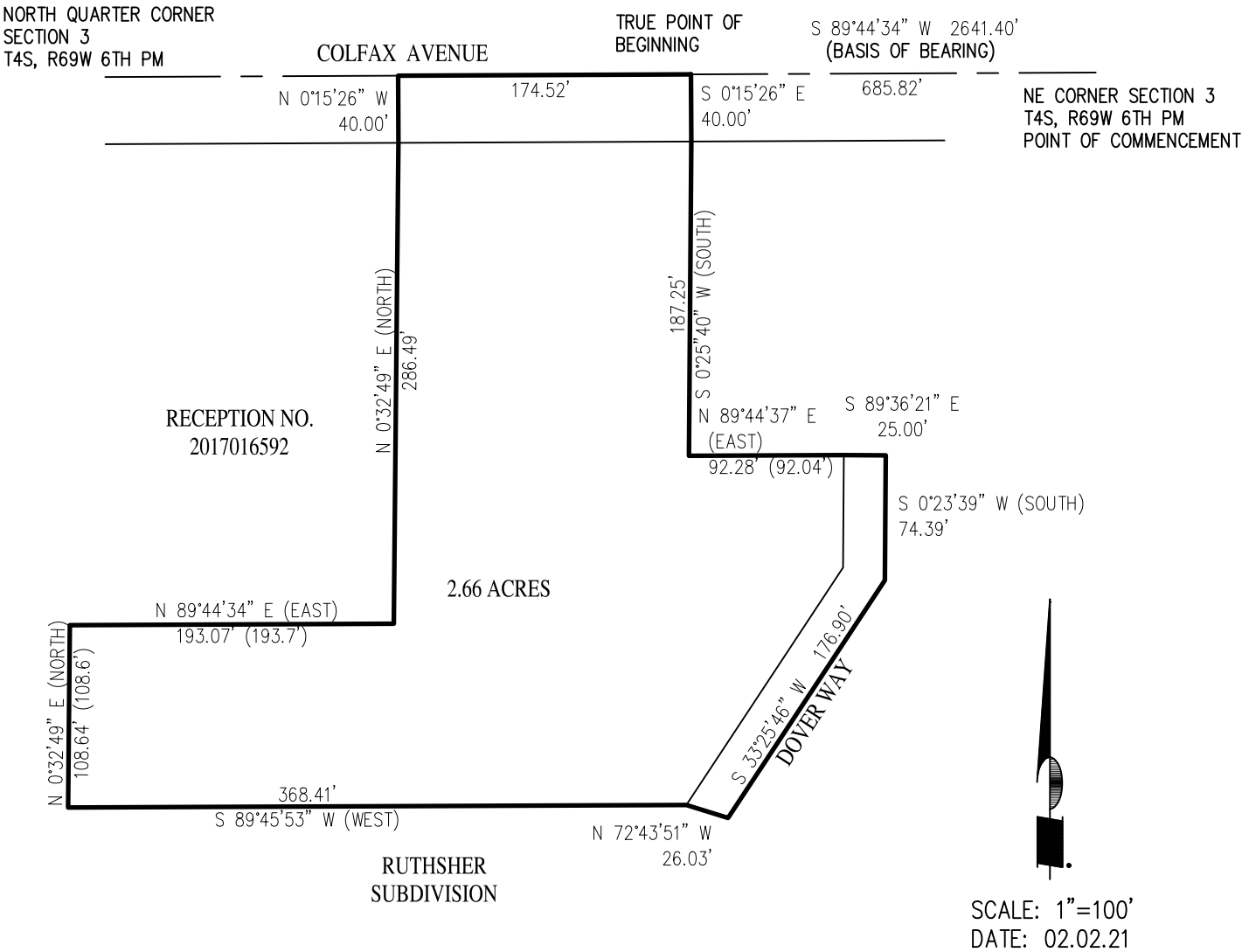
William P. Marino
Board Chair

cc: Board of Directors

EXHIBIT A

ZONING AREA DESCRIPTION

SECTION 3, TOWNSHIP 4 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN
CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO



ZONING AREA DESCRIPTION:

A PARCEL OF LAND LOCATED WITHIN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH RECORD INFORMATION DENOTED BY PARENTHESIS ():

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 3 WHENCE THE NORTH QUARTER CORNER THEREOF BEARS S 89°44'34" W, 2641.40 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE ALONG THE NORTH LINE OF SAID SECTION S 89°44'34" W, 685.82 FEET TO THE TRUE POINT OF BEGINNING; THENCE S 0°15'26" E, 40.00 FEET TO THE SOUTH RIGHT-OF-WAY OF COLFAX AVENUE; THENCE S 0°25'40" W (SOUTH), 187.25 FEET; THENCE N 89°44'37" E (EAST), 92.28 (92.04) FEET; THENCE S 89°36'21" E. 25.00 FEET TO THE CENTERLINE OF DOVER WAY; THENCE ALONG SAID CENTERLINE S 0°23'39" W (SOUTH), 74.39 FEET; THENCE CONTINUE ALONG SAID CENTERLINE S 33°25'46" W, 176.90 FEET; THENCE N 72°43'51" W, 26.03 FEET TO THE COMMON LINE WITH RUTHSHER SUBDIVISION; THENCE ALONG SAID COMMON LINE S 89°45'53" W (WEST), 368.41 FEET; THENCE N 0°32'49" E (NORTH), 108.64 (108.6) FEET TO THE SOUTH LINE OF THE PARCEL RECORDED AT RECEPTION NO. 2017016592; THENCE ALONG THE COMMON LINE WITH SAID PARCEL N 89°44'34" E (EAST), 193.07 (193.7) FEET; THENCE CONTINUING ALONG SAID COMMON LINE N 0°32'49" E (NORTH), 286.49 FEET TO THE SOUTH RIGHT-OF-WAY OF COLFAX AVENUE; THENCE N 0°15'26" W, 40.00 FEET; THENCE N 89°44'34" E, 174.52 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2.66 ACRES MORE OR LESS.

RESOLUTION OF CITY OF LAKEWOOD PLANNING COMMISSION

On January 20, 2021 the Lakewood Planning Commission reviewed rezoning Case No. RZ-20-001 to rezone the properties at 8600 & 8650 W. Colfax Avenue from Mixed-Use Neighborhood Urban (M-N-U) zone district to Mixed-Use General Suburban (M-G-S).

Motion was made by COMMISSIONER MILLER and seconded by COMMISSIONER HEALD to recommended APPROVAL by City Council, which passed by a vote of 7 to 0. The roll having been called; the vote of the Lakewood Planning Commission was as follows:

Alex Bartlett	Aye
Johann Cohn	Aye
Alan Heald	Aye
Cathy Kentner	Aye
Dale Miller	Aye
Rhonda Peters	Aye
Theresa Stone	Aye

FINDINGS OF FACT AND ORDER

The Planning Commission finds that:

- A. The applicant, David Leibowitz, is proposing to rezone 8600 and 8650 W. Colfax Avenue from Mixed-Use Neighborhood Urban (M-N-U) zone district to Mixed-Use General Suburban (M-G-S).
- B. Notice of the Public Hearing was provided to the fee owners of property and residents within 500 feet; and registered neighborhood organizations within a 1/2 mile as required by the Lakewood Zoning Ordinance; and
- C. Notice was published in the official City newspaper at least six days prior to the hearing; and
- D. Notice was posted at the property at least 14 days prior to the hearing; and
- E. The request was reviewed by the appropriate referral agencies; and
- F. The proposed rezoning promotes the purposes of this Zoning Ordinance as stated in Section 17.1.2.; and
- G. The proposed rezoning is compatible with existing surrounding land uses and the land uses envisioned in the Comprehensive Plan; and
- H. The proposed rezoning promotes the implementation of the Comprehensive Plan;

AND

The Planning Commission adopts the findings of fact and order, A through H, as presented in this staff report and recommends that the City Council **APPROVE** Rezoning Case No. RZ-20-001



Alan Heald, Chair



Alex Bartlett, Secretary of the Planning Commission

CERTIFICATION

I, Aaron Schultz, Secretary to the City of Lakewood Planning Commission, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Lakewood Planning Commission at a Public Hearing held in Lakewood, Colorado, on the 20th day of January, 2021 as the same appears in the minutes of said meeting.

A handwritten signature in black ink, appearing to read "Aaron Schultz", written over a light gray rectangular background.

01/20/2021

Date approved

Aaron Schultz, Secretary to the
Planning Commission

**CHANGE IN USE DEVELOPMENT AGREEMENT
FOR 8600, 8630 & 8650 W COLFAX AVENUE
LAKEWOOD, CO 80215**

THIS CHANGE IN USE DEVELOPMENT AGREEMENT (the “Agreement”) is made by and between Malik Tanweer (the “Owner”), and the CITY OF LAKEWOOD, a Colorado home rule municipal corporation (the “City”). The Owner and the City are collectively referred to herein as the “Parties.” The Effective Date of this Agreement shall be the date upon which the proposed rezoning is approved as identified in paragraph H of the Recitals below.

Recitals

A. The Owner owns 2.34 acres, more or less, of contiguous property located within the City at 8600, 8630 and 8650 West Colfax Avenue, more particularly described on Exhibit 1 attached hereto (the “Property”).

B. The Owner seeks to rezone the Property, which is currently zoned Mixed-Use Neighborhood Urban (M-N-U), to the Mixed-Use General Suburban (M-G-S) zone district to accommodate Motor Vehicle Sales, Minor Motor Vehicle Service and Outdoor Storage and Display land uses associated with the existing satellite facility of the Prestige Imports dealership (“Prestige”), located less than ½ of a mile from the Property at 9201 W. Colfax Avenue.

C. Prestige is currently using the Property for outdoor storage of vehicle inventory pursuant to a Long-Term Temporary Use permit that expires on January 20, 2021. Outdoor storage is not a permitted use in the M-N-U zone district; however, the proposed minor motor vehicle service land use is a permitted use in the M-G-S zone district, and the outdoor display and storage of for sale vehicles is a limited land use. As such, the M-G-S zone district would accommodate all of the foregoing proposed land uses.

D. Upon rezoning approval, Prestige seeks to begin construction of certain site improvements, including the removal of the dilapidated 5,000 SF building at 8630 W. Colfax Avenue, repaving the outdoor vehicle storage area, and installing site lighting, outdoor storage area screening and landscape improvements (the “Proposed Project”).

E. The rezoning approval results in an automatic change in use for the Property. Per Section 2.6 of the Colorado Department of Transportation (“CDOT”) Access Code, a change in use at this location triggers closure of the Property’s eastern access point to W. Colfax Avenue. The closure of this access requires certain public improvements along the Property frontage in accordance with City regulations (the “Public Improvements”).

F. The Owner and the City desire to enter into this Agreement to ensure the Public Improvements are constructed to accommodate the change in use.

G. The City desires to complete a formal site plan and civil engineering review of the Proposed Project and Public Improvements together as a single project to ensure the change in use will adequately accommodate service and emergency vehicle access across the site and that all improvements will satisfy the applicable development and design standards adopted by the City.

H. The proposed rezoning of the Property, to be achieved via Ordinance O-2020-____ (the “Rezoning Ordinance”), will be or has been submitted to the Lakewood City Council for approval upon second and final reading currently scheduled to occur on February 22, 2021.

Agreement

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

1. Major Site Plan Submittal. The Owner shall prepare and submit to the City a formal site plan application and civil construction plans for all required Public Improvements and any proposed private improvements within six (6) months of the effective date of the Rezoning Ordinance.

2. Public Improvements Agreement. The City will prepare and provide to the Owner for signature a public improvements agreement (“PIA”) more particularly describing the Public Improvements to be constructed by the Owner. The Owner shall return the signed PIA to the City for recording. The PIA must be in place prior to any City approvals of the site plan or civil engineering plans.

3. Drainage Improvements. Upon review of the submitted site plan, the City may require detention and water quality measures if the total site disturbance exceeds 1.0 acre.

4. Uses Dependent on Improvements. The Owner acknowledges and agrees that making use of the Property as authorized by the rezoning is contingent upon the improvements contemplated in sections 2 and 3 hereof (the “Required Improvements”). Failure to construct the Required Improvements will result in the Property failing to meet the standards of the City’s Zoning Ordinance, Title 17, Lakewood Municipal Code. The Owner further acknowledges and agrees that making use of the Property without having completed the Required Improvements may subject the Owner to enforcement actions, including, but not limited to, cease and desist orders and municipal court summons.

5. Agreement Conditioned on Approval of Rezoning. The Parties acknowledge and agree that this Agreement is dependent upon the City Council’s approval of the Rezoning Ordinance, which would rezone the Property from its current M-N-U Zone District to the M-G-S zone district. However, should the City Council fail to approve the rezoning, the Parties acknowledge and agree that this Agreement shall be void *ab initio* and shall have no effect on the Property.

6. Term. The term of this Agreement (“Term”) will commence on the Effective Date and will continue through the completion of the Proposed Project. Nothing herein will limit the ability of the Parties to amend this Agreement to extend the Term. After expiration of the Term, this Agreement will be deemed terminated and of no further force and effect; provided, however, such termination will not affect any common law vested property rights established prior to such termination.

7. Full Authority. Each Party represents that it has the full right, power and authority to enter into, perform and observe this Agreement.

8. Miscellaneous.

- a) Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement will be valid or binding.
- b) Amendment. This Agreement may be amended by written mutual agreement of the Parties.
- c) Binding Effect. The rights and obligations of the Parties to this Agreement will be binding on each of the Parties' successors, assigns, and heirs.

9. Counterparts; Electronic Delivery; Electronic Disposition. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement, and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately represent the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF LAKEWOOD

Kathleen E. Hodgson, City Manager

ATTEST:

Bruce Roome, City Clerk

Attestation Date

RECOMMENDED AND APPROVED:

Jay N. Hutchison, Director
Public Works Department

Travis Parker, Director
Planning Department

APPROVED AS TO FORM:

Gregory D. Graham, Deputy City Attorney

[Signatures continued on following page]

MALIK TANWEER


Malik Tanweer, Owner

STATE OF Virginia)
COUNTY OF Fairfax) ss

The foregoing instrument was acknowledged before me this 29th day of January, 2021,
by Tanweer Malik, as an individual residing in Jefferson County, Colorado.

Witness my hand and official seal.

My commission expires: 5/31/2024


Notary Public

CHARMAINE K-CHENG
Notary Public
Commonwealth of Virginia
Registration No. 7523371
My Commission Expires May 31, 2024

EXHIBIT 1
LEGAL DESCRIPTION FOR
8600, 8630 AND 8650 W COLFAX AVENUE

Parcel A:

That part of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West of the 6th Principal Meridian, described as follows:

Beginning at the point on the North line of said Section 3, which is 25 feet West of the Northeast corner of the West one-half of the Northeast one-quarter of the Northeast one-quarter of the said Section 3, running thence South 435.6 feet, thence West 175 feet; thence North 435.6; thence East 175 feet to the Point of Beginning, except the North 40 feet thereof, County of Jefferson, State of Colorado.

Parcel B:

A tract of land in West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ Section 3, Township 4 South, Range 69 West as follows:

Beginning at a point 200 feet West and 327 feet South of Northeast corner of West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West; thence South 108.6 feet; thence West 193.7 feet; thence North 108.6 feet; thence East 193.7 feet, more or less, to the Point of Beginning, County of Jefferson, State of Colorado.

Parcel C:

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West described as follows:

Beginning at a point 593.20 feet West of the East line and 50 feet of the North line of said Section 3; thence South and parallel with the East line of said Section 3; 177.25 feet to the True Point of Beginning; thence continuing South and parallel with said East line, 64.75 feet, more or less, to the Easterly right of way line of Rocky Mountain Ditch; thence along said right of way line to the point of intersection with the centerline of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the said Section 3; thence Southwesterly 45.9 feet, more or less, to a point 435.6 feet South of the North line of said Section 4 and 25 feet West of the centerline of the Northeast $\frac{1}{4}$ of said Section 3; thence North and parallel with said centerline 208.35 feet, more or less, to a point 227.25 feet South of the North line of said Section 3; thence East and parallel with the said North line, 92.04 feet, more or less, to the True Point of Beginning, Except that part described in Book 876 at Page 217, County of Jefferson, State of Colorado.

**CHANGE IN USE DEVELOPMENT AGREEMENT
FOR 8600, 8630 & 8650 W COLFAX AVENUE
LAKEWOOD, CO 80215**

THIS CHANGE IN USE DEVELOPMENT AGREEMENT (the "Agreement") is made by and between Malik Tanweer (the "Owner"), and the CITY OF LAKEWOOD, a Colorado home rule municipal corporation (the "City"). The Owner and the City are collectively referred to herein as the "Parties." The Effective Date of this Agreement shall be the date upon which the proposed rezoning is approved as identified in paragraph H of the Recitals below.

Recitals

A. The Owner owns 2.34 acres, more or less, of contiguous property located within the City at 8600, 8630 and 8650 West Colfax Avenue, more particularly described on Exhibit 1 attached hereto (the "Property").

B. The Owner seeks to rezone the Property, which is currently zoned Mixed-Use Neighborhood Urban (M-N-U), to the Mixed-Use General Suburban (M-G-S) zone district to accommodate Motor Vehicle Sales, Minor Motor Vehicle Service and Outdoor Storage and Display land uses associated with the existing satellite facility of the Prestige Imports dealership ("Prestige"), located less than ½ of a mile from the Property at 9201 W. Colfax Avenue.

C. Prestige is currently using the Property for outdoor storage of vehicle inventory pursuant to a Long-Term Temporary Use permit that expires on January 20, 2021. Outdoor storage is not a permitted use in the M-N-U zone district; however, the proposed minor motor vehicle service land use is a permitted use in the M-G-S zone district, and the outdoor display and storage of for sale vehicles is a limited land use. As such, the M-G-S zone district would accommodate all of the foregoing proposed land uses.

D. Upon rezoning approval, Prestige seeks to begin construction of certain site improvements, including the removal of the dilapidated 5,000 SF building at 8630 W. Colfax Avenue, repaving the outdoor vehicle storage area, and installing site lighting, outdoor storage area screening and landscape improvements (the "Proposed Project").

E. The rezoning approval results in an automatic change in use for the Property. Per Section 2.6 of the Colorado Department of Transportation ("CDOT") Access Code, a change in use at this location triggers closure of the Property's eastern access point to W. Colfax Avenue. The closure of this access requires certain public improvements along the Property frontage in accordance with City regulations (the "Public Improvements").

F. The Owner and the City desire to enter into this Agreement to ensure the Public Improvements are constructed to accommodate the change in use.

G. The City desires to complete a formal site plan and civil engineering review of the Proposed Project and Public Improvements together as a single project to ensure the change in use will adequately accommodate service and emergency vehicle access across the site and that all improvements will satisfy the applicable development and design standards adopted by the City.

H. The proposed rezoning of the Property, to be achieved via Ordinance O-2020-____ (the "Rezoning Ordinance"), will be or has been submitted to the Lakewood City Council for approval upon second and final reading currently scheduled to occur on February 22, 2021.

Agreement

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

1. Major Site Plan Submittal. The Owner shall prepare and submit to the City a formal site plan application and civil construction plans for all required Public Improvements and any proposed private improvements within six (6) months of the effective date of the Rezoning Ordinance.

2. Public Improvements Agreement. The City will prepare and provide to the Owner for signature a public improvements agreement ("PIA") more particularly describing the Public Improvements to be constructed by the Owner. The Owner shall return the signed PIA to the City for recording. The PIA must be in place prior to any City approvals of the site plan or civil engineering plans.

3. Drainage Improvements. Upon review of the submitted site plan, the City may require detention and water quality measures if the total site disturbance exceeds 1.0 acre.

4. Uses Dependent on Improvements. The Owner acknowledges and agrees that making use of the Property as authorized by the rezoning is contingent upon the improvements contemplated in sections 2 and 3 hereof (the "Required Improvements"). Failure to construct the Required Improvements will result in the Property failing to meet the standards of the City's Zoning Ordinance, Title 17, Lakewood Municipal Code. The Owner further acknowledges and agrees that making use of the Property without having completed the Required Improvements may subject the Owner to enforcement actions, including, but not limited to, cease and desist orders and municipal court summons.

5. Agreement Conditioned on Approval of Rezoning. The Parties acknowledge and agree that this Agreement is dependent upon the City Council's approval of the Rezoning Ordinance, which would rezone the Property from its current M-N-U Zone District to the M-G-S zone district. However, should the City Council fail to approve the rezoning, the Parties acknowledge and agree that this Agreement shall be void *ab initio* and shall have no effect on the Property.

6. Term. The term of this Agreement ("Term") will commence on the Effective Date and will continue through the completion of the Proposed Project. Nothing herein will limit the ability of the Parties to amend this Agreement to extend the Term. After expiration of the Term, this Agreement will be deemed terminated and of no further force and effect; provided, however, such termination will not affect any common law vested property rights established prior to such termination.

7. Full Authority. Each Party represents that it has the full right, power and authority to enter into, perform and observe this Agreement.

8. Miscellaneous.

- a) Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement will be valid or binding.
- b) Amendment. This Agreement may be amended by written mutual agreement of the Parties.
- c) Binding Effect. The rights and obligations of the Parties to this Agreement will be binding on, each of the Parties' successors, assigns, and heirs.

9. Counterparts; Electronic Delivery; Electronic Disposition. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement, and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately represent the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF LAKEWOOD

Kathleen E. Hodgson, City Manager

ATTEST:

Bruce Roome, City Clerk

Attestation Date

RECOMMENDED AND APPROVED:

Jay N. Hutchison, Director
Public Works Department

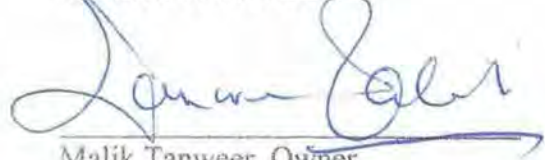
Travis Parker, Director
Planning Department

APPROVED AS TO FORM:

Gregory D. Graham, Deputy City Attorney

[Signatures continued on following page]

MALIK TANWEER



Malik Tanweer, Owner

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021,
by _____, as an individual residing in Jefferson County, Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT I
LEGAL DESCRIPTION FOR
8600, 8630 AND 8650 W COLFAX AVENUE

Parcel A:

That part of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West of the 6th Principal Meridian, described as follows:

Beginning at the point on the North line of said Section 3, which is 25 feet West of the Northeast corner of the West one-half of the Northeast one-quarter of the Northeast one-quarter of the said Section 3, running thence South 435.6 feet, thence West 175 feet; thence North 435.6; thence East 175 feet to the Point of Beginning, except the North 40 feet thereof, County of Jefferson, State of Colorado.

Parcel B:

A tract of land in West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ Section 3, Township 4 South, Range 69 West as follows:

Beginning at a point 200 feet West and 327 feet South of Northeast corner of West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West; thence South 108.6 feet; thence West 193.7 feet; thence North 108.6 feet; thence East 193.7 feet, more or less, to the Point of Beginning, County of Jefferson, State of Colorado.

Parcel C:

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West described as follows:

Beginning at a point 593.20 feet West of the East line and 50 feet of the North line of said Section 3; thence South and parallel with the East line of said Section 3; 177.25 feet to the True Point of Beginning; thence continuing South and parallel with said East line, 64.75 feet, more or less, to the Easterly right of way line of Rocky Mountain Ditch; thence along said right of way line to the point of intersection with the centerline of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the said Section 3; thence Southwesterly 45.9 feet, more or less, to a point 435.6 feet South of the North line of said Section 4 and 25 feet West of the centerline of the Northeast $\frac{1}{4}$ of said Section 3; thence North and parallel with said centerline 208.35 feet, more or less, to a point 227.25 feet South of the North line of said Section 3; thence East and parallel with the said North line, 92.04 feet, more or less, to the True Point of Beginning, Except that part described in Book 876 at Page 217, County of Jefferson, State of Colorado.

2021 - ____

A RESOLUTION

AUTHORIZING A CHANGE IN USE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 8600, 8630 & 8650 WEST COLFAX AVENUE

WHEREAS, on March 22, 2021, the Lakewood City Council adopted Ordinance O-2021- ____, which rezoned certain property within the City located at 8600, 8630 & 8650 W. Colfax Avenue (collectively, the "Property") from Mixed-Use Neighborhood Urban (M-N-U) to Mixed-Use General Suburban (M-G-S) to accommodate motor vehicle sales, minor vehicle service and outdoor storage land uses (the "Rezoning Ordinance");

WHEREAS, approval of the Rezoning Ordinance results in an automatic change in use by right for the Property that, in accordance with section 2.6 of the Colorado Department of Transportation Access Code, will require the closure of the Property's eastern access point to W. Colfax Avenue, necessitating the construction of certain public improvements along the Property frontage (the "Public Improvements");

WHEREAS, following the effective date of the Rezoning Ordinance, the Property owner's lessee intends to begin construction of certain site improvements, including demolition of the building at 8630 W. Colfax Avenue, repaving the outdoor vehicle storage area, and installing site lighting, outdoor storage area screening and landscape improvements (the "Project");

WHEREAS, the property's owner and the City wish to enter into the attached Change In Use Development Agreement to ensure the Public Improvements, in accordance with City regulations, are constructed to accommodate the change in use and designed to reflect the Project; and

WHEREAS, the City Council hereby finds and determines that approving the attached Change In Use Development Agreement is and shall be in the best interest 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 attached Change in Use Development Agreement for 8600, 8630 and 8650 W. Colfax Ave., Lakewood, Colorado, is hereby approved.

SECTION 2. The City Manager and City Clerk are hereby authorized and directed to execute and attest, respectively, the Change in Use Development Agreement on behalf of the City.

SECTION 3. The City will record the fully executed Change in Use Development Agreement with the Jefferson County Clerk and Recorder's Office.

SECTION 4. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ, AND ADOPTED by a vote of ____ for and ____
against at a virtual meeting of the City Council on March 22, 2021, at 7 o'clock p.m.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

EXHIBIT 1
(Legal Description of the Property)

Parcel A:

That part of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West of the 6th Principal Meridian, described as follows:

Beginning at the point on the North line of said Section 3, which is 25 feet West of the Northeast corner of the West one-half of the Northeast one-quarter of the Northeast one-quarter of the said Section 3, running thence South 435.6 feet, thence West 175 feet; thence North 435.6; thence East 175 feet to the Point of Beginning, except the North 40 feet thereof, County of Jefferson, State of Colorado.

Parcel B:

A tract of land in West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ Section 3, Township 4 South, Range 69 West as follows:

Beginning at a point 200 feet West and 327 feet South of Northeast corner of West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West; thence South 108.6 feet; thence West 193.7 feet; thence North 108.6 feet; thence East 193.7 feet, more or less, to the Point of Beginning, County of Jefferson, State of Colorado.

Parcel C:

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West described as follows:

Beginning at a point 593.20 feet West of the East line and 50 feet of the North line of said Section 3; thence South and parallel with the East line of said Section 3; 177.25 feet to the True Point of Beginning; thence continuing South and parallel with said East line, 64.75 feet, more or less, to the Easterly right of way line of Rocky Mountain Ditch; thence along said right of way line to the point of intersection with the centerline of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the said Section 3; thence Southwesterly 45.9 feet, more or less, to a point 435.6 feet South of the North line of said Section 4 and 25 feet West of the centerline of the Northeast $\frac{1}{4}$ of said Section 3; thence North and parallel with said centerline 208.35 feet, more or less, to a point 227.25 feet South of the North line of said Section 3; thence East and parallel with the said North line, 92.04 feet, more or less, to the True Point of Beginning, Except that part described in Book 876 at Page 217, County of Jefferson, State of Colorado.

STAFF MEMO

DATE OF COUNCIL MEETING: FEBRUARY 22, 2021 / AGENDA ITEM NO. 10

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **An Ordinance Amending Title 3 of the Lakewood Municipal Code to Modify Certain Sales and Use Tax Exemptions and to Adopt Certain Changes to Sections 3.03.310 and 3.01.320 and Chapters 3.02 and 3.03 Thereof**

SUMMARY STATEMENT: Lakewood Municipal Code (“LMC”) Chapter 3.02 (Registration of a Motor Vehicle) and Chapter 3.03 (Accommodations Tax) need to be updated to carry through some of the changes in terminology and taxation clarification related to the recent adoption of Chapter 3.01. In addition, other revisions to Chapter 3.01 regarding licensing, lodging services, and exemptions could better align the City with the State and/or other municipalities, which would simplify taxation and increase compliance.

BACKGROUND INFORMATION: Chapter 3.01 of the LMC was revised to incorporate standardized definitions, transform the language to be more user (business) friendly and more clearly articulate current processes and tax determinations. The revised code was adopted unanimously by City Council on December 14, 2020. Other chapters of the LMC need to be updated to carry through some of the changes in terminology and taxation clarification. Additional updates for Chapter 3.01 will align the City with the State and/or other municipalities. The exemption of certain items and not others sold by a vendor causes complexity and results in varying tax rates that can cause errors and increased audit liability. The alignment of taxation across jurisdictions makes it easier for taxpayers to understand and implement within the constraints of software systems (POS).

BUDGETARY IMPACTS: It is anticipated that the revised Code will result in better compliance and therefore, increased revenue. Revenue gains are anticipated to be de minimus.

STAFF RECOMMENDATIONS: Staff recommends City Council provide any specific questions in advance, so thoughtful answers may be researched and responded to suitably.

ALTERNATIVES: City Council could choose to adopt any or none of these items.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council.

NEXT STEPS: 2nd Reading March 22, 2021

ATTACHMENTS: Ordinance O-2021-4
Exhibits A, B, C & D to Ordinance O-2021-4
City Council Study Session February 1, 2021 PowerPoint
New Revenue White Papers – February 2021

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

O-2021-4

AN ORDINANCE

AMENDING TITLE 3 OF THE LAKEWOOD MUNICIPAL CODE TO MODIFY CERTAIN SALES AND USE TAX EXEMPTIONS AND TO ADOPT CERTAIN CHANGES TO SECTIONS 3.03.310 AND 3.01.320 AND CHAPTERS 3.02 AND 3.03 THEREOF

WHEREAS, the Lakewood City Council desires to repeal certain sales and use tax exemptions in chapter 3.01 of the Lakewood Municipal Code ("LMC") and to add an exemption thereto for the purposes of simplifying taxation for businesses, increasing taxpayer compliance, and aligning more closely with the State of Colorado and the revised Sales and Use Tax Code adopted by the City Council on second reading on December 14, 2020 (the "Revised Tax Code");

WHEREAS, the City Council desires further to amend LMC sections 3.01.310 and 3.01.320 to add semi-annual license renewals and update licensing fees to more accurately reflect the cost of sales and use tax license administration;

WHEREAS, the City Council additionally desires to amend LMC chapters 3.02 and 3.03 to revise citations to the Revised Tax Code, as well as certain definitions and language, to make such citations, definitions and language consistent with the Revised Tax Code;

WHEREAS, analyses conducted by the City's Revenue Division of the Finance Department have shown that the amendments herein will cause, at most, a *de minimis* net revenue gain;

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. The sales and use tax exemptions identified in **Exhibit A** hereto are hereby repealed, and the Revised Tax Code shall be amended as shown in such Exhibit A.

SECTION 2. The amendments as set forth in **Exhibits B, C and D** hereto are hereby adopted.

SECTION 3. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. 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 virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 22nd day of March, 2021; read, finally passed and adopted by the City Council on the 22nd day of March, 2021; and signed by the Mayor on the ____ day of _____, 2021_.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

EXHIBIT A

Words and punctuation are shown in red and underlined if added by this amendment and are shown in ~~red and struck through~~ if deleted by this amendment.

3.01.430 Exemptions.

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

A. Cigarettes. ~~All cigarettes.~~ Repealed

C. Construction Materials.

1. Railroad tracks. Construction Materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
2. Delivered outside City. Construction Materials if delivered to a location outside the City.
3. Tax prepaid on building permit. Construction Materials if the purchaser of such materials presents to the Retailer a building permit where Use Tax has been prepaid.
4. ~~Certain exempt entities. Construction Materials to be used on a project for an exempt entity identified in subsection (D) below, if the purchaser of such materials presents to the Retailer documentation from the City evidencing that tax is not required to be paid. This exemption shall not apply to Construction Materials used by contractors who perform contracts for a Qualified Hospital Organization.~~
5. Storage. The Storage of Construction Materials.

G. Food.

4. ~~Repealed Articles furnished with food. Any article to be furnished by a Retailer to a Consumer or user, together with food, meals or beverages Purchased for human consumption, if: a separate charge is not made for the article to the Consumer or user; such article becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);~~
5. ~~Repealed Containers or bags furnished by food Retailers. Any container or bag furnished by a Retailer of food, meals or beverages for human consumption to a Consumer or user for the purpose of packaging or bagging Tangible Personal Property Purchased at retail, if: a separate charge is not made for the container or bag to the Consumer or user; such container or bag becomes the property of the~~

~~Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);~~

R. Transportation.

1. Aircraft. Aircraft for Use in interstate commerce by an Airline Company;
2. Automotive vehicles registered outside the City. Automotive vehicles as defined in this Tax Code that are registered and required by state law to be registered outside the City;
3. ~~Electric-powered Automotive Vehicles. Electric-powered automotive vehicles, including both the original and all subsequent Purchases of such vehicles, and batteries and controls required for the operation and maintenance of such vehicles.~~

EXHIBIT B

Words and punctuation are shown in red and underlined if added by this amendment. Words and punctuation deleted by this amendment are shown in ~~red and struck through~~.

Chapter 3.01 – Sales and Use Tax Code

PART 1. SALES AND USE TAX

3.01.430 Exemptions.

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

K. Medical.

4. Oxygen. Oxygen concentrators, oxygen, and ~~with~~-related accessories.

- I. Lodging Services. Lodging Services provided to a natural Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more;

Words and punctuation are shown in **red and underlined** if added by this amendment and are shown in **red and struck through** if deleted by this amendment.

Chapter 3.02 - ~~INCORRECT~~ REGISTRATION OF A MOTOR VEHICLE

Sections:

3.02.010 Definitions

3.02.020 Registration of motor vehicle

3.02.030 Penalty for incorrect registration of motor vehicle

3.02.010 Definitions

As used in this chapter, the following terms shall have the following meanings:

"Chief Financial Officer/~~City Treasurer~~" means the Chief Financial Officer/City Treasurer of the ~~city~~ City.

"Motor vehicle" has the meaning set forth in Section 42-6-102(~~710~~) of the Colorado Revised Statutes.

"Notice of deficiency" means the notice issued by the Chief Financial Officer/~~City Treasurer~~ pursuant to ~~Section 3.01.260~~ Section 3.01.510 of this Code for failure, neglect or refusal to pay any sales or use tax due or any penalties or interest thereon.

"Penalty assessment notice" means the written notice of the Chief Financial Officer/~~City Treasurer~~'s determination that a violation of Section 42-6-137(2) of the Colorado Revised Statutes has occurred and assessment and demand for the payment of the civil penalty provided for in Section 3.02.030 hereof.

"Person" shall have the meaning set forth in section 3.01.230 of this code.

3.02.020 - Registration of motor vehicle.

No person shall register a motor vehicle in violation of the provisions of Section 42-6-137(2) of the Colorado Revised Statutes.

3.02.030 - Penalty for incorrect registration of motor vehicle.

A person ~~who that~~ registers a motor vehicle in violation of the provisions of Section 42-6-137(2) of the Colorado Revised Statutes shall be subject to a \$500.00 civil penalty pursuant to the authority granted in Section 42-6-137(4) of the Colorado Revised Statutes. The procedure for the assessment of such civil penalty shall be as follows:

A. When the Chief Financial Officer/~~City Treasurer~~ determines on such information as is available that a person has registered a motor vehicle in violation of the provisions of Section 42-6-137(2) of the Colorado Revised Statutes, ~~then~~ the Chief Financial Officer/~~City Treasurer~~ shall provide to such person a penalty assessment notice. If the Chief Financial Officer/~~City Treasurer~~ also has determined pursuant to ~~section 3.01.260~~ section 3.01.510 of this Code that sales or use taxes are due to the City on such motor vehicle, then such penalty assessment notice shall be included in the notice of deficiency.

B. Such person shall pay such civil penalty within the same time period provided pursuant to ~~Section 3.01.260~~ Section 3.01.510 of this Code for payment of any amounts due pursuant to the notice of deficiency, unless such person files a written protest pursuant to subsection ~~(C)~~ of this section.

C. If such person desires to protest the penalty assessment notice, such person shall file a written protest with the Chief Financial Officer/~~City Treasurer~~ within the time period provided pursuant to ~~Section 3.01.330~~ Section 3.01.710(A)(1) of this Code for protesting a notice of deficiency. The protest shall set forth the facts which show that a violation of Section 42-6-139 of the Colorado Revised Statutes, as amended, did not occur. The Chief Financial Officer/~~City Treasurer~~ shall issue a written decision affirming or withdrawing such penalty assessment notice within the same time period and in the same manner as provided pursuant to ~~Section 3.01.330~~ Section 3.01.710(BC) of this Code on a protest on a notice of deficiency. If the decision affirms the penalty assessment notice, then such person shall pay such civil penalty within the time period provided for payment of a final assessment pursuant to ~~Section 3.01.330~~ Section 3.01.710(BC) of this Code.

D. Such person may seek judicial review of the Chief Financial Officer/~~City Treasurer~~'s decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. No such judicial review shall be available if a written protest was not timely filed in the manner provided for in subsection (C) of this section.

E. The Chief Financial Officer/~~City Treasurer~~ may enforce collection of the civil penalty provided for in this section in the same manner provided in ~~Section 3.01.260~~ Section 3.01.510 of this Code for the collection of unpaid sales or use taxes, penalties, or interest.

F. Nothing in this section shall be deemed to preclude the collection of any tax, fee, penalty, or interest thereon provided by law or the imposition of any other civil or criminal penalty provided by law.

Words and punctuation are shown in **red** and **underlined** if added by this amendment and shown in **red** and **struck through** if deleted by this amendment. Language that has moved is shown in **green** and **struck through** in its former location, and shown in **green** and **underlined** in its new location.

Chapter 3.03 - HOTEL/MOTEL ACCOMMODATIONS TAX

3.03.010 - Title.

~~The ordinance codified in this chapter shall be known as the hotel/motel accommodations tax Code ordinance.~~

(Ord. O-86-89 § 1 (part), 1987).

3.03.020 - Legislative intent.

The City Council intends to levy upon any Person that~~the~~ purchasers, consumers, or users ~~of hotel/motel facilities~~Lodging Services the tax imposed by this ~~chapter~~Accommodations Tax Code ~~upon such purchasers, consumers, or users~~ for the privilege of ~~renting or leasing a lodging room~~making use of Lodging Services in the ~~city~~. This tax is in addition to and does not replace or repeal the sales tax on ~~hotel/motel rooms~~Lodging Services imposed by ~~Chapter 3.01~~the City of Lakewood Sales and Use Tax ~~of this Code.~~

(Ord. O-87-89 § 1 (part), 1987).

3.03.030 - Purpose.

The purpose of this tax imposed by this Accommodations Tax Code shall be to raise revenues to be used by the ~~city~~ to promote economic development within the ~~city~~.

(Ord. O-87-89 § 1 (part), 1987).

3.03.040 - Incorporation of certain Sales and Use Tax Code provisions; Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

- A. Unless the context otherwise requires, the following provisions of the city sales and use tax ordinance set forth in Chapter 3.01 of this Sales and Use Tax Code, including all amendments thereto, are hereby incorporated by reference into this Accommodations Tax Code chapter with the following modifications as is fully set forth herein:
 - Sections 3.01.~~230~~020, 3.01.030, 3.01.060, 3.01.065, 3.01.100, 3.01.130 through 3.01.190~~280~~, 3.01.370, 3.01.410(E) & (F), 3.01.430(D); Part 5, except section 3.01.520; and all of Parts 6 & 7. 3.01.210 through 3.01.350, inclusive;
- B. As used in this Accommodations Tax Code, Any reference therein the foregoing incorporated Sales and Use Tax provisions to:
 1. "Chapter 3.01," the "Tax Code," or "shall be deemed to refer to" this chapter" shall be deemed to refer to this Accommodations Tax Code;
 2. Any reference therein to "Sales tax," "Use tax," or "tax" shall be deemed to refer to the tax imposed pursuant to this chapter Accommodations Tax Code; and
 3. Any reference therein to "Taxpayer" or "Retailer" shall be deemed to refer to an owner of a hotel/motel facility any Provider of Lodging Services;
- C. "Provider of Lodging Services," as used in this Accommodations Tax Code, shall mean and include any Person that furnishes, provides, supplies or makes sales of Lodging Services.

~~Any reference therein to "retailer" or "vendor" shall be deemed to refer to an owner of a hotel/motel facility.~~

D. In the event of a conflict between this chapter and Chapter 3.01 Accommodations Tax Code and Sales and Use Tax Code, the provisions of this chapter Accommodations Tax Code shall control.

(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).

~~City Manager means the manager of the city.~~

~~Finance Department means the Finance Department of the city.~~

~~Chief Financial Officer/City Treasurer means the Chief Financial Officer/City Treasurer of the city.~~

~~Hotel/motel facility means a hotel, motel, or other similar facility which: (i) has lodging rooms; (ii) is located within the city; and (iii) the rental period is less than 30 consecutive days.~~

~~Lodging room is a regular sleeping room or unit which is part of a hotel or motel, or similar facility for which a charge is made for its use.~~

~~Purchaser, consumer, or user is that person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, motel, or similar facility for a period less than 30 consecutive days.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).~~

3.03.050 - Levy of tax.

On and after January 1, 1988, there is levied an excise tax of three percent (3%) upon the entire amount charged to any ~~p~~Person for a Lodging room Services, and such said tax shall be collected and paid ~~by each to the City by each Provider of Lodging Services. owner of a hotel/motel facility to the city.~~

(Ord. O-87-89 § 1 (part), 1987).

3.03.060 - Payment of tax.

Before the twentieth day of ~~each April, July, October, and January~~month, commencing January 1, ~~1988~~2014, every Provider owner of a hotel/motel facility of Lodging Services shall make a return to the Chief Financial Officer/~~City Treasurer~~ for the preceding calendar ~~quarter-month~~ and remit to the Chief Financial Officer/~~City Treasurer~~ an amount equal to three percent (3%) of the entire amount charged to all persons for Lodging Services room(s) during the preceding calendar ~~quarter-month~~. Such returns shall be furnished electronically through the City's online tax portal ~~by the Finance Department.~~

(Ord. 2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).

3.03.070 - Administration.

The City Council may adopt rules and regulations in conformity with this ~~chapter~~ Accommodations Tax Code for the proper administration and enforcement of this ~~chapter~~ Accommodations Tax Code. The administration of this ~~chapter~~ Accommodations Tax Code is vested in and shall be exercised by the City Manager. The Chief Financial Officer/~~City Treasurer~~ shall assist the City Manager in the administration of

this chapter Accommodations Tax Code to the extent provided herein and in the rules and regulations Sales and Use Tax Code promulgated hereunder.

(Ord. 2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).

~~3.03.080 Incorporation by reference of certain provisions of city's sales and use tax ordinance.~~

~~Unless the context otherwise requires, the following provisions of the city sales and use tax ordinance set forth in Chapter 3.01 of this Code, including all amendments thereto, are incorporated by reference into this chapter with the following modifications as if fully set forth herein:~~

~~A.2. Sections 3.01.020, 3.01.030, 3.01.060, 3.01.065, 3.01.100, 3.01.130 through 3.01.190, and 3.01.210 through 3.01.350, inclusive;~~

~~B.2. Any reference therein to "Chapter 3.01" shall be deemed to refer to this chapter;~~

~~C.2. Any reference therein to "sales tax," "use tax," or "tax" shall be deemed to refer to the tax imposed pursuant to this chapter~~

~~D.2. Any reference therein to "taxpayer" shall be deemed to refer to an owner of a hotel/motel facility;~~

~~E.2. Any reference therein to "retailer" or "vendor" shall be deemed to refer to an owner of a hotel/motel facility.~~

~~In the event of a conflict between this chapter and Chapter 3.01, the provisions of this chapter shall control.~~

~~(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).~~

3.03.080 Exemptions

A. Lodging Services provided, furnished or supplied to a natural Person, through a written agreement, for thirty (30) consecutive days or more are exempt from the tax imposed under this Accommodations Tax Code.

B. The burden of proving that any Provider of Lodging Services is exempt from collecting the tax imposed under this Accommodations Tax Code and paying the same to the City shall be on the Provider of Lodging Services as set forth in Regulation 3.01.250(F) of the Sales and Use Tax Regulations.

C. If a dispute arises as to whether or not the provision of Lodging Services is exempt from taxation hereunder, the Provider of Lodging Services shall collect, and the purchaser shall pay, the tax, and the Provider of Lodging Services shall thereupon issue to the purchaser a receipt or certification showing the names of the Provider of Lodging Services and the purchaser, the lodging purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption, as set forth in Regulation 3.01.250(D) of the Sales and Use Tax Regulations. The purchaser may apply to the Chief Financial Officer for a refund of such taxes pursuant to Sales and Use Tax Code section 03.01.540.

(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).



Lakewood
Full of Possibilities

City Council Study Session February 1, 2021

Tax Exemptions Review and Other Administrative Changes

New Revenue Opportunities

Draft Timeline

<u>Opportunity</u>	<u>Estimated Timing</u>	<u>Vote Needed</u>
✓ Adoption of Revised Lakewood Municipal Code Chapter 3	Dec-20	City Council
➔ Removal/Modification of Certain Tax Exemptions	Mar-21	City Council
Taxation of Specific Services	Nov-21	Citizen
Legalization of Specific Business Activities	2021	Varies
Adoption of Occupational Privilege Tax	Nov-21	Citizen
Establish TABOR Base at 2019 Level	Nov-21	Citizen
Annexation of Commercial Areas	TBD	City Council



Removal/Modification of Certain Tax Exemptions

Exemption	Reason
Medical Supplies of Practitioners Removed from consideration	Clarification of intent
Electric Vehicles	Alignment with the State
Cigarettes	Removal of exemption now allowed by HB19-1033; Alignment with other jurisdictions – CO, Aurora, Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle, and Vail
Non-essentials (carryout food/drink)	Alignment with the State
Pass-through Exemption from Exempt Entities to Contractors Removed from consideration	Alignment with other jurisdictions – Aurora, Boulder, Colorado Springs, Denver, Englewood, Lone Tree, Fort Collins, Greenwood Village, Thornton, Westminster, and Wheat Ridge



Medical Supplies of Practitioners

CURRENTLY UNDER REVIEW BY THE STATE

CDOR is proposing the rewrite of Rule 39-26-717 Medical Material, Equipment, and Drugs. A hearing will be held 1/25/21.

**This item has been removed from
consideration at this time.**



Electric Vehicles

- **Change:** Remove exemption on sale of electric-powered automotive vehicles, batteries, and controls
- **Reason:** Simplifies taxation for businesses, increases compliance, and broadens the tax base
- **Municipal Alignment:** State of Colorado
- **Revenue Impact:** \$150,000-356,000 per year



Cigarettes

- **Change:** Remove exemption on the sale of cigarettes
- **Reason:** Simplifies taxation for businesses, increases compliance, and broadens the tax base
- **Municipal Alignment:** State of Colorado, Aurora, Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle, and Vail
- **Revenue Impact:** \$450,000/year
- Other Options for Consideration:
 - Special sales tax
 - Cigarettes only, or
 - All tobacco products (i.e. electronic smoking devices, vape pens, and any refill, cartridge or component of such product)
 - Expansion of current licensing to all tobacco retailers selling products that contain tobacco, nicotine or synthetic nicotine, tobacco-related paraphernalia, and electronic smoking devices
 - ~~Implementation of retail tobacco store license~~
 - ~~Increase in minimum age from 18 to 21 to purchase all tobacco products, including smoking devices~~



Non-Essentials (Carryout)

- **Change:** Amend exemptions to apply to essential articles or containers only
- **Reason:** Simplifies taxation for businesses, increases compliance, and broadens the tax base
- **Municipal Alignment:** State of Colorado
- **Revenue Impact:** \$13,000 per year

Pass-Through Exemption to Contractors

- **Change:** Eliminate section (a)(ii) of the exemption which allows contractors to use an exempt entity's certificate of exemption to claim a tax exemption
- **Reason:** Broadens the tax base
- **Municipal Alignment:** Aurora, Boulder, Colorado Springs, Denver, Englewood, Lone Tree, Ft. Collins, Greenwood Village, Thornton, Westminster and Wheat Ridge
- **Revenue Impact:** \$260,000 per year

This item has been removed from consideration at this time.



Lakewood
Full of Possibilities

Discussion on Exemptions

Chapter 3.01 – Lodging Services

- **Change:** Add the word “natural” to Exemption 3.01.430 (I)
I. Lodging Services provided to a natural Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more
- **Reason:** The addition narrows the exemption to only natural persons. It will eliminate large businesses from taking advantage of the exemption by booking a room under the business name for several people’s use.
- **Municipal Alignment:** State of Colorado and Denver

Administrative Changes

(Continued)

Chapter 3.01 - Sales and Use Tax Licensing

- **Licensing Fee Approver**

- **Change:** Assign Chief Financial Officer (CFO) as license fee approver
- **Reason:** CFO will have knowledge of licensing process and associated personnel cost used to determine license fee

- **License Renewals**

- **Change:** Implement a 2-year license renewal
- **Reason:** Ensures business information is up to date, allowing for better communication and account management
- **Municipal Alignment:** State of Colorado, Aurora, Denver, Golden, Parker

Administrative Changes

(Continued)

Chapter 3.02 – Registration of a Motor Vehicle

- **Change:** Revisions to align with recently adopted Sales & Use Tax Code Chapter 3.01
- **Reasons:** Consistency with Chapter 3.01 sections

Chapter 3.03 - Accommodations Tax

- **Change:** Revisions to align with recently adopted Sales & Use Tax Code Chapter 3.01
- **Reasons:**
 - Consistency with Chapter 3.01 sections
 - Strengthens language to clarify that online travel companies and other Marketplace Facilitators are providers of Lodging Services



Lakewood
Full of Possibilities

Discussion on Administrative Changes



Opportunities Requiring Citizen Vote

- **Additional tax on cigarettes and like product**
- **Taxation of specific services**
- **Legalization of specific business activities**
- **Adoption of Occupational Privilege Tax**
- **Modification of TABOR base**

Action Needed

City Council, please identify which items to be considered for the November 2021 ballot.

NEW REVENUE OPPORTUNITIES

Updated February 2021

OVERVIEW

As the City strives to overcome the challenge of restoring balance to the budget, the Leadership Team has been developing robust plans to reduce operational costs by \$17 million by the end of 2021. Current revenue streams are also being re-evaluated to ensure that the City's fees and program costs are competitive in the market.

Historically, the City has been heavily reliant on sales tax to fund operations, accounting for roughly 53% of the revenue for the General Fund. The impact of the COVID-19 pandemic has been detrimental to local retail, as businesses have been forced to shut down or limit their operations. The impact to sales tax revenue is significant for City finances. Staff has identified a list of strategic revenue ideas for City Council's review. While these ideas do not move us away from being reliant on sales tax, they do, in many cases, broaden the tax base, simplify taxation for businesses, increase compliance, or offer additional flexibility to how the current revenue funds can be used. The attached "white papers" have been drafted to provide City Council with background and options for each of the following areas:

- Adoption of Standardized Sales Tax Definitions and Revised Chapter 3 of the Lakewood Municipal Code
- Removal/Modification of Certain Tax Exemptions
- Taxation of Specific Services
- Legalization of Specific Business Activities
- Adoption of Occupational Privilege Tax
- Modification of TABOR
- Annexation of Certain Commercial Areas

Action Needed

These white papers were presented to City Council in August 2020 to seek a recommendation on which items they would like for staff to research or pursue. City Council approved the adoption of the revised tax code on December 14th. It will go into effect on January 16, 2021. Lakewood voters approved the sale of recreational marijuana in the City November 2020. The remainder of the items will be reviewed during 2021.

Adoption of Revised Tax Code – Approved 12/14/2020

1. Standardized Sales Tax Definitions & Revised Lakewood Municipal Code (“LMC”) Chapter 3

Simplifies taxation for businesses and increases compliance.

Background

The Colorado Constitution gives local municipalities the ability to determine their tax base, establish rates, and perform their own tax collection. Lakewood is one of more than seventy-two locally-collecting municipalities. For businesses that operate in more than one jurisdiction, managing the (sales/use) taxation can be complex and burdensome. The General Assembly adopted Senate Joint Resolution (SJR) 14-038 urging Colorado’s home rule municipalities that locally collect their sales tax to work with the Colorado Municipal League to develop a package of uniform tax definitions. The intent of this resolution was to simplify taxation by having the municipalities utilize standardized terminology in their taxation policy. Definitions were drafted in a way that added clarity about current business practices without triggering a TABOR election. Standardized definitions were finalized February 2016. To date, 55 of the 72 self-collecting home rule jurisdictions have adopted the standardized definitions.

When incorporating the 2016 standardized definitions into LMC, it became clear that the LMC should be reviewed in totality. Over the years, changes had been made to the LMC in response to state legislative changes, the 1992 standardized definition project, and local legal disputes and challenges. The Code in its current state has typos, spelling errors, and inconsistencies. In addition, the Code is difficult for businesses to read and interpret.

Option

- ❖ City Council can adopt the rewritten tax code, LMC Chapter 3. Staff has spent more than four years working on a draft of the code that incorporates the 2016 standardized definitions. The revised code has been written to make sales and use tax easy to understand by business owners and accountants, without the interpretation of an attorney. It is organized in a way that is logical, and the language more clearly articulates the taxation policy. It is anticipated that the adoption of the rewritten code will result in incremental revenue from better compliance. In addition, it will be an opportunity for other items, such as Economic Nexus and Marketplace Facilitators (below) to be incorporated.

2. Economic Nexus, Marketplace Facilitators, and Sales & Use Tax System

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

The U.S. Supreme Court’s June 2018 ruling in *South Dakota v. Wayfair* (hereinafter “Wayfair”) changed the taxation landscape when the Court ruled that South Dakota could require internet sellers with no physical presence in the state to collect and remit taxes. The Supreme Court held that South Dakota had several measures in place that removed the burden on interstate commerce, including a threshold amount to not require small businesses to remit, a clause eliminating taxes from being owed retroactively, a single state-level tax administration, and uniform definitions.

Following the Wayfair ruling, Colorado passed HB19-240, which addressed the areas highlighted in the Wayfair ruling to remove the burden of interstate commerce.

- Economic nexus – Effective June 1, 2019, sellers who do not have a physical presence in Colorado are required to collect and remit taxes if their total sales exceed \$100,000 in a calendar year. This obligation is not retroactive.
- Destination sourcing – The State clarified their expectation of sourcing sales to the destination (vs. seller's location). However, small businesses (<\$100,000 in sales) with physical locations in Colorado were given reprieve until the State could implement an electronic system.
- Marketplace seller rules – Beginning October 1, 2019, marketplace facilitators, such as Amazon and Etsy, must collect and remit taxes on behalf of remote sellers selling through their platforms.

The *Wayfair* decision also reinforced the importance of a single portal for remote sellers. The State has since developed a single point of remittance portal (hereinafter "SUTS"), which will allow those municipalities who want to sign up for the State portal to collect taxes from (1) marketplace facilitators who collect on behalf of third-party sellers, and (2) businesses that are only connected to the municipality by economic presence. SUTS is not limited to remote/online retailers.

In efforts to have cohesive economic nexus requirements among all jurisdictions in Colorado, home rule municipalities agreed upon similar language as the State to lessen the burden on businesses and minimize legal risk. Definitions for Marketplace Facilitator and Economic Nexus were added to the standardized definitions from February 2016. The CML recommends that municipalities only adopt the Economic Nexus definition if they will be signing up for the SUTS. Requiring businesses to remit directly to the City without the option of the portal could result in a constitutional challenge under the Commerce Clause.

Definitions:

"Marketplace" means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

"Marketplace Facilitator"

(A) Means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

(B) "Marketplace Facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

“Marketplace Seller” means a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

“Multichannel Seller” means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Options

- ❖ The City Manager can sign the agreement with the State for SUTS if City Council adopts the rewritten LMC, to include the 2016 standardized definitions and the addition of Marketplace Facilitator and Economic Nexus. New guidelines would go into effect no sooner than 30 days after passed by City Council to allow time for communication to businesses. By taking these actions, Lakewood would meet the requirements specified in the South Dakota v. Wayfair ruling. (\$1.2-1.9 million)
- ❖ City Council could adopt the definition for Marketplace Facilitators only. The adoption of this term only (without Economic Nexus) will likely not lead to much additional revenue, as taxation would only apply to marketplace facilitators with a physical presence in Lakewood. Those businesses should already be collecting and remitting.

3. Tax Licensing Application Fees

Broadens the tax base.

Background

Businesses wishing to operate in the City of Lakewood must submit an application. The application review process is the same for both service-only businesses and retail businesses. Currently, the City charges an application fee of \$15 for Sales & Use Tax Licenses and \$0 for Use (service) Licenses.

The Colorado Municipal League is requesting that licensing fees not be required for marketplace facilitators that only have economic nexus and submit returns via the State’s SUTS portal.

Option

- ❖ City Council can approve the alignment of application fees for Sales & Use Tax Licenses and Use Tax Licenses (with the exception of marketplace facilitators as mentioned above). (<\$10,000)

4. Tax License Renewals

Broadens the tax base and increases compliance.

Background

Currently, there are roughly 11,000 licensed businesses in the City. Businesses commonly close or relocate without notifying the Revenue Division; contact information also gets outdated. This impedes communication when trying to reach taxpayers regarding filing compliance or collections.

Use Tax License (service only) holders strongly oppose the annual filing requirement. On average, about 40% of Use Tax filers do not file their returns on time, which results in delinquency letters and additional staff time. By requiring a license renewal for a business to continue to operate in the City, businesses would be required to update all information and could confirm that they continue to have non-taxable sales only (i.e. no changes to their business model). This would significantly decrease staff time in tracking down the zero-returns of the Use Tax filers.

Other cities that have a renewal process include: Denver (\$50 fee, 2 year renewal), Golden (\$20 fee, 2 year renewal, Edgewater (\$18 fee, 1 year renewal), Wheat Ridge (\$20 fee, 1 year renewal).

Option

- ❖ City Council could request that staff explore tax license renewals. Revenue from renewals would be dependent on the fee and frequency. (\$160,000-220,000)

Removal/Modification of Certain Tax Exemptions

1. ~~Medical Supplies of Practitioners~~ – Removed from Consideration

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

Lakewood's Municipal Code (LMC) §3.01.180(5) exempts certain medical supplies, some of which are exempt only when dispensed pursuant to a prescription. LMC §3.01.020, defines medical supplies as

“drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as a part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.”

The intent behind the exemption was to provide tax relief to patients purchasing or consuming certain medically necessary supplies (as determined by a doctor). Medical professionals and others have veered away from the original intent and have challenged that the exemption should apply to purchases by medical facilities.

The exemption is also unclear and difficult for vendors, licensed practitioners and auditors to determine which items are subject to tax, because the same material can be taxable or exempt depending on how the material is used. These items include bandages, braces, band-aids, sutures, gauze, aspirin and other items that are provided to the patient as part of their professional services.

Other home rule municipalities have chosen to limit their exemption to patients.

Options

- ❖ City Council could amend the definition of medical supplies to clarify the exemption and limit the exemption to certain supplies purchased by patients. The amendment would remove the section of the definition “drugs or materials when furnished by a doctor as a part of professional services provided to a patient”. The amended definition is, as follows: (\$155,000)

“Medical Supplies for Humans” include:

1. prescription drugs;
2. items for treatment and testing relating to diabetic conditions;
 - a. insulin in all its forms dispensed pursuant to the direction of a licensed physician,
 - b. glucose to be used for treatment of insulin reactions
 - c. urine and blood testing kits and materials
 - d. insulin measuring and injecting devices, including hypodermic syringes and needles
3. prosthetic devices worn on the body;

4. wheelchairs and hospital beds, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry, or podiatry;
 5. corrective eyeglass lenses including eyeglass frames, and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry;
 6. hearing aids when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or audiologist, or a hearing instrument specialist.
- ❖ City Council could limit the exemption of wheelchairs and hospital beds to personal use by a specific individual. This would preclude hospitals, nursing homes, and other care centers from the exemption. (\$11,000)
 - ❖ City Council could remove the exemption for items purchased by a doctor to use when providing professional services, unless specifically exempted. (\$144,000)

2. Electric Vehicles

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

LMC§ 3.01.180(28) exempts the purchase price of electric-powered automotive vehicles, including both the original and all subsequent purchases of such vehicles, and the purchase of batteries and controls required for the operation and maintenance of such vehicles. This exemption was adopted in 1985 along with the entire code. The State has since removed their electric vehicle exemption, presumably when tax credits and incentives started.

Jefferson County assesses tax, on the City's behalf, when a vehicle is registered. After recent discussions with the County, it appears as though the County has not been exempting the sales of electric vehicles for Lakewood tax.

Sales of electric vehicles are anticipated to more than double in the next five years (Colorado Electric Vehicle Plan 2020).

Option

- ❖ City Council could remove the exemption from the code. (\$150,000 in 2020, growing to \$356,000 in 2025)

3. Cigarettes

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

LMC §3.01.180(4) began exempting cigarettes from sales and use tax in 1985 when the code was adopted.

Prior to March 2019, State statute (C.R.S. 39-28-112) prohibited Lakewood from imposing their own fees, licenses, or taxes on cigarette sales. Instead, the State apportioned an amount of State cigarette tax revenues to Lakewood in proportion to the amount of State sales tax revenues collected within Lakewood's boundaries. In the event that Lakewood had wished to impose their own taxes and fees on cigarettes, they would have had to forego the apportionment. The City receives roughly \$300,000 per year from the State's apportionment.

In March 2019, HB19-1033, Section 5 was passed, which removed this prohibition, thus allowing local governments to impose their own fees and licenses on any person as a condition for engaging in the business of selling cigarettes. It is yet to be determined if the municipality would lose the apportioned state cigarette tax revenues if a City pursued its own sales and use tax. Aurora is currently challenging the State on this matter.

In addition, HB19-1033, Section 6 was passed, which authorizes a home rule city, if approved by a vote of the people within their jurisdiction, to levy, collect, enforce and administer a municipal special sales tax on the sale of cigarettes, tobacco products, or nicotine products.

Actions taken by other jurisdictions:

- Removal of cigarette exemption – State of Colorado, Aurora, Aspen, Avon, Basalt, Crested Butte
- Special sales tax on cigarettes (i.e. \$0.15 per cigarette or \$3.00 per pack of 20) – Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle and Vail
- Special sales tax rate on the retail price of tobacco products (i.e. electronic smoking devices, vape pens, and any refill, cartridge or component of such product) – Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle and Vail
- Annual licenses for tobacco retailers to sell products containing tobacco, nicotine or synthetic nicotine, tobacco-related paraphernalia, and electronic smoking devices (\$200 for new license & \$175 for renewal) – Edgewater
- Implementation of retail tobacco store license (\$250 application fee and \$500 license fee) - Denver
- Increase in minimum age from 18 to 21 to purchase all tobacco products, including smoking devices – Aspen, Avon, Denver, Edgewater, Basalt, Boulder, Glenwood Springs, Eagle County, Minturn, Carbondale and Snowmass Village

Options

- ❖ City Council could remove exemption 3.01.180(4) and collect sales tax on cigarettes sales; potentially forgoing the state's apportionment. The estimated additional net revenue, after removing the apportionment, is \$450,000 tax annually.
- ❖ City Council could impose fees or licenses on any person as a condition for engaging in the business of selling cigarettes. (\$TBD)
- ❖ City Council could determine if the minimum age should be raised for buying tobacco and nicotine products. (\$TBD)
- ❖ City Council could conduct a vote to levy a municipal special sales tax on cigarettes, tobacco products, or nicotine products. (\$TBD)

4. Non-essentials (carryout food/drink)

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

Lakewood currently exempts certain items that are furnished by food vendors with the sale of taxable carryout food, meals, or beverages. Examples include plastic utensils, straws, ketchup, bags and containers.

LMC 3.01.180 (16) exempts “Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.01.120(A) or (E).”

LMC 3.01.180 (17) exempts “Any sale of any container or bag to a retailer or vendor of food, meals, or beverages which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.01.120(I) or (5).”

Lakewood’s exemptions were in line with those of the State until March 2010, when the State narrowed their language to only exempt essential articles or containers.

- Exempt - “Disposable containers or packaging materials (used in an essential manner) on, or in which, food is transferred to the consumer, including pizza delivery box, sleeve for French fries, buckets, clamshells or other containers if the retailer cannot transfer the food to the consumer without such article or container.”
- Nonexempt – “An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to effectuate the sale of food.” Examples include, but are not limited to, utensils, napkins, cup sleeves, straws, and grocery bags.

With the State’s narrowing of the exemption, retailers selling these types of items now have different tax rates to impose when purchases are made by food vendors.

Option

- ❖ City Council could amend Lakewood’s exemptions to apply to essential articles or containers only. (\$13,000)

5. ~~Pass-through exemption from exempt entities to contractors~~ – Removed from consideration *Broadens the tax base.*

Background

In 1985, Lakewood exempted construction materials purchased by contractors for use on projects for government and charitable organizations.

LMC §3.01.180(19)

a. All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned or used by:

- i. The United States Government, the state, its departments and institutions, and the political subdivisions thereof in their governmental capacities only,
- ii. Charitable organizations in the conduct of their regular charitable functions and activities, or
- iii. Schools, other than schools held or conducted for private or corporate profit.

Cities of Aurora, Boulder, Colorado Springs, Denver, Englewood, Lone Tree, Ft. Collins, Greenwood Village, Thornton, Westminster and Wheat Ridge do not have an exemption for sales of construction materials for use by contractors on projects for charitable organizations.

Option

- ❖ City Council could eliminate section (a)(ii) of the exemption which allows contractors to use an exempt entity's certificate of exemption to claim a tax exemption. (\$260,000)

Taxation of Specific Services

Background

Sales tax is intended to be a tax on consumption. The economy has seen a significant shift from the consumption of goods to the consumption of services. However, taxation has not kept up with this change in purchasing habits. The taxation of services is essential, if revenue levels are to be maintained without an increase in the sales tax rate.

According to Avalara, a professional tax compliance company, “Delaware, Hawaii, New Mexico, and South Dakota tax most services. Still others, like Texas and Minnesota, are actively expanding service taxability.”

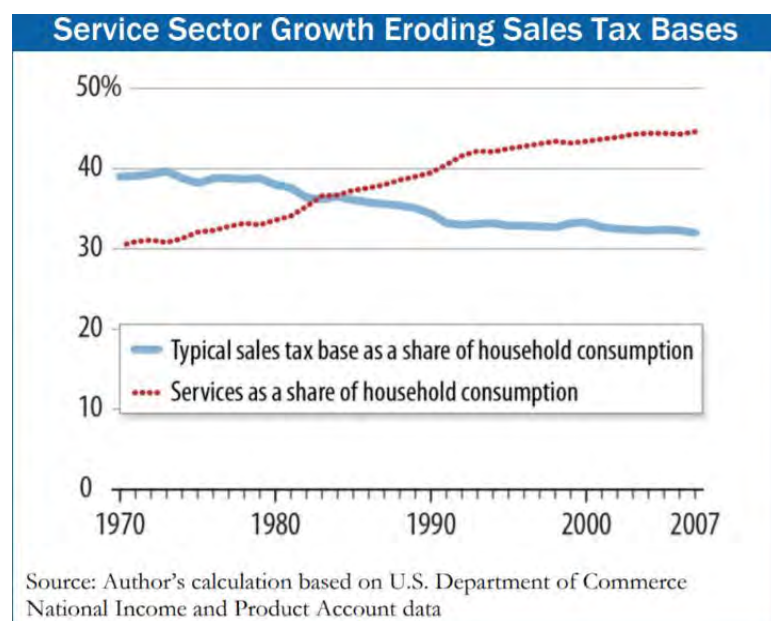
Lakewood’s Municipal Code imposes sales and use tax on retail sales of tangible personal property. In general, the tax does not apply to sales of services, except for those services specifically enumerated in the code. Taxation of additional services would require a vote of the people to avoid a TABOR violation.

1. All Services

Broadens the tax base.

The taxation of services would broaden Lakewood’s tax base and help stabilize the tax revenue stream for the City, especially in times of economic downturn. Services would be taxable, unless clearly exempted from the Lakewood code. The City could consider exempting such services where taxation could burden low-income households, such as child care and health care.

While dated, the following graph from the publication “Expanding Sales Taxation of Services: Options and Issues,” written by Michael Mazerov in July 2009, shows the shift in the economy toward consumption of services.



Option

- ❖ City Council could conduct a vote to tax services, unless specifically exempted.

2. Storage Facilities

Broadens the tax base.

The number of storage facilities nationwide grew to more than 60,000 in 2020 from around 47,000 in 2008, according to the research firm IBISWorld. Revenue increased 2.6% annually to \$38.6 billion in 2019 from 2014. Storage facilities are currently not an enumerated service in LMC.

Option

- ❖ City council could conduct a vote to levy sales tax on storage facilities. (\$250,000)

3. Luxury services

Broadens the tax base.

The taxation of services considered to be “luxury” by nature would provide additional revenue without overburdening lower-income populations. Such luxury items could include health club memberships, private club memberships, massages, nail care, pet grooming, landscaping/lawn care, and dry cleaning/laundry.

Option

- ❖ City Council could have staff compile a comprehensive list of luxury services that could be taxed. City Council could then ask Lakewood voters to approve the taxation of those services.

4. Software as a Service (SaaS)

Broadens the tax base.

Software as a service (SaaS) is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. It is sometimes referred to as cloud software, on-demand software or web-based software and is typically accessed by users through a web browser. SaaS has become very common for many business applications including office software, payroll processing software, management software, gamification, accounting, collaboration, customer relationship management, management information systems.

Prior to SaaS, software was purchased on a disk and/or downloaded. The City has always considered these transactions to be sales of tangible personal property and subject to Lakewood’s tax. Since SaaS is not distributed physically, staff has conservatively chosen to not tax SaaS, unless the software is hosted on a computer, device or server located in Lakewood; although SaaS is actually the same product as the software contained on a disk or software that is “downloaded”.

Option

- ❖ City Council could ask Lakewood voters to levy a sales tax on software as a service (SaaS). (\$1,000,000)

5. Informational Services

Broadens the tax base.

The sale or purchase of informational services involves the relay or transmission of electromagnetic waves in order for the informational service to be received. Informational services include, but are not limited to, the right to access databases and electronic or internet purchases of data, data research, data analysis, data filtering, or record compiling. Informational services include the furnishing of information of any kind, which has been generated, collected, compiled, or analyzed by the seller and which is made available through electromagnetic waves.

Examples include:

- On-line credit reports and on-line subscriptions, including, newsletters, magazines, and reports;
- On-line libraries, including Lexis and Westlaw; and
- Financial data retrieval and research, including stock, bond, and mutual fund quotes.

The tax is imposed on the purchase price for the right to access, use, or receive such informational services. The sale of personal services would not be subject to Lakewood's sales or use taxes. A distinction exists between the retail sale of informational services and the sale of personal services. A sale of personal services exists when the service provider performs custom research for a single client and the results are proprietary to that client.

The City of Denver currently taxes information services.

Option

- ❖ City Council could ask Lakewood voters to levy a sales tax on information services. (\$TBD)

Legalization of Specific Business Activities

1. Recreational Marijuana

Broadens the tax base.

Background

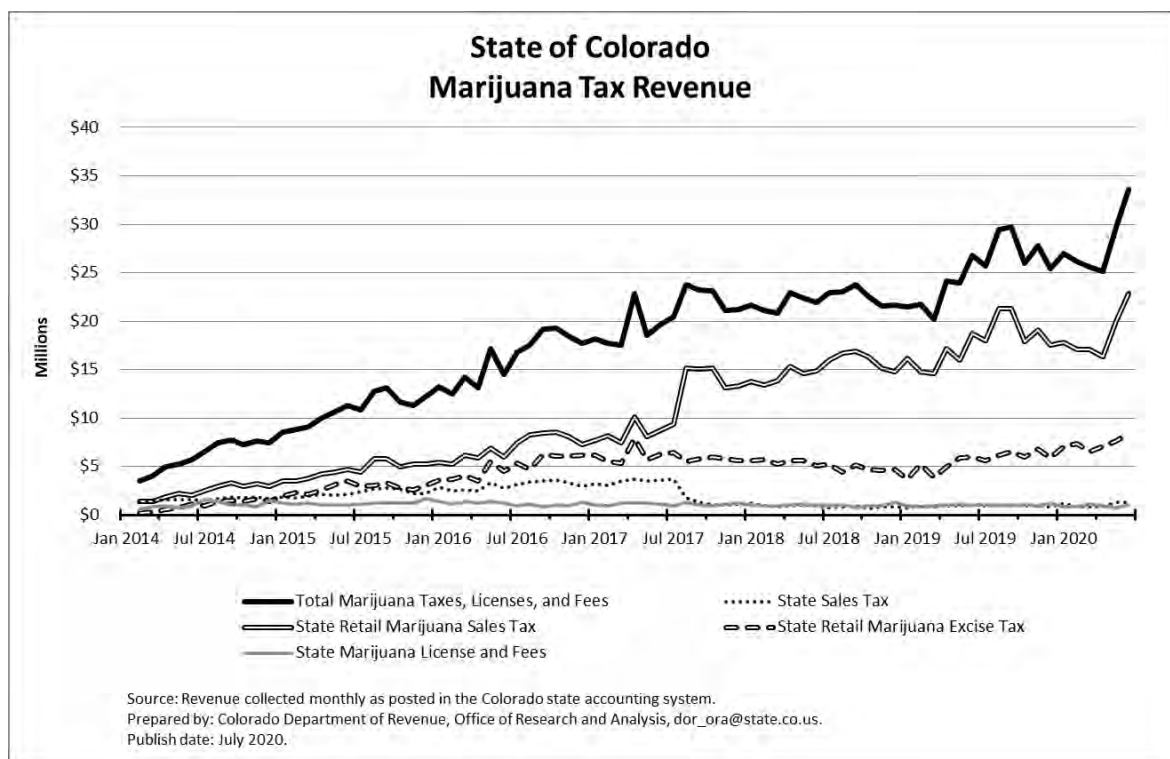
Lakewood began collecting sales tax revenue on medical marijuana in 2009. To date, more than \$3.7 million of tax revenue has been generated in Lakewood. Medical marijuana revenue has declined over the past 5 years, as more surrounding municipalities have legalized recreational marijuana.

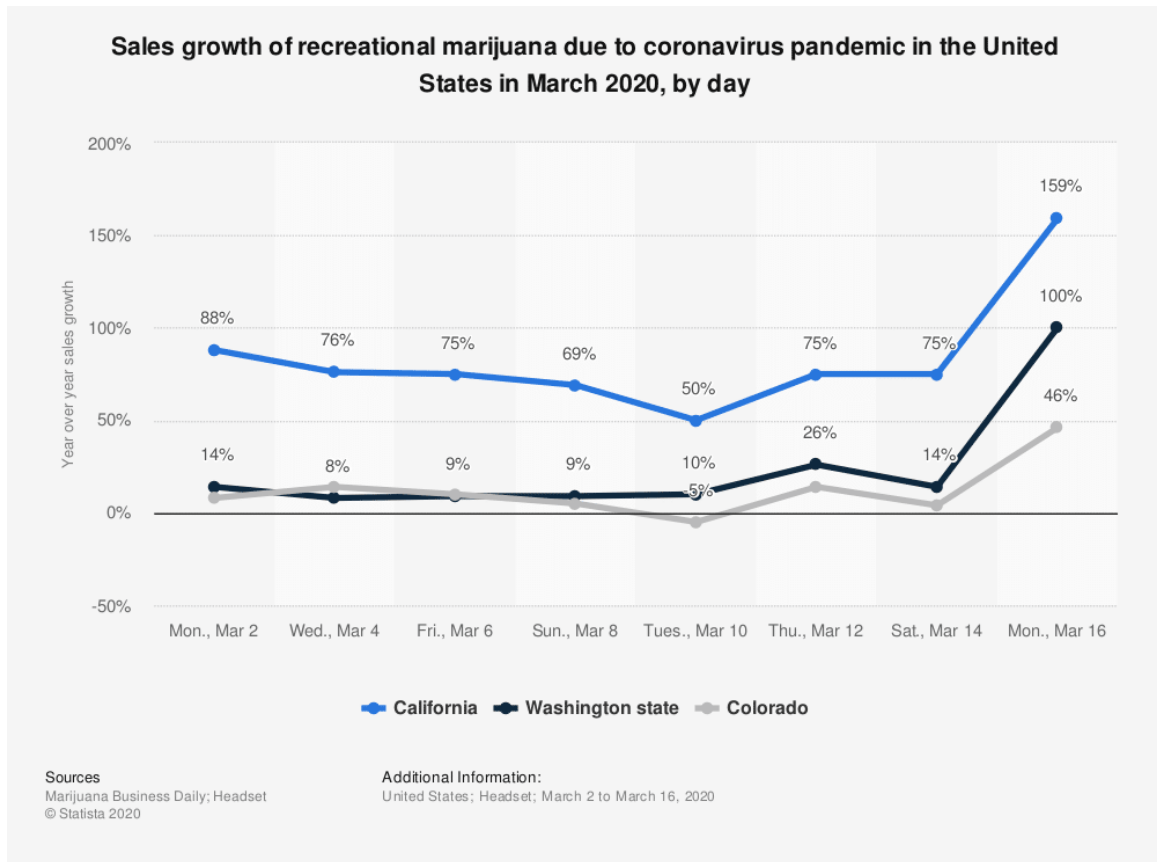
Other Municipalities

Staff has begun preliminary research of recreational marijuana sales of the State and other Denver metro municipalities.

- **State of Colorado Findings**

- Retail marijuana and retail marijuana-infused products = 15% sales tax rate (exempt from standard rate)
- Medical marijuana and medical marijuana-infused products = 2.9% sales tax rate
- Excise tax (15%) – applies to distributors of retail marijuana only





- **Denver Metro Findings**

- Retail marijuana revenues have started to plateau in some cities.
- Some cities have seen a shift to medical marijuana during the pandemic months.
- Some cities have chosen to tax recreational marijuana at a different tax rate than their standard sales tax rate – i.e. State (15%), Boulder (3.86% standard + 3.5%), and Aurora (3.75% standard + 5%).

A petition is currently being circulated (citizen driven) to get recreational marijuana on the ballot in November. Language in their drafted ordinance does not address the taxation of marijuana.

Options (can choose multiple)

- ❖ City Council can ask Lakewood voters to legalize recreational marijuana (3% standard tax rate). – *Approved November 2020*
- ❖ City Council can ask voters to legalize recreational marijuana at a higher rate (set % specific to recreational marijuana or an incremental special tax on top of the standard rate).
- ❖ City Council can implement a special licensing fee for recreational marijuana businesses.
- ❖ City Council can authorize grow operations with an excise tax.

2. Marijuana Delivery

Broadens the tax base.

Background

HB19-1234 allows for the creation of marijuana delivery permits for licensed medical and recreational marijuana centers and transporters for the delivery of medical and recreational marijuana and infused products to customers.

A one-dollar surcharge is assessed on each delivery, and that money is remitted to the municipality where the center or store is located, or to the county if the center or store is in an unincorporated area, to help cover local law enforcement costs related to marijuana enforcement.

Deliveries are limited to private residences, and cannot be made to any school, institution of higher education, or public property. The act provides protection against criminal prosecution for those making the deliveries.

Delivery is only allowed in a jurisdiction if that jurisdiction has voted to allow delivery either by referendum or by the governing board of the jurisdiction.

Denver has authorized an additional sales tax rate that can increase or decrease without further voter approval so long as the rate of taxation does not exceed 15%.

Options

- ❖ City Council could ask Lakewood voters to approve the delivery of marijuana at the standard 3% tax rate.
- ❖ City Council could ask Lakewood voters to approve the delivery of marijuana with an additional sales tax on the sale and delivery of marijuana into Lakewood's boundaries, perhaps with a "not to exceed" clause.
- ❖ City Council could implement a medical and/or recreational marijuana delivery permit.

3. Short-term Rentals

Broadens the tax base.

Background

Short-term rentals are furnished homes that are rented for short periods of time, they are typically classified as a stay under thirty-days but most often stays are between 2 and 7 days. They are seen as an alternative to hotels. Some examples of short-term rental companies are Airbnb and HomeAway (aka VRBO). Currently, Lakewood's zoning ordinance does not allow short-term rentals in residential zone districts.

If short-term rentals were allowed in the city, with restrictions similar to the City of Denver, it is estimated that \$138,000 in sales tax and \$138,000 in accommodations tax would be collected and remitted to the city annually.

Option

- ❖ City Council could amend the zoning code to allow for short-term rentals. (\$138,000 sales tax + \$138,000 accommodations tax)

Adoption of Occupational Privilege Tax

Broadens the tax base.

Background

Occupational Privilege Taxes (OPT), also known as “head taxes” are imposed on employees that perform work within the City boundaries and meet a certain income threshold per month. The tax is sometimes considered a “match” by the employer.

Five cities in Colorado have an OPT: Aurora, Denver, Glendale, Greenwood Village, and Sheridan.

	<u>Aurora</u>	<u>Denver</u>	<u>Glendale</u>	<u>Greenwood Village</u>	<u>Sheridan</u>
Gross Wages Threshold	\$250	\$500	\$750	\$250	N/A
Employee rate	\$2	\$5.75	\$5	\$2	\$3
Employer rate	\$2	\$4	\$5	\$2	\$3

Option

- ❖ City Council could request that additional research be performed and consider conducting a vote to adopt an Occupational Privilege Tax. (\$TBD)

Modification of TABOR

Offers additional flexibility to how the current revenue funds can be used.

Background

In 1992, Colorado voters approved an amendment to Article X of the State constitution that added a new Section 20, known as the Taxpayer's Bill of Rights or "TABOR." TABOR's Section 7 (Spending limits) contains the following provisions affecting the City of Lakewood's finances:

- (b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
- (c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
- (d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess [referred to hereinafter as "excess TABOR revenue"] shall be refunded in the next fiscal year [referred to hereinafter as a "TABOR refund"] unless voters approve a revenue change as an offset.

On November 6, 2018, Lakewood voters authorized the City to retain its excess TABOR revenue for the years 2017 through and including 2025. These excess TABOR revenue amounts were to be expended equally on:

- Parks and open space acquisition, improvements and maintenance (one-third)
- Police Department safety-related equipment, assets, and/or personnel (one-third)
- Certain infrastructure needs (one-third)
 - Infrastructure in areas with high-priority public safety concerns
 - Installation, repair and/or upgrading of sidewalks
 - Installation, repair and/or upgrading of street and path lighting for public safety purposes

To date (2017-2019), \$29,901,492 has been retained by the City to be used for the purposes specified above. Projects have been identified to utilize all available funding.

TABOR is a formula that restricts the amount of revenue growth each year. When City revenues decrease, the base used in the TABOR calculation resets to that lower level. This "ratchet effect" makes the recovery from an economic downturn more difficult. The impact of COVID-19 on City finances has been significant, resulting in significant budget cuts and an impact to community service levels. It is projected that it will take the City five years to get back to the 2019 TABOR base for revenue/expense.

"Of the state's 272 municipalities, 230 municipalities have obtained voter approval to retain and spend all or a portion of excess revenue collected. Of the state's 64 counties, 51 counties have obtained voter approval to retain and spend all excess revenue. All but four of the 178 school districts in Colorado have obtained voter approval to retain and spend excess revenue." – *Westword March 25, 2019*

Option

- ❖ City Council could ask Lakewood voters to establish the City's base for revenue/expenses for the years 2021-2023 at the 2019 level, thus protecting the General Fund from diverting an estimated \$11.5M during that time period.

Annexation of Certain Commercial Areas

Broadens the tax base.

Background

Annexing certain areas into the City could bring in additional revenue. Per State statute, annexations are limited to no more than three miles beyond City borders.

Option

- ❖ City Council to provide guidance if annexation should be explored.

STAFF MEMO

DATE OF COUNCIL MEETING: February 22, 2021 / AGENDA ITEM NO. 11

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901
Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **Ordinance Amending the 2021 Annual Budget and Authorizing the Expenditure of Grant Funds for the Colfax Safety Project**

SUMMARY STATEMENT: This ordinance would revise the 2021 budget to provide the \$2,500,000 match required of the City for the \$10,000,000 *Safer Main Streets Initiative* grant and authorize expenditures to improve safety and other features along Colfax Avenue between Wadsworth and Sheridan boulevards.

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

In December 2020, the City was notified that it was awarded a \$10,000,000 grant by the Denver Regional Council of Governments to improve safety and provide other features along this section of Colfax. The grant application included 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 6 of the deaths were pedestrians or cyclists.

Three additional pedestrian deaths have occurred since mid-2020.

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

Both business owners and residents will remain closely informed of the project as it is implemented. Public input will be received for project components such as landscaping, fencing and barriers. Certain project elements, such as art will include the local community and local artists as much as feasible. Affected businesses and neighborhoods will be kept informed and involved in the implementation process to minimize negative effects of construction and to make both the process and completed project an asset to the community.

BUDGETARY IMPACTS: Previous information was that the City's match for the grant would be \$2.0 million. On February 4, the City was notified by the Colorado Department of

Transportation that a mathematical error had occurred and the required City match is \$2.5 million. An alternative would be for the \$10 million grant to be reduced to \$8 million to keep the City match at \$2.0 million, which would not be adequate funding for the project.

Funding for the \$2.5 million City match will initially come from the following sources:

- \$1,000,000 – TABOR transportation project contingency funds and savings experienced on 2020 TABOR transportation project bids.
- \$500,000 – Additional TABOR transportation funds available in 2021 and attributable to 2020 revenues.
- \$1,000,000 – Capital Improvement Fund balance.

The Capital Improvement Fund balance is intended to be replenished from savings on TABOR transportation projects or future TABOR transportation funds, if any.

STAFF RECOMMENDATION: Approval of the ordinance.

ALTERNATIVES: City Council could choose to not approve this ordinance resulting in the Colfax Safety Project grant being declined or City Council could select other funding sources for the required \$2.5 million match for the grant.

PUBLIC OUTREACH: Notification has been made through the City Council agenda process.

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

ATTACHMENTS: Ordinance O-2021-5

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

AN ORDINANCE

AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF \$12,500,000 TO THE 2021 ANNUAL BUDGET AND AUTHORIZING EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO ASSIST THE CITY OF LAKEWOOD IN IMPROVING SAFETY ON COLFAX AVENUE BETWEEN WADSWORTH AND SHERIDAN BOULEVARDS

WHEREAS, Section 12.8 of the City Charter allows City Council to make supplemental appropriations by ordinance during the fiscal year for unanticipated expenditures required for the operation of the City using monies not anticipated in the adopted budget;

WHEREAS, Section 3.04.080 of the Lakewood Municipal Code requires approval by the City Council for any unbudgeted purchase or any purchase of more than fifty thousand dollars that has a change in funding source;

WHEREAS, the City of Lakewood has been 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 desires to appropriate the required grant matching funds of \$2,500,000 for the Colfax Safety Project to the 2021 Capital Improvement and Preservation Fund;

WHEREAS, the sources of such grant matching funds shall be: \$1,500,000 from the transportation portion of TABOR funds and \$1,000,000 from Capital Improvement Fund balance, which shall be replenished from transportation TABOR funds available in the future, if any;

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 RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Appropriation and Expenditure. The City Council hereby appropriates and authorizes the expenditure of twelve million five hundred thousand dollars (\$12,500,000) for fiscal year 2021 to fund the Colfax Safety Project.

SECTION 2. Effective Date. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 3. Severability. 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 virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 15th day of March, 2021; read, finally passed and adopted by the City Council on the 15th day of March, 2021; and signed by the Mayor on the _____ day of _____, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney



STAFF REPORT

DATE OF MEETING: FEBRUARY 22, 2021 / AGENDA ITEM NO. 12

To: Mayor and City Council

From: Kit Newland, Department Director (x7822)

Subject: AN ORDINANCE APPROVING SUPPLEMENTAL APPROPRIATIONS AND EXPENDITURE OF GRANT FUNDS FROM DENVER REGIONAL COUNCIL OF GOVERNMENTS TO PROVIDE TRANSPORTATION SERVICES THROUGH LAKEWOOD RIDES PROGRAM

SUMMARY STATEMENT: The Recreation Division within the Community Resources Department requests permission to receive grant funding from the Denver Regional Council of Governments (“DRCOG”) in the amounts of \$135,000 and \$20,000 to help offset the costs associated with the Lakewood Rides program. DRCOG is the recipient of grant funds under Title III of the Older Americans Act (the “OAA”), State (of Colorado) Funding for Senior Services (the “SFSS”), and a Senior and Vulnerable Transportation (“SVT”) grant, and desires to provide the aforementioned grant funding amounts to the City. In exchange, the City must agree to carry out the purposes of the grants in accordance with the City’s grant proposals and applicable law.

BACKGROUND INFORMATION: Lakewood Rides provides transportation services for Lakewood residents 60 and older, and individuals of any age who have a disability, for grocery trips, medical appointments, congregate meal sites, Adult Day Centers, wellness, education, employment, social, volunteerism and personal trips. Lakewood Rides is a demand response human service transportation program, and operates on a first-come, first-served basis. Door-through-door assistance is provided, to include hand-offs and assistance in pick-up and drop-off on any floor of a building. The destination boundaries are east to University, west into Golden, north to 49th Avenue, and south to Quincy Avenue. The program’s office hours are 7am to 5pm. The first pick-up is at 7:40am, and the last return time is 4:15pm. To request a ride, riders register themselves or can be registered by a caregiver. Riders request their ride time and pick-up/drop-off locations and, if available, the ride is scheduled. In general, a 7-minute pick-up window is given with exception for riders with extensive mobility challenges/frailty. Reminder calls are given to those riders with memory challenges or who need extra time, as needed. Staff provide assistance carrying items, extending an arm for balance, with leverage for standing from a sitting position, and with any mobility device. Emergency contact information is obtained when available in case a rider experiences health concerns while in the Lakewood Rides bus driver transportation care.

BUDGETARY IMPACTS: If approved, the City would accept grant funds in the amount of \$155,000 from the Denver Regional Council of Governments, which will help offset general fund expenses used to operate Lakewood Rides.

STAFF RECOMMENDATIONS: Staff recommends approving the attached resolution.

ALTERNATIVES: City Council could deny approval. Should the Council take this approach, the City will either need to continue funding Lakewood Rides through the use of the general fund or ask for a reduction in services offered by Lakewood Rides.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council.

NEXT STEPS: Pending approval, Recreation Division staff will notify the Denver Regional Council of Governments of the City's intent to receive and use the grant funds.

ATTACHMENTS: Ordinance O-2021-6
Lakewood Rides Proposal – OAA/SFSS
Lakewood Rides Proposal – SVT
DRCOG Contract
DRCOG Approval Letters

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

O-2021-6

AN ORDINANCE

AUTHORIZING SUPPLEMENTAL APPROPRIATIONS TO THE 2021 CITY OF LAKEWOOD ANNUAL BUDGET IN THE AMOUNTS OF \$135,000 AND \$20,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO PROVIDE TRANSPORTATION SERVICES THROUGH THE LAKEWOOD RIDES PROGRAM

WHEREAS, Article XII, Section 8, of the Lakewood home rule charter (the "Charter") authorizes the City Council to make supplemental appropriations by ordinance during the fiscal year for unanticipated expenditures required for the operation of the City using monies not anticipated in the adopted budget that have become available to the City;

WHEREAS, the Denver Regional Council of Governments ("DRCOG") is the recipient of grant funds under Title III of the Older Americans Act (the "OAA"), State (of Colorado) Funding for Senior Services (the "SFSS"), and a Senior and Vulnerable Transportation ("SVT") grant;

WHEREAS, DRCOG desires to enter into a contract with the City through which the City will render certain services described therein and expected to be financed under the OAA and/or the SFSS (the "Contract");

WHEREAS, DRCOG further desires to provide SVT funding to the City as a subrecipient for transportation services;

WHEREAS, the City agrees to do, perform, and carry out, in a satisfactory manner, as determined by DRCOG, all work elements described in the City's proposals submitted for the grant funding;

WHEREAS, no additional money is being requested for these grants;

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. In accordance with Section 12.8 of the Charter, there is hereby appropriated in the Grant Fund \$155,000 to offset costs associated with the Lakewood Rides program, in compliance with the grant proposals identified above.

SECTION 2. With respect to the Contract, the City agrees to administer services in accordance with the OAA, all applicable provisions of the Colorado Revised Statutes, 12 CCR 2510-1, OAA Programs (Rule Manual Volume 10), the Policy and Procedures Manual of the Colorado Department of Human Services' Division of Aging and Adult Services - State Unit on Aging, and the DRCOG Contract Management Manual, as may be amended from time to time. In performance of its obligations under the Contract, the City further agrees to comply with all applicable provisions of 45 CFR, Part 74, and 45 CFR, Part 92, regarding uniform requirements for the administration of Department of Health and Humans Services ("HHS") grants and principles for determining costs applicable to activities assisted by HHS grants.

SECTION 3. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 4. 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 virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 22nd day of March, 2021; read, finally passed and adopted by the City Council on the 22nd day of March, 2021; and signed by the Mayor on the ____ day of _____, 2021_.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

LAKEWOOD RIDES FUNDING PROPOSAL

Submitting Agency:	City of Lakewood
DUNS Number:	076468305
Type of Organization:	Non-profit
Date Established:	May 1, 1969
Agency Description:	Governmental agency- municipality
Agency Director:	Kit Newland Director of Community Resources 480 S. Allison Pkwy, Lakewood CO 80226 303-987-7822 kitnew@lakewood.org
Proposal Contact:	Ginger Harris Sr. Resource Development Specialist 480 S. Allison Pkwy, Lakewood CO 80226 (303) 987-7000 ginhar@lakewood.org
Proposal Status:	Validated

Proposal Description

The City of Lakewood is requesting \$150,000 in funding to support Lakewood Rides, a door-through-door transportation program for city residents ages 60 and over. Due to financial challenges as a result of the COVID pandemic, the City of Lakewood is needing to restructure the business model for this valuable service through looking to grant support. The Older Americans Act Title III funds will enable Lakewood Rides to continue providing high-quality and efficient transportation services, as well as meet the increasing need for rides and address the diminishing transportation service capacity in our area.

Proposed Services

Service	Grant Funds
Assisted Transportation	\$135,000.00
TOTAL REQUESTED FUNDS	\$135,000.00

Reason for Requesting Less Than \$75,000

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LAKESWOOD RIDES FUNDING PROPOSAL

Compensated Services

ASSISTED TRANSPORTATION

Service-level Narrative:

Question	Response
Please describe in detail the program/service you propose to offer (i.e. what does this program look like on the ground?).	<p>Lakewood Rides provides transportation services for Lakewood residents that are 60 and older for grocery trips, medical appointments, congregate meal sites, and Adult Day Centers. We also provide transportation for wellness, education, employment, social, volunteerism and personal trips. Lakewood Rides also serves persons with disabilities of any age. Lakewood Rides is a demand response human service transportation program, and operates on a first-come, first-served basis. Door-through-door assistance is provided, to include hand-offs, and assistance in pick-up and drop-off on any floor of a building.</p> <p>The destination boundaries are East to University, West into Golden, North to 49th Avenue, South to Quincy Avenue. The program's office hours 7am to 5pm. The first pick-up is at 7:40am, and the last return time is 4:15pm. To request a ride, a rider registers themselves, or can be registered by a caregiver. They request their ride time and pick-up/drop-off locations and, if available, the ride is scheduled. In general, a 7 minute pick-up window is given with exception for riders with extensive mobility challenges, frailty. Reminder calls are given to those riders who have memory challenges or need extra time, as needed. Staff provide assistance with carrying items, extending an arm for balance, leverage for standing from a sitting position, and assistance with any mobility device. Emergency contact information is obtained when available in case the rider experiences health concerns while in the Lakewood Rides bus driver transportation care.</p>
Give an example of why this service is important to the individual and to the community.	<p>Lakewood Rides provides transportation for residents for all of the basic needs. We operate on a first-come, first-served basis, giving every qualified resident an opportunity to schedule and utilize our transportation service. This service is essential to the individuals served and the wider community:</p> <ul style="list-style-type: none"> - Ten years from now 21 percent of the population will be considered older Americans, being over 65, according to the United States Census Bureau

LAKESWOOD RIDES FUNDING PROPOSAL

Starting. Lakewood, having a greater than average population of older adults, may have a greater need than available rides, without additional capacity. The number of 75 and older is also projected to increase significantly. Many of these individuals are frail and low-income. It is highly probable that they will not be able to use Uber, Lyft, Taxi, Fixed Routes. It is also highly probable that they will not be able to use Access-A-Ride due to distance they have to travel to be assessed. In addition, RTD is projected to experience financial short fall in 2021 that may impact their ability to maintain routes which will impact Access-A-Ride.

- There are few para-transit agencies available that serve the 60 and older population. This can place an unintended burden on the remaining agencies financially as it can equate to a higher cost per trip due to greater distance of travel, possible increased dead head miles. This lends to the importance of cooperatives between the remaining agencies in order to be effective in services.

- We have several riders who have memory challenges. Their families, who are their care givers, work to support the rider – providing a home with family and all of the basic needs. These families need respite to replenish themselves, and rely on Lakewood Rides to take their loved ones to an ADC. They hand them off to the driver, completely depending on that driver to deliver their loved one safely to the hands of the ADC provider, and return them safely again.

- Lakewood Rides provides transportation to many older adults who do not have family close by, but want to remain in their home (many clients have been in their home for 40 to 50 years.) Lakewood Rides is in communication with the rider and with the family, providing support that allows the older adult to remain in the home until relocation is absolutely necessary.

- Lakewood Rides administrative staff utilize Clements Community Center resource staff and other community resources to give courtesy calls when a driver identifies a concern, in order to better inform the riders' emergency contact.

- Lakewood Rides sees numerous registrants who are in the their early 60's, who want to be prepared for assistance when needed. These individuals want help getting to doctor appointments downtown to avoid the anxiety of increased traffic.

LAKESWOOD RIDES FUNDING PROPOSAL

Does this service have a waitlist? If so, how many are currently on the waitlist and what are your plans to try to reduce that waitlist?

There is no waitlist at this time due to COVID-19. There is a significantly reduced number of requests, as the older adult population is very cautious about leaving home. In 2019, there was an unfilled request/waitlist- of 1,100 rides, totaling 4% of the number of requested rides. Some of these were filled when there was a cancellation. After COVID, the number of requests are anticipated to return to normal, and we will continue to work on reduction of unfilled requests through effective routing and working with cancellations.

What are the minimum job qualifications for the positions providing the direct service?

The minimum job qualifications for Lakewood Rides driving staff are as follows:

- CTAA PASS (Passenger Assistance Safety and Sensitivity) Certified within 6 months of Hire.
- Minimum of one year's experience driving 22-passenger coach buses or larger passenger vehicles with air brakes.
- Experience working with children and youth, older adults, and people who have disabilities.
- Experience operating wheelchair lifts and securement systems, including child restraint systems, within established safety practices and guidelines.
- Must have current, valid Colorado Commercial Drivers License: Class -B with P2 endorsement and with the air brake restriction lifted.
- Must pass City of Lakewood Certificate of Qualification for USDOT Physical including initial drug and alcohol screening.
- Incumbents will be subject to random drug and/or alcohol screenings.
- Criminal background check is required.
- Knowledge of Denver metro area geography, structures, streets and numbering systems.
- Respect for diversity and the ability to work with a broad range of people who vary widely in their mental and physical capabilities.
- Ability to be patient, dependable and responsible while working in an unpredictable environment.
- Ability to be attentive to details: riders' needs; vehicles' responsiveness operations and condition; recording required information on a daily log.
- Ability to maintain order on a moving vehicle, using established disciplinary techniques.
- Must be able to push an occupied wheelchair, with a total weight up to approximately 250 pounds, a minimum of 120 linear feet.
- Must be able to raise (push) and lower (pull) an occupied wheelchair, with a total weight up to

LAKESWOOD RIDES FUNDING PROPOSAL

approximately 250 pounds, over one step/curb or two steps if separated by a landing.

- Must be able to push an occupied wheelchair, with a total weight up to approximately 250 pounds, up a ramp with a slope of 1:16 for 30 linear feet.
- Must be able to control an occupied wheelchair, with a total weight up to approximately 250 pounds, descending a ramp with a slope of 1:16 for 30 linear feet.
- Sustained sitting behind the wheel of a passenger vehicle occurs on a daily basis.
- Bending and kneeling, crouching and stooping are required for securing wheelchairs, and picking up and setting down riders personal effects on the vehicle and in a rider's personal door way, as well as when performing pre and post trip safety inspections.
- Walking with and giving direct assistance to frail passengers weighing up to approximately 250 pounds, stabilizing the passenger by allowing them to grasp your arm, to and from the bus, into their home, doctors' office, hospital, grocery store etc., for at least 100 yards are required.
- Must have quick reflexes for going safely through traffic, especially in highly congested areas and around schools, hospitals, and other sites where there are many pedestrians.
- Ability to hear two-way radio transmissions.
- Ability to hear comments from frail passengers.

- Ability to hear and identify street noises, including emergency vehicle sirens.

- Must pass hearing test as required by the USDOT every two years.

- Employee uses vision to read handwriting, drivers' schedules, spreadsheets, maps, and vehicle maintenance work order forms.

- Must pass vision test as required by the USDOT every two years.

- Must pass vision test as required by the State of Colorado for holders of Commercial Drivers Licenses.

- Must be able to see road hazards, pedestrians and animals in the roadway, traffic signs and signals, brake lights, street identification signs, addresses on structures.

- Must remember names and faces of passengers.

- Must remember locations of major health care facilities, residential facilities, streets, avenues, boulevards and Head Start locations.

- Must remember unit numbers of vehicles and call numbers for two-way radio system.

- Must remember who is behind the wheel of each

LAKESWOOD RIDES FUNDING PROPOSAL

	<p>vehicle during the workday.</p> <ul style="list-style-type: none"> - Must remember City policies, procedures and processes related to customer service, employee relations and risk management including motor vehicle accident, on-the-job injury, cleanup of biohazards, and DOT drug/alcohol testing. - Must be able to read and interpret addresses and numbering systems in relationship to time, distance and direction. - Must be able to converse with a variety of people including co-workers, technical staff, other service providers, law enforcement personnel, parents of young children, grown children of elderly parents, older adults, individuals who have disabilities. - Must adhere to the standards of the City of Lakewood and the Federal Communications Commission when using the two-way radio system.
How does this service address the specific needs arising from the COVID-19 pandemic?	<p>To address specific needs arising from the pandemic, Lakewood Rides:</p> <ul style="list-style-type: none"> - Offers individual rides, and has capped group trips to help avoid the spread of COVID-19. - With the congregate meal program temporarily suspended, we have adapted and adjusted our VOA meal site from a congregate meal site to a meals-on-wheels delivery model. Lakewood Rides serves 84 residents upon request from them for a meal. Lakewood Residents 60 and older have a good source of nutrition each week. Additionally, in conjunction with VOA, we have added a hot meal delivery twice per month. - Accommodates grocery trips to the store that match low-volume shopping times, in order to protect riders from greater COVID-19 exposure. - Increased cleaning and regular disinfectant policies to protect riders. - Supplied masks to the older adults who are not able to obtain their own. - Made several duplicate trips across various days, or several stops in one day, to help riders find items when those items were out at the riders' normal store. - Delivered groceries to the frail or health compromised so they did not have to leave the safety of their home

Unit Costs:

Requested State/Fed Funds	Units	Unduplicated Clients	Requested Funds/Units	Requested Funds/Clients
\$135,000.00	5300.00		\$25.47	-

LAKEWOOD RIDES FUNDING PROPOSAL

Units by Service Area:

Service Area	Units
Jefferson	5,300.00
TOTAL	5,300.00

Service Area	Total Clients	Low Income	Minority	Low Income Minority	Frail	Rural
Jefferson						
Jefferson						
Jefferson						
Jefferson						
Jefferson						
TOTALS						

Revenue

Requested State/Federal Funds	\$135,000.00
Local Cash	\$15,032.62
Local Governmental Entity - [Nothing entered]	\$15,032.62
Local In-Kind	-
Program Income	\$500.00
Consumer Contributions - [Nothing entered]	\$500.00
TOTAL REVENUES (excl Program Income)	\$150,532.62

LAKESWOOD RIDES FUNDING PROPOSAL

Expense

Contractual Services	-
Equipment	-
Indirect	-
Other Expense	-
Personnel	\$150,032.62
Regular Part Time Bus Driver [752 hrs at \$20.73/hr]	\$15,588.96
Transportation Scheduler/Dispatcher [952 hrs at \$20.38/hr]	\$19,401.76
Regular Full Time Bus Driver [952 hrs at \$20.57/hr]	\$19,582.64
Regular Full Time Bus Driver [960 hrs at \$20.62/hr]	\$19,795.20
Business Specialist II [952 hrs at \$22.64/hr]	\$21,553.28
Lead Bus Driver [952 hrs at \$23.64/hr]	\$22,505.28
Transportation Services Specialist [\$31605.5 x 100.00%]	\$31,605.50
Staff Training/Education	-
Supplies	-
Travel	-
TOTAL EXPENSES	\$150,032.62

Non-Compensated Services

Non-Compensated Services

Service	Estimated Units
Information and Assistance	125
Outreach	50

Unduplicated Client Count

Total unduplicated clients for this proposal 220.00

LAKWOOD RIDES FUNDING PROPOSAL

Narrative Responses

Narrative Questions

Please how the agency meets the service needs of the area and the Priorities in the Four-year Plan on Aging addressing the Following:

- *Briefly describe your agency's mission, current programs and activities. What specific populations do you serve and how many people are served?*
- *What is/are the specific needs your program is addressing with this service proposal? (please cite statistical references when possible)*
- *Describe the goals and major components of the proposed program.*
- *Describe how the organization does, or plans to, coordinate with other community service providers to ensure non-duplication of service.*
- *Describe the organization's formal plans to provide outreach and to serve the Older Americans Act targeted populations (ie. low income, minority, and others with the greatest economic and social need). If no such written plan is in place, please explain the approach that will be taken to d*

Lakewood Rides offers door-through-door transportation for City of Lakewood residents 60 years of age or older and those with disabilities of any age, with the mission of improving their quality of life and supporting greater independence and mobility. Lakewood Rides programming provides transportation for grocery shopping, Volunteers of America (VOA) dining sites, medical appointments, adult day care, and various personal needs. Lakewood Rides performs demand-response human service transportation, providing assistance with walking-standing, carrying items, hand-offs, wheel chair use, and stability. Additionally, while Lakewood's VOA dining site is closed, meals are being delivered upon request to residents registered for the meal program and Lakewood Rides.

The population served is individuals over 60 with all levels of mobility and socio-economic status. In addition, Lakewood Rides serves those with disabilities of any age (if awarded, funding will only be used for adults age 60+.) Lakewood Rides serves approximately 450 unduplicated individuals per year, providing approximately 22,000 trips annually, and has an average of 9.5 trips per hour. These numbers are lower for 2020 due to COVID-19.

The goal of Lakewood Rides is to support quality of life for the 60 and older population with attention to as many as possible who are low-income and frail; support independence and choice to remain in the home and community, prolonging the need for assistive/skilled living; and support caregivers who rely on assistance in getting their older adult loved ones to medical appointments, Adult Day Care, nutrition sites and groceries.

Transportation continues to be one of the most significant needs for individuals age 60 and above, and demographics suggest this population is increasing in Lakewood. According to DRCOG's Four-year Plan on Aging, by 2030 one in four area residents will be over 60; those 75+ will increase by 94%; and those 90+ will increase by 34%. In our service area, Jefferson County exceeds the regional average of those 60 and older at over 22%. The City of Lakewood also exceeds the national average.

This need is also growing due to recent changes in available transportation. The Seniors' Resource Center (SRC) has recently ended their transportation services. Via Mobility Services has assumed the territory covered by SRC, however, there are challenges in covering a large territory without support from smaller programs, such as Lakewood Rides, that are able to target their services for greater efficiency. There is also a

LAKESWOOD RIDES FUNDING PROPOSAL

projection of financial loss for the Regional Transportation District, which may result in loss of Access-A-Ride services. Further, according to DRCOG's Four Year Plan on Aging, housing is a major concern for older adults. Keeping low-cost/free transportation services assists older adults financially, supporting them in remaining at home. If awarded, Lakewood Rides will be able to support more older adults who are low-income.

Lakewood Rides has a history of leveraging collaboration to ensure non-duplication and overall efficiency of transportation services. Lakewood previously coordinated with SRC to deliver nutrition transportation services, receiving Older Americans Act funding from SRC. Currently Lakewood has an agreement with Via Mobility Services, as they have recently expanded to cover areas served by SRC. Lakewood also has an agreement with the Developmental Disability Resource Center (DDRC), which contracts with Lakewood for additional support and ride services. Dawn Sluder, the City's Older Adult and Transportation Supervisor, sits on the Local Coordinating Council, and the Transportation Advisory Committee to DRCOG, and the Aging Well JeffCo Steering Committee. To ensure continued non-duplication, Lakewood Rides will continue to leverage collaboration while further developing strong communication with other service providers, working together to cover ride requests such that all agency requirements are met, and rides are fulfilled. The projected demand is high due to increased number of citizens over 60, and Lakewood anticipates playing a key role in ensuring that services meet demand.

The City of Lakewood has direct communication with the target population through its Older Adult Services, which include recreation, fitness, and more. The City promotes Lakewood Rides at both city events, such as the Older Adult Wellness Fair, and at community events. We also post ads in free publications, on the City website, social media channels, and through e-newsletters. To ensure communications reach low-income, minority, and other populations with the greatest need, the City provides outreach and informational handouts (in English and Spanish) at sites that provide free/low-cost services for basic needs and medical care, such as the Action Center, Jeffco Health Department, and STRIDE Community Health Center.

LAKESWOOD RIDES FUNDING PROPOSAL

Give information on the financial state of the program including the following:

- Are the services for which you are requesting funding supported by other sources of funding? If yes, please list the other sources, including their associated funding amounts, for the services included in this proposal. Is this funding secure at this time? If no, please explain.
- What is the organization's level of current assets, and how much of this is cash? If you are a subsidiary of the overall organization, you may use the current assets of your specific department.
- Are you audited financially by the entity providing funding or do you conduct an independent audit?

Lakewood Rides is facing an increased financial burden due to many factors, including costs due to cleaning and sanitization protocols. These and other financial stressors have significantly impacted the City and has created the need to operate more efficiently and cost effectively.

The current sources of funding for Lakewood Rides are as follows:

- City of Lakewood, General Fund for Lakewood Rides- currently \$750,000 annually. As stated, due to the increased financial burden and economic changes due to COVID, this grant would aid in offsetting some of the expenses, supporting the Lakewood Rides transportation service to remain viable.
- Via Mobility Services, agreement for nutrition trips - \$27,000 annually, which may not exist after 12-31-2020. If awarded the OAA grant this agreement will not exist as funding for nutrition trips will come through the OAA grant. If not awarded this grant, the City will pursue renewal of this agreement.
- Fares -From some ride purposes (currently excludes all nutrition trips due to receiving OAA funds indirectly through agreement with Via Mobility Services) - \$30,000 annually (pre- COVID). Fares for medical, nutrition, grocery, wellness, and adult day care trips and others, for those 60+, will be eliminated if awarded the OAA grant.
- Agreement with Developmental Disabilities Resource Center - \$20,000 annually (pre-COVID). This is indirect Medicaid funds. Most of these trips are for those 59 and younger.
- Medicaid/Home and Community Based Services trips - \$16,000 annually (pre-COVID). Most of these trips are for those 59 and younger.

As of 12-31-2019, the City's assets are \$193M and \$117M is unrestricted cash. The City conducts an independent audit

Please describe your agency's experience running the program include information related to the following:

- Describe your agency's experience in providing the services in the project.
- How many years has the organization provided the services for which you are requesting funding? Of these, how many years has the organization provided services in Colorado?
- Describe how you measure the impact of your program, both during and after program activities. For each targeted outcome, include the specific evaluation methods used and the expected result. Be as specific as possible.
- If you are seeking funding for an ongoing program, please describe what lessons you have learned in the past two to five years based upon your results. Are you planning, or have you made any program or evaluation changes based on what you learned? If yes, please describe.

LAKWOOD RIDES FUNDING PROPOSAL

Lakewood Rides has been in existence for over 30 years performing assisted and paratransit services. Lakewood Rides was specifically designed to support the 60 and older population as a specialized People Service Transportation Program. Lakewood also has a long history of coordinating with other transportation service providers. Further, the program's operations staff have strong institutional knowledge, due to low turnover and regular refresher training. This equates to seasoned staff who have the skillset to provide high-quality paratransit services to older adults. Lakewood Rides has been recognized twice for providing quality service in this industry by Denver Regional Mobility and Access Council. Lakewood Rides serves citizens of Lakewood only- and has never provided services outside of Colorado.

Lakewood Rides measures the impact on riders through Satisfaction Surveys that ask riders to rate driver service, attitude, driving skill, office staff conduct, ride availability, bus ride, and cleanliness. Staff strive to maintain a rating of "Above Average" in each ratable question from a minimum of 90% of responders.

Lakewood Rides also continually evaluates program efficiency and effectiveness internally, improving processes when possible. Trip delivery timeliness is measured by the overall route, with check points through a Geo tracking system and customer feedback. In recent years, across all demand response door-through-door human service trips, the Overall Number of trips scheduled equals an average of 95% of those trips requested. The total number of demand response door-through-door human service trips scheduled is divided by the total number of demand response door-through-door human service trips requested. Lakewood Rides is currently meeting this criteria. Additionally, from 2017 to 2019 there has been a 48% reduction in unfilled medical trips. This change equated to 77% to 88% of requested medical trips scheduled. The goal is to schedule 95% of requested medical trips.

Lakewood Rides has learned the following lessons in the past five years, based on program data:

- Regarding the overall waitlist, staff have determined methods for more efficient pairing of trips. Staff pair trips based on pick up and destination area, and is evaluated to avoid backtracking for pickups and drop-offs, reduction in dead head miles, allowing drivers to accomplish more trips per hour based on their current location.
- The number of cancellations reduce the number of rides we are able to provide, and staff have developed strategies to reduce cancellations, including education and follow-up with riders who cancel more than 3 times in 30 days. If there are habitual cancellations (defined as 3 cancellations in 30 days at the door), especially medical, the individual gets a notice, and can be suspended at the next offense.
- Adjustments have been made in driver schedules to more efficiently utilize staff.
- Cross training where applicable has allowed increased trip capacity.

LAKEWOOD RIDES FUNDING PROPOSAL

Please describe how your agency has changed in response to the COVID-19 pandemic, specifically addressing the following:

- How does the organization currently ensure the safety of clients and staff?
- How has your organization needed to change methods of service delivery during this time?

Lakewood Rides has instituted safety and precautions that include utilizing larger equipment to ensure 6+ feet social distancing, buses are marked with guide tape to ensure distance is maintained, disinfecting in between each rider(s), and rotating seats such that each new rider does not sit in the same seat as the previous, disinfecting each day with an Electrostatic sprayer, and deep cleaning and disinfecting regularly. All high touch areas are disinfected regularly throughout the day. All Drivers wear masks when in contact with residents and while residents are in transport. Drivers also use gloves when needed, such as when handling residents' groceries, mobility devices, or when assisting residents to and from their home or destination. Drivers sanitize hands in-between riders and keep hand sanitizer available on the bus for riders. Lastly, there is increased education to riders when needed on safety. All riders are asked to follow the Jefferson County Health order in wearing a mask while receiving the service. Mask are provided if the rider does not have one.

Service delivery has been changed in the following ways:

- Lakewood Rides now maintains social distancing for residents and drivers.
- All drivers use masks at all times.
- Max capacities have been reduced on all units, and have been marked accordingly as a guide to the drivers to ensure that residents remain 6 feet apart and 6 feet from the driver while seated on the bus.
- To accommodate new circumstances due to COVID-19, we are allowing for longer wait times and increased number of grocery bags when possible.
- As grocery stores now have established hours for older adults, Lakewood Rides has worked to accommodate earlier trips.
- Staff is utilized such that unfilled requests are 1% or less, at this time.
- Allowing for same day add-on or extended time at a destination. For example, scheduling last minute flu shot services at the riders' doctor appointment, making an extra stop to pick up prescriptions within the already scheduled ride.
- Increased flexibility of return time- when the need arises. Many doctor appointments run over due to the protocol at the doctors office as it relates to COVID precautions.
- During the early weeks of the pandemic, Lakewood Rides focused on basic, urgent needs such as medical and food. As restrictions have laxed, all rides are scheduled regardless of the purpose.

Submittal Details

This submission must be **received** by 5:00 PM Mountain Time on Friday October 9, 2020.

Method of Submittal:	Not submitted yet
Date Submitted:	

**CONTRACT BY AND BETWEEN THE
DENVER REGIONAL COUNCIL OF GOVERNMENTS**

1001 17th Street, Suite 700
Denver, Colorado 80202
("DRCOG")

and

CITY OF LAKEWOOD
1580 Yarrow Street
Lakewood, Colorado 80216
("CONTRACTOR")

for

Lakewood Rides
("Contract")

Project Number: 624021

Contract Number EX20048

RECITALS:

- A. DRCOG is the recipient of grant funds under Title III of the Older Americans Act (OAA) and the State of Colorado (State) Funding for Senior Services (SFSS).
- B. DRCOG desires Contractor to render certain services hereinafter described in connection with an undertaking which is expected to be financed under the OAA and/or the SFSS.
- C. The Contractor agrees to comply with all relevant provisions of the Contract between DRCOG and the State for OAA and/or SFSS, incorporated herein by reference and made a part of this Contract, as if fully set forth, in the monitoring and administration of this Contract.

NOW THEREFORE, the parties hereto mutually agree as follows:

1.0 SELECTION OF CONTRACTOR

DRCOG hereby selects the Contractor and the Contractor hereby agrees to perform the services hereinafter set forth in connection with the project of DRCOG under the Older Americans Act and/or the SFSS.

2.0 SCOPE OF SERVICES

The Contractor shall do, perform, and carry out, in a satisfactory manner, as determined by DRCOG, all work elements described in the Contractor's Proposal submitted for funding (as approved and as may be amended, from time to time, by DRCOG) which is herein incorporated by reference and made a part of this Contract and which is summarized in Exhibit A, Scope of Services, of this Contract. The Contractor will administer services funded under this Contract in accordance with the Older Americans Act; all applicable provisions of the Colorado Revised Statutes; 12 CCR 2510-1, Older Americans Act (OAA) Programs (Rule Manual Volume 10); Colorado Department of Human Services, Division of

Aging and Adult Services, State Unit on Aging (SUA) Policy and Procedures Manual; and the DRCOG Contract Management Manual, as from time to time may be amended.

3.0 ADMINISTRATIVE REQUIREMENTS

In performance of its obligations under this Contract, Contractor shall comply with all applicable provisions of 45 CFR, Part 74 and 45 CFR, Part 92 regarding uniform requirements for the administration of Department of Health and Humans Services (HHS) grants and principles for determining costs applicable to activities assisted by HHS grants.

4.0 TIME OF PERFORMANCE

This Contract is intended to be a 6-month contract, beginning upon execution and ending June 30, 2021. Funding of this Contract is conditioned upon funds being made available to DRCOG for such purposes. Services of the Contractor shall commence upon Contract execution. Services shall be undertaken in such sequence as to assure completion of all services required hereunder by June 30, 2021. **Services cannot commence prior to an executed contract.**

5.0 AMOUNT OF CONTRACT

DRCOG agrees to reimburse the Contractor for allowable project expenses up to but not exceeding the sum of **\$135,000.00**. DRCOG agrees to reimburse the Contractor for allowable expenses as outlined in the Scope of Services attached hereto as Exhibit A.

6.0 HHS GRANT

It is agreed by the above parties that should the HHS or the State disapprove this Contract or refuse or fail to make the grant to DRCOG as contemplated by this Contract, then this Contract shall be void and shall not be binding on any parties hereto.

Unearned payments under this Contract may be suspended or terminated in the event that the Contractor refuses to accept additional terms or conditions to this Contract that may be imposed by HHS, the State or DRCOG after the effective date of this Contract. Contractor expressly acknowledges that Contractor will be paid or otherwise compensated with funds provided to DRCOG by federal agencies that are subject to sequestration pursuant to the Budget Control Act of 2011 and other applicable federal laws. In the event that funds for this Contract are not advanced, diminished, or required to be returned to the federal government due to sequestration, DRCOG may immediately terminate this Contract in whole or part without liability, including costs and liability for termination. Contractor expressly acknowledges and agrees that DRCOG has the right to require that funds previously paid to Contractor for services performed hereunder be returned to DRCOG in the event the federal government requires that funds be returned because of sequestration.

7.0 CHANGES

Except as may be expressly provided in this Contract, including its Exhibits, any changes, including, without limitation, any increase in the amount of this Contract or changes in the scope of services, which are mutually agreed upon by and between

DRCOG and the Contractor, shall be incorporated in a written Option Letter or a written amendment to this Contract.

8.0 DEBARMENT, SUSPENSION

By signing this Agreement, the Contractor represents that its organization and its principals are not suspended or debarred per federal requirements.

9.0 TERMS AND CONDITIONS

The parties agree that this Contract is also subject to the provisions set forth in Exhibits A, B, C, D, E, F (if E and F are applicable), G, H, I, J and Attachments A, B, and C of this Contract, attached hereto and incorporated herein.

10.0 AUTHORITY

The undersigned signatories of Contractor represent that they have been duly authorized to execute this Agreement and have full power and authority to bind Contractor to the terms and conditions hereof, and certify that their signatures below, whether handwritten, electronic, or digital or submitted by facsimile or electronic mail are their own. Contractor further understands and agrees that no further certification authority or third-party verification is necessary to validate any signature hereto and that the lack of such certification or verification will not in any way affect the enforceability of the Agreement.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____, 20____ and acknowledge that the signatures hereon, whether handwritten, typed, electronic, or digital or submitted by facsimile or electronic mail, are sufficient and legally binding

**DENVER REGIONAL COUNCIL
OF GOVERNMENTS**

CITY OF LAKEWOOD

By: _____
Douglas W. Rex
Executive Director

By: _____

ATTEST:

By: _____
Jenny Dock
Division Director, Administration and Finance

CITY OF LAKEWOOD

By: _____
Kit Newland, Director
Department of Community Resources

ATTEST:

By: _____
Bruce Roome, City Clerk

Attestation Date

Approved as to form:

By: _____
Gregory D. Graham, Deputy City Attorney

Recommended and approved as to content:

By: _____
Brent Berninger, Family Services Manager
Department of Community Resources

By: _____
Dawn Sluder,
Older Adult and Transportation Supervisor

EXHIBIT A
SCOPE OF SERVICES

The Contractor shall perform all the necessary services provided under this Contract for eligible residents of the jurisdiction(s) listed in both the Supplemental Contract Information form (Attachment B) and Scope of Services (Attachment C), attached hereto and incorporated herein.

Prior written approval from DRCOG is required if the number of units of service in any service category listed in the attached exhibit is more than ten percent (10%) lower than listed. This provision shall not alter the maximum funding set forth in Section 5.1.

Upon Contractor submittal and contract execution by both parties, the Supplemental Contract Information form shall be made part of this Contract and legally binding.

EXHIBIT B
TERMS AND CONDITIONS

The following supplemental terms and conditions apply to the Contract herein and take precedence over any conflicting language within the Contract.

1. Personnel. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with DRCOG.

2. Prohibition Against Employing Illegal Aliens (Colorado requirement). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Exhibit I, the "Pre-Contract Certification in Compliance with C.R.S. § 8-17.5-102(1)", must be signed and returned with this Contract, which is attached hereto and incorporated herein by reference.

Contractor will participate in either the E-verify program or the Department of Labor and Employment (Department) program, as defined in C.R.S. § 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services, as defined by C.R.S. § 8-17.5-101(6), as amended and in effect from time to time. If Contractor participates in the Department program, Contractor shall deliver to DRCOG a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employees, and shall comply with all other requirements of the Department program. Contractor is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed. If Contractor will be participating in the Department program, Contractor will provide to DRCOG a copy of Contractor's executed Notice of Participation in the Department Program form.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

- a. Notify the subcontractor and DRCOG within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If Contractor violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, DRCOG may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to DRCOG.

This Section shall not apply to the following types of contracts: (1) intergovernmental agreements; (2) agreements for information technology services or products and services; (3) agreements relating to the offer, issuance, or sale of securities; (4) agreements for investment advisory services or fund management services; (5) any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract, pursuant to C.R.S. § 8-17.5-101(6)(b).

3. Prohibition Against Employing Illegal Aliens (Federal requirement). If this Contract includes an award of Federal funds of more than \$3,000, Contractor must also comply with the E-Verify Federal Contractor Rule set forth in Exhibit I, attached hereto and incorporated herein by reference, which requires the Contractor to use the E-Verify program to verify the employment eligibility of all employees assigned to the Contract and all new hires. If Contractor uses one or more subcontractors to provide services under the Contract, Contractor shall include the language set forth in Exhibit I in any subcontract that is: (1) for commercial or noncommercial services or construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States. Contractors who are State or local governments, institutions of higher education, or governments of a Federally recognized Indian tribe are not exempt from the requirements of this Section; however, such entities may choose to verify only those employees who are assigned to the Contract, whether existing employees or new hires, as further detailed in Exhibit I.

4. Qualifications. All of the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

5. Background Check; Driver's License. Contractor shall ensure that prior to delivery of services, a records check through the Colorado Bureau of Investigations (CBI) or another background check system that provides information at the same level of detail or higher than the CBI records check, shall be conducted for all employees, volunteers, and contractors of Contractor directly providing one or more of the following services: personal care, homemaker, adult day, transportation, case management, chore or home modifications that are provided through a contracted agency, home delivered meals, material aid services (provided within a consumer's home), one-to-one legal, one-to-one counseling, or respite care. Contractor shall ensure that appropriate follow-up of the background check is completed according to the SUA Policy and Procedure Manual, Subsection 401.15, and shall ensure that its employees, volunteers, and contractors are in compliance with the restrictions of said Subsection. Effective January 1, 2019, Contractor shall comply with the requirements outlined in SUA Policy and Procedure Manual Subsection 401.16 and the correlated DRCOG policy in which it is stipulated that a Colorado Adult Protective Services (CAPS) background check is conducted prior to hiring or contracting with a new employee who will provide direct care to an at-risk adult. Employees, volunteers or contractors responsible for transporting consumers shall have a valid Colorado driver's license and shall not have any alcohol related offenses in the past three years, or two or more convictions or chargeable accidents within the past two years.

6. Sub-grant or Subcontract. None of the work or services covered by this Contract shall be sub-granted or subcontracted to any other party except for those subcontractors that have been pre-approved by the State Unit on Aging. Subcontractors cannot start services without the prior written approval of DRCOG. Failure to obtain DRCOG's prior approval of any additional sub-grantors or subcontractors shall result in the disallowance of reimbursements for any services provided by sub-grantor or subcontractors not previously approved. Contractor shall verify that all sub-grantees and subcontractors have not been excluded or disqualified pursuant to 2 CFR Part 376 prior to submitting such sub-grantees or subcontractors to DRCOG for approval and shall certify that the proposed sub-grantees and subcontractors are neither excluded nor disqualified by a Federal agency. Any approval by DRCOG of a sub-grantee or subcontractor shall be effective only through the current contract fiscal year and subject to the continuing requirement of non-exclusion or non-disqualification pursuant to 2 CFR Part 376. It shall be Contractor's responsibility to submit verification of such non-exclusion or non-disqualification upon request.

7. Licensure. Where the State or local public jurisdictions require licensure for the provision of social services provided hereunder, the Contractor shall be licensed and shall meet all requirements of licensure. Contractor shall provide DRCOG notice of any action to revoke or suspend any such licenses as well as any actual suspension or revocation of any licenses within 48 hours of Contractor receiving notice.

8. Contractor Training. Contractor shall complete mandatory training through DRCOG at least biannually (or more often if deemed appropriate by DRCOG) regarding contract management of this Contract.

9. Monitoring and Reporting Program Performance. The activities of Contractor in providing the services set forth under this Contract shall be monitored by DRCOG in accordance with the applicable provisions of 45 CFR Part 74 and 45 CFR Part 92, other applicable Federal regulations, and this Contract. DRCOG will monitor all activities of Contractor supported by this Contract to assure that the services being performed are consistent with the Contract and applicable Federal regulations. Contractor acknowledges that disclosure of protected health information to DRCOG is permitted pursuant to Federal law.

10. Performance Management. Contractor shall meet or exceed applicable Performance Measures and Contract Performance Measures as outlined in the State Contract with DRCOG. Contractor acknowledges that such performance measures shall evolve to meet the objective of measuring key performance outcome indicators for the work of the Contractor.

11. Monthly Data Entry. The Federal Administration on Community Living requires certain Older Americans Act data to be reported in the National Aging Program Information System (NAPIS). To assist in the data collection for NAPIS, the State requires all Contractors to report services provided in a State software system as designated and assigned by the State from time to time. Currently the software utilized is PeerPlace. Contractor must complete training on PeerPlace for all employees who will be performing the data entry service. Training is available each year and is mandatory for anyone who has not previously attended or as deemed appropriate by DRCOG. Contractor shall enter the previous month's service data into PeerPlace **no later than the fifteenth of the following month**. If the fifteenth of the month falls on a holiday or weekend, then entering of all data shall be due the business day prior to the fifteenth. Failure to enter PeerPlace data correctly and timely is a violation of this Contract and DRCOG may exercise any remedies available under the Contract or at law, including withholding payments.

12. Cost Analysis. Contractor shall prepare and submit to DRCOG by no later than May 15th of the then-current calendar year, a cost analysis, in a form approved by DRCOG, comparing actual costs incurred to reimbursements received from DRCOG.

13. Services Performance Report and Reimbursement Requests. Contractor shall submit a monthly service performance report and reimbursement request in a form prescribed by DRCOG. Such report and request shall be filed on or before the fifteenth day of the month following the month in which services are provided, throughout the term of the Contract. If the fifteenth of the month falls on a holiday or weekend, then submissions shall be due the business day prior to the fifteenth. Failure to submit the monthly report and reimbursement request by the fifteenth day of the following month will delay processing of payments until the next calendar month. Further, failure to submit the final month's report and reimbursement request by July 15 of the then-current fiscal year of the contract term, will result in non-payment for services provided, and Contractor specifically agrees that any such late-filed final reimbursement request will not be paid. All payments are subject to verification by DRCOG. Contractor is responsible for the timely filing, completeness and accuracy of all service performance reports and reimbursement requests. All payments are subject to verification by DRCOG.

DRCOG agrees to reimburse Contractor via Electronic Funds Transfer (EFT) (Attachment A) into the bank account designated by Contractor upon approval of reimbursement request during regularly scheduled payment cycles.

14. Waiting Lists. Waiting lists shall be established by the Contractor when services are available but cannot be provided to all eligible consumers. In such circumstances, Contractor shall place eligible consumers on a waiting list. Waiting list procedures must be equitable to all eligible consumers. Contractor shall give priority to consumers targeted by the Older Americans and Older Coloradans Act, with due consideration given to the time kept on a wait list. Persons shall be removed from the waiting list in accordance with SUA Policy and Procedure Manual, Subsection 205c. Contractor will develop a waiting list procedure in compliance with the policies set forth in Subsection 205b., regardless of whether or not there are consumers waiting for service. Furthermore, Contractor shall maintain waiting lists, and shall make the waiting list and the procedures for the waiting list readily available for review by DRCOG and/or the State Unit on Aging. Waiting list documentation may be kept in hard copy or electronically, but must be printable. Contractor shall retain waiting list documentation, and shall not destroy any such records until notified by DRCOG.

15. Consumer Complaint/Appeal Process. The Contractor shall develop a procedure to assure that applicants to, or clients of, their services are advised in writing of their right to complain about services or the denial of services, to appeal decisions made about the complaint, and that those complaints and appeals, are processed and tracked in compliance with SUA Policy and Procedure Subsection 501 and as directed by DRCOG. Complaint/appeals documentation may be kept in hard copy or electronically but must be printable. Contractor shall retain complaint/appeal documentation and shall retain records in accordance with Section 21 herein.

16. Evaluation. Contractor shall implement a quality improvement process, which includes, at a minimum, monitoring of service quality and consumer satisfaction. Methods of receiving consumer input on the quality of services shall be established, documented and utilized by the Contractor on a regular basis throughout the term of this Contract. Examples include site councils, projects councils, consumer forums, consumer satisfaction surveys, telephone interviews, and visits. Contractor shall upon the DRCOG's request provide information regarding Contractor's compliance with the requirements of this Section.

17. Voluntary Contributions and Non-eligible Recipient Fees. Contractor shall (1) provide each recipient with an opportunity to voluntarily contribute to the cost of the service; (2) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary; (3) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; (4) establish appropriate accounting procedures to safeguard and account for all contributions; (5) use all collected contributions to expand or enhance the service for which the contributions were given; and (6) identify the income as program income and expend it in accordance with guidelines below. Contractor shall establish minimum standards and procedures for the responsible collection of, handling, and safeguarding of consumer contributions and non-eligible recipient fees in compliance with SUA Policy and Procedure Manual, Subsection 310.

18. On-Site Assessment. The Contractor acknowledges receipt of the on-site assessment requirements from DRCOG and shall comply with the on-site assessment requirements.

19. Policy Changes. From time to time during the term of this Contract, DRCOG and/or the State Unit on Aging may adopt policies and procedures that relate to services provided under this Contract. Upon notice of such adopted policies or procedures, Contractor shall incorporate any such policies and procedures into their practices and comply with the provisions thereof.

20. Eligibility Assessments. The Contractor will conduct an assessment of individual eligibility prior to the delivery of any registered services, as defined in 45 CFR 1321.3, using the standardized assessment form provided by DRCOG, and re-assessments will be conducted every six months thereafter for applicable registered services continuing after six months. The Contractor may not alter the standardized assessment form unless explicitly approved by DRCOG. Eligibility for services provided under this Contract shall be only that the individual receiving service is age 60 or above unless other eligibility requirements exists within Rule Manual Volume 10 or SUA Policy and Procedure for the contracted service.

21. Records. The Contractor agrees to retain all records pertinent to this Contract for a period of three years after final payment hereunder. In the event that activities or costs are questioned by audit, records shall be retained until all questioned items are resolved. Contractor shall maintain confidentiality of information relating to specific consumers by ensuring that such information is gathered only with the informed consent of the consumer, such information is used only for the purposes gathered, adequate security of records is maintained to prevent unauthorized use, access to consumer records and identifiable information is limited only to program staff, and consumer files are kept under lock and key after use. Contractor shall maintain the confidentiality of protected health information as required by law, including the consumer's individually identifiable health information.

22. Accounting Records. Records which identify adequately the source and application of funds for Contract activities shall be maintained for the period referenced above and shall comply with the requirements of the Older Americans Act, Colorado Revised Statutes, Rule Manual Volume 10 and the SUA Policy and Procedure Manual, as from time to time amended.

23. Contractor Audits. The Contractor shall ensure that an annual independent audit is conducted of the Contractor's financial records in accordance with the requirements of Title II Part 200 of the Code of Federal Regulations. The Contractor shall, upon request, make a copy of the audit available for review by DRCOG and/or SUA. All activities and costs charged under this Contract shall be in accordance with the provisions of the Older Americans Act, Colorado Revised Statutes, Rule Manual Volume 10 and the SUA Policy and Procedure Manual, as from

time to time amended, including but not limited to compliance with cost principles set forth in: Title II Part 200 of the Code of Federal Regulations and Government Audit Standards regardless of the amount of Federal funding the Contractor receives. Federal Acquisition Regulations at 48 C.F.R. Part 31.2 shall also apply when applicable. Should an audit or other financial review disallow any reimbursed costs, the disallowed funds shall be returned to DRCOG or, in DRCOG's discretion and to the extent permitted by Federal and State law and regulations, offset against current or future payments to Contractor. Failure to fulfill these audit obligations is a breach of this Contract and will subject Contractor to all remedies available herein and at law, including all funds being due and payable back to DRCOG.

24. Audits and Inspections. During the Contract period, the retention period and as long thereafter as the records are maintained, at any time during normal business hours, Contractor shall make available to DRCOG, HHS, the State and the Comptroller General of the United States, or their authorized representatives, any books, documents, papers or other records of the Contractor with respect to all matters covered by this Contract in order to make audit, examination, excerpts, and transcripts. Contractor acknowledges that disclosure of protected health information to DRCOG, HHS, the State and the Comptroller General of the United States and their authorized representatives is permitted pursuant to Federal law. Failure to make records available for inspection within 72 hours of notice shall be deemed a violation of the Contract.

25. Additional Records Required. Contractors shall develop and maintain the records required by applicable laws and regulations including but not limited to Section 401.7 of the SUA Policy and Procedure Manual and including the following records: personnel records for each employee to include documentation of training, documentation of supervision, and documentation of current licensure if applicable; a Targeting Plan; Emergency Response Plan (if nutrition and/or transportation provider); confidentiality procedures; procedures for handling and reporting of critical incidents, including accidents, suspicion of abuse, neglect or exploitation, and criminal activity; a log of all complaints and critical incidents; records for each older adult served; and travel documentation policies and procedures. These shall be maintained by the Contractor and made available to DRCOG, SUA and/or their authorized representatives upon request.

26. Income. Program income, including participant contributions, earned by the Contractor from activities which are supported by this Contract shall be added to funds committed to the project or program and used for allowable costs of services under the Contract to further the objectives of this Contract as provided under 45 CFR 74.24(b)(1). Program income must be fully expended within the reporting month it was received and cannot be carried over for any period of time.

27. Income Accounting Records. Program income must be accounted for according to the additional costs alternative referenced above and pursuant to 45 CFR, Section 74.24.

28. Equal Employment Opportunity. The Contractor agrees to comply with all applicable Federal laws, regulations, and orders regarding "Equal Employment Opportunity", as from time to time amended, and to execute such provisions as are required under Exhibit (C) attached hereto. **The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable.**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against

qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

29. Records. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and for employees as HHS, the State, or DRCOG may require.

30. Handicapped. The Contractor will not discriminate in employment on the basis of handicap against any qualified handicapped person and agrees to take positive steps to employ and advance in employment qualified handicapped persons and to comply with Department of Human Services Regulations (45 CFR Part 84), as from time to time amended.

31. Identification of Documents. Contractor shall designate on the front cover or title page of all reports, maps and other documents completed as part of this Contract, other than documents exclusively for internal use by the Contractor, an acknowledgement of the support received under the Older Americans Act.

32. Publication, Reproduction and Use of Material. Material produced in whole or in part under this Contract may not be subject to copyright laws.

33. Procurement. All procurement transactions for supplies, equipment and services shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition as provided under 45 CFR, Part 74, Subpart C, as from time to time amended, and shall comply with the provisions of 45 CFR, Part 74, Subpart C.

34. Work Hours. The Contractor shall comply with the Contract Work Hours and Safety Standards Act and comply with the Department of Labor Regulations (29 CFR Part 5), as from time to time amended.

35. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. No person having any such interest shall be employed or participate in any decision relative to this Contract.

36. Assignability. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of DRCOG thereto; provided, however, that claims for money due or to become due to the Contractor from DRCOG under this Contract may be assigned to a bank or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished to DRCOG.

37. Influencing Legislation. To the extent prohibited by Federal or State law, as from time to time amended, no part of this Contract shall be used to pay the salary or expenses of any person or any organization acting for the Contractor to engage in any activity designed to influence legislation or appropriations pending before the Congress, or legislation or appropriations pending before the State General Assembly.

38. Termination for Cause. If, through any cause, the Contractor shall fail to meet performance measures set forth by the State, fail to fulfill in timely and proper manner with Contractor

obligations under this Contract or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, DRCOG shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination, the reasons for such termination, and specifying the effective date thereof, at least 5 days before the effective date of such termination, unless a shorter time is set forth herein for any failure to fulfill Contractor's obligations.

39. Mutual Termination. The parties may terminate this Contract upon mutual written consent, which instrument shall set forth the effective date of the termination and any procedures to be followed incident to such mutual termination.

40. Termination for the Convenience of DRCOG. DRCOG may terminate this Contract at any time by giving written notice to the Contractor of such termination, which shall be effective upon receipt of the written notice. If the Contract is terminated by DRCOG as provided herein, the Contractor shall be entitled to receive compensation for services performed prior to the effective date of such termination, subject to such services being completed to the satisfaction of DRCOG, and except as provided in Section 6.0 of this Contract.

41. Project Material. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of DRCOG, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

42. Liability. Notwithstanding the above, the Contractor shall not be relieved of liability to DRCOG for damages sustained by DRCOG by virtue of any breach of the Contract by the Contractor, and DRCOG may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due DRCOG from the Contractor is determined.

43. Remedies. Where the Contractor violates or breaches terms of this Contract, DRCOG, at its discretion, shall terminate said Contract subject to the provisions hereinabove stated, and, in addition, may institute such administrative, contractual or legal remedies available to DRCOG as may be appropriate. In addition to the corrective actions set forth below, DRCOG may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold payments pending correction of deficiency by the Contractor.
2. Disallow all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the Contract, including suspending the Contract and services provided under the Contract pending any audit or other investigation.
4. Withhold further Contracts with Contractor.
5. Take any other remedies that may be legally available.

44. Corrective Action. In the event DRCOG finds that Contractor is failing to conform to the terms and conditions of this Contract, then DRCOG may, in its sole discretion and in addition to any other remedies it may have, including termination of this Contract, require that a corrective

action plan be prepared by a date specified by DRCOG and suspend payments under the Contract, such payments to begin only upon production by the Contractor of and compliance with a corrective action plan satisfactory to DRCOG. Further, DRCOG shall have the right, upon issuance of notice to the Contractor and without necessity of an Option Letter or amendment, to retain and reallocate to other contractors' funds remaining under this Contract in the event of any termination or any failure of the Contractor to provide the service units listed in Attachment B in accordance with this Contract or any corrective action plan. Nothing in this subsection shall require that DRCOG accept a corrective action plan in lieu of exercising its rights to terminate this Contract.

45. Erroneous Payments. Unless prohibited by Federal or State law or regulation, any costs incurred by the Contractor that are later found to be disallowed or ineligible for payment under this Contract shall be reimbursed by the Contractor to DRCOG or offset against current or future payments due by DRCOG to the Contractor, at DRCOG's election.

THIS CONCLUDES the provisions of these supplementary terms and conditions.

EXHIBIT C
ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES REGULATION UNDER
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
AND SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to Regulations of the Department of Health and Human Services (HHS) (45 CFR Part 80) issued pursuant to that title, and to comply with Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and all requirements imposed by or pursuant to the Regulations of the HHS (45 CFR Part 84) issued pursuant to the Act, all as from time to time amended, to the end that, in accordance with Title VI, the Act and Regulations, no person in the United States shall, on the grounds of race, color, national origin, or non-qualified handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance from DRCOG, a recipient of Federal financial assistance from HHS; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by DRCOG, this assurance shall obligate the Contractor, or in the case of any transfer of such property, any 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 so provided, this assurance shall obligate the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Contractor for the period during which the Federal financial assistance is extended to it by DRCOG.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Contractor by DRCOG, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that DRCOG or the United States or both shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

EXHIBIT D
INDEMNIFICATION & INSURANCE

Section 1. Indemnification.

To the extent allowable by law, the Contractor shall indemnify, save, and hold harmless the State of Colorado, DRCOG, their officers, employees, and insurers, against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

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, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* as applicable, as now or hereafter amended. The Contractor, by execution of this Contract containing this indemnification clause does not waive the operation of any law concerning the Contractor's ability to indemnify.

Section 2. Insurance.

(a) The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 1 of this Exhibit D. Such insurance shall be in addition to any other insurance requirements imposed by this agreement or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 1 of this Exhibit D by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

(b) Contractor shall procure and maintain and shall cause each subcontractor hired to perform services under this Agreement pursuant to its' obligations herein to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to DRCOG.

All coverages shall be continuously maintained through the term of this contract to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 1 of this Exhibit D.

In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage for a period of three years beyond the expiration of the contract. Evidence of qualified self-insured status may be substituted for the insurance requirements listed below.

(1) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this agreement, and Employers' Liability insurance with minimum limits of ONE HUNDRED THOUSAND DOLLARS (\$100,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease policy limit, and ONE HUNDRED THOUSAND DOLLARS (\$100,000) disease - each employee. Provide a waiver of subrogation in favor of DRCOG.

(2) General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal and advertising injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations, and shall provide for defense of sexual abuse and molestation claims for innocent insureds. The policy shall contain a severability of interests provision.

(3) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services.

(4) Security & Privacy Liability or Cyber Risk insurance to cover loss of Protected Health Information ("PHI") data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI with minimum annual limits as follows:

- Contractors with 10 or less clients **and** revenues of \$250,000 or less shall maintain limits on Privacy Liability Insurance of not less than \$50,000.
- Contractors with 25 or less clients **and** revenues of \$500,000 or less shall maintain limits on Privacy Liability Insurance of not less than \$100,000.
- Contractors with more than 25 clients **and** revenues of more than \$500,000 shall maintain limits on Privacy Liability Insurance of not less than \$1,000,000.

(5) Professional Liability insurance in the amount of ONE MILLION DOLLARS (\$1,000,000) each occurrence for coverage to defend against allegations as well as damages resulting from failure to perform on the part of, financial loss caused by, and error or omission in the service or product of the policy holder.

(c) Every policy required above shall be primary insurance, and any insurance carried by DRCOG, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by paragraph (1) above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

(d) A certificate of insurance evidencing coverage and naming DRCOG, its officers, its employees and the State of Colorado as additional insureds on the general liability and automobile liability policies shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by DRCOG prior to commencement of the agreement. In the case of qualified self-insurance status, DRCOG may require satisfactory evidence of sufficient funding for such purposes. The certificate shall identify this Contract and shall provide that coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to DRCOG. The completed certificate and/or evidence of qualified self-insured status must be sent with the signed Contract to:

Denver Regional Council of Governments
Attention: Contracts
1001 17th Street, Suite 700
Denver, Colorado 80202

(e) Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this agreement upon which DRCOG may immediately terminate this agreement, or at its discretion, DRCOG may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by DRCOG shall be repaid by Contractor to DRCOG upon demand, or DRCOG may offset the cost of the premiums against any monies due to Contractor from DRCOG.

(f) DRCOG reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(g) The parties hereto understand and agree that DRCOG and the City of Lakewood is relying on and does not waive or intend to waive by any provision of this agreement, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et. seq., C.R.S., as from time to time amended, or otherwise available to DRCOG, its officers, or its employees.

(h) Notwithstanding the above provisions, the Contractor, if a governmental entity, may elect to self-insure for any of the coverage areas required by subsections (b)(1) – (b)(3) of this Section 2. In such case, the Contractor shall maintain a claims fund that is available solely to pay claims against the Contractor that are proven or otherwise settled by the Contractor in its sole discretion. Such claims fund is intended for and available for only those purposes and is not available or allocated to fund a commitment or obligation, if any, or to defend or indemnify any party. Payments out of such funds may require approval by the Contractor's governing body. It is understood and agreed that a commitment by the Contractor to self-insure by the creation of said claims fund does not commit the Contractor to otherwise appropriate funds to fund self-insurance for this Contract or for any other commitment of the Contractor, and it is further understood and agreed that the Contractor has not appropriated funds for such purpose. In case of such election to self-insure, the Contractor shall itself provide DRCOG with written confirmation of the Contractor's self-insured status and the existence of said claims fund.

EXHIBIT E
APPROVED SUBCONTRACTORS

Subcontractor(s) will be incorporated into this contract only by written approval from the State Unit on Aging through DRCOG. Upon State approval and contract execution by both parties, approved Subcontractors shall be made part of this Contract and legally bound to all applicable provisions herein.

EXHIBIT F
FIXED ASSETS

Note: This Exhibit F is applicable only to contracts that include funding of a fixed asset acquisition approved by DRCOG.

1.0 FIXED ASSETS

DRCOG hereby approves the acquisition of the fixed assets described in Contractor's Proposal, which is herein incorporated by reference and made a part of this Contract. Fixed assets may include (1) real property (land, buildings, and building improvements); (2) leasehold improvements (remodeling or redecorating of rented or leased spaces); and (3) tangible personal property (office furniture, kitchen equipment and vehicles) with a useful life of more than one year and an acquisition cost greater than \$5,000 per unit.

1.1 Real Property. Title to any real property shall vest in Contractor subject to the condition that the Contractor shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of DRCOG.

1.2 Equipment. Title to equipment shall vest in Contractor subject to the following conditions:

1. Contractor shall not use equipment acquired hereunder to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent services. All user charges shall be treated as program income.

2. Contractor shall use the equipment in the project as long as needed, whether or not the project continues to be supported by Federal or State funds, and shall not encumber the equipment without the approval of DRCOG. When no longer needed for the original project, the Contractor shall use the equipment in compliance with applicable Federal and State regulations.

3. Contractor shall make the equipment available for use on other projects or programs if such other use will not interfere with the work on the program for which the equipment was originally acquired. First preference for such other use shall be given to other programs, projects, or activities sponsored by DRCOG. Use by others shall be in preference order consistent with applicable Federal and State regulations.

4. When acquiring replacement equipment, Contractor may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment, subject to the approval of DRCOG.

5. Contractor shall maintain accurate equipment records and shall take a physical inventory of equipment and reconcile the results with the equipment records annually. Any discrepancies between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences. Contractor shall annually verify the existence, current utilization, and continued need for the equipment. Contractor shall submit to DRCOG annually a property inventory report for all fixed assets acquired under this Contract in the form attached below.

6. Contractor shall maintain a control system to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Contractor shall implement adequate maintenance procedures to keep the equipment in good condition. In the event the Contractor no longer

needs the equipment, Contractor shall contact DRCOG for instructions. In such event, DRCOG reserves the right to order the transfer of title of the equipment to the Federal Government or to a third party named by DRCOG when such third party is otherwise eligible.

1.3 Supplies. Title to supplies shall vest in the Contractor upon acquisition. Contractor shall not use supplies acquired under this Contract to provide services to non-Federal organizations for a fee that is less than private companies charge for equivalent services, unless authorized by DRCOG. User charges shall be treated as program income.

2.0 ACQUISITION OF FIXED ASSETS

2.1 Contractor shall acquire the fixed assets as set forth in its Proposal in compliance with all applicable procurement standards set forth in either State or Federal regulations. Contractor is the responsible authority, without recourse to DRCOG, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of this Contract.

2.2 Contractor shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of Contractor shall participate in the selection, award, or administration of a contract supported by this Contract if a real or apparent conflict of interest would be involved. The officers, employees, and agents of the Contractor shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub agreements.

2.3 All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Contractor, price, quality and other factors considered.

2.4 Contractor shall establish written procurement procedures in compliance with 45 CFR § 74.44.

3.0 ADMINISTRATIVE REQUIREMENTS

In performance of its obligations under this Contract, Contractor shall comply with all applicable provisions of Rule Manual Volume 10, 45 CFR Part 74 and 45 CFR Part 92, and Section 313 of the SUA Policy and Procedure Manual, as applicable, regarding acquisition, use and disposition of fixed assets.

4.0 INSURANCE

In addition to Contractor's obligations to maintain insurance as set forth in the Contract, Contractor shall maintain, at a minimum, insurance coverage adequate to cover the replacement value of all fixed assets.

5.0 USE OF FIXED ASSETS

Fixed assets shall be used for the purposes set forth in this Contract and the Contractor's proposal. Fixed assets may be used on a part-time basis for non-contract purposes as follows:

1. By nonprofit agencies, provided that: (1) a minimum usage fee is charged in accordance with Program Income requirements pursuant to Rule Manual Volume 10; and (2)

the part-time usage does not conflict with the use of the equipment for the purposes of the Contract.

2. By profit-making organizations, provided that: (1) a usage fee equal to or greater than the prescribed minimum is charged; (2) usage does not conflict with the use of the equipment for purposes of the Contract; and (3) prior approval has been obtained from DRCOG.

6.0 DISPOSITION OF FIXED ASSETS

6.1 Real Property. In the event that the Contractor determines that real property acquired under this Contract is no longer needed for the purpose of the original project, Contractor shall obtain written approval from DRCOG for the use of the real property in other Federally-sponsored projects. Use in other projects shall be limited to those Federally-sponsored projects or programs that have purposes consistent with those authorized for support by DRCOG. If the real property is no longer needed for a Federally-sponsored project, then Contractor shall request disposition instructions from DRCOG or its successor.

6.2 Equipment. In the event Contractor determines that equipment acquired under this Contract is no longer needed for the purpose of the project, Contractor may use the equipment for other activities as follows: for equipment with a current per unit fair market value of \$5,000 or more, the Contractor may retain the equipment for other uses provided that compensation is made to DRCOG. The amount of compensation shall be computed by applying the percentage of DRCOG's share in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from DRCOG.

6.3 Supplies. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project and the supplies are not needed for any other Federally-sponsored program, the Contractor shall retain the supplies for use on non-Federally sponsored activities or sell them, but shall, in either case, compensate DRCOG for its share. The amount of compensation shall be computed by applying the percentage of DRCOG's share in the cost of the original project or program to the current fair market value of the supplies.

6.4 These provisions regarding disposition of fixed assets shall survive termination of the Contract.

7.0 HHS GRANT

It is agreed by the above parties that should the Department of Health and Human Services ("HHS") or the State disapprove this Contract or refuse or fail to make the grant to DRCOG as contemplated by this Contract, then this Contract shall be void and shall not be binding on any parties hereto.

8.0 CHANGES

Any changes, including any increase in the amount of this Contract, which are mutually agreed upon by and between DRCOG and the Contractor, shall be incorporated in written amendments to this Contract.

9.0 TERMS AND CONDITIONS

The parties agree that this Contract is also subject to the provisions set forth in the Contract between DRCOG and Contractor. If Contractor does not comply with the requirements set forth herein or in the Contract, Contractor agrees to return the value of the fixed assets to DRCOG.

**DENVER REGIONAL COUNCIL OF GOVERNMENT
AREA AGENCY ON AGING
PROPERTY INVENTORY FORM**

Inventory Tag Number: _____ Date of physical inventory: _____

Description:

Manufacturer's serial number, model number, or other identification number:

Source of equipment (include award number):

Title in (check one):

☐ Contractor

☐ DRCOG

☐ Federal Government

☐ State

Acquisition Date: _____ Acquisition Cost: _____

Percentage of DRCOG share in cost of equipment (attach documentation to calculate percentage): _____

Location of equipment:

Condition of equipment: _____

Unit acquisition cost: _____

Ultimate disposition data:

Signature: _____

Date: _____

EXHIBIT G
OPTION LETTER-SAMPLE

THIS OPTION LETTER is made and entered into this _____ day of _____, 20____ by and between Denver Regional Council of Governments ("DRCOG") and _____ (the "Contractor") and shall extend/and or amend the terms of the contract referenced herein (the "Contract").

NOW THEREFORE, in consideration of the recitals, promises, payments, covenants, and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, DRCOG and Contractor hereby agree to the following extension and/or amendments to said Contract:

Contract Name: _____ Original Contract Date: _____

Contractor Address: _____

Contract Number: _____ Project Number: _____

Term End Date is Hereby Extended to: _____

Funding levels and updated Scope/units for the fiscal year are provided in the attached AAA Supplemental Contract Information, which by reference is made a part of the original contract.

IN WITNESS WHEREOF, DRCOG and Contractor have executed this Option Letter as of the day and year first above set forth.

**DENVER REGIONAL COUNCIL
OF GOVERNMENTS**

CONTRACTOR NAME

By: _____
Douglas W. Rex
Executive Director

By: _____

ATTEST:

ATTEST:

By: _____
Jenny Dock, Division Director
Administration and Finance

By: _____

EXHIBIT H

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is a part of the Contract between the Denver Regional Council of Governments ("DRCOG"), Area Agency on Aging, and "Contractor". For purposes of this Addendum, DRCOG, Area Agency on Aging, is referred to as "AAA" and the Contractor is referred to as "Associate". Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to "the Contract" or "this Contract" include this Addendum.

RECITALS

- A. AAA entered into a HIPAA Business Associate Addendum ("State Addendum") with the Department of Human Services, Division of Aging and Adult Services ("Covered Entity" or "CE") as required by the HIPAA Regulations, the Privacy Rule (defined below), which requires the CE, prior to disclosing protected health information to AAA, to enter into a contract containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Addendum.
- B. Associate, as a sub-grantee of AAA, has access to certain information, some of which may constitute Protected Health Information ("PHI") (defined below).
- C. As a subgrantee with access to PHI, Associate is a Business Associate and subject to obligations with respect to PHI under HIPAA in the same manner as the State Addendum.
- D. AAA and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws, as amended.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Privacy Rule at 45 CFR Parts 160 and 164, as amended ("Privacy Rule"). In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this Contract, the Privacy Rule shall control. Where the provisions of this Contract differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this Contract shall control.

b. "Protected Health Information" or "PHI" means 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, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

c. "Protected Information" shall mean PHI provided by CE or AAA to Associate or created or received by Associate on CE's or AAA's behalf.

2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE or AAA, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE or AAA, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR Section 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards consistent with applicable law as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall maintain a comprehensive written information privacy and security program consistent with applicable law that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

d. Reporting of Improper Use or Disclosure. Associate shall report to AAA in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under the Contract, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE and AAA as third party beneficiaries with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to AAA by the deadline specified in a written request by AAA so that AAA may comply with any request(s) by CE to AAA for inspection and copying of records to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524.

g. Amendment of PHI. By the deadline specified in a written request from AAA for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to AAA to provide to CE so that CE may fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526.

If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify AAA in writing within two (2) days of receipt of the request.

h. Accounting Rights. By the deadline specified in written notice by AAA of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to AAA the information required to provide an accounting of disclosures so that AAA may forward such accounting disclosures on to CE so that CE may fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528. As set forth in, and as limited by, 45 CFR Section 164.528, Associate shall not provide an accounting to AAA of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.506; (ii) to individuals of Protected Information about them as set forth in 45 CFR Section 164.502; (iii) pursuant to an authorization as provided in 45 CFR Section 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR Section 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of the receipt of the request forward it to AAA in writing, which will forward such request to CE. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the Privacy Rule. Associate shall provide to AAA a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary. AAA shall subsequently provide such information to CE.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary, to the extent practicable, to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule including, but not limited to 45 CFR Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Notwithstanding Section 4(d) of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years after termination of the Contract.

m. Associate's Insurance. Associate shall maintain casualty and liability insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).

n. Notification of Breach. During the term of this Contract, Associate shall notify AAA within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

o. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE or AAA to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

p. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to AAA pursuant to the Contract, in accordance with the standards and requirements of the Privacy Rule, until such Protected Information is received by AAA, and in accordance with any specifications set forth in Attachment A.

q. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. 164.522, Associate will restrict the use or disclosure of an individual's Protected Information, provided Associate has agreed to such a restriction. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of AAA.

a. Safeguards During Transmission. AAA shall be responsible for using appropriate safeguards consistent with applicable law to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Associate pursuant to this Contract, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Changes. AAA shall provide Associate with a copy of any notices of changes that it receives from the State pursuant to the State Addendum, including the following: 1) notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information; 2) any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures; and 3) to the extent that it may affect Associate's permitted use or disclosure of PHI, any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR Section 164.522. CE may effectuate any and all such notices of non-private information via posting on CE's web site. Associate shall monitor CE's designated web site for notice of changes to CE's HIPAA privacy policies and practices.

4. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by AAA, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by AAA pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, AAA may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, AAA may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from AAA, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which AAA has an interest.

(3) Compensation. Payment for completed supplies delivered and accepted by AAA shall be at the Contract price. In the event of a material breach under paragraph 4a, AAA may withhold amounts due Associate as AAA deems necessary to protect AAA against loss from third party claims of improper use or disclosure and to reimburse AAA for the excess costs incurred in procuring similar goods and services elsewhere.

(4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.

b. Reasonable Steps to Cure Breach. If AAA knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then AAA shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, AAA shall either (i) terminate the Contract, if feasible or (ii) if termination of this Contract is not feasible, AAA shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Judicial or Administrative Proceedings. Either party may terminate the Contract, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

d. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to AAA that such PHI has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide AAA notice of the conditions making return or destruction

infeasible. Upon mutual agreement of AAA and Associate that return or destruction of Protected Information is infeasible, Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. AAA shall have the right to injunctive and other equitable and legal relief against Associate or any of its subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law. Associate acknowledges and agrees that in the event of such impermissible use or disclosure of Protected Information, AAA may seek injunctive relief if: (1) AAA will suffer real, immediate, and irreparable injury which will be prevented by injunctive relief; (2) that AAA has no plain, speedy, and adequate remedy at law; (3) that the granting of a preliminary injunction will promote the public interest in privacy rather than disserve the public interest; (4) that the balance of equities always favors the injunction in such cases; (5) that the injunction will preserve the status quo pending a trial on the merits; and (6) that AAA shall not be required to demonstrate a reasonable probability of success on the merits in order to obtain injunctive relief.

6. No Waiver of Immunity. 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, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now in effect or hereafter amended.

7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.

8. Disclaimer. AAA makes no warranty or representation that compliance by Associate with this Contract, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

10. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. This Addendum may be amended upon written notice by AAA to Associate, provided that such amendment is necessary to assure ongoing compliance with the State Addendum, HIPAA, the Privacy Rule and other applicable laws relating to the security or privacy of PHI. The parties understand and agree that CE and AAA must receive satisfactory written assurance from Contractor that Contractor will adequately safeguard all Protected Information. Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. AAA may terminate this Contract upon thirty (30) days written notice in the event (i) Contractor does not promptly enter into negotiations to amend this Contract when requested by CE or AAA pursuant to this Section or (ii) Contractor does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE or AAA, in their discretion, deem sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under the Contract, available to CE or AAA, at no cost to CE or AAA, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against AAA, its directors, officers or employees based upon a claimed violation by associate, its subcontractors, employees or agent of HIPAA, the Privacy Rule or other laws relating to security and privacy or PHI covered by this Addendum, except where Associate or its subcontractor, employee or agent is a named adverse party.

12. No Third Party Beneficiaries. The Department of Human Services, Division of Aging and Adult Services, is a Third Party Beneficiary to this Agreement with rights of enforcement and indemnification in the event of any violation of the Contract. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than The Department of Human Services, Division of Aging and Adult Services, CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(d) ("Effect of Termination") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

15. Representatives and Notice.

a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

AAA Representative:

Name: Tim Feld
Title: HIPAA Compliance Coordinator
Address: 1001 17th Street, Suite 700
Denver, CO 80202

Contractor/Business Associate Representative:

Name: _____
Title: _____
Department/Division: _____
Address: _____

ATTACHMENT to EXHIBIT H

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract between DRCOG and Contractor and is effective as of November 1, 2009 (the "Attachment Effective Date"). This Attachment may be amended from time to time as provided in Section 10(b) of the Addendum.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows: _____
None except as otherwise directed in writing by DRCOG

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows: _____
None except as otherwise directed in writing by DRCOG

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract: _____
None except as otherwise directed in writing by DRCOG

4. Receipt. Associate's receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate's obligations under the Addendum shall commence with respect to such PHI upon such receipt: Upon the effective date of the contract

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: _____
As may be directed in writing by DRCOG or the State

6. Additional Terms. [This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]
None

EXHIBIT I
E-VERIFY FEDERAL CONTRACTOR RULE
EMPLOYMENT ELIGIBILITY VERIFICATION

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

Exhibit J

Pre-Contract Certification in Compliance with C.R.S. Section 8-17.5-102(1)

The undersigned hereby certifies as follows:

That at the time of providing this certification, the undersigned does not knowingly employ or contract with an illegal alien; and that the undersigned will participate in the E-Verify program or the Department program, as defined in C.R.S. § § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform under the public contract for services.

Contractor:

By _____

Title: _____

Date

* This Exhibit I shall not apply to the following types of contracts: (1) intergovernmental agreements; (2) agreements for information technology services or products and services; (3) agreements relating to the offer, issuance, or sale of securities; (4) agreements for investment advisory services or fund management services; (5) any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract, pursuant to C.R.S. § 8-17.5-101(6)(b).

ATTACHMENT A



ACH Payment Request Form

Email request to: Accounts payable@drcog.org

Section 1 Your Company Information:

Company Name: _____ Vendor ID (if known): _____
Requested by: _____ Telephone Number: _____

Email address/es (this is for payment confirmation): _____

Section 2 Bank Information:

Name of Financial Institution: _____
Routing Number: _____
Account Number: _____

ACH Information: By submitting this form, you authorize DRCOG to initiate ACH transactions to the account noted above.

For Internal Use Only

Input in GP: _____
Prenote completed: _____ Verified by: _____

ATTACHMENT B (Supplemental Form)

AAA Supplemental Contract Information

Provider:	City of Lakewood
Contract Title:	Lakewood Rides
Contract Number:	EX20048

Contract Totals:

Funding Source	Amount
Contracted Funds	\$135,000.00
Local Cash	\$15,032.62
Local In Kind	-
Program Income	\$500.00

Service-Level Budgets:

ASSISTED TRANSPORTATION

Funding Source	Project Code	Amount
Contracted Funds	State - 624021	\$135,000.00
Local Cash		\$15,032.62
Local In Kind		-
Reimbursement Rate		\$25.47
Program Income		\$500.00

Total Unduplicated Clients	220.00
-----------------------------------	--------

Scope/Units

Service	Adams	Arapahoe	Broomfield	Clear	Denver	Douglas	Gilpin	Jefferson	Total Units
Assisted Transportation	-	-	-	-	-	-	-	5,301	5,301

Non-compensated Units

Service	Units
Information and Assistance	125
Outreach	50

Service Definitions

Service	Type	Definition	Unit
Assisted Transportation	Compensated	Assistance and transportation, including escort, to a person who has difficulties (physical or cognitive) using regular vehicular transportation.	1 One-way trip
Information and Assistance	Non-compensated	A service that: (A) provides individuals with information on services available within the communities; (B) links individuals to the services and opportunities that are available within the communities; (C) to the maximum extent practicable, establishes adequate follow-up procedures. Internet web site "hits" are to be counted only if information is requested and supplied.	1 Contact
Outreach	Non-compensated	Intervention with individuals initiated by an agency or organization for the purpose of identifying potential clients (or their care givers) and encouraging their use of existing services and benefits.	1 Contact

ATTACHMENT C SCOPE OF WORK

A. Agency Overview

The City of Lakewood is a municipal governmental entity in the state of Colorado.

B. Service Description (From Proposal)

Assisted Transportation:

Question	Response
Please describe in detail the program/service you propose to offer (i.e. what does this program look like on the ground?).	Lakewood Rides provides transportation services for Lakewood residents that are 60 and older for grocery trips, medical appointments, congregate meal sites, and Adult Day Centers. We also provide transportation for wellness, education, employment, social, volunteerism and personal trips. Lakewood Rides also serves persons with disabilities of any age. Lakewood Rides is a demand response human service transportation program, and operates on a first-come, first-served basis. Door-through-door assistance is provided, to include hand-offs, and assistance in pick-up and drop-off on any floor of a building. The destination boundaries are East to University, West into Golden, North to 49th Avenue, South to Quincy Avenue. The program's office hours 7am to 5pm. The first pick-up is at 7:40am, and the last return time is 4:15pm. To request a ride, a rider registers themselves, or can be registered by a caregiver. They request their ride time and pick-up/drop-off locations and, if available, the ride is scheduled. In general, a 7-minute pick-up window is given with exception for riders with extensive mobility challenges, frailty. Reminder calls are given to those riders who have memory challenges or need extra time, as needed. Staff provide assistance with carrying items, extending an arm for balance, leverage for standing from a sitting position, and assistance with any mobility device. Emergency contact information is obtained when available in case the rider experiences health concerns while in the Lakewood Rides bus driver transportation care.
Give an example of why this service is important to the individual and to the community.	Lakewood Rides provides transportation for residents for all of the basic needs. We operate on a first-come, first-served basis, giving every qualified resident an opportunity to schedule and utilize our transportation service. This service is essential to the individuals served and the wider community: - Ten years from now 21 percent of the population will be considered older Americans, being over 65, according to the United States Census Bureau Starting. Lakewood, having a greater than average population of older adults, may have a greater need than available rides, without additional capacity. The number of 75 and older is also projected to increase significantly. Many of these individuals are frail and low-income. It is highly probable that they will not be able to use Uber, Lyft, Taxi, Fixed Routes. It is also highly probable that they

	<p>will not be able to use Access-A-Ride due to distance they have to travel to be assessed. In addition, RTD is projected to experience financial short fall in 2021 that may impact their ability to maintain routes which will impact Access-A-Ride. - There are few para-transit agencies available that serve the 60 and older population. This can place an unintended burden on the remaining agencies financially as it can equate to a higher cost per trip due to greater distance of travel, possible increased dead head miles. This lends to the importance of cooperatives between the remaining agencies in order to be effective in services. - We have several riders who have memory challenges. Their families, who are their care givers, work to support the rider – providing a home with family and all of the basic needs. These families need respite to replenish themselves, and rely on Lakewood Rides to take their loved ones to an ADC. They hand them off to the driver, completely depending on that driver to deliver their loved one safely to the hands of the ADC provider and return them safely again. - Lakewood Rides provides transportation to many older adults who do not have family close by but want to remain in their home (many clients have been in their home for 40 to 50 years.) Lakewood Rides is in communication with the rider and with the family, providing support that allows the older adult to remain in the home until relocation is absolutely necessary. - Lakewood Rides administrative staff utilize Clements Community Center resource staff and other community resources to give courtesy calls when a driver identifies a concern, in order to better inform the riders' emergency contact. - Lakewood Rides sees numerous registrants who are in their early 60's, who want to be prepared for assistance when needed. These individuals want help getting to doctor appointments downtown to avoid the anxiety of increased traffic.</p>
Does this service have a waitlist? If so, how many are currently on the waitlist and what are your plans to try to reduce that waitlist?	<p>There is no waitlist at this time due to COVID-19. There is a significantly reduced number of requests, as the older adult population is very cautious about leaving home. In 2019, there was an unfilled request/waitlist- of 1,100 rides, totaling 4% of the number of requested rides. Some of these were filled when there was a cancellation. After COVID, the number of requests are anticipated to return to normal, and we will continue to work on reduction of unfilled requests through effective routing and working with cancellations.</p>
What are the minimum job qualifications for the positions providing the direct service?	<p>The minimum job qualifications for Lakewood Rides driving staff are as follows: - CTAA PASS (Passenger Assistance Safety and Sensitivity) Certified within 6 months of Hire. - Minimum of one year's experience driving 22-passenger coach buses or larger passenger vehicles with air brakes. - Experience working with children and youth, older adults, and people who have disabilities. - Experience operating wheelchair lifts and securement systems, including child restraint systems, within established safety practices and guidelines. - Must have current, valid Colorado Commercial Drivers License: Class –B with P2 endorsement and with the air brake restriction lifted. - Must pass City of Lakewood Certificate of Qualification for USDOT Physical including initial</p>

drug and alcohol screening. - Incumbents will be subject to random drug and/or alcohol screenings. - Criminal background check is required. - Knowledge of Denver metro area geography, structures, streets and numbering systems. - Respect for diversity and the ability to work with a broad range of people who vary widely in their mental and physical capabilities. - Ability to be patient, dependable and responsible while working in an unpredictable environment. - Ability to be attentive to details: riders' needs; vehicles' responsiveness operations and condition; recording required information on a daily log. - Ability to maintain order on a moving vehicle, using established disciplinary techniques. - Must be able to push an occupied wheelchair, with a total weight up to approximately 250 pounds, a minimum of 120 linear feet. - Must be able to raise (push) and lower (pull) an occupied wheelchair, with a total weight up to approximately 250 pounds, over one step/curb or two steps if separated by a landing. - Must be able to push an occupied wheelchair, with a total weight up to approximately 250 pounds, up a ramp with a slope of 1:16 for 30 linear feet. - Must be able to control an occupied wheelchair, with a total weight up to approximately 250 pounds, descending a ramp with a slope of 1:16 for 30 linear feet. - Sustained sitting behind the wheel of a passenger vehicle occurs on a daily basis. - Bending and kneeling, crouching and stooping are required for securing wheelchairs, and picking up and setting down riders personal effects on the vehicle and in a rider's personal door way, as well as when performing pre and post trip safety inspections. - Walking with and giving direct assistance to frail passengers weighing up to approximately 250 pounds, stabilizing the passenger by allowing them to grasp your arm, to and from the bus, into their home, doctors' office, hospital, grocery store etc., for at least 100 yards are required. - Must have quick reflexes for going safely through traffic, especially in highly congested areas and around schools, hospitals, and other sites where there are many pedestrians. - Ability to hear two-way radio transmissions. - Ability to hear comments from frail passengers. - Ability to hear and identify street noises, including emergency vehicle sirens. - Must pass hearing test as required by the USDOT every two years. - Employee uses vision to read handwriting, drivers' schedules, spreadsheets, maps, and vehicle maintenance work order forms. - Must pass vision test as required by the USDOT every two years. - Must pass vision test as required by the State of Colorado for holders of Commercial Drivers Licenses. - Must be able to see road hazards, pedestrians and animals in the roadway, traffic signs and signals, brake lights, street identification signs, addresses on structures. - Must remember names and faces of passengers. - Must remember locations of major health care facilities, residential facilities, streets, avenues, boulevards and Head Start locations. - Must remember unit numbers of vehicles and call numbers for two-way radio system. - Must remember who is behind the wheel of each vehicle during the workday. - Must remember City policies, procedures and processes related to customer service, employee relations and risk management including motor vehicle accident,

	<p>on-the-job injury, cleanup of biohazards, and DOT drug/alcohol testing. - Must be able to read and interpret addresses and numbering systems in relationship to time, distance and direction. - Must be able to converse with a variety of people including co-workers, technical staff, other service providers, law enforcement personnel, parents of young children, grown children of elderly parents, older adults, individuals who have disabilities. - Must adhere to the standards of the City of Lakewood and the Federal Communications Commission when using the two-way radio system.</p>
How does this service address the specific needs arising from the COVID-19 pandemic?	<p>To address specific needs arising from the pandemic, Lakewood Rides: - Offers individual rides, and has capped group trips to help avoid the spread of COVID-19. - With the congregate meal program temporarily suspended, we have adapted and adjusted our VOA meal site from a congregate meal site to a meals-on-wheels delivery model. Lakewood Rides serves 84 residents upon request from them for a meal. Lakewood Residents 60 and older have a good source of nutrition each week. Additionally, in conjunction with VOA, we have added a hot meal delivery twice per month. - Accommodates grocery trips to the store that match low-volume shopping times, in order to protect riders from greater COVID-19 exposure. - Increased cleaning and regular disinfectant policies to protect riders. - Supplied masks to the older adults who are not able to obtain their own. - Made several duplicate trips across various days, or several stops in one day, to help riders find items when those items were out at the riders' normal store. - Delivered groceries to the frail or health compromised so they did not have to leave the safety of their home</p>

C. Project Budget, Clients and Units Served

See attached Supplemental Contract Form.

D. Contract Expiration

The expiration date for this contract is 06/30/2021.

E. Reimbursement Eligibility

Requests for reimbursement for project costs will be paid to Contractor upon presentation of invoice(s) to DRCOG for eligible costs incurred after the date of execution of this Grant through and within the limits of this Grant. Invoice(s) must be submitted to DRCOG monthly on the 15th of the month following the month expenses were incurred. For example, for expenses incurred in January, invoice(s) should be submitted by February 15. If the 15th falls on a weekend or holiday, the reimbursement request will be due the business day before. Failure to submit the reimbursement request on time may delay payment until the following month.

John Diak, Chair
Ashley Stolzmann, Vice Chair
Kevin Flynn, Secretary
Steve Conklin, Treasurer
Bob Fifer, Immediate Past Chair
Douglas W. Rex, Executive Director

December 22, 2020

Dawn Sluder
City of Lakewood
480 S. Allison Pkwy.
Lakewood, CO 80226

Dear Dawn,

Per my letter in November, DRCOG's Board of Directors approved the funding allocations recommended by the Advisory Committee on Aging. I am pleased to inform you that your proposal is approved for funding for the period of January 1, 2021 – June 30, 2021. The award is as follows:

Service	Amount
Assisted Transportation	\$135,000.00

Please be advised that the contract amount is subject to the availability of funds. Services cannot commence until the contract is fully executed. To ensure timely contract execution, please print and sign two copies of the attached contract and return it, along with the required documentation listed below to DRCOG at contracts@drcog.org as soon as possible.

- Certificate(s) of Insurance – Recently issued certificates of insurance with the coverage and specifications as required by DRCOG. Services cannot commence until proof of coverage has been received.
- W9 – This is required if (1) you are a new contractor to DRCOG or (2) you are a returning contractor whose agency has had any changes to name, address, or tax ID.

If you have any questions regarding this award, contact Sharon Day, 303-480-6705 or SDay@drcog.org, or Travis Noon, 303-480-6775 or TNoon@drcog.org. Please note that mandatory training for new contractors will be held Thursday, January 21 at 10 am via webinar. A calendar invitation will be sent to you soon.

The AAA is excited to provide support for this program. Please let me know if I can be of any assistance. I look forward to working together with you and hearing how the program is impacting area older adults.

Sincerely,



Jayla Sanchez Warren
Director, Area Agency on Aging



WWW.LAKEWOOD.ORG

[Facebook](#) | [Instagram](#) | [YouTube](#)

[Explore Community Connection, our guide to arts, parks and recreation!](#)



From: Travis Noon <TNoon@drcog.org>
Sent: Wednesday, December 9, 2020 9:59 AM
To: Dawn Sluder <DawSlu@lakewood.org>
Subject: RE: CDOT Vulnerable Transportation Funds

EXTERNAL – USE CAUTION

Hi Dawn,

Thank you for this proposal. We will be awarding the \$20,000 requested from the CDOT Senior and Vulnerable transportation funds. Please review the attached SOW and let me know if you have any questions. I will get this moving forward on our side.

Thanks,

Travis Noon | Senior Program Specialist | Administration & Finance
Direct 303-480-6775 | **Fax** 303-480-6790 | **E-mail** tnoon@drcog.org



1001 17th St. • Suite 700 • Denver, CO 80202

main: 303-455-1000 • **email:** drcog@drcog.org • **web:** drcog.org



From: Dawn Sluder <DawSlu@lakewood.org>
Sent: Thursday, November 12, 2020 12:42 PM
To: Travis Noon <TNoon@drcog.org>
Subject: RE: CDOT Vulnerable Transportation Funds

Hi Travis

Yes- it is making sense and thank you. Next is my informal proposal. Let me know if I need to provide any additional information. And, thank you again.

EXHIBIT A: SCOPE OF WORK AND CONDITIONS

Denver Regional Council of Governments

Title of Project	Lakewood Rides- 2021		
Recipient	City of Lakewood	DUNS #	076468305
Contact Name	Dawn Sluder	Phone #	303-987-4832
Address	480 South Allison Parkway Lakewood, CO 80226	Email:	dawslu@lakewood.org
Project Budget			
Total Project Budget (SVT and Match)			\$20,000
SVT			\$20,000
Local Match Funds			\$0

A. Agency Overview

Governmental agency- municipality

B. Project Description

Funding will be used as matching dollars on grants awarded to the City of Lakewood for its Lakewood Rides program. The City of Lakewood – Lakewood Rides program is a specialized demand response human service transportation program, providing door-through-door services. It serves residents of Lakewood who are 60 and older and those with disabilities of any age. The destination boundaries include East to University Avenue, West into Golden, North to 49th Avenue, and South to Quincy Avenue. Trip purposes include medical, grocery, nutrition trips to meal site programs, personal, wellness, Adult Day Care, employment, and volunteerism placements. Trips can be scheduled as a one-time appointment on a first-come-first-served basis or standing subscription trip as space comes available. In addition, group trips are provided to the older adult living facilities within Lakewood for special outings, as part of the normal organization and scheduling of trips where possible. Lakewood Rides office hours are Monday through Friday 7:00am to 5:00pm.

Transportation pick-up and return operations run from 7:40 am to 4:15 pm. The primary users of the service are residents that have significant mobility challenges and are not able to transport themselves, may not have family available or ability to assist them for various reasons, do not have the resources or ability to secure other forms of transportation, or do not meet the criteria set forth within the RTD Access-a-Ride system. Clients register with the Lakewood Rides program and then can begin requesting rides. If the person is under 60, a brief statement from the rider's physician verifying that the person meets criteria under the Americans with Disabilities Act, following definitions set forth in Title 42 U.S.C.12102..

C. Performance Standards

1. Performance will be reviewed throughout the grant agreement. Contractor will need to report to the DRCOG Project Manager whenever one or more of the following occurs.
 - a. Budget changes in excess of 10% of the total budget or project schedule changes.
 - b. Project outcomes were not met.

- c. Identification of problem areas and how the problems will be solved.
- d. Expected impacts and the efforts to recover from delays.

2. Project Timeline:

Milestone	Est Date of Completion	Description
Submit Monthly Expense Report	07/15/2021	Final Monthly expense report due in OAA-SYS
Submit Progress Reports	04/15/2021, 07/15/2021	Progress report is due in OAA-SYS
IMPORTANT NOTE: All funds must be spent no later than the contract expiration date of 06/30/2021.		

D. Project Budget

1. The Total Project Budget Amount is \$20,000.00 and is comprised of the following components: \$20,000.00 from SVT funds, with a local match of \$0. For DRCOG accounting purposes, the SVT funds of \$20,000.00 will be encumbered for this Grant Agreement.
2. DRCOG will pay no more than the Total Project Amount Encumbered via this Grant Agreement up to the maximum amount of \$20,000.00. In the event the final cost of the Project is less than the Total Project Budget Amount, DRCOG is not obligated to provide any more than 100% of the total cost and shall retain any remaining balance of the federal share. Contractor shall be solely responsible for all costs incurred with the Project in excess of the amount paid by DRCOG from SVT Funds for the federal share of eligible, actual costs.
3. No refund or reduction of the amount of Contractor's share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.
4. Contractor may use federal funds for the local share, but those funds cannot be from other federal Department of Transportation (DOT) programs. Contractor share, together with the federal share, must be enough to ensure payment of Total Project Budget. Local matching funds used to match this grant may not be used to match any other grant.
5. DRCOG shall have no obligation to provide federal funds for use on this Project. DRCOG will administer SVT funds for this Project under the terms of this Grant, provided that the SVT funds to be administered by DRCOG are made available and remain available. In no event shall DRCOG have any obligation to provide State funds or provide federal FTA funds for Contractor's share of the Project. Contractor shall initiate and prosecute to completion all actions necessary to enable Contractor to provide its share of the total project budget at or prior to the time that such funds are needed to meet the total project budget.

6. Upon execution of the grant, DRCOG will request from CDOT advance payment for the full budget. Upon receipt of the payment from CDOT DRCOG will pay contractor within 10 business days for the full project budget.

E. Contract Expiration

This Grant will expire according to the terms and conditions of the Grant. The expiration date for this Grant is 06/30/2021.

F. Expense Reports

Contractor must submit monthly expense reports in OAA-SYS. These reports will detail the expenses incurred under the grant funds and will be reviewed to ensure that the costs incurred and allowable under the grant. Reports are due on the 15th of the month following the month expenses were incurred. If the 15th falls on a weekend or holiday, then reports are due the business day before. For example, for expenses incurred in January, reports should be submitted by February 15.

G. Training

In an effort to enhance transit safety, Denver Regional Council of Governments shall make a good faith effort to ensure that appropriate training of agency and contracted personnel is occurring and that personnel are up to date in appropriate certifications. DRCOG will hold mandatory trainings, as deemed appropriate by DRCOG staff.

H. Special Conditions

1. Contractor's sub-grantees must maintain safety records, if applicable. These records must be submitted to DRCOG, if DRCOG requests them. The records may include the number of vehicle accidents within certain time frames as requested by the State, the number and extent of passenger injuries and claims, and the number and extent of employee accidents, injuries, and incidents.
2. Contractor must obtain DRCOG approval if funds are intended to be used for payment of a lease or for third-party contracts.
3. Contractor's sub-grantees must demonstrate a good faith effort to provide, and certify as applicable, safety-related training for drivers and other appropriate personnel.
4. Contractor shall advertise its fixed route and/or rural based service as available to the general public and service will not be explicitly limited by trip purpose or client type.
5. Contractor will provide comparable transportation services to persons with disabilities according to the Americans with Disabilities Act.
6. Meal delivery for homebound individuals must not conflict with providing public transportation service or reduce service to public transportation passengers.
7. Contractor will work cooperatively with DRCOG to market and/or publicize this project as requested by DRCOG. Such efforts may include ribbon cuttings, news articles, photos,

and/or other media to be supplied by Contractor as appropriate.



MINUTES
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD
[MEETING VIDEO LINK](#)

7:00 P.M

January 11, 2021

Minutes are action minutes only with times listed on each item for easy reference to the meeting video linked above.

ITEM 1 – CALL TO ORDER (12:15 of video)

Mayor Paul called the **VIRTUAL MEETING** to order at 7:00 p.m.

ITEM 2 – ROLL CALL (13:08 of video)

Those present were:

- Mayor Adam Paul, Presiding
- Anita Springsteen
- Dana Gutwein
- David Skilling
- Jacob LaBure
- Charley Able
- Sharon Vincent
- Mike Bieda
- Ramey Johnson
- Barb Franks
- Karen Harrison

Absent: None.

Others in attendance: Kathy Hodgson, City Manager, Ben Goldstein, Deputy City Manager, Alison McKenney Brown, City Attorney, Greg Graham, Deputy City Attorney

Full and timely notice of this City Council meeting had been given, and a quorum was present.

ITEM 3 – PLEDGE OF ALLEGIANCE (13:46 of video)

The Pledge of Allegiance was recited, and there was a moment for silent reflection.

ITEM 4 – RESOLUTION 2021-2 – APPOINTING THE MAYOR PRO TEM OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD (16:30 of video)

Councilor Franks motioned to nominate Councilor David Skilling for Mayor Pro Tem. It was seconded.

The Mayor and Council discussed nominating another Council member to the leadership role.

Councilor Johnson stated she would like to nominate Councilor Gutwein for Mayor Pro Tem.

Councilor Gutwein advised that she will not accept the nomination for Mayor Pro Tem.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON		X
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
			TOTAL	10	1

The motion passed.

ITEM 5 – PUBLIC COMMENT (46:14 of video)

James Mace, Ward 1, states opposition to West Metro Fire District policies. Mr. Mace demands an investigation.

ITEM 6 – EXECUTIVE REPORT (51:04 of video)

Kathy Hodgson, City Manager, gave her executive report:

- The new City Attorney's Start date is Tuesday, January 19, 2021. Her name is Alison McKenney Brown.
- Porchlight project at 8th and Quail plans to open to the public on February 8, 2021.
- Jefferson County communications team has started a Notify Me project that Jeffco residents can sign up to keep apprised of COVID-19 news.
- The hazard mitigation plan is currently being updated in Jefferson County.
- Open spaces consortium is conducting a two-year project to evaluate trail signs.
- Denver Regional Council of Governments (DRCOG) Grant will award the City of Lakewood \$10 million towards the \$12 million Colfax pedestrian safety project. Public information to start at the end of February.
- On January 2, 2021, former L.P.D. Chief Ron Burns passed away.

ITEM 14 was moved by Mayor Paul. (1:03:42 of video)

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL JANUARY 25, 2021, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

Mayor Pro Tem Skilling made a motion to extend the Declaration of Disaster in the City of Lakewood Colorado resulting from the Coronavirus/COVID-19 Pandemic, pursuant to Section 1.27 of the Lakewood Municipal Code, originally declared by Proclamation of the Lakewood City Manager on March 17, 2020, extended by a majority vote of the City Council on multiple occasions, and by this motion extended again until January 25, 2021, unless earlier extended or terminated by the City Council. It was seconded.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN		X
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
			TOTAL	10	1

The motion passed.

CONSENT AGENDA (1:05:37 of video)

City Clerk Bruce Roome read the Consent Agenda into the record. The Consent Agenda consists of Items 7 through 12, inclusive.

ITEM 7 – RESOLUTION 2021-3 – APPOINTING A MEMBER TO THE BUDGET AND AUDIT BOARD

ITEM 8 – RESOLUTION 2021-4 – APPOINTING AND REAPPOINTING MEMBERS TO THE LAKEWOOD ADVISORY COMMISSION

ITEM 9 – RESOLUTION 2021-5 – DESIGNATING THE PUBLIC PLACE FOR POSTING NOTICES OF PUBLIC MEETINGS DURING 2021 PURSUANT TO C.R.S. 24-6-402

ITEM 10 – ORDINANCE O-2021-1 – MODIFICATION TO OFFICIAL DEVELOPMENT PLAN (ODP) TO LEGISLATIVELY REZONE LAND LOCATED AT 2301 S. MCINTYRE ST., LAKEWOOD, CO 80465, COUNTY OF JEFFERSON, STATE OF COLORADO.

ITEM 11 – ORDINANCE O-2021-2 – AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

ITEM 12 – APPROVING MINUTES OF CITY COUNCIL MEETINGS

City Council Meeting August 24, 2020
City Council Meeting September 28, 2020
City Council Meeting October 12, 2020

Council Discussion: (1:08:42 of video)

Councilor Johnson asked for Agenda Item 11 Ordinance O-2021-2 to be removed from Consent Agenda to be discussed later in the meeting.

Public Comment:

Marie Venner, Ward 5, had comments for general public comment and will send an email to the Mayor and Council in favor of sustainability.

Mayor Pro Tem Skilling made a motion to approve Council Minutes; order all ordinances introduced on first reading be published in the Denver Post Newspaper for a public hearing set for dates included in the ordinances; and to adopt resolutions, all of which are included in the Consent Agenda Items, for the record and introduced by the City Clerk. It was seconded.

Councilor Able, Chair of the Boards & Commissions appointment screening committee, spoke about the last round of interviews and told who was nominated for appointment/reappointment.

Vote on Consent Agenda:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				11	0

The motion passed.

END OF CONSENT AGENDA

ITEM 13 – RESOLUTION 2021-6 – (1:16:50 of video) ESTABLISHING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR 2021 AND ASSIGNING ALLOCATIONS TO POOLS PURSUANT TO CHAPTER 14.27 OF THE LAKEWOOD MUNICIPAL CODE

Public Comments:

Mayor Paul noted that two public comments were received through Lakewood Speaks.

There were no other callers for public comment.

Mayor Pro Tem Skilling made a motion to adopt Resolution 2021-6. It was seconded.

Council discussion:

The Mayor and Council members each spoke on the issue stating that the staff memo with all the different numbers made it too confusing to precisely understand what Council was requested to pass.

Councilor Able made an amendment to the motion to postpone Resolution 2021-6 to a date certain of January 25, 2021. It was seconded.

Vote on amendment motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				11	0

The motion passed.

Councilor Vincent withdrew her 2nd to the original motion, and Councilor Skilling withdrew his original motion.

Mayor Pro Tem Skilling made a motion to postpone Resolution 2021-6 to a date certain of January 25, 2021. It was seconded.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				11	0

The motion passed.

ITEM 11 – ORDINANCE O-2021-2 – (1:44:02 of video) AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

Councilor Johnson motioned to postpone Ordinance O-2021-2 to a future date to occur after an Executive Session occurs for legal advice. It is being held for clarification of the various issues surrounding this Ordinance. It was seconded.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				11	0

The motion passed.

ITEM 14 – GENERAL BUSINESS (1:03:42 of video)

Mayor Paul moved this Item to after Item 6 on the agenda.

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL OCTOBER 26, 2020, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

Mayor Paul, under General Business (1:54:13), reports that he still needs to fill the Council Members 2021 Committee assignments. A discussion by all members ensued.

ITEM 15 – MAYOR AND CITY COUNCIL REPORTS (2:22:48 of video)

Mayor Paul and City Council Members reported any news from their Wards and any other City business with which they were involved.

ITEM 16 – ADJOURNMENT (2:55:41 of video)

There being no further business to come before City Council, Mayor Paul adjourned the meeting at 9:30 p.m.

Respectfully submitted

Bruce Roome, City Clerk



MINUTES
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD
[MEETING VIDEO LINK](#)

7:00 P.M

January 25, 2021

Minutes are action minutes only with times listed on each item for easy reference to the meeting video linked above.

ITEM 1 – CALL TO ORDER (3:05 of the video)

Mayor Paul called the virtual meeting to order at 7:00 pm.

ITEM 2 – ROLL CALL (3:47 of video)

Those present were: Mayor Adam Paul, Presiding

Anita Springsteen
Dana Gutwein
David Skilling
Jacob LaBure
Charley Able
Sharon Vincent
Mike Bieda
Ramey Johnson
Barb Franks
Karen Harrison

Absent: None.

Others in attendance: Kathy Hodgson, City Manager, Ben Goldstein, Deputy City Manager, Alison McKenney Brown, City Attorney

Full and timely notice of this City Council meeting had been given, and a quorum was present.

ITEM 3 – PLEDGE OF ALLEGIANCE (4:23 of video)

The Pledge of Allegiance was recited, and there was a moment for silent prayer.

ITEM 4 – PUBLIC COMMENT (6:36 of video)

Mayor Paul commented that on Lakewood Speaks, nine comments were received on items such as sustainability, Westland Town Center, and one who was interested in serving on committees and anyone can view at lakewoodspeaks.org.

There were no other callers for public comment.

ITEM 5 – EXECUTIVE REPORT (8:06 of video)

Kathy Hodgson, City Manager, gave her executive report:

- Budget and Audit Board meeting on Wednesday, January 27, 2021, at 5:30 pm via Zoom.
- This Saturday, January 30, 2021, is the 2021 Annual Planning Session for City Council via Zoom at 8 am.
- New in-house City Attorney, Alison McKenney Brown, is here for her first meeting.

ITEM 10 - was moved by Mayor Paul. (13:00 of video)

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL FEBRUARY 8, 2021, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

Mayor Pro Tem Skilling made a motion to extend the Declaration of Disaster in the City of Lakewood Colorado resulting from the Coronavirus/COVID-19 Pandemic, pursuant to Section 1.27 of the Lakewood Municipal Code, originally declared by Proclamation of the Lakewood City Manager on March 17, 2020, extended by a majority vote of the City Council on multiple occasions, and by this motion extended again until February 8, 2021, unless earlier extended or terminated by the City Council. It was seconded.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN		X
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				10	1

The motion passed.

CONSENT AGENDA (15:40 of video)

City Clerk Bruce Roome read the Consent Agenda into the record. The Consent Agenda consists of Items 6 and 7, inclusive.

ITEM 6 – RESOLUTION 2021-7 – APPOINTING COUNCIL MEMBERS TO VARIOUS BOARDS AND COMMITTEES

ITEM 7 – APPROVING MINUTES OF CITY COUNCIL MEETINGS

City Council Meeting	July 27, 2020
City Council Special Meeting	September 21, 2020
City Council Special Meeting	September 28, 2020
City Council Special Meeting	January 4, 2021

Public Comment: None

Mayor Pro Tem Skilling made a motion to adopt resolutions, all of which are included in the Consent Agenda Items, for the record and introduced by the City Clerk. It was seconded.

Vote on Consent Agenda:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN		X
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
			TOTAL	10	1

The motion passed.

END OF CONSENT AGENDA

ITEM 8 – RESOLUTION 2021-6 – (18:04 of video) ESTABLISHING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR 2021 AND ASSIGNING ALLOCATIONS TO POOLS PURSUANT TO CHAPTER 14.27 OF THE LAKEWOOD MUNICIPAL CODE

Public Comment: None

Note: there were three comments received on Lakewood Speaks on this specific item. Anyone can view it at lakewoodspeaks.org.

Travis Parker, Director of Planning, gave a summary of the allocation numbers and how each option provides various choices. Still, any of the three will be below the 1% growth cap mandated per the ordinance.

The Mayor and City Council members discussed a continuation from January 11, 2021, City Council meeting. This is an annual duty because of the strategic growth initiative passed by citizens in 2019. Also discussed was that what is decided tonight will be below the 1% growth cap mandated per the ordinance.

Mayor Pro Tem Skilling made a motion to adopt Resolution 2021-6. It was seconded.

Councilor Vincent withdrew her second, and Mayor Pro Tem Skilling withdrew his motion.

Mayor Pro Tem Skilling made a motion to adopt Resolution 2021-6 amended to reflect the calculations expressed in Option 1. It was seconded.

This option will create 355 total allocations. The allocations are divided as follows: 175 in the Open Pool, 117 in the Affordable Pool, and 63 in the Hardship Pool

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL		X	SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT		X	JOHNSON	X	
GUTWEIN		X	LABURE		X
BIEDA	X		HARRISON		X
SKILLING	X				
TOTAL				6	5

The motion passed.

ORDINANCES ON SECOND READING AND PUBLIC HEARINGS

ITEM 9 – ORDINANCE O-2021-1 – (51:41 of video) MODIFICATION TO OFFICIAL DEVELOPMENT PLAN (ODP) TO LEGISLATIVELY REZONE LAND LOCATED AT 2301 S. MCINTYRE ST., LAKEWOOD, CO 80465, COUNTY OF JEFFERSON, STATE OF COLORADO.

Public Comment: None

Note: there were no comments received on Lakewood Speaks on this specific item.

Kara Mueller, Senior Planner, gave a brief overview of the events that led up to this meeting.

Brian Connelly from Otten Johnson was present to represent the property owner stated he was available to answer any questions.

The Mayor and City Council members asked a variety of questions of Mr. Connelly regarding the Developers plans.

Mayor Pro Tem Skilling motioned to adopt Ordinance O-2021-1 on the second and final reading. It was seconded.

Vote on the motion:

	AYES	NAYS		AYES	NAYS
PAUL	X		SPRINGSTEEN	X	
ABLE	X		FRANKS	X	
VINCENT	X		JOHNSON	X	
GUTWEIN	X		LABURE	X	
BIEDA	X		HARRISON	X	
SKILLING	X				
TOTAL				11	0

The motion passed.

ITEM 10 – GENERAL BUSINESS (1:06:33)

Mayor Paul moved this Item to after Item 5 on the agenda at 13:00 of video.

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL OCTOBER 26, 2020, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

ITEM 11 – MAYOR AND CITY COUNCIL REPORTS (1:06:38)

Mayor Paul and City Council Members reported any news from their Wards and any other City business with which they were involved.

ITEM 12 – ADJOURNMENT (1:59:34 of video)

There being no further business to come before City Council, Mayor Paul adjourned the meeting at 8:59 pm.

Respectfully submitted

Bruce Roome, City Clerk



**LAKESWOOD CITY COUNCIL
STUDY SESSION
MEETING SUMMARY
[YOUTUBE VIDEO LINK](#)**

7:00 p.m.

February 1, 2021

ITEM 1 – CALL TO ORDER – (7:31 of video)

Mayor Paul called the virtual meeting to order at 7:00 p.m.

ITEM 2 – ROLL CALL (7:40 of video)

Those present were: Mayor Adam Paul, Presiding; Charley Able; Sharon Vincent; Dana Gutwein; Mike Bieda; David Skilling; Anita Springsteen; Ramey Johnson; and Barb Franks.

Absent: Jacob LaBure; Karen Harrison.

Staff in attendance: Kathy Hodgson, City Manager; Ben Goldstein, Deputy City Manager; Alison McKenney Brown, City Attorney

Full and timely notice of this study session was given, and a quorum was present.

ITEM 3 – FINANCIAL UPDATE – (10:46 of video)

Holly Bjorklund, Director of Finance – gave an overview of what would be covered in this presentation, which is where the city unofficially stands financially at the end of 2020 and expected in 2021. None of these numbers are official until the official audit has been completed in 2021.

Councilor Bieda, Chairman of the Budget and Audit Committee – gave a summary of the meeting last week.

Councilor Gutwein – asked if there were any new updates regarding 2021 funding, to which Ms. Bjorklund stated that there are none so far this year.

ITEM 4 – REVIEW OF SALES TAX EXEMPTIONS (24:00 of video)

Bjorklund – Finance had the task of trying to find possible revenue sources from current sales tax exemptions.

Erin Nordmann, Revenue Manager, and Nicole Stehr, Revenue Supervisor – discussed the timeline, which led to tonight's discussion. Electric vehicles, cigarettes, non-essential items for fast food restaurants, pass-through exemptions to contractors.

Bieda – explained that the committee did not reach a consensus on most of these suggested exemptions.

The Mayor and Councilmembers asked the finance staff questions and gave their input regarding how they feel regarding the different proposed exemptions. Consensus to remove medical from the list and wait for the State to decide on this issue. Everything else will move forward for a second reading and public input.

Nordmann – (1:06:50 of video) discussed potential administrative changes to increase revenues and align the language.

Council reached a consensus to move these ideas forward.

Nordmann – (1:13:17 of video) identified opportunities that would require a citizen vote to raise taxes.

Consensus to move forward for more research and discussion with an additional tax on cigarettes and like products, potential marijuana taxation, and TABOR base modification.

There also is consensus from the council to learn more about a potential commercial vacancy tax, Certificates of Participation (COP), and bonded indebtedness.

PUBLIC INPUT

Public comments (1:42:10 of video):

Natalie Menton - Ward 5 – suggested furloughs and salary reductions to save money. They did this at RTD, where she served two terms on their Board. She believes a cigarette tax is a penalty for those adults who smoke.

Anonymous, a citizen of Lakewood – orders medical supplies from Amazon because it is not stocked locally in Lakewood. Amazon collects the tax, so he is paying \$32 a month, which he shouldn't be paying, but Amazon doesn't know any different,

Note: One comment was received on Lakewood Speaks on this specific item. Anyone can view it at lakewoodspeaks.org.

ITEM 5 – REPORTS (1:50:24 of video)

Mayor Paul and City Council Members reported their attendance at previous meetings and events and announced upcoming neighborhood meetings and events.

ITEM 6 – ADJOURNMENT (2:01:42 of video)

There being no further business to come before the Council, Mayor Paul adjourned the study session at 8:55 p.m.

Submitted by:

Bruce Roome, City Clerk

**EXECUTIVE COMMITTEE MEETING
LAKEWOOD ADVISORY COMMISSION**

January 6, 2021

@ 6:00 p.m.

Virtual Meeting

MINUTES

CALL TO ORDER

Chair Peggy Ralph called the virtual meeting to order at 6:02 p.m.

ROLL CALL

Commissioners Present: Jamie Cornell, Casey Hensley, Nicole Malandri, Kate McBride, and Peggy Ralph were present.

Commissioners Absent: Andrea Gelfuso Goetz

A total of 5 commissioners were present. A quorum was present.

Staff Present: City Clerk Bruce Roome was in attendance.

CORRESPONDENCE

None.

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

Vice Chair Hensley motioned to approve the minutes of the December 2, 2020 Executive Committee Meeting. It was seconded by Commissioner Malandri; Vote: 5 Ayes, 0 Nays, 1 Absent. The motion passed.

NEW BUSINESS

- 1) Recording of three presentations that are ready

Chair Peggy Ralph discussed the three presentations that need to be recorded. Ms. Ralph showed the Board the 2019/2020 Annual Report presentation. Ms. Ralph wants to get the three presentations ready to be presented to City Council. It was decided that Mr. Roome would record them via Zoom and that the presentations would be Civility During the COVID-19 Pandemic, Renewable Energy Mitigation Program (REMP,) and the Fishing Line Cleanup project.

2) Presentation Training

Chair Peggy Ralph talked about her background in training and wants to offer her services on helping people learn on how to talk to strangers, make presentations, etc. Ms. Ralph proposes to have a training at the end of each full meeting for the newer members.

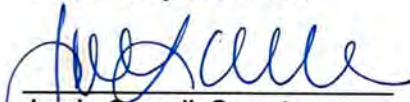
3) How to start the process of a City Council assignment or grass roots projects

Chair Peggy Ralph discussed the assignment flowchart that outlines the steps of how projects are approved by City Council.

ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Peggy Ralph adjourned the meeting at 6:58 p.m.

Respectfully submitted,



Jamie Cornell, Secretary



**PROCLAMATION OF THE CITY MANAGER OF THE CITY OF LAKEWOOD,
COLORADO DECLARING A STATE OF DISASTER AS A RESULT OF THE NOVEL
CORONAVIRUS (COVID-19)**

WHEREAS, on January 31, 2020, the United States Department of Public Health and Human Services Secretary declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020; and

WHEREAS, on March 10, 2020, Colorado Governor Jared Polis declared a State of Disaster Emergency as the number of identified COVID-19 cases in Colorado increased, and announced numerous emergency measures to protect public health and safety; and

WHEREAS, the Jefferson County Department of Public Health has informed the City of Lakewood that the number of confirmed cases of COVID-19 in Jefferson County continues to increase; and

WHEREAS, the cost and magnitude of responding to and recovery from the impact of the COVID-19 Pandemic may be far in excess of the City's available resources; and

WHEREAS, declaration of a local disaster emergency will assist and permit access to local emergency funds and Federal and State assistance, and will allow adjustments to policies, procedures, and ordinances to ensure the public's health and welfare; and

WHEREAS, it is appropriate and in the interests of the public health and safety of the City and its residents to rapidly address community spread of COVID-19 and subsequent cascading impacts, such as economic distress, and to further protect the health and safety of the public by declaring a state of disaster in the City of Lakewood; and

WHEREAS, the situation is sufficiently serious that it has become necessary for the City Manager to declare a state of disaster within the City of Lakewood pursuant to Chapter 1.27 of the Lakewood Municipal Code, and to exercise the City Manager's emergency powers set forth therein; and

WHEREAS, I have reviewed the situation, consulted with City of Lakewood Department Directors and the Jefferson County Director of Public Health, and verified the existence of the state of disaster cited below, and the necessity for me to take immediate, extraordinary action as outlined in this Proclamation.

**NOW, THEREFORE, I, KATHLEEN E. HODGSON, AS CITY MANAGER OF THE
CITY OF LAKEWOOD, COLORADO, DO PROCLAIM AND ORDER AS FOLLOWS:**

SECTION 1. DECLARATION OF STATE OF DISASTER

A. Based on my review of the present circumstances and my consultations with City of Lakewood Department Directors, the Jefferson County Director of Public Health and the Director of the Colorado Department of Public Health and Environment, I have determined that a state of disaster exists requiring and authorizing me to exercise any or all of the emergency powers vested in me as City Manager by Lakewood Municipal Code Chapter 1.27 as described in this Proclamation. The issuance and execution of this Proclamation declaring a state of disaster shall automatically empower me as the City Manager to exercise any and all of the disaster and emergency powers and shall activate all relevant portions of the Emergency Plan and Management System. Nothing in this Proclamation shall be construed to limit or reduce the authority or powers available to the City Manager pursuant to Chapter 1.27, and all provisions of Chapter 1.27 shall remain in full force and effect regardless of whether those provisions are referenced herein.

B. I will be exercising the authority provided in Chapter 1.27 through the mechanisms identified therein, including through the promulgation of such regulations as I deem necessary to protect life and property and preserve critical resources, through the issuance of emergency orders, proclamations and other enactments and through the use and direction of City personnel, services and equipment and such additional acts necessary for the management of the state of disaster.

C. Pursuant to Lakewood Municipal Code section 1.27.071, it is unlawful for any person to violate or to knowingly fail to obey any order or regulation made or issued pursuant to that Chapter. Penalties for violations of any order or regulation promulgated by the City Manager or for violations of any provision of Chapter 1.27 shall be as set forth in Section 1.27.120 of the Lakewood Municipal Code.

SECTION 2. DISTRIBUTION OF DECLARATION OF STATE OF DISASTER

Once issued, this Proclamation shall be properly published and disseminated to the public and filed with the City Clerk and the City Council. A copy of this Proclamation shall be forwarded to the Colorado Division of Emergency Management and the Department of Local Affairs.

SECTION 3. DURATION OF DECLARATION OF STATE OF DISASTER.

Pursuant to LMC Section 1.27.060(D), the state of disaster declared by this Proclamation shall remain in effect until the City Manager declares by Proclamation that the threat of danger has passed or that the disaster conditions no longer exist, suggesting that the City Manager has the authority to declare a state of disaster of indefinite duration. However, Section 1.27.060(D) further provides that a declaration of a state of disaster cannot extend beyond seven days, unless a majority of the City Council approves a longer duration. Inasmuch as the COVID-19 disaster will obviously extend well beyond seven days, the City Manager intends to ask the City Council to vote, at its next meeting, to declare the state of disaster to continue indefinitely. In making the ultimate determination as to whether the danger has passed or the disaster conditions no longer exist, the City Manager may consider such factors as whether the state of Colorado's declaration of disaster has been terminated.

SIGNED THIS 17th DAY OF March

BY:

Kathleen E. Hodgson

Kathleen E. Hodgson, City Manager
City of Lakewood, Colorado

ATTEST:

Michele Millard

Michele Millard, City Clerk
City of Lakewood, Colorado

