LOVELAND CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 18, 2012
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMMODATION TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2343 OR TDD # 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

5:30 P.M. **DINNER - City Manager's Conference Room**
6:30 P.M. **REGULAR MEETING - City Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE ROLL CALL

PROCLAMATION DECLARING SEPTEMBER 17 THROUGH 23, 2012 AS "CONSTITUTION WEEK"

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

1. **CITY CLERK**
APPROVAL OF COUNCIL MINUTES
Consideration of a motion approving Council minutes
This is an administrative action to approve Council minutes from the August 28, 2012 study session and the September 4, 2012 regular meeting.

2. **WATER & POWER**
SUPPLEMENTAL APPROPRIATION FOR WATER UTILITY FUNDS
Consideration on second reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for water

filter plant improvements and emergency waterline repairs

This is an administrative action. The department is requesting the movement of water utility funds ($670,000) which will fund critical water infrastructure projects in 2012. The appropriation is funded by reserves in the Water Enterprise Fund. On August 15, 2012, the Loveland Utilities Commission voted unanimously to recommend that City Council adopt this ordinance. City Council unanimously adopted the ordinance on first reading on September 4, 2012.

3. WATER & POWER

MUNICIPAL CODE CHANGES TO WASTEWATER SYSTEM CHAPTER 13.10

Consideration on second reading of an ordinance amending the Loveland Municipal Code at Chapter 13.10 concerning pretreatment

This is a legislative action to adopt an ordinance amending Chapter 13.10 of the Loveland Municipal Code concerning the City's Wastewater Pretreatment Program. The amendments are being proposed to meet a requirement of the compliance schedule issued by the Colorado Department of Public Health and Environment in the City's Wastewater Treatment Plant discharge permit and to address recommendations from the U.S. Environmental Protection Agency following its audit of the Pretreatment Program in August 2011. City Council unanimously adopted the ordinance on first reading on September 4, 2012.

4. DEVELOPMENT SERVICES

HISTORIC DESIGNATION FOR MARIANO MEDINA FAMILY CEMETERY

Consideration on second reading of an ordinance designating as a historic landmark the Mariano Medina Family Cemetery located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado

This item is a legislative action to adopt an ordinance on second reading designating as a Historic Landmark the "Mariano Medina Family Cemetery" at Namaqua Avenue and Namaqua Elementary, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The applicant is owner, the Loveland Historical Society. City staff has reviewed the benefits and obligations of historic designation with the property owner. City Council unanimously adopted the ordinance on first reading on September 4, 2012.

5. FINANCE

SETTING PUBLIC HEARING DATE FOR 2013 RECOMMENDED BUDGET

Consideration of Resolution #R-61-2012 establishing a date, time, and place for a public hearing on the 2013 Recommended Budget for the City of Loveland, Colorado

This is an administrative action. The resolution sets the date for the public hearing of the 2013 Recommended Budget for October 2, 2012.

6. AIRPORT

PUBLIC HEARING

GRANT AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR RUNWAY WEATHER INFORMATION SYSTEM

a) Consideration of Resolution #R-62-2012 authorizing the City Manager to execute a grant agreement with the State of Colorado, Division of Aeronautics (CDAG #12-FNL-01, Amendment #2) for equipment improvements and funding pertaining to the Fort Collins-Loveland Municipal

Airport.

b) Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Fort Collins-Loveland Municipal Airport budget for the runway weather information system installation project

There are two administrative actions. a) Adoption of the resolution that authorizes the City Manager to execute a Grant from the State of Colorado, Division of Aeronautics for funds in the amount of $74,783. The State Aviation Grant will be used for runway weather information system improvements at the airport which will allow for better and more efficient removal of snow and ice from the airport runways in the future. b) The ordinance appropriates funding from the State grant to the airport for the additional funds necessary for the installation of a runway weather information system.

7. PUBLIC WORKS

PUBLIC HEARING

MUNICIPAL CODE AMENDMENT – STORMWATER QUALITY

Consideration on first reading of an ordinance amending the Loveland Municipal Code at Chapter 13.20 concerning stormwater quality

This is a legislative item to adopt an ordinance amending Chapter 13.20 concerning stormwater quality. The amendments will bring the Loveland Municipal Code into compliance with the City's state permit and is responsive to a recent audit questionnaire distributed by the Colorado Department of Public Health and Environment.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

a. Citizens' Report *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*

b. Business from Council *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

c. City Manager Report

d. City Attorney Report

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

8. DEVELOPMENT SERVICES

PUBLIC HEARING

MUNICIPAL CODE AMENDMENT – USE CREDIT FOR CAPITAL EXPANSION FEES

Consideration on first reading of an ordinance repealing and reenacting Section 16.38.030 of the Loveland Municipal Code regarding change in use credit for Capital Expansion Fees

This is a legislative action. The purpose of the Code amendment is to clarify how Capital Expansion Fee credits are calculated and applied when a change to an existing use occurs.

9. CULTURAL SERVICES

PUBLIC HEARING

SUPPLEMENTAL APPROPRIATION – MUSEUM EXPANSION ACTIVITIES

Consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a fund raising position and materials and architect fees for a conceptual design of the museum expansion

There are two parts to this administrative action:

1. Appropriation of funds in the amount of $36,830 from the Kroh Charitable Trust for the capital campaign. The amount requested is for the remainder of 2012. Continuation of the campaign in 2013 will be submitted as a supplemental request.

2. Appropriation of funds in the amount of $30,000 from Cultural Services' Capital Expansion Fees (CEFs) to hire an architect to develop conceptual drawings of the proposed museum expansion. The drawings would be used for public input and for fundraising purposes.

ADJOURN

CITY OF LOVELAND
CITY COUNCIL
Civic Center ● 500 East Third Street ● Loveland, Colorado 80537
(970) 962-2727 ● FAX (970) 962-2903 ● TDD (970) 962-2620
www.cityofloveland.org

PROCLAMATION

WHEREAS, September 17, 2012 marks the two hundred twenty-fifth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

NOW, THEREFORE, we, the Loveland City Council of the City of Loveland, do hereby proclaim September 17 through 23, 2012 as

CONSTITUTION WEEK

in the City of Loveland, and ask our citizens to reaffirm the ideals of the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

Signed this 18th day of September, 2012

Cecil A. Gutierrez, Mayor

City Council Study Session
August 28, 2012
Page 1 of 1

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Farley, Fogle, Taylor, Trenary, Klassen, Shaffer and McKean. City Manager Bill Cahill was also present.

1. Water & Power
   Infrastructure Investments Needs-Water and Wastewater Utilities
   Utility Accounting Manager, Jim Lees presented this item to Council providing background information on increasing infrastructure investment needs in the water utilities and final results from a cost-of-service rate study, including rate implications associated with several financing approaches. Preliminary results of the rate study were presented at the May 22, 2012 Study Session and direction was given to staff to prepare the rate study's final results for the 2013 budget process. Water Utilities Manager, Chris Matkins reviewed the needs of the Water Utility, possible Capital Program approaches, rate increase alternatives ranging from 18% to 53%; and recent changes in infrastructure budgeting needs. StepWise Utility Advisors consultant, Jason Mumm gave an overview of the water and wastewater rate studies, reviewing the three scenarios used and financing overview results for capital needs projected for the next 10 years. Council concerns were expressed and recommendations were made for spending revenue reserves to minimize the impact on citizens. City Manager Bill Cahill spoke regarding Tabor limits on revenue reserves. Executive Fiscal Advisor, Alan Krcmarik discussed the financing options. Council discussion ensued. Council direction supported the staff's recommendation at this time of Financing Scenario C for the Water Utility, creating the need for a 13% water rate increase in 2013, and re-evaluation of the needs going forward. Council direction supported the staff's recommendation of Financing Scenario B for the Wastewater Utility, creating the need for a 9.9% rate increase per year for the ten years from 2013 through 2022. Council thanked staff for the presentation

2. City Manager
   Capital Expansion Fee Progress Report #2
   Executive Fiscal Advisor, Alan Krcmarik introduced this item to Council, for information and discussion only. City staff members began the process to conduct a major review of the Capital Expansion Fees early this year. A study session in March covered the introduction of the process and a history of how the City has used Capital Expansion Fees since 1984. At the July 10th Study session, staff provided a progress report on the update. This presentation covered three topics: Options to Adjust Multi-Family Capital Expansion Fees; Annual Adjustment for Inflation; and Growth Related Revenue Sources for Operations and Maintenance. Council discussion ensued. Council thanked staff for the presentation.

Having no further business to come before Council, the August 28, 2012 Study Session was adjourned at 10:56 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER — Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL — Roll was called and the following responded: Gutierrez, Farley, Klassen, Trenary, Fogle, McKean, Shaffer and Taylor.

PROCLAMATION — Councilor John Fogle read the proclamation and Larry Turner, Exalted Ruler of the Loveland Elks Lodge #1051 accepted.

PROCLAMATION

WHEREAS the Loveland Benevolent Protective Order of Elks Lodge #1051 has been actively supporting the needs of our Loveland community since October 31, 1906; and

WHEREAS the Loveland Elks membership has come from a diverse background of prominent business men and women. the leaders in the community, scientists, inventors, artists, actors, athletes, doctors, writers, active military, veterans, educators, students, public servants, and primarily are people who have a heart to help others, people who influence and create positive impact on those around us, and carry out the motto of our Order, which is Elks Care Elks Share; and

WHEREAS the contributions of the Loveland Elks have been silently surrounding us. They have not sought recognition or repayment for what they have done, only that they hope that the people whose lives have been touched continue to be blessed, and when possible, to forward a blessing on to others;

WHEREAS the Loveland Elks 911 Community Blood Drive is an effort to bring the community together once again, to join forces with our neighboring businesses and residents, to support our local hospitals and blood banks and ultimately save the lives of those in critical need around us; and

WHEREAS it is the express desire of the Loveland Elks to continue to help those in need among us, to care for those experiencing sickness and distress, to be a place where neighbors come together, families share meals, where children grow up learning to give back to their community. It is the desire of the Loveland Elks to continue to invest in the community through programs that help children grow up healthy and drug-free, by undertaking projects that address unmet needs, and by honoring the service and sacrifice of our active military and our veterans.

NOW, THEREFORE, we the City Council of Loveland, do hereby proclaim the 11th day of September, 2012 as

911 COMMUNITY BLOOD DRIVE DAY

in Loveland, Colorado, and in so doing, urge all citizens to recognize and join in the community-wide effort to raise awareness about the importance of serving our local community, paying it forward and collaborating together to enrich and enhance the quality of life in our daily lives, and most importantly to honor the priceless gift of blood donations that are critical to saving the lives of those around us.

Signed this 4th day of September, 2012
Cecil A Gutierrez, Mayor

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to remove any of the items or public hearings listed on the Consent Agenda. Councilor Klassen pulled Item 3 from the agenda. Councilor Shaffer moved to approve the Consent Agenda with the exception of Item 3. The motion was seconded by Councilor Trenary and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: The minutes from the August 21, 2012 regular meeting were approved.

2. CITY MANAGER

Appointments to the Boards & Commissions

Motion

Administrative Action: A motion appointing Andrew Ross to the Construction Advisory Board for a term effective until June 30, 2015 was approved.

3. DEVELOPMENT SERVICES

Historic Designation for Mariano Medina Family Cemetery

This item was pulled from the consent agenda.

4. WATER & POWER

Supplemental Appropriation for Water Utility Funds

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR WATER FILTER PLANT IMPROVEMENTS AND EMERGENCY WATERLINE REPAIRS" was approved and ordered published on first reading.

5. WATER & POWER

Municipal Code Changes to Wastewater System Chapter 13.10

1st Rdg Ord & P.H. Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.10 CONCERNING PRETREATMENT" was approved and ordered published on first reading.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None

b) Business from Council

Taylor Councilor Taylor thanked Police Chief Hecker for providing information on the Child Advocacy Center which provides services to residents in Larimer County.

McKean Councilor McKean requested a status update from the Economic Development department on their activities and successes over the past year and their next steps at a future Council meeting.

Klassen Councilor Klassen attended the recent retreat held by the staff of the Loveland Chamber of Commerce. At the retreat he suggested the Chamber create and maintain a higher profile with the Loveland City Council. He suggested one way to achieve this is to invite the Chamber to provide updates to the City Council on a quarterly basis.

Farley Councilor Farley mentioned the 2012 Business Appreciation Breakfast is scheduled for Wednesday, September 5th at the Embassy Suites. Following that is the Innovation and Technology Showcase from 10:30 am to 4:00 pm at the Rocky Mountain Center for Innovation and Technology. A wine and cheese reception for museum members was held prior to the opening of the Bird Exhibit. He encouraged acquiring membership at the Museum.

Shaffer Councilor Shaffer wished everyone a Happy Labor Day. She participated in a focus group conducted by the Housing Authority looking at their programs including things like messaging.

Trenary Councilor Trenary is attending the presentation from the City of Greeley on September 7th regarding the establishment of an "Entertainment District". This Sunday, September 8th, is the Honor Flight ceremony sending 122 veterans to Washington DC for an overnight trip. A "Patriot's Picnic" will be held on Sunday, September 16th.

Fogle Councilor Fogle mentioned the significant attendance at this year's Corn Roast Festival. The Loveland Rotary Club "Duck Race" was successful in their fund raising. The funds will be used to purchase dictionaries for 3rd Grade school children and provide for scholarships.

Gutierrez Mayor Gutierrez mentioned the Peace in the Park event at the Civic Center Park on September 8th. Loveland Habitat for Humanity will be celebrating their 25th anniversary on Tuesday, September 11 and a celebration dinner will occur on Saturday, September 15th. He also attended an event last Friday honoring Madwire (Joe Kellogg) as one of 50

Colorado companies to watch. They started with three employees in 2009 and now have over 100 employees. The Mayor complemented the Police and Fire Departments and the Airport staff for their work during the President's visit.

c) City Manager Report — City Manager Cahill acknowledged the members of the Police Department for their work on the recent accreditation assessment. They have been accredited since 1992. It places our Police Department within the top 1% of all Police Departments in the country. The accreditation assessment occurred last week, during the time police were actively involved with the Corn Roast Festival, the Presidential visit and the Thunder in the Rockies event.

d) City Attorney Report — None

PROCEDURAL INFORMATION
Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

3. DEVELOPMENT SERVICES
Historic Designation for Mariano Medina Family Cemetery
1st Rdg Ord & P.H.

Legislative Action: Greg George, Director of Development Services, introduced this item. Councilor Klassen asked for the word "settler" to be inserted in the 5th "whereas" of the ordinance so that it reads "…an early settler credited with establishing the first business…" Bill Meirath from the Loveland Historical Society spoke about the research involved with the Medina Family Cemetery. The Mayor opened the public hearing at 7:10 p.m. and hearing no comments closed the hearing at 7:10 p.m. Councilor Shaffer moved to approved and ordered published on first reading "AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE MARIANO MEDINA FAMILY CEMETERY LOCATED ADJACENT TO NAMAQUA AVENUE TO THE WEST AND NAMAQUA ELEMENTARY SCHOOL TO THE SOUTH IN LOVELAND, COLORADO". Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

6. CITY CLERK
Approval of Council minutes
Motion

Administrative Action: City Clerk Terry Andrews introduced this item to Council. Not all Councilors were present at the August 14, 2012 study session. Councilor Trenary moved to approve the minutes from the August 14, 2012 study session. Councilor Taylor seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

7. POLICE

Larimer Humane Society Update

Information Only

This is an information item providing a brief update on the first six months' performance of the Humane Society under the reduced rate contract for 2012. Chief Hecker introduced this item to Council. Judy Calhoun, Executive Director of the Larimer Humane Society gave an introduction to Council. A presentation was made by Captain Bill Porter, Larimer Humane Society and Lt. Tim Brown LPD. Consensus of Council was to address the following concerns in the January 1, 2013 contract: develop specific statistics to measure service levels and streamline processes around how residents' access services (911, calls to Police Department, calls to Larimer Humane Society).

8. DEVELOPMENT SERVICES

Right-of-Way Easement Vacation – Harlow Addition (First Bank Building)
Ordinance #5700

Legislative Action: City Planner Brian Burson introduced this item to Council. This is a legislative action to vacate a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland. The applicant is First Bank. First Bank will dedicate a new public access, emergency access and utility easement to replace the vacated portion of the alley right-of-way. This will assure that all owners of property abutting this alley, as well as all utility providers and emergency services, will continue to have the same access rights. City Council unanimously approved the ordinance on first reading on August 21, 2012. Since then the ordinance was amended to grant the replacement easement by means of the plat rather than by a separate document. All other provisions of the ordinance remain the same as for first reading. Councilor Shaffer moved to make the findings in Section VIII, of the July 23, 2012 Planning Commission staff report, and adopt, on second reading, an ordinance vacating a portion of a public alley right-of-way in the Harlow Addition to the City of Loveland, Larimer County, Colorado. Councilor Taylor seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

9. FINANCE

July 2012 Financial Report

Information Only

Finance Director Brent Worthington introduced this item to Council. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the seven months ending July 31, 2012.

10. CITY MANAGER

INVESTMENT REPORT FOR JULY 2012

Information Only

Executive Fiscal Advisor Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2012 is $2,729,560. Through July 2012, the amount posted to the investment account is $1,658,581 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by $49,715. Based on the July monthly statement, the estimated annualized yield on the U.S. agencies and corporates remained at 1.31%, under the annual target rate of 1.7% for 2012. Reinvestment rates are still near record low levels, much lower than the budget projection.

ADJOURNMENT

Having no further business to come before Council, the September 4, 2012 Regular Meeting was adjourned at 9:15 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: **2**
MEETING DATE: 9/18/2012
TO: City Council
FROM: John McGee, Water & Power Department
PRESENTER: Chris Matkins, Water Utility Manager

TITLE:
Second reading of an ordinance approving a supplemental budget and appropriation to the 2012 City of Loveland budget for the Water Treatment Plant (WTP) Filter Plant #2 Improvements and Waterline Replacement and Repair Emergencies

RECOMMENDED CITY COUNCIL ACTION:
Move to approve the ordinance on second reading

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This is an administrative action. The department is requesting the movement of water utility funds which will fund critical water infrastructure projects in 2012 as explained in the Summary below. On August 15, 2012, the Loveland Utilities Commission voted unanimously to recommend that City Council adopt this ordinance.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible
The appropriation is funded by reserves in the Water Enterprise Fund.

SUMMARY:
The water division has a shortage of 2012 available, uncommitted or redirected funds to meet the needs of critical projects that must begin in 2012 and should be complete in early spring 2013. In addition, the water division is faced with record on-going water line repairs that may become emergency water line replacement projects. These projects are summarized below:

WTP Filter Plant #2 Improvements Project: This is the final year of a three-year phased improvements project for Filter Plant #2 at the WTP. The work requires that a portion of the plant be taken down during non-peak production months so that the construction may be started and completed before peak production begins. The typical window of time to complete the rehabilitation work is between October and April (5 to 6 months). The water utility has $950,000 of capital funding to complete this work, however, this funding is contingent upon the 2013 water capital budget approval by City Council and is not available until January 1, 2013. This year, the Filter Plant #2 improvements must begin mid to late September so the work can be completed before peak water production begins. The estimated 2012 cost for the rehabilitation work and purchase of long lead equipment is $240,000. An additional $80,000 is required for current budget expenses drawn from this project. In total, $320,000 is requested for 2012 work.

Emergency Water Line Replacement: The Water Operations Division has had 43 water main leaks and repairs through July 31, 2012 and is on pace to exceed last year's record number of water main leaks of 99. The cost to repair the leaks last year exceeded the budgeted operation and maintenance funds for water line repairs. In a span of 6 months, the water department has had to initiate two (2) major emergency water main replacement projects totaling over $350,000 (Logan Street and Wilson). The water utility is requesting $350,000 to fund potential emergency water line replacement projects and repairs for the remainder of 2012. Because of the emergency nature of water line repairs and replacement, it is prudent that budgeted funds are available immediately.

The City Council unanimously adopted the ordinance on first reading at its meeting on September 4, 2012.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Ordinance

FIRST READING September 4, 2012

SECOND READING September 18, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR WATER FILTER PLANT IMPROVEMENTS AND EMERGENCY WATERLINE REPAIRS

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of $670,000 from fund balance in the Water Enterprise Fund 300 are available for appropriation. Revenues in the total amount of $670,000 are hereby appropriated for filter plant improvements and emergency waterline repairs and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Water Entrprise Fund 300

Revenues		
Fund Balance		670,000
Total Revenue		**670,000**
Appropriations		
300-46-318-0000-49360-W1011C	Construction	320,000
300-46-310-0000-49360	Construction	350,000
Total Appropriations		**670,000**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 18th day of September, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: **3**
MEETING DATE: 9/18/2012
TO: City Council
FROM: Bill Thomas, Water & Power Department
PRESENTER: Bill Thomas, Water & Power Department

TITLE:
Second Reading of an Ordinance Amending the Loveland Municipal Code at Chapter 13.10 Concerning Pretreatment

RECOMMENDED CITY COUNCIL ACTION:
Adopt the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This is a legislative action to adopt an ordinance amending Chapter 13.10 of the Loveland Municipal Code concerning the City's Wastewater Pretreatment Program (Pretreatment Program). The amendments are being proposed to meet a requirement of the compliance schedule issued by the Colorado Department of Public Health and Environment (CDPHE) in the City's Wastewater Treatment Plant (WWTP) discharge permit and to address recommendations from the U.S. Environmental Protection Agency (EPA) following its audit of the Pretreatment Program in August 2011.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The Pretreatment Program is a federally-mandated program intended to protect the City's wastewater collection and treatment system, the Big Thompson River, and the health and safety of the citizens and workers of the City of Loveland.

In August 2011, the EPA conducted a routine audit of the Pretreatment Program. Following the audit, the EPA recommended that the City take specific actions to comply with Title 40 Part 403 of the Code of Federal Regulations (40 CFR Part 403). The attached ordinance addresses the audit recommendations, which were to:

- establish additional Sector Control Programs;
- update the City's local discharge limits; and
- support the City's legal authority to address non-compliant industrial users.

Sector Control Programs:
The ordinance establishes five new programs intended to address specific industrial user discharge concerns (Sector Control Programs). These five new sector programs, identified in Section 13.10.305 of the ordinance, are petroleum oil, grease, and sand (POGS), mercury, pharmaceutical, nanotechnology, and nonylphenol. Only two of the five Sector Control Programs have requirements at this time: POGS and mercury. The two businesses most effected by the requirements are carwash facilities and dental facilities. Twenty-three (23) carwash facilities and forty-five (45) dental facilities were notified by letter of the proposed ordinance and informed of the public meetings at which the item would be discussed.

For carwash facilities, the requirements are necessary due to observations made during routine maintenance of the sewer main (i.e.; excessive amounts of oily sediment downstream of carwash businesses). The requirements include installation of a properly sized petroleum, oil, grease, and sand separator, cleaning the separator at an appropriate frequency, and keeping records related to the cleaning and servicing of the separator.

For dental facilities, the requirements are necessary due to a stringent mercury discharge limit in the City's Wastewater Treatment Plant discharge permit and a compliance schedule within the permit that requires the City to "implement pretreatment solutions or appropriate management approaches to control mercury sources by December 31, 2012." In addition, there are forthcoming federal regulations for dentists.

The pretreatment solutions and appropriate management approaches for the mercury sector control program implement the American Dental Association's best management practices as well as local requirements, and include registering with the City and complying with the sector control program requirements as of July 1, 2013, installing and maintaining a properly-sized ISO 11143 certified amalgam separator, and annual certification regarding mercury use or capture.

Forty-five dentists will fall under the Sector Control Program. Twenty-two dentists indicated that they already have installed an amalgam separator. However, it's possible that some dentists may have to replace their separator if it does not meet the Sector Control Program

requirements. The estimated cost of an amalgam separator is $715 - $1,995 with annual maintenance of about $300. Dental facilities that do not use or capture mercury will have the option to file an annual certification with the City for an exemption.

Local Discharge Limits:
The following table shows a comparison of the current local discharge limits to the proposed local discharge limits. Only four of the thirteen pollutant concentrations are more stringent. The proposed limits are based on monitoring data collected in 2012, are technically based, and will apply uniformly to Significant Industrial Users (SIUs).

Comparison of current and proposed local discharge limits.

Pollutant	Current Uniform Local Limit (mg/l)	Proposed Uniform Local Limit (mg/l)
Arsenic	0.15	0.27
Cadmium	0.08	0.12
Chromium	1.1	1.26
Copper	1.94	3.91
Cyanide	0.65	0.46
Iron	N/A	171
Lead	0.92	1.53
Mercury	0.0002	0.0001
Molybdenum	0.49	0.88
Nickel	1.95	2.49
Selenium	0.37	0.11
Silver	0.19	1.50
Zinc	6.28	9.06

Currently, the City only has one SIU, and it was informed of the proposed ordinance and local limit changes on August 2, 2012.

City's Legal Authority:
The City is required by federal law to develop and implement an Enforcement Response Plan (ERP). The ERP describes how the City will investigate instances of noncompliance and the types of escalating enforcement responses. The EPA required the City to update the ERP to include specific federal violation criteria. The proposed ordinance incorporates the federal criteria and follows the guidelines set by the EPA in its model pretreatment ordinance.

Approval Process:
On August 1, 2012, the City submitted the proposed ordinance to the EPA for review and approval in accordance with the audit requirements and federal law. The EPA will public notice the proposed changes to the Pretreatment Program in accordance with its requirements. If the ordinance is approved by the EPA, the amendments to Chapter 13.10 will take effect on January 1, 2013.

The City Council unanimously adopted the ordinance on first reading at its meeting on September 4, 2012.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:
Ordinance

FIRST READING September 4, 2012

SECOND READING September 18, 2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.10 CONCERNING PRETREATMENT

WHEREAS, Chapter 13.10 of the Loveland Municipal Code sets forth the requirements for discharges into the City of Loveland's Publicly Owned Treatment Works ("POTW") and enables the City to comply with applicable state and federal laws, including the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the General Pretreatment Regulations, 40 C.F.R. Part 403; and

WHEREAS, the United States Environmental Protection Agency ("EPA") conducted a routine audit of the City's pretreatment program and recommended that the City amend Chapter 13.10 to respond to the EPA's audit findings; and

WHEREAS, the City's Pretreatment Coordinator has proposed changes to Chapter 13.10 to respond to the EPA's audit findings, to update local discharge limitations, and to implement certain sector control programs, such as a dental mercury control program; and

WHEREAS, pursuant to the EPA's audit requirements, the proposed changes to Chapter 13.10 were submitted to the EPA on August 1, 2012 for review and approval; and

WHEREAS, on August 15, 2012, the proposed changes were reviewed by the Loveland Utilities Commission, which adopted a motion recommending that the City Council adopt an ordinance amending Chapter 13.10 to incorporate the proposed changes; and

WHEREAS, the City Council desires to amend Chapter 13.10 to incorporate the proposed changes, subject to approval by the EPA.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Chapter 13.10 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 13.10

WASTEWATER PRETREATMENT PROGRAM

I. General Provisions

I. General Provisions

13.10.101 Purpose and policy.

A. This chapter sets forth uniform requirements for all users of the publicly owned treatment works for the City of Loveland and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the general pretreatment regulations (40 C.F.R. Part 403). The objectives of this chapter are:
   1. To prevent the introduction of pollutants into the POTW that will interfere with its operation;
   2. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW;
   3. To prevent adverse impacts to worker health and safety;
   4. To provide for and promote the general health, safety, and welfare of Loveland's citizens;
   5. To enable the city to comply with its Colorado discharge permit system conditions, biosolids use and disposal requirements, and all other state and federal laws to which the POTW is subject; and
   6. To improve opportunities to recycle and reclaim municipal and industrial wastewater and sludges from the POTW.

B. This chapter applies to all users of the POTW, regardless of whether those users are located inside or outside the city limits, and including those who are users by contract or agreement.

C. This chapter authorizes the issuance of wastewater discharge permits and other control mechanisms; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires industrial user monitoring and reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

13.10.102 Administration.

Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the director may be delegated by the director to other water and power department personnel.

13.10.103 Abbreviations.

The following abbreviations, when used in this chapter, shall have the designated meanings:

BOD	Biochemical oxygen demand

BMP	Best management practice
C	Celsius
C.F.R.	Code of Federal Regulations
COD	Chemical oxygen demand
CDPS	Colorado discharge permit system
EPA	Environmental Protection Agency
F	Fahrenheit
gpd	Gallons per day
gpm	Gallons per minute
mg/1	Milligrams per liter
POTW	City of Loveland publicly owned treatment works
RCRA	Resource Conservation and Recovery Act
s.u.	Standard units
TRC	Technical review criteria violations
TSS	Total suspended solids
U.S.C.	United States Code

13.10.104 Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

"Amalgam" means any mixture or blending of mercury with another metal or with an alloy used in dental applications.

"Amalgam waste" means any waste containing mercury or residues from the preparation, use or removal of amalgam. This includes, but is not limited to, any waste generated or collected by chair-side traps, screens, filters, vacuum systems filters, amalgam separators, elemental mercury, and amalgam capsules.

"Approval authority" means the appropriate EPA regional administrator, or upon approval of Colorado's pretreatment program, the chief administrator of such pretreatment program.

"Authorized representative of the industrial user" means the following:

(1) If the industrial user is a corporation: the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to ensure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to

sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the industrial user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the industrial user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

(4) The individuals described above may designate another authorized representative if the authorization is in writing, specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and is submitted to the city.

"Best management practices" means the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

"Biochemical oxygen demand" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20º C, usually expressed as a concentration (*e.g.*, mg/L).

"Categorical pretreatment standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act (33 U.S.C. § 1317) that apply to a specific category of industrial users and that appear at 40 C.F.R. Chapter I, Subchapter N, Parts 405 – 471.

"City" means the City of Loveland, Colorado.

"Categorical industrial user" means an industrial user subject to a categorical pretreatment standard or categorical standard.

"Chemical oxygen demand" means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

"Clean Water Act" means the Federal Water Pollution Control Act amendments of 1972, PL 92-500, and subsequent amendments, 33 U.S.C. Section 1251 et seq.

"Composite sample" means a sample formed either by continuous sampling or by mixing discrete samples. The sample may be a time proportional composite sample or a flow proportional composite sample. If composite sampling is not an appropriate technique then a composite sample shall consist of a minimum of four grab samples collected at equally spaced intervals.

"Control authority" means the entity directly administering and enforcing the pretreatment standards and requirements of this chapter. The director is the control authority for the POTW.

"Control mechanism" means those mechanisms used to control the discharges of significant industrial users and other industrial users of the POTW. Control mechanisms may include wastewater discharge permits, BMPs, written authorizations to discharge, liquid waste hauler permits, and other requirements enforceable under this chapter.

"Daily maximum limit" means the allowable discharge limit of a pollutant during a calendar day. Where the daily maximum limit is expressed in units of mass, the allowable discharge limit is the total mass discharged over the course of a calendar day. Where the daily

maximum limit is expressed in terms of a concentration, the allowable discharge limit is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

"Day" or "days" means calendar days except where otherwise noted.

"Dental facility" means any facility used for the practice of dentistry or dental hygiene that discharges wastewater containing amalgam.

"Director" means the director of the department of water and power or his or her duly authorized representative.

"Domestic wastewater" or "domestic wastestream" means liquid waste from noncommercial preparation, cooking, and handling of food, or liquid waste containing only human excrement and similar matter from sanitary conveniences (*e.g.*, toilets, showers, bathtubs) of dwellings or commercial, industrial, or institutional buildings.

"Enforcement response plan" means the written plan that sets forth the specific actions the city will take to investigate and respond to violations of this chapter.

"Environmental Protection Agency" means the U.S. Environmental Protection Agency or, where appropriate, the regional water management division director, or other duly authorized official of said agency.

"Existing source" means any source of discharge that is not a new source.

"Fats, oil, and grease" means nonpetroleum organic polar compounds derived from animal or plant sources such as fats, nonhydrocarbons, fatty acids, soaps, waxes, and oils that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established at 40 C.F.R. Part 136.

"Flow proportional sample" means a composite sample where each discrete sample is collected based upon the flow (volume) of wastewater.

"Food service establishment" means any nondomestic discharger where preparation, manufacturing, or processing of food occurs including, but not limited to, restaurants, cafes, fast food outlets, pizza outlets, delicatessens, sandwich shops, coffee shops, schools, nursing facilities, assisted living facilities, and other facilities that prepare, service, or otherwise make foodstuff available for consumption.

"Grab sample" means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

"Grease interceptor" means a large in-ground tank intended to remove, hold, or otherwise prevent the passage of fats, oil, and grease in the wastewater discharged to the POTW by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.

"Grease trap" means a device designed to reduce the amount of fats, oil, and grease in wastewater discharged into the POTW. Grease traps usually serve no more than four (4) fixtures and generally are located inside a building.

"Grease removal device" means a grease trap, grease interceptor, or other device (*i.e.*, hydromechanical) that is designed, constructed, and intended to remove, hold, or otherwise prevent the passage of fats, oil, and grease to the sanitary sewer.

"Hauled waste" means any waste from holding tanks, including, without limitation, chemical toilets, vacuum pump tank trucks, and septic tanks. Hauled waste does not include domestic waste from an individual's recreational vehicle (*e.g.*, camper or trailer).

"Indirect discharge" means the introduction by, without limitation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or dumping of pollutants into the POTW from any nondomestic source.

"Individual control mechanism" means a control mechanism (*i.e.*, permit) that only is issued to a specific industrial user.

"Industrial user" means a source of indirect discharge.

"Instantaneous limit" means the maximum concentration of a pollutant or measurement of a pollutant property allowed to be discharged at any time.

"Interference" means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its biosolids processes, use, or disposal; and therefore is a cause of a violation of the city's CDPS permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act, including Title II, commonly referred to as the Resource Conservation and Recovery Act; any state regulations contained in any state biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

"Local limit" means the specific discharge limits and BMPs developed, applied, and enforced by the city upon significant industrial users to implement the general and specific discharge prohibitions listed at 40 C.F.R. 403.5(a)(1) and (b).

"Monthly average limit" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

"Nanomaterials" means, without limitation, an engineered product developed using a microscopic particle(s) whose size is measured in nanometers.

"New source" means the following:

(1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that Section, provided that: (a) the building, structure, facility, or installation is constructed at a site at which no other source is located; (b) or the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; (c) or the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria in (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has: (a) begun, or caused to begin, as part of a

continuous onsite construction program, (i) any placement, assembly, or installation of facilities or equipment, or (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or (b) entered into a binding contractual obligation for the purchase of facilities or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

"Oil and sand separator" means a trap, interceptor, or other device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of petroleum products, sand, sediment, sludge, grease, or similar substances in the wastewater discharged to the POTW by gravity separation considering calculated retention times and volumes for each facility. Such interceptors include baffle(s) and a minimum of two (2) compartments and generally are located outside a building.

"Pass through" means a discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's CDPS permit, including an increase in the magnitude or duration of a violation.

"Person" means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

"pH" means a measure of the acidity or alkalinity of a solution, expressed in standard units.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes, and certain characteristics of wastewater (*e.g.*, TSS, turbidity, color, BOD, COD, toxicity, or odor) and other substance or material (*e.g.*, nanomaterial) as determined by the director.

"Pretreatment" or "treatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

"Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

"Pretreatment standards" or "standards" means prohibited discharge standards, categorical pretreatment standards, and local limits. There are two different circumstances in which BMPs may be pretreatment standards. The first is when the director establishes BMPs to implement the prohibitions of Section 13.10.202 or the local limits of Section 13.10.205. The second is when the BMPs are categorical pretreatment standards established by the EPA.

"Publicly owned treatment works" means any devices, facilities, structures, equipment, or works owned or used by the city for the purpose of the transmission, storage, treatment,

recycling and reclamation of industrial and domestic wastes, or necessary to recycle or reuse water at the most economical cost over the estimated life of the system, including intercepting sewers, outfall sewers, collection lines, pumping, power and other equipment, and their appurtenances and excluding service lines; extensions, improvements, additions, alterations or any remodeling thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including the land and sites that may be acquired, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from the treatment, or reuse of treated water for irrigation, recreation or commercial purposes. It does not include the stormwater system, a separate municipal operation that is not part of POTW. The municipality, as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Significant industrial user" means, except as provided in (3) and (4) below:

(1) An industrial user subject to categorical pretreatment standards; or

(2) An industrial user that: (a) discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater); (b) contributes a process wastestream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (c) is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling, and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met: (a) the industrial user, prior to the city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements; (b) the industrial user annually submits the certification statement required at 40 C.F.R. 403.12(q) together with any additional information necessary to support the certification statement; and (c) the industrial user never discharges any untreated concentrated wastewater.

(4) Upon a finding that the industrial user meeting the criteria in (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with procedures at 40 C.F.R. 403.8(f)(6), determine that such industrial user should not be considered a significant industrial user.

"Significant noncompliance" means an industrial user that violates one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limitations, for the same pollutant parameter.

(2) Technical review criteria violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter

taken during a six (6) month period equal or exceed the product of a numeric pretreatment standard or requirement including instantaneous limitations multiplied by the applicable TRC (TRC = one and four-tenths (1.4) for BOD, TSS, fats, oil, and grease, and one and two-tenths (1.2) for all other pollutants except pH).

(3) Any other violation of a pretreatment standard or requirement (daily maximum limit, long term average limit, instantaneous limit, narrative standard, or BMP) that the director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge.

(5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within thirty (30) days after the due date, any required reports such as baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations, which may include a violation of BMPs, that the director determines will adversely affect the operation or implementation of the pretreatment program.

"Spill" or "slug discharge" means any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 13.10.202, or any discharge of a nonroutine, episodic nature, including, but not limited to, an accidental spill or non-customary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits, or control mechanism.

"Solids interceptor" means a device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of solid foodstuff (*e.g.*, coffee grounds) to the sanitary sewer.

"Stormwater" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

"Time proportional composite sample" means a sample of equal-volume aliquots taken at regular intervals throughout the sampling period.

"Total suspended solids" or "suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

"Wastewater" means liquid and water-carried industrial, domestic, or other polluted wastes from dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, that are contributed to the POTW.

"Wastewater treatment plant" or "treatment plant" means that portion of the POTW that is designed to provide treatment of wastewater.

II. General Sewer Use Requirements

13.10.201 Legal authority.

A. The city operates pursuant to legal authority enforceable in federal, state, or local courts that authorizes or enables the city to apply and enforce the requirements of this chapter and 40 C.F.R. Part 403. This authority allows the director to:
   1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants to the POTW by industrial users where:
      a. Such contributions do not meet applicable federal, state, or local pretreatment standards and requirements;
      b. Could cause the treatment plant to violate its CDPS permit; or
      c. Could cause problems in the POTW.
   2. Control through permit, order, or similar means the wastewater contributions to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements.
   3. Require compliance with applicable pretreatment standards and requirements by industrial users.
   4. Identify, locate, and notify all possible industrial users that might be subject to the pretreatment program.

13.10.202 Prohibited discharge standards.

A. General prohibitions. No industrial user shall introduce or cause to be introduced into the POTW any pollutant that causes pass through or interference. These general prohibitions apply to all industrial users of the POTW whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.

B. Specific prohibitions. No industrial user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
   1. Pollutants that create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140° F (60° C) using the test methods specified at 40 C.F.R. 261.21.
   2. Wastewater having a pH less than five and one-half (5.5) or greater than eleven and one-half (11.5), or otherwise causing corrosive structural damage to the POTW.
   3. Solid or viscous substances in amounts that will cause obstruction to the flow in the POTW resulting in interference.
   4. Pollutants, including oxygen-demanding pollutants (*e.g.*, BOD), released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause interference with the POTW.
   5. Wastewater having a temperature greater than 104° F (40° C), or that will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
   6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
   7. Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
   8. Trucked or hauled pollutants, except at discharge points designated by the director in accordance with Section 13.10.304.E.

9. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewer for maintenance or repair.
10. Wastewater that imparts color that cannot be removed by the treatment plant process, such as, by not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent.
11. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations, or as otherwise limited by the director.
12. Sludges, screenings, or other residues from the pretreatment of industrial wastes.
13. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
14. Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW or otherwise cause pass through or interference.
15. Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the lower explosive limit of the meter.

C. Pollutants, chemicals, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

13.10.203 National categorical pretreatment standards.

Significant industrial users must comply with the categorical pretreatment standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405 through 471.

A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with this section.
B. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.
C. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit in accordance with 40 C.F.R. 403.6(e).
D. A categorical industrial user may apply for a net/gross adjustment to a categorical pretreatment standard in accordance with 40 C.F.R. 403.15.

13.10.204 State pretreatment standards.

State pretreatment standards and requirements adopted pursuant to the Colorado Water Quality Control Act shall apply in any case where they are more stringent than federal standards.

13.10.205 Local limits.

A. The following pollutant limits are established to protect against pass through and interference. No significant industrial user shall discharge wastewater containing in excess of the following daily maximum limits (all concentrations are total):

Pollutant	Daily Maximum Limit
Arsenic	0.27 mg/l
Cadmium	0.12 mg/l
Chromium	1.26 mg/l
Copper	3.91 mg/l
Cyanide	0.46 mg/l
Iron	171 mg/l
Lead	1.53 mg/l
Mercury	0.0001 mg/l
Molybdenum	0.88 mg/l
Nickel	2.49 mg/l
Selenium	0.11 mg/l
Silver	1.50 mg/l
Zinc	9.06 mg/l

B. The above daily maximum limits may apply at the significant industrial user's end of process or where the significant industrial user's facility wastewater is discharged to the POTW.
C. The director may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

13.10.206 City's right of revision.

The city reserves the right to establish, by ordinance, control mechanism, or other appropriate means more stringent or additional standards or requirements for any industrial user to protect the POTW against pass through, interference, or as necessary, in the director's opinion, to protect the health and safety of POTW personnel or the general public.

13.10.207 Dilution.

No industrial user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement.

III. Pretreatment of Wastewater

13.10.301 Pretreatment facilities.

A. All industrial users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with applicable categorical pretreatment standards, local limits, BMPs, and the prohibitions set out in Sections 13.10.202 through 13.10.205 within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided and properly operated and maintained at the industrial user's expense. The director may require that detailed plans describing such facilities and operating procedures be submitted for review and be acceptable to the director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the industrial user from the

responsibility of modifying such facilities as necessary to produce a discharge acceptable to the director under the provisions of this chapter.

B. The director may require an industrial user to install sampling, monitoring, or other appropriate pretreatment equipment as necessary to ensure compliance with the pretreatment standards and requirements. The equipment shall be installed, operated, and maintained at all times in a safe and proper operating condition by the industrial user at its own expense.

C. Industrial users shall notify the director prior to any remodeling, or equipment modification or addition, that may result in an increase in flow or pollutant loading or that otherwise requires the facility to submit plans or specifications for approval through a building or zoning department, or any other formal approval process of a city, county, or other jurisdiction.

13.10.302 Additional pretreatment measures.

A. Whenever deemed necessary, the director may require industrial users to restrict their discharge during peak or low flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic wastestreams from nondomestic wastestreams, and impose such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this chapter.

B. Backflow prevention devices shall be installed and maintained by the industrial user in accordance with Chapter 13.06.

C. Industrial users with the potential to discharge flammable substances may be required to install and maintain proper treatment equipment or an approved combustible gas detection meter.

D. Individual water meters, sub-meters, or flow meters shall be installed where the director has determined it is necessary to ascertain flow data. Such devices shall be installed, tested, inspected, and repaired as needed by the industrial user at its expense.

13.10.303 Accidental discharge; slug discharge control plans.

A. Each industrial user shall provide protection from accidental discharge of substances that have a reasonable potential to violate the POTW's regulations, local limits, or CDPS permit conditions.

B. The director shall evaluate whether a significant industrial user needs a plan or other control mechanism to control slug discharges within one (1) year of the date on which the industrial user is designated a significant industrial user.

C. The director may require any industrial user to develop, submit for approval, and implement a slug control plan. If the director decides that a slug control plan is needed, the plan shall include, at a minimum, the following elements:

1. Description of discharge practices, including nonroutine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the director of any accidental or slug discharge, including procedures for follow-up written notification within five (5) days as required by Section 13.10.606; and
4. Procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and

unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

D. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.

E. Significant industrial users are required to notify the POTW immediately of any changes at their facilities affecting potential for a slug discharge.

13.10.304 Best management practices.

A. The director may develop BMPs, or require an industrial user to develop BMPs, to implement the prohibitions of Section 13.10.202 and the local limits of Section 13.10.205. BMPs shall be considered pretreatment standards and local limits for purposes of this chapter and Section 307(d) of the Clean Water Act. Additionally, BMPs may be categorical pretreatment standards established by the EPA.

B. The director may develop general BMPs that are applicable to categories of industrial users, categories of activities, or geographic areas.

C. Elements of a BMP may include, but are not limited to:
   1. Installation of treatment.
   2. Requirements for or prohibitions on certain practices or discharges.
   3. Requirements for the operation and maintenance of treatment equipment.
   4. Timeframes associated with key activities.
   5. Procedures for compliance certification, reporting, and records retention.
   6. Provisions for reopening and revoking BMPs.

D. Any industrial user may be required to comply with BMPs. BMPs may be incorporated in categorical pretreatment standards, control mechanisms, or orders.

13.10.305 Sector control programs.

A. General requirements.
   1. The director may establish specific sector control programs for industrial users to control specific pollutants as necessary to meet the objectives of this chapter. Pollutants subject to these sector control programs shall generally be controlled using BMPs.
   2. The director shall implement procedures as necessary to identify industrial users for inclusion into applicable sector control programs.
   3. Facilities undergoing any physical change, change in operations, or other change that could change the nature, properties, or volume of wastewater discharge shall notify the director and may be required to submit specific documentation to ensure that current sector control program requirements are incorporated and implemented.
   4. The industrial user shall inform the director prior to:
      a. Sale or transfer of ownership of the business;
      b. Change in the trade name under which the business is operated; or
      c. Change in the nature of the services provided that affect the potential to discharge sector control program pollutants.
   5. Inspections.
      a. The director may conduct inspections of any facility with or without notice for the purpose of determining applicability and/or compliance with sector control program requirements.

b. If any inspection reveals non-compliance with any provision of a sector control program requirement, corrective action shall be required pursuant to the applicable sector control program.
c. Inspection results will be provided in writing to the facility.

6. Closure. The director may require closure of plumbing, treatment devices, storage components, containments, or other such physical structures that are no longer required for their intended purpose. Closure may include, for example, the removal of equipment, the filling in and/or cementing, capping, or plugging of the device or structure.

B. Mercury best management practices.

1. These BMPs establish requirements for dental facilities for reducing the amount of amalgam waste discharged into the sanitary sewer. All dental facilities shall be required to comply with subsections A. and B. of this section as of July 1, 2013.
2. The city's BMPs include two general requirements:
   a. The dental facility must submit a completed amalgam waste registration form with the city; and
   b. The dental facility must implement the required BMPs.
3. Dental facilities that have not registered shall file a registration on a form provided by the director prior to discharging any waste to the POTW generated from dental-related activities.
4. Annual BMP compliance certification. Dental facilities shall provide an annual certification to the city that the industrial user has implemented all required BMPs during the calendar year. This certification shall be submitted by January 28 of each year for the previous calendar year on a form provided by the director.
5. All dental facilities shall implement the following BMPs:
   a. International Organization for Standardization 11143 certified amalgam separators shall be installed and maintained according to manufacturer's specifications. Amalgam separators shall provide a clear view of the waste collected in the device (*i.e.*, no "black box" type devices).
   b. All amalgam separators shall be appropriately sized for the dental facility. The amalgam separator shall be installed so that all amalgam-contaminated wastewater will flow to the unit for treatment before being discharged.
   c. All amalgam separtors shall be located to provide easy access for cleaning and inspection.
   d. Each dental facility shall inspect and maintain the amalgam separator at a frequency that would reasonably identify problems (*e.g.*, leaks, early removal of sludge).
   e. Use precapsulated amalgam alloy and implement practices to minimize the discharge of amalgam to any drain.
   f. Properly dispose of all amalgam waste and maintain all records that contain sufficient information to verify proper off-site disposal.
   g. Use line cleaners designed to minimize dissolution of amalgam. Bleach, chlorine-containing, or low acidic line cleaners are specifically prohibited.
   h. Implement the BMPs provided by the American Dental Association.
   i. The dental facility shall maintain records of amalgam recycling on site for at least three (3) years. These records shall include the date, the name and address of the

facility to which any waste amalgam is shipped, and the amount shipped. These records may be periodically reviewed by the city.

C. Fats, oil, grease, and solids requirements.
   1. The requirements established in this section shall apply to food service establishments connected to, or proposing to connect to, the POTW.
   2. All food service establishments that discharge to the POTW wastewater containing fats, oil, grease, or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance shall install a properly-sized grease removal device and/or solids interceptor. The director may require food service establishments to replace or upgrade the grease removal device or solids interceptor if either, in combination with BMPs, does not cause a reduction in the quantity of fats, oil, grease, or solids, or the food service establishment changes in nature, adds fixtures or equipment, or is renovated in such a manner as to increase the likelihood of discharging to the POTW wastewater contributing fats, oil, and grease or solids in quantities sufficient to cause sanitary sewer line restriction or necessitate increased POTW maintenance. Food service establishments that are unable to comply with this section due to site or plumbing constraints that make compliance impossible or financially impracticable shall apply in writing to the director for an exemption, which may be granted by the director in his sole discretion. The written request shall include the reason(s) why the food service establishment cannot comply with this section and steps the food service establishment will take to prevent sanitary sewer line restriction and increased POTW maintenance.
   3. Grease removal device requirements.
      a. Grease interceptors shall be seven hundred fifty (750) gallon minimum capacity and provide a minimum of thirty (30) minutes retention time at total peak flow. The maximum size shall be two thousand, five hundred (2,500) gallons. A series of interceptors may be necessary for grease interceptor capacities greater than two thousand, five hundred (2,500) gallons based on cleaning and maintenance frequency.
      b. Grease traps, when permitted, shall be fifty (50) gpm flow rated or provide one hundred (100) pound grease capacity. Grease traps require a flow restriction device.
      c. Other grease removal devices may be allowed by the director if it is shown that an alternative pretreatment technology is equally effective in controlling the discharge of fats, oil, and grease.
      d. Grease removal devices shall be located to provide easy access for cleaning and inspection.
      e. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the director to support the proposed grease removal device or solids interceptor size.
      f. If required by the director, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required grease removal device or solids interceptor has been installed and all sources of fats, oil, grease, or solids are discharging to the device before discharging wastewater to the POTW.

4. Food service establishments shall use the following BMPs to reduce the amount of wastewater containing fats, oil, grease, or solids discharged into the POTW:
   a. Disconnect or minimize the use of garbage disposals (garbage grinders);
   b. Install a 1/8" or 3/16" mesh screen over all kitchen sinks, mop sinks, and floor sinks;
   c. Use "dry" clean-up methods, including scraping or soaking up fats, oil, and grease from plates and cookware before washing;
   d. Use pre-wash sinks to clean plates and cookware;
   e. Recycle fats, oil, and grease and beneficial food waste when possible;
   f. Pour remaining liquid fats, oil, and grease from pots, pans, and other cookware into containers to be disposed of in the trash once congealed; and
   g. Post BMPs and provide training to each employee on such BMPs.
5. Grease removal devices and solids interceptors shall be inspected, cleaned, and maintained in proper working order at all times by the industrial user at its expense. Grease removal devices in active use shall be cleaned at the frequency specified in the industrial user's control mechanism.
   a. In the event that a grease interceptor is larger than the capacity of a vacuum truck, the interceptor shall be completely evacuated within a twenty-four (24) hour period. The industrial user's documentation shall accurately reflect each pumping event.
   b. Food service establishments shall retain a State of Colorado registered waste grease transporter to completely evacuate all contents, including floating materials, wastewater, bottom solids, and accumulated waste on the walls of the grease removal device. Waste must be disposed of in accordance with federal, state, and local laws.
   c. Any food service establishment desiring a cleaning schedule less frequent than that required by the director shall submit a written request to the director requesting a change and the reasons for the change. A reduction in cleaning frequency may be granted by the director when it has been determined that the grease removal device has adequate capacity and detention time for fats, oil, grease, and solids removal. The cleaning frequency will depend on factors such as the location of the facility, type of facility, type of food prepared, hours of operation, capacity of the device, the anticipated amount of fats, oil, grease, and solids in the wastewater, and the type of BMPs in place.
6. The following are strictly prohibited:
   a. Connecting garbage grinders, garbage disposals, and dishwashers to grease traps.
   b. Altering or tampering with a grease removal device or solids interceptor.
   c. Discharging or permitting another to discharge any liquid, semi-solid, or solid back into a grease removal device or solids interceptor at any time during maintenance or cleaning operations.
   d. Discharging or permitting another to discharge any grease removal device or solids interceptor wastes into any drain, public or private sewer, or other grease removal device or solids interceptor.
   e. Using hot water or chemicals, bacteria, enzymes, or other products that will emulsify fats, oil, and grease.

D. Petroleum oil, grease, and sand requirements.

1. Applicability. The requirements established in this section shall apply to industrial users that generate sand, sediment, grit, gravel or other aggregate, grease, petroleum oil, or other petroleum products that may discharge to the POTW. Examples of such facilities include, without limitation, vehicle service or repair facilities, small or large equipment service or repair facilities, vehicle and equipment wash facilities, machine shops, garden nurseries, warehouses, and parking garages (if connected to sewer).
2. Oil/sand general requirements.
    a. An oil/sand separator shall be provided for the proper handling of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances.
    b. An oil/sand separator shall be properly sized to provide adequate retention time to prevent the discharge of wastewater containing sand, sediment, sludge, grease, petroleum products, or similar substances to the POTW.
    c. Oil/sand separators shall be installed, inspected, cleaned, and maintained, as needed, by the industrial user at its expense. All such devices shall be located to be easily accessible for cleaning and inspection.
    d. Unless directed otherwise, a professional engineer registered in the State of Colorado shall properly size and provide documentation to the director to support the proposed oil/sand separator size.
    e. If required by the director, an engineer licensed by the State of Colorado shall file a written, signed certification with the director stating that the required oil/sand separator has been installed and all sources of sand, sediment, sludge, grease, petroleum products, or similar substances are discharging to the device before discharging wastewater to the POTW.
3. Maintenance.
    a. Oil/sand separators shall be serviced at a frequency that will prevent the separator from discharging sand, sediment, sludge, grease, petroleum products, or similar substances to the POTW. The city recommends that servicing occur when the total volume of waste in the separator reaches twenty-five percent (25%) of the separator's capacity. The director is authorized to issue a control mechanism if a separator is not serviced at an appropriate frequency as required herein.
    b. The industrial user must document each cleaning with an invoice, waste manifest, or other acceptable document, which must be kept on site for at least three (3) years.
    c. The industrial user must take reasonable steps to ensure that all waste is properly disposed of at a facility in accordance with federal, state and local regulations (*i.e.*, certification by the hauler included on a waste manifest).

E. Hauled waste requirements.
1. Any hauled waste meeting the definition of an RCRA hazardous waste as defined at 40 C.F.R. Part 261 will not be accepted and shall not be discharged to the POTW.
2. Persons proposing to discharge non-RCRA hazardous waste shall apply for and obtain a control mechanism from the director. Control mechanisms will be issued on a case-by-case basis. No hauled waste may be discharged without prior written consent of the director. Hauled waste may only be discharged at locations designated by the director. Hauled waste is subject to all the requirements of this chapter.

3. Any violation of the terms and conditions of a control mechanism, failure to apply for a control mechanism as required, or discharging without authorization shall be deemed a violation of this chapter.
4. The director may collect samples of each hauled waste load to ensure compliance with this chapter. The director may require the waste hauler to provide a waste analysis of any load or a waste-tracking form for every load prior to discharge.
5. The director has the right to reject any hauled waste that may be harmful to, or cause obstruction of, the wastewater collection system, or that may cause or contribute to interference or pass through of the POTW, or that may violate any local limits adopted by the city.

F. Pharmaceutical sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of applicable pharmaceuticals to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.

G. Nanomaterial sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nanomaterial to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial users and by control mechanism for other industrial users.

H. Nonylphenol sector control program. The director has the authority to establish specific BMPs for industrial users to control discharges of nonylphenol to the POTW, as necessary, to meet the objectives of this chapter. These BMPs shall be required through permit, where necessary, for significant industrial user and by control mechanism for other industrial users.

IV. Wastewater Discharge Permits

13.10.401 Wastewater analysis.

When requested by the director, an industrial user must submit information on the nature and characteristics of its wastewater within the time specified by the director. The director is authorized to prepare a form for this purpose and may periodically require industrial users to update this information.

13.10.402 Wastewater discharge permit requirement.

A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director, except that a significant industrial user that has filed a timely application pursuant to Section 13.10.404 may continue to discharge for the time period specified therein.

B. The director may require other industrial users to obtain a wastewater discharge permit as necessary to carry out the purposes of this chapter.

C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this section.

D. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements, or with any other requirements of federal, state, and local law.

13.10.403 Wastewater discharge permitting.

Any industrial user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to beginning or recommencing such discharge. An application for this wastewater discharge permit, in accordance with Section 13.10.404, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

13.10.404 Wastewater discharge permit application contents.

A. All industrial users required to obtain a wastewater discharge permit must submit an application on a form prepared by the director. The director may require industrial users to submit as part of an application any or all of the following information:
   1. Identifying information, including:
      a. Name and address of the facility.
      b. Name and contract information for the owner and operator.
      c. Description of facilities, activities, and plant production processes on the premises.
   2. List of any environmental control permits held by or for the facility.
   3. Description of operations, including:
      a. Brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
      b. Types of wastes generated and a list of all raw materials and chemicals used or stored at the facility that are, or could accidentally or intentionally be, discharged to the POTW.
      c. Number and type of employees, hours of operation, and proposed or actual hours of operation.
      d. Type and amount of raw materials processed (average and maximum per day).
      e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.
   4. Time and duration of discharges.
   5. Location for monitoring all wastes covered by the permit.
   6. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in subsection 13.10.203C.
   7. Measurement of pollutants, including:
      a. Categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
      b. Results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.

c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
d. The sample shall be representative of daily operations and shall be analyzed in accordance with Section 13.10.610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the director or the applicable standards to determine compliance with the standard.
e. Sampling must be performed in accordance with Section 13.10.611.

8. Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.

B. Incomplete or inaccurate applications will be returned to the industrial user for revision.

13.10.405 Wastewater discharge permit decisions.

The director will evaluate the data furnished by the industrial user and may require additional information. Within forty-five (45) business days of receipt of a complete wastewater discharge permit application, the director will determine whether to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit.

V. Wastewater Discharge Permit Issuance Process

13.10.501 Wastewater discharge permit duration.

A wastewater discharge permit may be issued for a period no greater than five (5) years from the date of issuance. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the director. Each wastewater discharge permit shall indicate a specific date upon which it shall expire.

13.10.502 Wastewater discharge permit contents.

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits must contain:
1. A statement that indicates the wastewater discharge permit issuance date, expiration date, and effective date.
2. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with Section 13.10.504 and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
3. Effluent limits, including BMPs, based on applicable pretreatment standards.
4. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or BMP) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.
5. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule

may not extend the time for compliance beyond that required by applicable federal, state, or local law.

6. Requirements to control slug discharge, if determined by the director to be necessary.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW.
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges.
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
5. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices.
6. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those that become effective during the term of the wastewater discharge permit.
7. Other conditions as deemed appropriate by the director to ensure compliance with this chapter and state and federal laws, rules, and regulations.

13.10.503 Wastewater discharge permit modification.

A. The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
2. To address alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
3. A change to the POTW's CDPS permit;
4. Information indicating that the permitted discharge poses a threat to the POTW, city personnel, or the receiving waters;
5. Violation of any terms or conditions of the individual wastewater discharge permit;
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
7. Revision of or the grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 403.13;
8. To correct typographical or other errors in the wastewater discharge permit; or
9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 13.10.504

13.10.504 Wastewater discharge permit transfer.

A. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) business days advance written notice to the director, and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator that:
   1. States that the new owner and/or operator has no intent to change the facility's operations and processes within ninety (90) days after the transfer;
   2. Identifies the specific date on which the transfer is to occur; and
   3. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

13.10.505 Wastewater discharge permit revocation.

A. The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
   1. Failure to notify the director of changes to the wastewater prior to the changed discharge;
   2. Failure to provide prior notification to the director of changed conditions pursuant to Section 13.10.605;
   3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
   4. Falsifying self-monitoring reports and certification statements;
   5. Tampering with sampling or monitoring equipment;
   6. Refusing to allow the director timely access to the facility premises and records;
   7. Failure to meet effluent limitations;
   8. Failure to pay fines;
   9. Failure to pay wastewater charges and fees;
   10. Failure to meet compliance schedules;
   11. Failure to complete a wastewater survey or the wastewater discharge permit;
   12. Failure to provide advance notice of the transfer of the wastewater permit to a new owner or operator; or
   13. Violation of any pretreatment standard or requirement, any terms of the wastewater discharge permit, or this chapter.

B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership to a new owner or operator without the director's approval in violation of Section 13.10.504 All wastewater discharge permits issued to an industrial user are void upon the issuance of a new wastewater discharge permit to that industrial user.

13.10.506 Wastewater discharge permit reissuance.

An industrial user with an expiring wastewater discharge permit shall apply for a wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 13.10.404, a minimum of sixty (60) business days prior to the expiration of the industrial user's existing wastewater discharge permit. In no case shall the reissued permit be for a period greater than five (5) years from the date of reissuance. A

wastewater discharge permit may be reissued for a period less than five (5) years, at the discretion of the director.

13.10.507 Waste received from other jurisdictions.

If another jurisdiction, or industrial user located within another jurisdiction, contributes wastewater to the POTW, the city shall enter into an intergovernmental agreement with the contributing jurisdiction. Such intergovernmental agreement shall ensure that discharges received from entities outside of the city's jurisdictional boundaries are regulated to the same extent as are discharges from within the city's jurisdictional boundaries.

VI. Reporting Requirements

13.10.601 Baseline monitoring reports.

A. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 C.F.R. 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report that contains the information listed in subsection B. below. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report that contains the information listed in subsection B. below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Industrial users described above shall submit the following information:
   1. All information as may be required by subsection 13.10.404A.1. through 6. and 8.
   2. Measurement of pollutants.
      a. The industrial user shall provide the information required in subsection 13.10.405.A.7.a. through d.
      b. The industrial user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this subsection.
      c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 C.F.R. 403.6(e) to evaluate compliance with the pretreatment standards.
      d. Sampling and analysis shall be performed in accordance with Section 13.10.610.
      e. The director may allow the submission of a baseline report that utilizes only historical data so long as data provides information sufficient to determine the need for industrial pretreatment measures.
      f. The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

3. Compliance certification. A statement, reviewed by the industrial user's authorized representative as defined in Section 13.10.104 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements.
4. Compliance schedule. If additional operation and maintenance and/or additional pretreatment is required to meet the pretreatment standards and requirements, the shortest schedule by which the industrial user will provide such additional operation and maintenance and/or pretreatment must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 13.10.602.
5. Signature and report certification. All baseline monitoring reports must be certified and signed by an authorized representative in accordance with Section 13.10.614.

13.10.602 Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by subsection 13.10.601B.4.:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (such events include, without limitation, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
B. No increment referred to above shall exceed nine (9) months.
C. The industrial user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the industrial user to return to the established schedule.
D. In no event shall more than nine (9) months elapse between such progress reports to the director.

13.10.603 Reports on compliance with categorical pretreatment standard deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 13.10.404A.6. and 7, and subsection 13.10.601.B.2. For industrial users subject to equivalent mass or concentration limits established in accordance with Section 13.10.203, this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the industrial user's actual production during the appropriate

sampling period. All compliance reports must be signed and certified in accordance with Section 13.10.614. All sampling must be done in conformance with Section 13.10.611.

13.10.604 Periodic compliance reports.

A. All significant industrial users shall, at a frequency determined by the director but in no case less than once per six (6) months, submit a report indicating the nature and concentration of pollutants in the discharge that are limited by pretreatment standards and the measured or estimated average and/or maximum daily flow for the reporting period.
B. All wastewater samples must be representative of the industrial user's discharge. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
C. If an industrial user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in Section 13.10.610, the results of this monitoring shall be included in the report.

13.10.605 Reports of changed conditions.

A. All industrial users shall promptly notify the director in advance of any significant changes to the industrial user's operations or system that might alter the nature, quality, or volume of its wastewater. For the purposes of this section, a "significant change" shall mean a change that will be in effect for a period of ten (10) days or more and shall include, but is not limited to, the following:
    1. A change in number of shifts or shift hours, an additional processing operation, or the new use or discharge of any substances regulated under Section 13.10.202 or 13.10.205.
    2. A twenty percent (20%) increase or decrease in the wastewater flow or production volume, or any other change which may alter the average normal wastewater characteristics.
    3. Any other change that triggers the applicability of a categorical pretreatment standard that previously had not applied to the industrial user.
B. The director may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 13.10.404.
C. The director may reissue an individual wastewater discharge permit under Section 13.10.506 or modify an existing wastewater discharge permit under Section 13.10.503 in response to changed conditions or anticipated changed conditions.

13.10.606 Reports of potential problems.

A. In the case of any discharge, including, without limitation, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug discharge, that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the director of the incident. This notification shall include, at a minimum, the location of the discharge, type of waste, concentration and volume, and corrective actions taken by the industrial user.
B. Within five (5) days following such discharge, the industrial user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and

the measure(s) to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability that may be imposed pursuant to this chapter.

C. Significant industrial users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

13.10.607 Reports and information.

All industrial users connected to, or proposing to connect to, the POTW shall provide appropriate reports or information to the director as the director may require to meet the requirements of this chapter. It is unlawful for any person to knowingly make a false statement, representation, or certification in any record, report, or other document submitted or required to be maintained under this chapter.

13.10.608 Notice of violation; repeat sampling and reporting.

If sampling performed by an industrial user indicates a violation, the industrial user must notify the director within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. If the city performed the sampling and analysis in lieu of the industrial user, the city shall have the authority to require the industrial user to perform the repeat sampling and analysis.

13.10.609 Notification of the discharge of hazardous waste.

A. Any industrial user who commences the discharge of hazardous waste shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous waste under 40 C.F.R. Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known or readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expended to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred eighty (180) days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 13.10.605. The notification requirement in this section does not apply to pollutants already reported by industrial users subject to categorical pretreatment standards under the self-monitoring requirements of Sections 13.10.601, 13.10.603, and 13.10.604.

B. Dischargers are exempt from the requirements of subsection A. above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified at 40 C.F.R. 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the director, the EPA regional waste management division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
D. In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a control mechanism issued thereunder, or any applicable federal or state law.

13.10.610 Analytical requirements.

All pollutant analyses, including sampling techniques, required by the director shall be performed in accordance with the techniques prescribed at 40 C.F.R. Part 136, and any amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or approved by the EPA.

13.10.611 Sample collection.

A. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.
B. Except as indicated in subsections C. and D. below, an industrial user must collect wastewater samples using twenty-four (24) hour flow-proportional composite collection sampling techniques. In the event flow proportional composite collection sampling is not feasible, the director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the industrial user demonstrates that this will provide a representative sample of the discharge. Using protocols (including appropriate preservation) specified at 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters

unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the director, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

C. Grab samples must be used for oil and grease, temperature, pH, cyanide, total phenols, and volatile organic compounds. Temperature and pH must be an instantaneous measurement.

D. For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in Sections 13.10.601 and 13.10.603, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For the reports required by Section 13.10.604, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

13.10.612 Date of reports received.

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not postmarked the date of receipt of the report shall govern.

13.10.613 Recordkeeping.

A. Industrial users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements, and documentation associated with BMPs.

B. Records shall include, at a minimum, the date, exact place, method, and time of sampling, and the name of the person(s) taking the sample(s); the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

C. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the industrial user, or where the industrial user has been specifically notified of a longer retention period by the director.

13.10.614 Signature of authorized representative; certification.

A. All documents submitted to the director pursuant to this chapter shall be signed by an authorized representative of the industrial user as defined in Section 13.10.104.

B. The following certification shall be required on all industrial user applications and reports, and may be required by the director on surveys and questionnaires:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant*

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. Compliance Monitoring

13.10.701 Right of entry: inspection and sampling.

A. The director shall have the right to enter the premises of any industrial user to determine whether the industrial user is complying with all requirements of this chapter and any control mechanism or order issued hereunder. Industrial users shall allow the director ready access to all parts of the premises for the purposes of inspection, identifying the character or volume of pollutants, sampling, records examination and copying, photographs, noncompliance investigation, and the performance of any additional duties.

B. Where an industrial user has security measures in force that require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the director will be permitted to enter without delay for the purposes of performing specific responsibilities.

C. The director may require the industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.

E. Unreasonable delays in allowing the director access to the industrial user's premises shall be a violation of this chapter.

13.10.702 Search warrants.

If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample to verify compliance with this chapter or any control mechanism or order issued hereunder, or any other pretreatment standard or requirement, or to protect the overall public health, safety, and welfare of the community, the director may seek issuance of a search warrant from the court with appropriate jurisdiction.

13.10.703 Tampering prohibited.

It shall be unlawful to interfere with or remove, alter, or tamper with sampling, monitoring, or other pretreatment equipment.

VIII. Confidential Information

13.10.801 Confidential information.

Information and data on an industrial user obtained from reports, surveys, permit applications, wastewater discharge permits, monitoring programs, and inspection and sampling activities shall be available to the public without restriction, subject to the provisions of the

Colorado open records law. Wastewater constituents and characteristics and other effluent data, as defined at 40 C.F.R. 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

IX. Publication of Industrial Users in Significant Noncompliance

13.10.901 Publication of industrial users in significant noncompliance.

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the industrial users that, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall be applicable to all significant industrial users, and any other industrial user that violates sections (3), (4), or (8) of the definition of "significant noncompliance" set forth in Section 13.10.104.

X. Administrative Enforcement Remedies

13.10.1001 Notification of violation.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter or any control mechanism or order issued hereunder, or any other pretreatment standard or requirement, the director may serve upon the industrial user a written notice of violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction of prevention thereof, to include specific required actions, shall be submitted by the industrial user to the director. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

13.10.1002 Consent orders.

The director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Section 13.10.1004 and Section 13.10.1005 and shall be judicially enforceable.

13.10.1003 Show cause hearing.

A. The director may order an industrial user that has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the industrial user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the industrial user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally, by registered or certified mail (return receipt requested), or by

commercial carrier at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the industrial user as defined in Section 13.10.104 and required by Section 13.10.614. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

B. The director may conduct the hearing and take the evidence, or may designate a representative to:
   1. Issue, in the name of the director, a notice of hearing requesting the attendance and testimony of witnesses and the production of relevant evidence;
   2. Take the evidence; and
   3. Transmit an audio recording or written transcript of any testimony, and any other evidence, to the director, together with a written recommendation for action thereon.

C. Upon review of the evidence, the director shall make written findings of fact and conclusion upholding, modifying, or striking the proposed enforcement action.

13.10.1004 Compliance orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, water or wastewater service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

13.10.1005 Cease and desist orders.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past violations are likely to recur, the director may issue an order to the industrial user directing it to cease and desist all such violations and directing the industrial user to: (a) immediately comply with all requirements; and (b) take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

13.10.1006 Administrative fines.

A. When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such industrial user an amount not to exceed one thousand dollars ($1,000.00) per day, per violation. In the case

of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

B. Industrial users desiring to dispute such fines must file a written request for the director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Such request shall set forth the nature of the order or determination being appealed, the date of such order or determination, the reason for the appeal, and a request for a hearing.
C. Fines assessed under this section shall be included on the industrial user's utility bill.
D. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

13.10.1007 Emergency suspensions.

A. The director may immediately suspend an industrial user's discharge, after written or verbal notice to the industrial user, whenever such suspension is necessary to stop an actual or threatened discharge that reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The director may also immediately suspend an industrial user's discharge, after written or verbal notice and an opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment.
B. Any industrial user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the water or wastewater connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the industrial user to recommence its discharge when the industrial user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless termination proceedings in Section 13.10.1008 are initiated against the industrial user.
C. An industrial user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the director prior to the date of any show cause hearing under Section 13.10.1003, or termination hearing under Section 13.10.1008.
D. Nothing herein shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

13.10.1008 Termination of discharge.

A. In addition to the provisions in Section 13.10.505 any industrial user who violates the following conditions is subject to discharge termination:
    1. Violation of control mechanism conditions;
    2. Failure to accurately report the wastewater constituents and characteristics of its discharge;
    3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
    4. Refusal of reasonable access to the industrial user's premises for the purpose of inspection, monitoring, or sampling; or

5. Violation of the pretreatment standards in this chapter.

B. The industrial user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 13.10.1003 why the proposed action should not be taken. Exercise of this option by the director shall not be a bar to, or a prerequisite for, taking any other action against the industrial user.

XI. Judicial Enforcement Remedies

13.10.1101 Injunctive relief.

When the director finds that an industrial user has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the appropriate court for the issuance of a temporary or permanent injunction, as appropriate, that restrains or compels the specific performance of the control mechanism, order, or other requirement imposed by this chapter on activities of the industrial user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.

13.10.1102 Civil penalties.

A. An industrial user who has violated, or continues to violate, any provision of this chapter, control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of one thousand dollars ($1,000.00) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.

B. The director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

C. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, without limitation, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.

13.10.1103 Criminal prosecution.

A. An industrial user who willfully or negligently violates any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) per violation, per day.

B. An industrial user who willfully or negligently introduces any substance into the POTW that causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of up to one thousand dollars ($1,000) per violation, per day. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

C. An industrial user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed or required to be maintained pursuant to this chapter, a control mechanism, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine not more than one thousand dollars ($1,000.00) per violation, per day.

13.10.1104 Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant industrial user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any industrial user when the circumstances warrant.

XII. Supplemental Enforcement Action

13.10.1201 Performance bonds.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless such industrial user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

13.10.1202 Liability insurance.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to comply with any provision of this chapter, a previous control mechanism, or order issued hereunder, or any other pretreatment standard or requirement, unless the industrial user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

13.10.1203 Payment of outstanding charges, fees, fines, and penalties.

The director may decline to issue or reissue a control mechanism to any industrial user who has failed to pay any outstanding charges, fees, fines, or penalties incurred as a result of any provision of this chapter, a previous control mechanism, or order issued hereunder.

13.10.1204 Suspension of water or wastewater service.

A. The director may suspend water or wastewater service when such suspension is necessary, in the opinion of the director, to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW, or causes the POTW to violate any condition of its CDPS permit.

B. Any industrial user notified of suspension of its water or wastewater service or their control mechanism shall immediately stop the discharge. In the event of a failure of the industrial user to comply voluntarily with the suspension order, or in the event notification has been attempted but not accomplished, the director may take such steps as deemed necessary, including the entry onto private property, for the purpose of

immediately severing the sewer connection or otherwise ceasing the flow, to prevent or minimize damage to the POTW or endangerment to any individual. The city and its officers, agents, and employees shall not be liable for any damages resulting from any such entry or service suspension. The director may reinstate the water or wastewater service upon proof of the cessation of the noncomplying discharges. A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the director within fifteen (15) days of the date of suspension.

C. The industrial user shall pay all costs and expenses for any such suspension and restoration of service.

13.10.1205 Public nuisances.

A violation of any provision of this chapter, a control mechanism, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person creating a public nuisance shall be subject to the provisions of the city code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance.

XIII. Affirmative Defenses to Discharge Violations

13.10.1301 Upset.

A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection C. below are met.

C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
3. The industrial user has submitted the following information to the director within twenty four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
   i. A description of the indirect discharge and cause of noncompliance;
   ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
   iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have burden of proof.
E. Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
F. Industrial users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.10.1302 Bypass.

A. For the purposes of this section:
   1. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
   2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
B. An industrial user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of subsections C. and D. below.
C. Bypass notifications. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten (10) days before the date of the bypass, if possible. An industrial user shall provide verbal notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
D. Bypass. Bypass is prohibited, and the director may take an enforcement action against an industrial user for a bypass, unless:
   1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

3. The industrial user submitted notices as required in subsection C. above.

XIV. Wastewater Pretreatment Charges and Fees

13.10.1401 Pretreatment charges and fees.

The city may adopt reasonable charges and fees for reimbursement of the costs of operating the city's pretreatment program in an amount as established by resolution of the city council adopted after two readings. These charges and fees, which shall be included on the industrial user's utility bill, may include the following:

A. Fees for wastewater discharge permit applications, including the cost of processing such applications;
B. Charges for monitoring, inspection, and surveillance procedures, including the cost of collection and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users;
C. Charges for reviewing accidental spill/slug control procedures and construction;
D. Charges for the cost of publication in the newspaper for annual significant noncompliance notifications;
E. Fees for filing appeals; and
F. Other charges and fees as the city may deem necessary to carry out the requirements contained herein.

13.10.1402 Cost recovery.

A. Any industrial user that violates any of the provisions of this chapter or that discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the POTW shall be liable to the city for any expense, loss, or damage caused by such violation or discharge, including, without limitation, all costs and expenses related to suspending or terminating service and costs of labor, materials, and specified fees.
B. The city shall charge the industrial user for the cost incurred by the city for any monitoring surveillance, cleaning, repair, or replacement work caused by the violation or discharge and for costs incurred by the city in investigating the violation or discharge and in enforcement this chapter, including reasonable attorneys' fees, court costs, and other expenses of litigation.
C. In the event that an industrial user discharges pollutants that cause the city to violate any condition of its CDPS permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine.

13.10.1403 Lien.

All fines, charges, fees, costs, and expenses imposed by this chapter shall constitute a lien upon the property where the wastewater is used from the time of use and shall be a perpetual charge against said property until paid, and in the event the charges are not paid when due, the city clerk may certify such delinquent charges to the treasurer of Larimer County and the charges may be collected in the same manner as though they were part of the taxes.

XV. Miscellaneous Provisions

13.10.1501 Leased property.

Where the industrial user is leasing the property subject to the control mechanism, the director shall notify the record owner of the property where the industrial user is in significant noncompliance with applicable pretreatment standards and requirements. The property owner shall be responsible for ensuring that the industrial user is in compliance with this chapter and shall be subject to enforcement under this chapter for noncompliance.

13.10.1502 Enforcement response plan.

The director is authorized to develop and maintain an enforcement response plan containing procedures indicating how the director will investigate and respond to industrial user noncompliance in conformance with this chapter and all applicable state and federal laws and regulations.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon the latter of written approval from the U.S. Environmental Protection Agency, or January 1, 2013.

ADOPTED this 18th day of September, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **4**
MEETING DATE: September 18, 2012
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Karl Barton, Strategic Planning Division

TITLE: An ordinance designating as a historic landmark the Mariano Medina Family Cemetery located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:
Move to adopt the ordinance on second reading. The Historic Preservation Commission (HPC) recommends approval.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This item is a legislative action to adopt an ordinance on second reading designating as a Historic Landmark the "Mariano Medina Family Cemetery" at Namaqua Avenue and Namaqua Elementary, per Chapter 15.56 of the Municipal Code dealing with Historic Preservation. The applicant is owner, the Loveland Historical Society. City staff has reviewed the benefits and obligations of historic designation with the property owner.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The Historic Preservation Commission on August 20, 2012, found the Mariano Medina Family Cemetery to be eligible for designation as detailed in the attached staff report, and is forwarding this recommendation to City Council.

The Mariano Medina Family Cemetery is historically and culturally significant for its association with Mariano Medina, credited with establishing the first permanent settlement (Namaqua aka "Miraville") in 1858. The 1850 branch of the Cherokee Trail passed near the western edge of the cemetery and close to the Overland Trail. There are nine burials in the plot, seven are Medina relatives, one is a friend buried in 1864 and one is an unknown baby buried in the 1940s.

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.100. The Mariano Medina Family Cemetery meets the age requirement and additional criteria required for designation. Specific criteria for nomination are contained in the staff report.

City Council adopted the ordinance on first reading by a unanimous vote on September 4, 2012.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

A. Ordinance including Exhibits A & B (map)
B. Staff Report
C. HPC Statement of Recommendation
D. Application Materials

FIRST READING: September 4, 2012

SECOND READING: September 18, 2012

ORDINANCE NO. ___

AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE MARIANO MEDINA FAMILY CEMETERY LOCATED ADJACENT TO NAMAQUA AVENUE TO THE WEST AND NAMAQUA ELEMENTARY SCHOOL TO THE SOUTH IN LOVELAND, COLORADO

WHEREAS, Chapter 15.56 of the Loveland Municipal Code ("Code") provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Code Section 15.56.100 further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the owner of that real property described on **Exhibit A** attached hereto and incorporated herein by reference ("Property") and depicted on **Exhibit B**, located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado, filed an application for and/or consented to designation of the site and structures located thereon as historic landmarks under Code Chapter 15.56; and

WHEREAS, upon designation of the site and the structures on the Property as historic landmarks, the Property shall be subject to the provisions of Chapter 15.56 of the Loveland Municipal Code, as it may be amended from time to time by action of the City Council, which currently include, among other provisions, requirements for maintenance, requirements for prior approval of alteration, relocation, or demolition, and remedies for violation which are binding upon the owner and subsequent purchasers of the Property; and

WHEREAS, the site and structures to be designated hereunder include a pioneer cemetery and historic burial sites of the family of Mariano Medina, an early settler credited with establishing the first business, school, church, and consecrated cemetery in the Big Thompson Valley, which site and structures are known historically, and are hereafter collectively referred to, as the "Mariano Medina Family Cemetery"; and

WHEREAS, on August 20, 2012, the Historic Preservation Commission ("Commission") held a duly noticed public hearing ("Commission Hearing") at which it evaluated the application for designation of the site and structures on the Property as a historic landmark, considered the criteria for designation required in Code Section 15.56.100, and received and duly considered any public comments and testimony; and

WHEREAS, at the conclusion of the Commission Hearing, the Commission recommended to the City Council approval of the designation of the site and the structures located on the Property as a historic landmark; and

WHEREAS, as required by Code Section 15.56.030.D, the Commission has forwarded its written recommendation to City Council that the site and the structures on the Property be designated as a historic landmark; and

WHEREAS, City Council held a duly noticed public hearing on the designation application on September 4, 2012, at which it reviewed the application for conformance with the criteria for designation in and with the purposes of Code Chapter 15.56, and considered the written views of owners of affected property, if any.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO THAT:

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council finds that the site and structures located on that real property more specifically described on **Exhibit A** attached hereto and incorporated herein, also known as the Mariano Medina Family Cemetery and located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado (as depicted on **Exhibit B** attached hereto and incorporated herein), satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

a.) Social/Cultural
    1. Exemplifies the cultural, political, economic or social heritage of the community.

b.) Geographic/Environmental
    1. Enhances sense of identity of the community.

c.) Physical Integrity
    1. Shows character, interest, or value as a part of the development, heritage or cultural characteristics of the community, region, state or nation.
    2. Retains its original location.

Section 3. The site and structures located on that real property more specifically described on **Exhibit A** attached hereto and incorporated herein, also known as the Mariano Medina Family Cemetery and located adjacent to Namaqua Avenue to the west and Namaqua Elementary School to the south in Loveland, Colorado (as depicted on **Exhibit B** attached hereto and incorporated herein), are hereby designated as a historic landmark to the Loveland Historic Register.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 5. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this 18th day of September, 2012

_____
Cecil A. Gutierrez, Mayor

Attest:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

Exhibit A

Insert legal description

Exhibit B

Insert map showing location

EXHIBIT A

A PARCEL OF LAND BEING PART OF TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ¼ CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th P.M. AND CONSIDERING THE SOUTH LINE OF SAID QUARTER SECTION TO BEAR NORTH 89°46'06" WEST TO THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST WITH ALL BEARING CONTAINED HEREON BEING RELATIVE THERE TO;

THENCE NORTH 04°22'54" EAST, A DISTANCE OF 269.87 FEET; THENCE NORTH 89°48'57" WEST, A DISTANCE OF 50.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE ALONG THE MEDINA FAMILY CEMETERY BOUNDARY THE FOLLOWING FOUR COURSES AND DISTANCES, NORTH 89°48'57" WEST, A DISTANCE OF 117.15 FEET;
THENCE NORTH 00°00'34" EAST, A DISTANCE OF 253.53 FEET, TO A POINT ON TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION, NAMAQUA ELEMENTARY SCHOOL;
THENCE ALONG SAID LINE, SOUTH 89°53'27" EAST, A DISTANCE OF 136.78 FEET;
THENCE LEAVING SAID LINE, SOUTH 04°26'26" WEST A DISTANCE OF 254.41 FEET TO THE TRUE POINT OF BEGINNING.

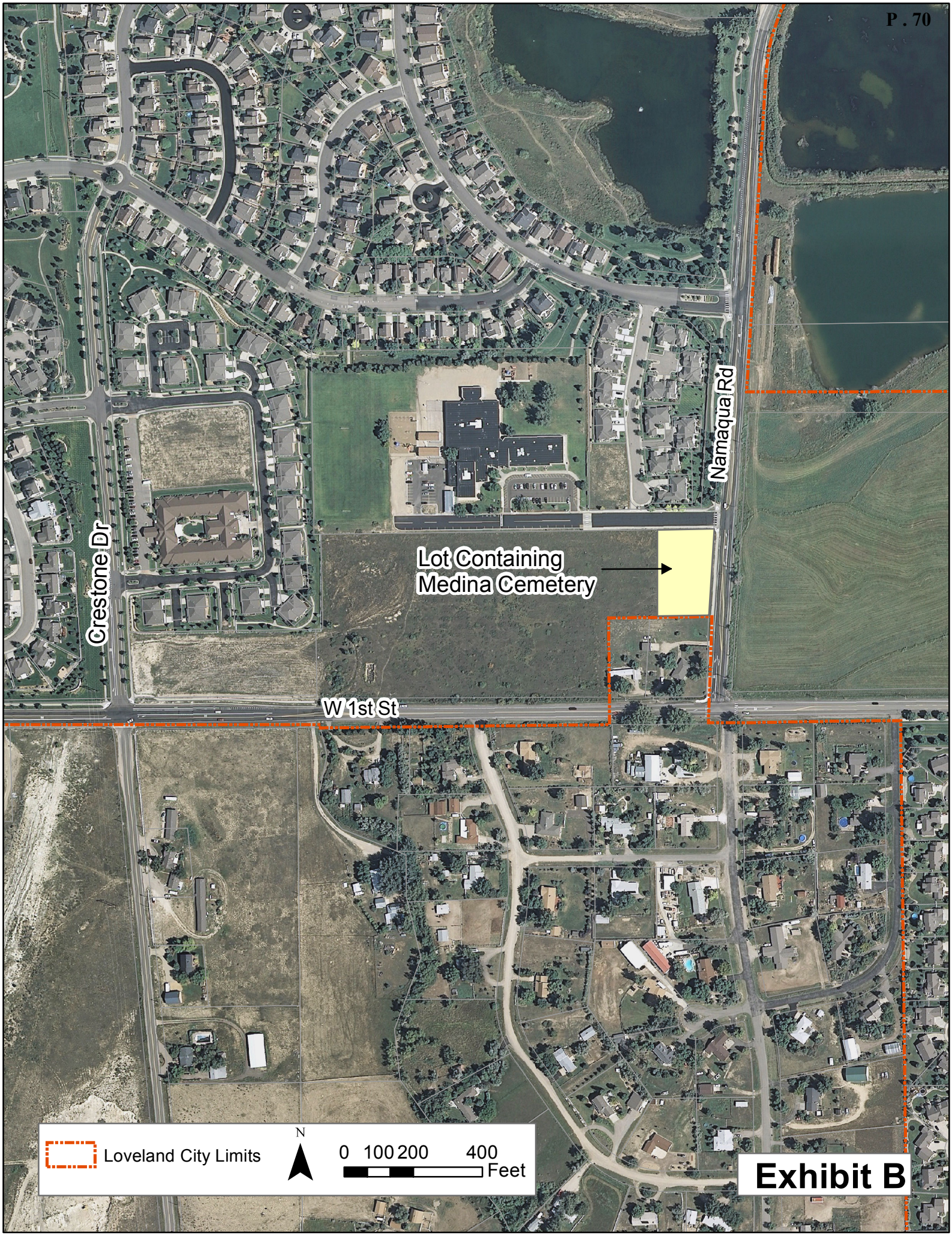
SAID PARCEL OF LAND CONTAINS 0.739 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY RIGHTS-OF-WAY OR OTHER EASEMENTS AS GRANTED OR RESERVED BY INSTRUMENTS OF RECORD OR AS NOW EXISTING ON SAID PARCEL OF LAND.

LEGAL DESCRIPTION PREPARED BY:

Grant M. Waldo

GRANT M. WALDO
KBN ENGINEERS LLC.
820 8TH STREET
GREELEY, COLORADO 80631

MARCH 7, 2017


Crestone Dr
Namaqua Rd
Lot Containing
Medina Cemetery
W 1st St
Loveland City Limits
N
0 100 200 400
Feet
Exhibit B

PRELIMINARY PLAT FOR

MARIANA BUTTE TWENTY FIFTH SUBDIVISION

BEING A SUBDIVISION OF LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATE IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

SHEET 1 OF 3

PROPERTY DESCRIPTION
MARIANA BUTTE TWENTY FIFTH SUBDIVISION:

Parcel 1
Lot 1, Block 12, Mariana Butte Seventh Subdivision, in the City of Loveland, County of Larimer, State of Colorado.

Parcel 2
A parcel of land being a portion of Tract A, Mariana Butte P.U.D., First Subdivision to the City of Loveland, County of Larimer, State of Colorado, according to the Plat on file in the office of the Clerk and Recorder said County, being more particularly described as follows:
Beginning at the Northeast corner of Lot 1, Block 12, Mariana Butte Seventh Subdivision to the City of Loveland, according to the Plat on file in the office of the Clerk and Recorder said County, thence along the Southerly and Easterly lines of Tract O, said Mariana Butte Seventh Subdivision, the following two courses and distances; South 89°52'30" East 20.00 feet; thence North 00°07'30" East 280.59 feet to a point on the South line of Tract W, said Mariana Butte P.U.D., First Subdivision; thence along said South line South 89°55'31" East 1,137.17 feet to a point on the Easterly line of Tract A, thence along the Easterly and Southerly lines of Tract A, the following courses and distances; South 04°22'54" West 254.36 feet, thence North 89°45'22" West 289.28 feet, thence South 00°15'20" West 229.49 feet, thence North 89°48'36" West 848.49 feet to a point on the East line of Tract T, said Mariana Butte Seventh Subdivision, thence along said East line and along the East line of said Lot 1 Block 12, North 00°07'30" East 200.00 feet to the Point of Beginning.

Containing 13.058 acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

GENERAL NOTES:

1. Outlots A, B, C, D and E are not building sites.

2. This project is subject to an Annexation Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.

3. This project, at final plat stage may be subject to a Development Agreement which shall be recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.

4. All easements adjacent to Street right of ways, as shown on this plat, are to be dedicated as public 14' Access, Utility, Drainage and Postal Easements.

5. All on-site drainage improvements, including swales and detention ponds, shall be owned and maintained by the Mariana Butte Twenty Fifth Subdivision Homeowners Association.

6. Maintenance and upkeep of stormwater detention ponds, storm sewer systems, swales, and permanent stormwater quality improvements are required by the City of Loveland and are a continuing obligation of the Mariana Butte Twenty Fifth Subdivision Homeowners Association. The Mariana Butte Twenty Fifth Subdivision Homeowners Association shall provide ongoing maintenance of the private stormwater improvements as needed to maintain compliance with the approved construction plans and reports.

7. The property lies within Flood Zone "X" (no hazards) per the Flood Insurance Rate Map (FIRM) as prepared by the Federal Emergency Management Agency (FEMA), Panel No. 08069C1163F having an effective date of December 19, 2006.

8. Developer-installed landscaping improvements shall be owned and maintained by the Mariana Butte Twenty Fifth Subdivision Homeowners Association (HOA).

9. Publicly dedicated rights of way are to be maintained by the City of Loveland. Landscaping improvements within publicly dedicated rights of way are to be maintained by Mariana Butte Twenty Fifth Subdivision Homeowners Association.

10. Outlots B, C, D and E are hereby dedicated as emergency access, access, public utility, drainage and landscape easements. All portions of outlots that fall within and/or overlap an existing or proposed exclusive easement, except for the Osceola Place crossing, shall be excluded from the above referenced dedication as emergency access, access, public utility, drainage and landscape easements.

11. Basis of Bearings for this Survey: The South line of the of Southwest Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, County of Larimer, State of Colorado, is assumed to bear South 89°46'05" East.

12. Benchmark: City of Loveland benchmark 95 62, Aluminum disk on concrete irrigation headwall at the Southwest corner of the intersection of 1st Street and Namaqua Road. Elevation=5033.40

13. (M) = Field measured bearing and/or distance per found monumentation.
(R) = Record bearing and/or distance per legal description and recorded subdivision plats.

14. All building pads as shown and labeled hereon contain 2600.0 square feet unless otherwise noted.

15. Structures/items that shall be contained within the lot/building envelope include roof eaves, foundation footings, window wells, building extrusions such as bay windows, porches, decks and patios.

16. ////////////// indicates Project Boundary

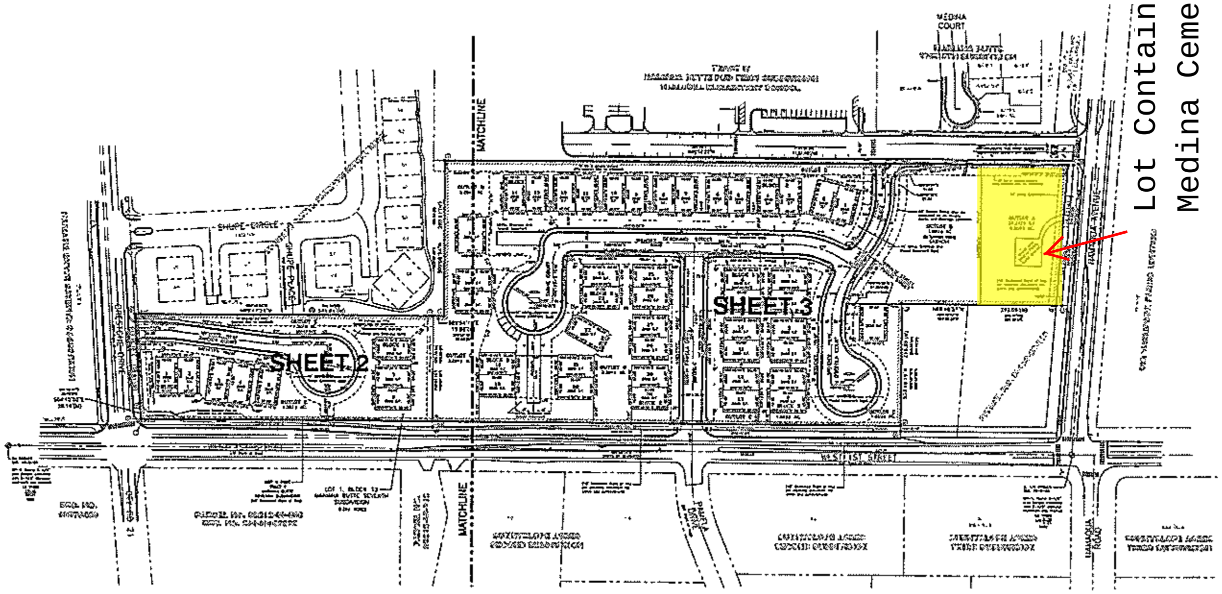
SETBACK NOTES:

Front Setback: Zero (0') feet to the property line, sixteen (16') feet minimum from the back of the sidewalk (or back of curb if no sidewalk exists) to the face of the structure, and twenty (20') feet minimum to the face of the garage.

Side Setback: Zero (0') feet to the property line, and ten (10') feet minimum between adjacent structures.

Rear Setback: Zero (0') feet to the property line, and ten (10') feet minimum between adjacent structures.

TRACT	ACRE(S)	% SITE	USE	WATER	OWN/MAINTAIN
Outlot A	0.856	2.56%	Point of Interest/Loveland Historical Society	N/A	Historical Society
Outlot B	1.007	3.00%	Utilities/Landscape/Open/Drainage/Access	N/A	Homeowners Assoc.
Outlot C	1.003	2.99%	Utilities/Landscape/Open/Drainage/Access	Potable	Homeowners Assoc.
Outlot D	3.294	9.83%	Utilities/Landscape/Open/Drainage/Access	Potable	Homeowners Assoc.
Outlot E	1.307	3.90%	Utilities/Landscape/Open/Drainage/Access	Potable	Homeowners Assoc.
Totals	7.467	22.28%			



CONTACT INFORMATION

Owner/Applicant: Jess Rodriguez
Attn: Jess Rodriguez
5534 Stone Church Court
Loveland, CO. 80537
(970) 217-9602

Civil Engineer: KBN Engineers
Attn: Mike Kettering
820 8th Street
Greeley, CO 80631
(970) 395-9880

Land Surveyor: Intermill Land Surveying, Inc.
Attn: Steven Stencel, PLS
1301 No. Cleveland Ave.
Loveland, CO. 80537
(970) 669-0516

Traffic Engineer: Eric Bracke
Attn: Eric Bracke
5401 Taylor Lane
Ft. Collins, CO. 80525
(970) 988-7551

NORTH
WEST EAST
SOUTH

HORIZONTAL SCALE 1" = 100'
STATEMENT OF LINEAR UNITS USED:
Linear Units Used for this survey = U.S. Survey Feet

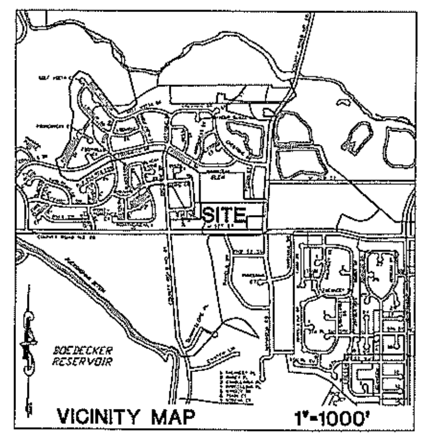
SHEET INDEX

1. Cover Sheet
2. Preliminary Plat (WESTERN PORTION)
3. Preliminary Plat (EASTERN PORTION)

PLANNING COMMISSION APPROVAL:

This plat is approved by the City of Loveland Planning Commission this ______ day of ____________, 20___.

____
Chairman – City of Loveland Planning Commission



According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

REVISIONS:	BY:	DATE:
1) City of Loveland DRT comments dated 11-12-2010	SJS	2-8-2011
2) Revise street names	SJS	11-9-2011
3) Revise acreage in Legal Description	SJS	12-30-2011

INTERMILL LAND SURVEYING, INC.
1301 NORTH CLEVELAND AVENUE LOVELAND, COLORADO 80537 BUS. (970)-669-0516 / FAX (970)-635-9775

TITLE: PRELIMINARY PLAT FOR
MARIAN BUTTE TWENTY FIFTH SUBDIVISION
PART OF THE SOUTHWEST QUARTER OF SECTION 16-5-69, LOVELAND, COLORADO

CLIENT: JESS RODRIGUEZ
5534 Stone Church Court
Loveland, CO 80537

DRAWN BY: SJS
CHECKED BY:
APPROVED BY:
DATE: 7-14-2010
SCALE: 1" = 100'
PROJECT NO.: P-08-6733
SHEET OF
ATTACHMENT 6

MARIANA BUTTE TWENTY FIFTH SUBDIVISION

MARIANA BUTTE TWENTY FIFTH SUBDIVISION

Exhibit B

City of Loveland

COMMUNITY & STRATEGIC PLANNING
Civic Center • 500 East Third Street • Loveland, Colorado 80537
(970) 962-2577 FAX (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

To:	Loveland City Council
From:	Community and Strategic Planning
Meeting Date:	September 4, 2012
Re:	Application for Historic Landmark Property Designation, Mariano Medina Family Cemetery

SITE DATA

Address:	Property at Namaqua Ave and Namaqua Elementary Loveland, CO 80537
Request:	Application for Historic Landmark Property Designation
Historic Name:	Mariano Medina Family Cemetery
Historic Use:	Burials
Land Size	0.739 acres ***(Source: Larimer Co. Assessor Property Information)***
Date Established:	1864
Legal Description:	A PARCEL OF LAND BEING PART OF TRACT "A" MARINA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH , RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO
Owner(s):	Loveland Historical Society
Applicant(s):	Mike Perry and Bill Meirath

Application Summary:
In March 2012 staff received a nomination application for the landmark designation of the Mariano Medina Family Cemetery property at Namaqua Ave and Namaqua Elementary in Loveland. The property was then owned by Jess Rodriguez, who was in the process of deeding the land to the Loveland Historical Society (LHS) because the historic Medina burial plots were located there. The designation process was placed on hold until August 2012 when the deed was legally transferred to the LHS.

At the August 20, 2012 Historic Preservation Commission meeting, staff presented the nomination application for this property. The Commission made the official recommendation to City Council to designate the property as a historic landmark.

History:
Born in Taos, New Mexico in 1812, Mariano Medina was a trapper and guide. His friends included Kit Carson, Louis Vasquez, the Bent brothers along with other legendary mountain men like Jim Bridger and Tom Toblin. Mariano Medina's surname has been spelled a variety of ways; Medina, Modena and Medena are the more common found. In 1858, Medina established the first permanent settlement on the Big Thompson Creek (River) (the unorganized western district of the Territory of Nebraska) near present day Loveland.

Medina started a business on the Big Thompson with a raft to ferry teams across the river and charged fifty dollars in gold for the service. Soon after, he built a toll bridge high enough to avoid the high spring run-off with its construction and eventually built a fort and trading post called "Marianne's Crossing." Soon the business became the favorite stopping place for the travelers involved in the western movement and Medina's now famous mountain friends.

Medina's homestead consisted of a traditional Spanish-style plaza surrounded on three sides by his log home, trading store, saloon, corrals and a post office. The settlement was originally called Miraville, then Mariano's Crossing, Big Thompson Crossing, and by today's name, Namaqua. Overland Mail in 1862 selected Medina's settlement as a home station. Medina is credited with establishing the first business, first school, first church, and first cemetery in the valley.

Mariano Medina had a very rich family life including two wives, two sons, three (?) daughters and a step son. Most of his family was buried in the Catholic Cemetery now known as the Medina Family Cemetery.

Description of Burial Plots in Cemetery:
There are nine bodies in the cemetery, eight are associated with Mariano Medina:

1. Mexican friend of Mariano, buried prior to 1864
2. Martin Medina, died in 1864 at age 12-15. Martin was the son of Mariano and his first wife, Marie/John/Tacanecy.
3. Rosita Medina, died in 1864 at the age of 2. Daughter of Mariano and first wife.
4. Daughter of Louis Papa (Mariano's step-son). Who died shortly after her birth in 1866.
5. Marcellina ("Lens") Medina, died in 1872 at the age of 15 and was the daughter of Mariano and first wife.
6. Marie/John/Tacanecy Medina, Mariano's first wife, died in 1874.
7. Mariano Medina, who died in 1878
8. Rafaelito Medina, who died in 1880 at the age of 6 or 7. He was Mariano's son by his second wife Susan Carter Howard.
9. An infant wrapped in a 1940's newspaper who body was discovered in January 1960.

Historic and Cultural Significance:

- Mariano Medina is credited with establishing the first business, first school, first church and first consecrated cemetery in the Big Thompson Valley.
- A pioneer cemetery established in 1864
- The 1850 branch of the Cherokee Trail passed near the western edge of the cemetery and close to the Overland Trail.
- Except for the cemetery, no trace of Namaqua (first permanent settlement on the south bank of the river and established in 1858) remains today.
- Nine people (8 associated with the Medina family) are buried on the site. Burials began in 1864 and ended in the 1940s. Contributed to the history of Loveland.
- Enhances the Hispanic Heritage of Larimer County.
- Mariano Medina was probably 1st permanent practicing Catholic in the Big Thompson Valley.

Future Plans:
The Loveland Historical Society plans, through grants and fundraising activities, to create a Historical and Educational Park for local history and outdoor classrooms.

Staff Recommendation
To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090. The Mariano Medina Family Cemetery satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register landmark of property:

a.) Social/Cultural
    1. Exemplifies the cultural, political, economic or social heritage of the community.

b.) Geographic/Environmental
    1. Enhances sense of identity of the community.

c.) Physical Integrity
    1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
    2. Retains its original location.

Given available information for the Mariano Medina Family Cemetery, staff and the Historic Preservation Commission has determined that the property exhibits the adequate *significance* to support its eligibility for designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility. Staff and the Historic Preservation Commission recommends approval of this request for designation of the Mariano Medina Family Cemetery property, located at Namaqua and Namaqua Elementary as a Loveland Historic Register landmark property.

Medina family cemetery was located on higher ground south of his settlement. Loveland Reporter Herald photo.

Motion by the Loveland Historic Preservation Commission to recommend Historic Landmark Designation of the Mariano Medina Cemetery

Motion made by Commissioner, Stacee Kersley, to recommend to City Council approval of Loveland Historic Landmark Designation of the Mariano Medina Cemetery located at Namaqua and Namaqua Elementary. The motion was seconded by Commissioner, Trudi Manuel, and passed with a unanimous vote during the August 20, 2012 Historic Preservation Commission meeting.

Stacee M. Kersley

Trudi Manuel

ATTACHMENT C

City of Loveland

Page 1- Applicant and General Property Information

FORM A
Application for Designation of a Historic Landmark

Please Type or Print Legibly

One property only per Application Form.
If more than one Applicant, please attach additional sheet.

APPLICANT(S) INFORMATION	
Owner of Proposed Landmark Property:	**LOVELAND HISTORICAL SOCIETY**
Applicant:	*X* Property Owner ☐ City Council (attach meeting minutes initiating action) ☐ Commission Designees (pursuant to 15.56.169) ☐ Historic Preservation Commission (attach meeting minutes initiating action) ***Please check one.***
Address:	Loveland Historical Society 503 N. Lincoln Loveland, CO, 80537
Telephone:	**Mike Perry 970-744-0453/Bill Meirath 970-669-8049**

PROPOSED LANDMARK INFORMATION	
Property Name:	**Mariano Medina Family Cemetery**
Address:	**Namaqua Avenue and Namaqua Elementary**
Historic Use:	**Burials**
Current and Proposed Use	**Open Field** **Preservation and History Park**
Legal Description	*Please attach copy of officially recorded document containing a legal description.*
Brief Description of Historical Qualities relating to Property	*Please attach additional sheets if necessary.* **1864 Catholic Cemetery**

FORM A
Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION	
Historic Property Name:	**Mariano Medina Family Cemetery**
Current Property Name:	**Mariano Medina Family Cemetery**
Address:	**Namaqua Avenue and Namaqua Elementary**
Legal Description	*Please attach copy of officially recorded document containing a legal description.*
Owner Name & Address:	Loveland Historical Society 503 N. Lincoln Loveland, CO, 80537
Style:	**N/A**
Building Materials:	**Stone**
Additions to main structure(s), and year(s) built.	**1864**
Is the structure(s) on its original site?	**Yes _X__ No_____ If No, Date Moved_____**
What is the historic use of the property?	**Burials**
What is the present use of the property?	**Open Field**
What is the date of construction?	**Estimated:_____ Actual:1864_ Original:_____**

FORM A
Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION continued	
Describe the condition of the property.	**Open Field**
Who was the original architect?	**See attached**
Who was the original Builder/Contractor?	**See attached**
Who was the original Owner(s)?	**See attached**
Are there structures associated with the subject property not under the ownership of this applicant? Please describe.	**No**
Detailed description of the architectural characteristics of the property.	***Please attach additional sheets if necessary.*** **See attached**

City of Loveland

FORM A
Application for Designation of a Historic Landmark

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: _____148 Years

1. Proposed Historic Landmarks. Please check all that apply:

For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.

A) Architectural:

☐ 1) Exemplifies specific elements of an architectural style or period.

☐ 2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, or locally.

☐ 3) Demonstrates superior craftsmanship, or high artistic value.

☐ 4) Represents innovation in construction, materials, or design.

☐ 5) Represents a built environment of a group of people in an era of

☐ 6) Exhibits a pattern or grouping of elements representing at least one of the above

☐ 7) Is a significant historic remodel.

B) Social/Cultural

■ 1) Is a site of an historic event that had an effect upon society.

☐ 2) Exemplifies the cultural, political, economic, or social heritage of the community.

■ 3) Is associated with a notable person(s) or the work of notable person(s).

C) Geographical/Environmental

■ 1) Enhances sense of identity of the community.

☐ 2) Is an established and familiar natural setting or visual feature of the community.

FORM A
Application for Designation of a Historic Landmark

2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Please check all that apply.

***Complete this section only if the subject property is a prehistoric or historic archaeological site.*

A) Architectural

☐ 1) Exhibits distinctive characteristics of a type, period, or manner of construction.

☐ 2) Is a unique example of a structure.

B) Social/Cultural

■ 1) Has the potential to make an important contribution to the knowledge of the area's history or

☐ 2) Is associated with an important event in the area's development.

■ 3) Is associated with a notable person(s) or the work of notable person(s).

☐ 4) Is a typical example/association with a particular ethnic or other community group.

☐ 5) Is a unique example of an event in local history.

C) Geographical/Environmental

■ 1) Is geographically or regionally important.

3. Each property or site will also be evaluated based on physical integrity using the following criteria *(a property need not meet all the following criteria):*

a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;

b) Retains original location or same historic context if it has been removed; or

c) Has been accurately reconstructed or restored based on documentation.

City of Loveland

FORM A
Application for Designation of a Historic Landmark

Statement of Significance **Please provide a brief statement summarizing the applicable criteria checked on previous pages.**	***Please attach additional sheets if necessary.*** **MARIANO MEDINA'S FAMILY CEMETERY** **FIRST SETTLED THOMPSON VALLEY 1858-59**
Photographs of property as it appears today	***Include photos from all angles: front, rear, and side elevations.***
Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.	***Please attach additional sheets if necessary.*** **OVER HILL AND VALE VOL.1,2,3 1956-1962-1971** **AUTHOR: HAROLD DUNNING** **MARIANO MEDINA COLORADO MOUNTAIN MAN 1981** **AUTHOR: ZETHYL GATES**

QUITCLAIM DEED

THIS DEED, made this 13th day of June, 2012, between Thomas L. Hartley, of the County of Jefferson, State of Colorado, Grantor, and Loveland Historical Society, 503 N. Lincoln, Loveland, CO 80537, of the County of Larimer, State of Colorado, Grantee:

WITNESS, that the grantor, for and in consideration of a charitable contribution, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell, and QUITCLAIM unto the Grantee and the Grantee's successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with any improvements thereon, located in the County of Larimer, State of Colorado, described as follows:

SEE ATTACHED EXHIBIT A

also known by street and number as: Vacant Land
assessor's schedule or parcel number: None Assigned

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, and the Grantee's successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Thomas L. Hartley

STATE OF COLORADO,
COUNTY OF Jefferson, SS.

The foregoing instrument was acknowledged before me this 13th day of June, 2012, by Thomas L. Hartley

My commission expires: 5/27/2014

DEANNA R. MIER NOTARY PUBLIC STATE OF COLORADO

Deanna R. Mier
Notary Public

EXHIBIT A

A PARCEL OF LAND BEING PART OF TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ¼ CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th P.M. AND CONSIDERING THE SOUTH LINE OF SAID QUARTER SECTION TO BEAR NORTH 89°46'06" WEST TO THE SOUTHWEST CORNER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST WITH ALL BEARING CONTAINED HEREON BEING RELATIVE THERE TO;

THENCE NORTH 04°22'54" EAST, A DISTANCE OF 269.87 FEET; THENCE NORTH 89°48'57" WEST, A DISTANCE OF 50.40 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE ALONG THE MEDINA FAMILY CEMETERY BOUNDARY THE FOLLOWING FOUR COURSES AND DISTANCES, NORTH 89°48'57" WEST, A DISTANCE OF 117.15 FEET:
THENCE NORTH 00°00'34" EAST, A DISTANCE OF 253.53 FEET, TO A POINT ON TRACT "A" MARIANA BUTTE P.U.D. FIRST SUBDIVISION, NAMAQUA ELEMENTARY SCHOOL;
THENCE ALONG SAID LINE, SOUTH 89°53'27" EAST, A DISTANCE OF 136.78 FEET;
THENCE LEAVING SAID LINE, SOUTH 04°26'26" WEST A DISTANCE OF 254.41 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 0.739 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY RIGHTS-OF-WAY OR OTHER EASEMENTS AS GRANTED OR RESERVED BY INSTRUMENTS OF RECORD OR AS NOW EXISTING ON SAID PARCEL OF LAND.

LEGAL DESCRIPTION PREPARED BY:

Grant M. Waldo

GRANT M. WALDO
KBN ENGINEERS LLC.
820 8TH STREET
GREELEY, COLORADO 80631

MARCH 7, 2017

Statement of Significance

Mariano Medina Family Cemetery

1. A Pioneer Cemetery. 1864

2. Hispanic Heritage of Larimer County.

3. Mariano Medina was probably 1st permanent practicing Catholic in the Big Thompson Valley.

4. Pioneer Cemetery located near the Cherokee/Overland Trail.

5. Will become a Historical and Educational Park for Local History and a outdoor classroom.

6. A source of Civic Pride

7. A destination for the bike and hiking trail along The Big Thompson River.

8. A show of respect for our first Pioneer.

Medina Family Cemetery

Spelling of Mariano Medina's Names

The last name of Mariano Medina and of the members of his family has been spelled numerous ways in historical records, partially because Mariano himself could not read and write, although he spoke a number of languages. On pages 1 and 2 of her book *Mariano Medina* (Source No. 25 below), Zethyl Gates explains why she has concluded that "Medina" is the correct spelling and that "Modena"—the most frequent alternative spelling—is, instead, "an Anglicization of *Medina*."

Even his first name was spelled variously as "Mariano," "Mary Ann," Marianne," "Marianna," and "Mariana" in historical accounts. Indeed, the butte west of Mariano's home in Namaqua appears on maps, including the U.S. Geologic Survey's Masonville Quad Map, as "Mariana Butte."

After her extensive research, Zethyl Gates concluded that the correct spelling of his name is "Mariano Medina." Consequently, we have used those spellings in this book expect when directly quoting documents that use another spelling.

For another detailed discussion of the various spellings of Mariano's first and last names in historical documents, see pages 11 and 12 of Source No. 24 below, which report, contrary to other sources, that Mariano "himself claimed to be able to read and write."

Location and Description of Original Medina Family Cemetery

Latitude 40° 23' 38" N, Longitude 105° 07' 32" W, Sixth Principal Meridian

The original Medina Family Cemetery is located in Loveland south of the Big Thompson River on the southwest corner of North Namaqua Avenue and a private road named Namaqua Elementary and is just southeast of the Namaqua Elementary School itself.

Sometime after 1864 (page 433 of Source No. 19 below) and probably after the first three individuals (a "Friend," Martin Medina, and Rosita Medina in the list under Photo C below) were buried there, Mariano Medina had a stacked sandstone wall erected around the cemetery, with the wall surrounding an approximately 10 X 25 foot area. Except Mariano and his son Rafaelito, who died after the original walled-in area was full, all of the individuals buried in the cemetery for whom we have historical records were buried inside that wall. However, the possibility remains that other early Namaqua residents outside of the Medina family may have been buried either inside or outside the walls of the Medina Family Cemetery even though no records of their burials have been found (Source No. 5 below).

Following his death in 1878, Mariano was buried outside of the original walled-in area at the southwest corner of the cemetery's south wall (Source Nos. 6, 10, 11, and 16 and pages 24 and 31 of Source No. 15 below). At least one source suggests that Mariano's youngest child, his son Rafaelito by his second wife Susan Carter Howard, was also buried south of the south wall near his father. (See Child No. 5 under "Children of Mariano Medina" below.)

Before the 18 May 1942 "unveiling" of the sandstone grave marker that Harold Dunning had made for Mariano Medina's grave, with the help of the his son Harold Bell, Dunning took down the old south wall of the cemetery, extended the east and west walls past Mariano's grave, and erected a new south wall (page 31 of Source No. 15 and Source Nos. 16, 17, and 18 below).

By 20 May 1946 (Source No. 17 below) Harold Dunning also created and installed sandstone grave markers for four other graves in the cemetery: for Mariano Medina's wife Marie/John/Tacanecy Medina, his daughter Marcellina/ "Lena" Medina, a "Friend," and an infant who died in childbirth, with the last two grave markers being unveiled to the public on 20 May 1946. (This infant was most likely the daughter of Louie Papa and his first wife. See Child No. 1 under "Children of Louie Papa and His First Wife" below.)

Unfortunately, on 17 and 18 January 1960, five of the graves in the original Medina Family Cemetery were removed to Namaqua Park. (See "Location and Description of Graves at Medina Memorial Wall at Namaqua Park" and "Destruction of the Cemetery in January 1960" below.) Immediately before the bodies in those five graves were moved, the sandstone walls around the cemetery were dismantled. Whether the five grave markers made by Harold Dunning were still marking the graves at the time the cemetery was dismantled is not known.

When Harold Dunning took Photo A below in about 1925, the original stacked sandstone wall around the Medina Family Cemetery was still in place (Source No. 10 and page 24 of Source No. 15 below). [Bill Meirath, who gave us a copy of Photo A to use in this chapter, arrived at the 1925 date for the photo because the first use of Dunning's photo he was able to find was in *Namaqua*, a book by Pierce Egan published in 1925 (Source No. 9 below). (For more information on all of the help that Bill gave us with our grave search efforts, see the "Acknowledgments" section.)

Photo A: Original Medina Family Cemetery as Photographed by Harold Dunning Before 1925. Photo Was Taken Looking North Northeast. The Black Arrow Points to Mariano Medina's Original Wooden Grave Marker Outside the Original South Wall of the Cemetery, With Mariano's Body Buried Southwest of the Marker

As of February 2012, the Medina Family Cemetery Committee (Bill Meirath, Chairman) of the Loveland Historical Society was actively working to both preserve the original Medina Family Cemetery and to restore it, as much as possible, to its original state. (See "Efforts to Preserve and Restore the Original Cemetery" below for details on this laudable preservation and restoration effort.)

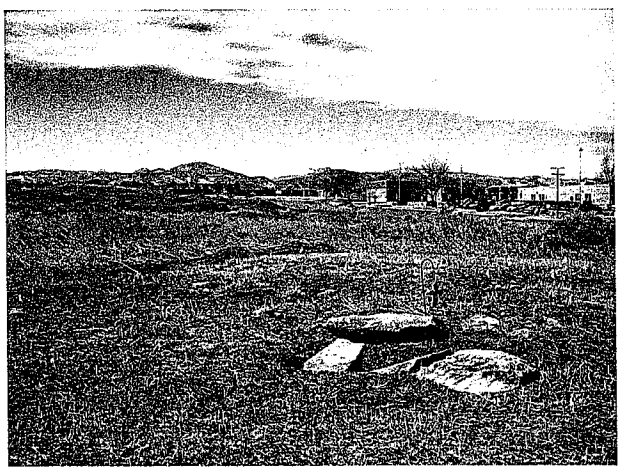


Photo B: Original Medina Family Cemetery as Photographed in May 2011 Showing a Portion of the Field Southeast of Namaqua Elementary School With Orange Flags Marking the Graves in the Original Cemetery (Courtesy Bill Meirath)

The orange flags in Photo B mark the 10 possible burial locations that William Schneider found using dowser rods at the original cemetery location in October 1996 (Source No. 26 below). When we dowsed the same area on 23 February 2008, we found three possible body burials near some bushes that were then growing in the area of the original cemetery. However, as the number of flags in Photo B indicates, Bill Schneider found seven additional possible burials. Given the low temperature on the day of our February 2008 visit, we certainly did not search the entire cemetery site. In addition, Bill may have been able to detect areas where the earth had been disturbed as well as where bodies still remained while we were only able to detect the bodies that remained in the original cemetery. Another possibility is that when bodies were moved in January 1960, some of the bones were accidentally left in the original graves. (See "Individuals Still Buried in the Original Medina Family Cemetery" below.)

In preparation for visits to the site of the original Medina Family Cemetery during the Loveland Historical Society's 20 June 2011 Historic Home Tour, Bill Meirath and other members of the Medina Family Cemetery Committee created nine wooden grave markers for the cemetery and labeled and placed them by matching the grave locations found by William Schneider in 1996 and the diagrams of the original cemetery created by Harold Dunning and Pierce Egan (Source No. 10 and pages 24 and 31 of Source No. 15 below). Photo C below shows the cemetery with these wooden markers in place.

Photo C: Wooden Grave Markers Temporarily Placed in the Original Medina Family Cemetery for the Loveland Historical Society's Historic Home Tour on 20 June 2011 (Courtesy Mike Perry)

The following inscriptions on these nine temporary grave markers include only the names or descriptions of the deceased persons and their known or assumed dates of death and are listed from right (north) to left (south) as they appear in Photo C: Marie (John)/Tacanecy, 1874; Marcellina Medina, 1872; Martin, 1864; Rosita, 1865; Louis Papa's Daughter, 1866; Baby, 1942; Friend, 186?; Mariano Medina, 1878; and Rafaelito/Son, 188?.

For genealogical information on all of these individuals except a "Friend 196?" and "Baby 1942," see "Genealogy Information on the Mariano Medina Family" below. For

information on the burial of a friend of Mariano Medina in the cemetery in about 1864, see Source Nos. 10 and 11, pages 24 and 31 of Source No. 15, Source Nos. 17 and 18, and pages 433-434 of Source No. 19. For information on "Baby 1942," see "Destruction of the Cemetery in January 1960" below.

In his 21 October 2011 email to us (Source No. 33 below), Bill Meirath points out that, with the exception of "Baby 1942," after the first burial of "Friend 186?," it is possible that each deceased person was buried to the north of the last burial until the original 10 X 25 foot walled-in area was full. Then, as noted above, Mariano and his son Rafaelito were buried south of the original south wall of the walled-in area.

Location and Description of Graves at Medina Memorial Wall at Namaqua Park

Latitude 40° 23' 58" N, Longitude 105° 07' 24" W, Sixth Principal Meridian

Namaqua Park in on the east side of North Namaqua Avenue south of the Big Thompson River and about a half mile south of U.S. 34. It is 0.4 of a mile northeast of the original Medina Family Cemetery.

As discussed in detail in "Destruction of the Cemetery in January 1960" below, on 17 and 18 January 1960, under order from the County Court of Larimer County, three morticians removed six bodies from the location of the original Medina Family Cemetery. (Note that these three gentlemen were *not* trained pathologists.) Five of the bodies were assumed to be historic burials from the original Medina Family Cemetery and were moved to Namaqua Park, where they were reburied. The sixth body was that of a "modern" infant wrapped in a 1940s newspaper. The official report of the bodies' removal says that this child's body was reinterred but does not say where.

The location in Namaqua Park where the five bodies from the original Medina Family Cemetery were reinterred has since been marked by a stone wall below which have been placed five bronze grave markers. The stone wall runs from north to south, with the grave markers flat on the ground below the wall's east side. Photo D below shows the wall's east side.

Photo D: East Side of the Medina Memorial Wall in Namaqua Park in Loveland

The bronze plaque on the face of the wall reads as follows:

Dedicated to the memory of
C. C. Buckingham
1846-1940
Whose estate fulfilled his desire
to provide this resting place for the
MODENA FAMILY
First Settlers of Namaqua

Erected by the Namaqua Chapter
Daughters of the American Revolution

The transcriptions of the inscriptions on the five bronze grave markers below the Medina Memorial Wall follow, in order from south to north:

Baby Boy
1864

Mariano Modena
1812-1878

Lena Modena
1856-1872

Marie "John" Modena
Died 1874

A Friend

Source Nos. 10 and 11, and page 31 of Source No. 15 below reports that the "friend" was of Mexican descent, with Source No. 11 saying that he died "about 1864."

Note that the markers above all spell the family's last name as "Modena" rather than "Medina," which Zethyl Gates's research showed was the most likely actual spelling (pages 1 and 2 of Source No. 25 below). See "Spelling of Mariano Medina's Names" above.

Our use of dowser rods over the above grave markers confirmed burials in all five locations. However, we cannot confirm that the individuals buried below the markers match the names on the markers. See "So Whose Remains Were Moved to Namaqua Park and Whose Remains Are Still in the Original Medina Family Cemetery?" below for a discussion of significant questions concerning which bodies were removed from the original Medina Family Cemetery and which bodies may still be buried there. Hence, the effort to preserve and restore the original Medina Family Cemetery.

Finding the Medina Family Cemetery

We first learned about the "Modena Cemetery" because it is listed in the Larimer County section of the1985 edition of the Colorado Council of Genealogical Societies' *Colorado Cemetery Directory*, which provides the following location information for the cemetery: "In area called Namaqua, about ½ mile southwest of Loveland (Sec. 16, T5N, R69W, 6th P.M.)."

When we first made an effort to visit the cemetery, we found the Graves at Medina Memorial Wall at Namaqua Park, not the original Medina Family Cemetery. We have visited the Medina Memorial Wall graves several times, the first visit being on 11 August 2000. At that visit, as noted above, we transcribed the plaques cited above and used dowser rods to confirm that five individuals are indeed buried in front of the wall. We have repeated out dowsing efforts at the Namaqua Park graves several times and have always found five burials there.

We did not even know about the existence of the original Medina Family Cemetery until May 2007 when Bill Meirath sent us a copy of the notebook (Source No. 28 below) he had prepared in an effort to create an interest in preventing the development of the property containing the original cemetery and in preserving and restoring the cemetery itself—primarily because a number of members of Mariano Medina's family and, possibly, even Mariano himself, are most likely still buried there.

Following Bill's instructions, we visited the original cemetery on 23 February 2008 where, as noted above, our use of dowser rods indicated that at least three individuals are still buried. As also noted above, the cold February weather that day kept us from doing as complete of a grave search as we normally would have done.

Indeed, as discussed briefly above, in October 1996 (Source No. 26 below), William Schneider ("a former engineer and corporate consultant and an earnest historian") dowsed the area of the original Medina Family Cemetery and found 10 possible graves. Bill was accompanied on his visit by Zethyl Gates. Interestingly, she had told Bill that the original cemetery was somewhere in the field, but she did not tell him its suspected location or how many graves her research had indicated that the cemetery might have originally contained. Concerning his discovery, Bill told the *Loveland Reporter-Herald* reporter, "It's something we can't forget is our past. Otherwise we're bound to create problems for the future."

Sources of Information on Mariano Medina, His Family, and the Medina Family Cemetery

Bill Meirath kindly provided us with copies of the following sources listed below: 2-6, 8-18, 20-21, and 26-28. Bill had found these sources during his extensive research on the Medina family and its cemetery.

1. Record Book A1, Sacred Heart of Jesus Catholic Church, Boulder, Colorado as cited in Source No. 25 below. The records in this book covering Catholic sacraments at Marianne's Crossing/Namaqua began on 9 January 1861 when Reverend Joseph Projectus Machebeuf conducted the first Catholic mass at "Marianne's Crossing," the name of the town that was later renamed "Namaqua."

2. "Death of Mariano Modena," *Denver Daily Times*, Vol. 7, No. 152, 29 June 1878, page 1, column 5.

3. Brief Obituary of Mariano Medina, *Boulder County Courier*, 6 July 1878.

4. "Obituary—Mariano Modena," *Fort Collins Courier*, 18 July 1878.

5. Mention of death of child of Mr. and Mrs. Krosky in Namaqua, *Fort Collins Courier*, 26 February 1891. There is no record that this child was buried in the Loveland Burial Park, Lakeside Cemetery, Grandview Cemetery, or Bingham Hill Cemetery, creating the possibility that the child could have been buried either on its parents' land or in the Medina Family Cemetery.

6. "The First White Man: Mariano Modeno," *Loveland Reporter*, 24 April 1902. This article contains the earliest mention of Mariano Medina being buried outside of the original walls of the Medina Family Cemetery.

7. The *History of Larimer County, Colorado,* written by Ansel Watrous and published in 1911. (See "Bibliography" for complete citation.)

Pages 87 and 88 contain information on Mariano Medina (spelled "Mariana Modena" in his book) and his "Old Lady Hawkens" rifle (spelled "Old Lady Hawkins" in his book).

Pages 167 and 168 contain information on Mariano Medina, his family, his exploits, and the cemetery that he established at Namaqua.

8. "Interesting Early Events on the Big Thompson River," written by Mrs. P. H. (Edith) Boothroyd, *Fort Collins Express*, 20 May 1923, pages 1 and 7. Article details Mrs. Boothroyd's visit with "Marianna Medina" on "one very warm day late in September of 1872" and discusses her impressions of Mariano, his sadness over the death of his daughter Lena, and his family's cemetery, which she describes as being "remarkably neat and well kept" when compared with other grave yards that she had seen in the West. (For more information on the Edith Margaret Latimer Boothroyd and her family, see the chapters on the Boothroyd-Hutchinson Cemetery and the Boothroyd Baby Girl Grave.)

9. *Namaqua*, written by Pierce Egan and published in 1925 by the Bookfellows at The Torch Press, Cedar Rapids, Iowa. Egan was originally a reporter for the *Loveland Reporter*. *Namaqua* is a romantic novel based on the life and legends of Marcellina Medina, one of Mariano Medina's two daughters, and is set in the foothills west of Loveland. This book contains Photo A above.

10. Page 295 from one of Harold Dunning's Scrapbooks/Photo Albums in the Denver Public Library. The page shows Photo A above and a map of the Medina Family Cemetery with the entrance on the east side; with Mariano Medina's wife "John" or Marie, daughter Lena, "a boy older than Lena," and a "Mexican" buried within the walls of the cemetery; and with Mariano Medina buried outside the cemetery's southwest corner. We used 1925 as the date of this page since a clipping referring to Source No. 9 above is attached to the page.

11. *Hitting the Trail to the Land of Olden Times; Historical and Natural Points of Interest Around the City of Loveland, Colorado,* pamphlet published in 1926 by the Loveland Chamber of Commerce. This pamphlet includes two paragraphs on the Medinas' "burial ground" and a map of the Namaqua area drawn by Harold Dunning that incorporates the Medinas' walled-in burial ground with Mariano Medina's grave shown as being outside the southwest corner of the cemetery.

12. "Early History of the Big Thompson Valley Graphically Told," written by Jefferson McAnnelly, *Fort Collins Express-Courier,* copy of undated article from a 1930s issue. Article reports that "Marianna Modena," his wife "John," their daughter Lena, and his son (Rafaelito or Ralph) by his second legal wife Susan Carter Howard, whom Mariano called "Maze," were all buried "in the little cemetery on the homestead." It also discusses how Mariano traded "a span of ponies, wagon, and harness" to Susan's husband for her.

13. "Pioneer Cattlemen," *Denver Post*, written by Astrid Berg, 15 April 1930. Article is accompanied by a photo of Louie Papa with Colorado Governor Adams and gives a brief account of Louie Papa's life, including naming Rose Davidson as one of Louie's wives and as the mother of a daughter who didn't live long and a son named Modena Papa. Article reports that Mariano traded "a span of horses" for his Indian wife Marie/"John" in the San Luis Valley in 1858 and that the two of them and Mariano's step-son Louie Papa came to the Big Thompson from the San Luis Valley about 1858.

14. "Tree Is Louis Papa's Record of Marriage 65 Years Ago," *Loveland Reporter-Herald*, 16 October 1931. Article mentions that Louie's daughter, whom he "loved above all things, died when she was small." It gives 1866 as the year that Louie married his first wife and repeats much of the same information as Source No. 13, except it gives "Mary" Davidson rather than "Rose" Davidson as the name of Louie's first wife and mentions that Louie's and Mary's son Modena Papa was living west of Pueblo with his mother in October 1931 and that Modena would have been about 64 and his mother "past 80" by that date.

15. Pages 24, 26, 29, and 31 from one of Harold Dunning's Notebooks in the Denver Public Library dated 1941 but obviously updated some after that date (See Pages 24 and 31 immediately below.)

    Page 24 includes a photo that Dunning took of the Medina Family Cemetery prior to 1925 and a map of the Medina Family Cemetery that includes "5/18/42" as the date Dunning erected a headstone on Mariano Medina's grave. The photo was also used in Source Nos. 9 and 10 above and is Photo A in this chapter.)

    Page 26 contains a quote "from the writings of Pierce Egan" that Dunning later used on page 441 of Volume I of *Over Hill and Vale* (Source No. 19) in his plea that the Medina Family Cemetery be restored and made into a "show place."

    Page 29 contains quotes and information on Mariano Medina, his family, and cemetery from Lucas Brandt's 1926 diary. This page includes the information that after Mariano's first wife "John" died, he "traded for a white woman but she did not live with Mariano very long."

    Page 31 shows a map of the Medina Family Cemetery with the entrance on the east side; with Mariano Medina's wife "John" or Marie, daughter Lena, "a boy," and and a "Mexican" buried within the original walls of the cemetery; and with Mariano Medina buried inside the extended south wall of the cemetery. The page is dated 1941 but contains a handwritten note saying that the cemetery's south wall was extended to include Mariano's grave in 1942.

16. "Monument Unveiled in Honor of Mariano Medina, First Settler," *Loveland Reporter-Herald*, Tuesday, 19 May 1942, page 1. Article reports that the sandstone headstone that Harold Dunning had made for Mariano Medina's grave in the Medina Family Cemetery was unveiled on Monday, 18 May 1942 and that the cemetery's walls had been extended to include Mariano's grave prior to that date.

17. "Pioneer Graves Marked Today in Namaqua Cemetery," *Loveland Reporter-Herald,* Monday, 20 May 1946, pages 1 and 6. Article reviews some of the 10 pioneer graves in Larimer County that Harold Dunning had marked and indicates that on 20 May 1946 Dunning showed off the markers he had made for the graves in the Medina Family Cemetery. The last two graves marked in the cemetery, which were shown to the public for the first time on 20 May 1946, were those of a friend of the Modena family, who was the first person buried in the cemetery, and the first member of the Modena family who was buried there: "an infant who died in child-birth," who Bill Meirath concludes was the daughter of Louie Papa who died in 1866. (See Child No. 1 under "Children of Louie Papa and His First Wife" below.)

18. "Over Hill and Vale," Harold Dunning's column in the *Loveland Roundup*, 1 January 1948, page 3. In spite of its much later publication date, this article basically repeats the *same* information as Source No. 17.

19. Volume I of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1956. (See "Bibliography" for complete citation.)

    Page 38 lists Mariano Medina (spelled as "Modena" in this book), his wife Marie/"John," and his step-son Louie Papa as the first permanent settlers in the Big Thompson Valley.

    Page 51 mentions that "Mariano Modena took great pride in his little cemetery where five of the family are now buried."

    Pages 423-425 contain information on the "fiction and fact" concerning Mariano Medina, including quotes from Jean Milne Bower's little booklet titled *Beads of Namaqua*.

    Pages 425-427 contains information on Mariano Medina that Dunning repeats from Francis Whittemore Cragin's "Far West Notebook" about Cragin's 1903 "trip up thru this region." Dunning's source was copied from Cargin's "originals in the Pioneer Museum at Colorado Springs by Lorene Englert." Note that Cragin did spell Mariano's last name as "Medina."

Pages 427-434 contain a section titled "More About Mariano Modena" that provides a wide-ranging collection of information and stories about Mariano and his family.

Pages 439-441 contain Dunning's plea that the Mariano's "little graveyard" be made into a show place to which Loveland's residents could point to with pride.

20. Petition No. 14815 by the Board of Commissioners of the County of Larimer to the County Court in and for the County of Larimer dated 20 October 1959. The petition asked the County Court to order the "removal and reinterment of the said 'Modena Graves'" because the "burial ground has been abandoned and through neglect and nonuse has become in danger of damage, destruction, desecration, and obliteration." The petition goes on to say that its text would be published in the 23 October, 30 October, and 6 November 1959 issues of the *Fort Collins Coloradoan* and that a hearing on the petition would be held at 10 a.m. on 7 December 1959.

21. Court Order No. 14815 by the County Court in and for the County of Larimer issued 7 December 1959. The Court Order ruled that since no one objected to Petition No. 14815 (Source No. 20 above) following its publication in the *Fort Collins Coloradoan,* the five "Modena Graves" [listed in the Court Order as Mariano Modena, Unknown Friend, Baby Boy Modena, Lena Modena, and Marie (John) Modena] should be removed from the "'Modena Graves' burial ground" and reinterred in the Northwest Quarter of the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th Prime Meridian (which is the location of what is now known as Namaqua Park).

22. Volume II of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1962. (See "Bibliography" for complete citation.)

    Pages 226-227 discuss in detail the 17 and 18 January 1960 move of six graves (one being a "modern" infant) from the original Medina Family Cemetery to Namaqua Park and quote in its entirety Carl Kibbey's "report of the events."

    Page 226 also reports that one of the two infants buried in the cemetery was "the daughter of Louie Papa."

    Pages 254-255 discuss where the "famous Overland Trail" existed in the Loveland area and the establishment of a stage station at "Mariano Medina's place."

23. Volume III of *Over Hill and Vale*, written by Harold Marion Dunning and published in 1971. (See "Bibliography" for complete citation.)

    Page 129 provides a list of the about 20 people who lived in the Big Thompson Valley in October 1860, that list including Mariano Medina and his family.

Page 223 contains a photo taken about 1920 showing Louie Papa and Lucas Brandt sitting in front of Mariano Medina's log home in Namaqua.

24. *Loveland-Big Thompson Valley, 1877-1977 Centennial*, edited by Clara Ball and published and distributed by the Loveland-Big Thompson Valley Centennial Commission, Inc., 1975. Pages 10-12 contain information on "Mariana Modena" that includes a fairly lengthy discussion of how his first and last names were spelled in early accounts of his life.

25. *Mariano Medina: Colorado Mountain Man*, written and copyrighted by Zethyl Gates, originally published in 1981. (See "Bibliography" for complete citation.) This extremely well-written biography does an excellent job of weaving the wealth of information on Mariano, his family, Miraville/Marianne's Crossing/Namaqua, and his family cemetery into a coherent story that does a convincing job of separating the truth about Mariano Medina and his family from the extensive legends/stories. The Loveland Museum and Gallery sells reprints of this well-researched book.

26. "Rods help historian uncover Loveland's past," written by Philip Tardani, *Loveland Weekend Reporter-Herald*, 26 and 27 October 1996, pages A-1 and A-5. Article reports on William Schneider's dowsing the original Medina Family Cemetery several days before the article was published.

27. "Dowsing has backing from some scientists," written by Philip Tardani, *Loveland Weekend Reporter-Herald*, 26 and 27 October 1996, page A-6. In this article, Tardani cites a scientific experiment discussed in a 1995 issue of *Science News* that concludes that some, but not all, dowsers "can find objects when the likelihood of their doing so by luck alone is astronomically high."

28. *Medina Family Plot*, notebook prepared by Bill Meirath and distributed in May 2007 in an effort to prevent the development of the property containing the original Medina Family Cemetery and to encourage the preservation and restoration of the cemetery. As discussed in "Efforts to Preserve and Restore the Original Cemetery" below, it is through Bill's considerable efforts that the Loveland community became aware of the abandoned and destroyed Medina Family Cemetery and determined to preserve it. It was this notebook that first brought the original Medina Family Cemetery to our attention.

    A copy of Bill's notebook will be in our files on the Medina Family Cemetery in the Local History Archive of the Fort Collins Museum, which has agreed to take our research files for this book.

29. "Preservation of the Mariano Medina Family Cemetery," written by Sharon Danhauer, *The Folsom Point*, the newsletter of the Northern Colorado Chapter of the Colorado Archaeological Society, Vol. 23, Issue 08, November 2008, pages 4 and 5. Article provides a brief biography of Mariano Medina and a brief history of

the Medina Family Cemetery and reports on the beginning of the efforts to preserve the original cemetery.

30. "Mariano Medina, the first permanent settler in the Big Thompson Valley," on pages 49-53 of the *Convention Booklet of the Oregon-California Trails Association 27th Annual Convention*, August 18-22, 2009, Loveland, Colorado. Article also provides a brief biography of Mariano Medina; photos of Namaqua, the town that Mariano established; and a brief history of the Medina Family Cemetery, including its destruction in 1960 and efforts to preserve and restore it.

31. "Land saved, history preserved," transcription and video available at http://www.9news.com of story on the original Medina Family Cemetery that first appeared on 9NEWS in Denver on 19 September 2009 . Video includes interviews with both Bill Meirath, the Chairman of the Medina Family Cemetery Committee of the Loveland Historical Society, and Jess Rodriquez, who bought the land containing the cemetery and who had agreed to donate the 0.96 acre containing the cemetery to the Loveland Historical Society. The story was one of several that 9NEWS produced in September 2009 in recognition of National Hispanic Awareness Month.

32. "Old Lady Hawkens, Mariano Medina's Famous Gun, Is Safe and Sound," written by Sharon Danhauer, *The Fifty-Niner*, the quarterly newsletter of the Colorado-Cherokee Trail Chapter of the Oregon-California Trails Association, July 2011, pages 6-8. Article tells of Sharon Danhauer's and Bill Meirath's trip to a private museum in northern New Mexico to see Mariano Medina's gun and accompanying artifacts.

33. Emails received from Bill Meirath between 6 and 30 October 2011 in which he provides digital copies of most of the photographs used in this chapter and answered the numerous questions we had during the chapter's preparation.

34. Emails received from Bill Meirath between 19 November and 4 December 2011 in which he provides changes to and additional information for the second draft of this chapter.

35. "Mariano Medina's family plot in west Loveland will be donated to historical society; Developer saves pioneer cemetery," *Loveland Reporter-Herald*, written by Craig Young, 9 January 2012. Article discusses the Loveland Planning Commission's approval on 9 January 2012 of the subdivision that includes the Medina Family Cemetery and the fact that the developer Jess Rodriquez will donate the cemetery site portion of the subdivision to the Loveland Historical Society. The article also includes information about Bill Meirath's efforts (now successful) to get the Loveland community to preserve the Medina Family Cemetery.

36. Emails received from Bill Meirath between 22 January and XX XXXXXX 2012 in which he provides changes to and additional information for the third draft of this chapter.

In the following two sections, we have italicized information about any individual's death and burial if records show that the person was buried in the Medina Family Cemetery and have bolded and italicized information concerning the order of each person's burial.

Brief Biography of Mariano Medina

Jesus Garcia Mariano Medina (page 9 of Source No. 25) was born in 1812 in what is now Taos, New Mexico (page 3 of Source No. 25) when New Mexico was still part of Spain. According to page 3 of Source No. 1, his parents were **Antonio Medina** from Spain and **Marie Hurtado (Urtado)** from New Mexico. Zethyl Gates (page 3 of Source No. 25) points out that the 1870 Colorado Census provides the contradictory information that Mariano was born in Mexico and that he was 50 in 1870, which would yield a birth year of about 1820 rather than 1812.

Since Zethyl Gates's biography of Mariano (Source No. 25) provides a very complete history of his life and exploits, we will provide only a brief biography of Mariano Medina here. For details about Mariano's two wives, step-son, and five children, see "Genealogy of the Mariano Medina Family" below.

Mariano was know to be a natty dresser, with positive comments on his appearance and clothing having been left behind by a number of his contemporaries (Source No. 8 and pages 43-44 of Source No. 25). Pages 51-53 of the same source contain photos of Mariano. Although he was wearing different "outfits" in each of the three photos, in all of them he had the same pipe hanging out of the left side of his mouth and may be wearing the same black hat.

However, during his life, Mariano "wore quite a few hats," for he is know to have worked as a "trapper, trader, bounty hunter, interpreter, guide" and mountain man" (Source No. 29). While his reputation is not as established as those of such well-known mountain men as Jim Bridger, John Colter, Kit Carson, and Jebediah Smith, Zethyl Gates points of that Mariano was nonetheless "a legend in his own time" (page 1 of Source No. 25).

Probably Mariano's best know exploits occurred in the 1840s when he worked as a "runner" and interpreter for Captain John C. Fremont during Fremont's Rocky Mountain expeditions (page 9 of Source No. 25) and in 1857 during the "Mormon war." During that war, Mariano and a member of John Robertson's family left Fort Bridger to warn Russells, Majors, and Waddell's freight wagons and cattle at Ham's Fort on the Green River that "the Mormons were preparing to steal the stock the next day" (page 18 of Source No. 25). Later in 1857 he and Miguel Alona saved Captain Randolph Marcy,

who was an officer in the Utah Expedition, and Marcy's troops from starving to death in the Rocky Mountains where they had gotten lost while trying to reach New Mexico to get supplies for the Expedition (page 20-25 of Source No. 25).

When the Mormon War was over in July 1858 (page 26 of Source No. 25), Mariano moved his wife Marie/John/Tacanecy, step-son Louie Papa, sons Antonio and Martin, and daughter Marcellina first to gold fields at Cherry Creek and then joined a group that moved from there to the banks of the Big Thompson where Nicholas and Antoine Janis had already set up a trappers' camp. Two early sources that Zethyl Gates may not have seen report that Mariano and his family had also been in the San Luis Valley before coming to the Big Thompson (Source Nos. 13 and 14).

(For details on Mariano's family, see "Genealogy of the Mariano Medina Family" below. For more information on the Janis brothers, see the chapter on the Antoine Janis Memorial. The Janis brothers later moved to Laporte, which is where the Antoine Janis Memorial is located.)

The Big Thompson settlers chose the specific location on the river's banks because of the ready availability of "water, good forage for stock, wild game for food, timber for cabins." Zethyl Gates reports, "It is accepted that Mariano was on the Thompson in the middle of 1858, for pioneers who arrived soon after that said that Mariano was here before them" (page 30 of Source No. 25).

The town that grew up on that part of the Big Thompson was first called "Miraville" for José de Mirabal, who was born in 1812 in Mexico and who, like Mariano, "had spent his life in the Rocky Mountain West." The 1860 Census reports that 45 families were living in the 22 houses in "Miraville City" but does not list Mariano and his family. While some of the old trappers and mountain men who had originally settled in Miraville City moved on, Mariano and his family stayed, perhaps because Mariano "sensed the coming era of expansion as traffic increased along the Cherokee Trail which followed the foothills north of the Arkansas River" (page 34 of Source No. 25).

It wasn't long until the name of the little settlement morphed from "Miraville" into "Marianne's Crossing," possibly because of the toll bridge that Mariano built over the Big Thompson close to the point where, first, the Cherokee Trail and, later, the Overland Trail crossed the Big Thompson. Mariano charged from $0.25 to $1.00 for travelers to cross his bridge and "fenced his land so that travelers must use his toll bridge in times of high water" (page 51 of Source No. 30, which contains an old photo of Mariano's bridge; page 168 of Source No. 7; and pages 431-432 of Source No. 19).

(For more information on the Cherokee and Overland Trails in Larimer County, see the "Brief History of the Overland Trail in Larimer County" in the chapter on the Cherokee Stage Station Graves, the "Brief History of the Little Thompson Crossing and the Little

Thompson Stage Station on the Cherokee-Overland Trail" in the chapter on the Little Thompson Crossing Grave, and the "History of the Virginia Dale Stage Station" in the chapter on the Virginia Dale Stage Station Cemetery.)

We know that Mariano and his family were living on the Big Thompson by early January 1861 because of the records left by a Catholic priest, Reverend Joseph Projectus Machebeuf (Source No. 1). Father Machebeuf reached Marianne's Crossing from Denver, where he had been sent by the Catholic bishop in Santa Fe, New Mexico. Father Machebeuf headed from Denver to Marianne's Crossing because he had heard that there were some Catholic families there. On the morning of 9 January Father Machebeuf set up a little alter, put on the appropriate vestments, celebrated mass, and then baptized seven children, including Marcellina Medina, the daughter of "Marian" Medina and "Mary Kansey" (Source No. 1 and pages 35-36 of Source No. 25). (For more information on Marcellina, see Child No. 3 under "Children of Mariano Medina" below.)

Mariano built a number of buildings at Marianne's Crossing, probably the best know of them being a "fort," which Mariano built on the north side of the Big Thompson River. The fort measured approximately 15 X 25 feet and was made from sandstone gathered nearby. Its walls were between 18 and 20 inches thick and contained gun ports. Its primary purpose was to provide locals with a place to fall back to when Indians attacked, which happened primarily when the Indians wanted the settlement's horses. Page 57 of Zethyl Gates's book (Source No. 25) contains photos of the exterior and interior of Mariano's "fort" taken by Mildred Beatty. In the exterior photo, the fort has a pitched roof made of wooden shingles, but the original roof was "covered with a foot of earth" (page 40 of Source No. 25).

The Indians' stealing horses would have been especially upsetting to Mariano since he was a renowned horseman, horse breeder, and trader (Source No. 8 and page 46 of Source No. 25). On page 432 of Source No. 19, Harold Dunning repeats Edwin D. Clark's 9 December 1903 story of the Utes stealing 73 head of Mariano's horses and Mariano getting all of them *plus one* back. (For more information on Edwin Clark and his family, see the chapter on the Clark Family Cemetery.)

Mariano built his family's 18 X 20 foot log cabin on the on the south side of the Big Thompson, with some of the logs from that cabin eventually being used to reconstruct a portion of Mariano's cabin in the Loveland Museum and Gallery (page 40 of Source 25 and page 50 of Source 30). Above his home, Mariano flew a white flag to indicate that he was "at peace with all nations" (page 50 of Source No. 25). Harold Dunning's photo of Mariano's family's cabin on page 56 on Source No. 25 and page 50 of Source No. 30 shows both Mariano's cabin and his white flag.

Other buildings on the south side of the river were Mariano's combination store-saloon, a stable with a corral, and lodging for travelers. Since Mariano kept all of his buildings

whitewashed, they stood out from the "brown log homes" of the others settlers along the Big Thompson. See the inside back cover of Zethyl Gates's biography of Mariano for a diagram of the locations of his buildings.

According to pages 60-63 of Source No. 25, when Ben Holladay began running his Overland Stage Line coaches from Denver to Salt Lake City in August 1862, he put that section of the line under the supervision of Major John Kerr. (See the "History of Little Thompson Crossing and Stage Station" in the chapter on the Little Thompson Crossing Grave for information on John Kerr, his stint with the Overland Stage, and a photo of his stone home near Berthoud, Colorado.) The portion of the route that followed the old Cherokee Trail north from Denver crossed the Big Thompson near Mariano's place. Since Kerr and Mariano knew each other from the "days of the Utah War," Kerr lived not far away in Berthoud, and the Cherokee Trail crossed the Big Thompson right at Mariano's place, it wasn't a surprise that Mariano's place became a stage stop on Kerr's section of the Overland Stage Line. In fact, Mariano's place was the first place travelers on the Overland Stage could eat north of Denver.

In 1866, Holladay sold out to the Wells Fargo Express Company. In 1867, Wells Fargo built a huge livery barn on the north side of the Big Thompson. (See page 51 of Source No. 30 for Harold Dunning's photo of this livery barn.) Mariano's place continued as a stage station between Denver and Cheyenne "until the trains came through in 1877" (page 63 of Source No. 25).

This stage station was called the "Big Thompson Station" until a federal post office was established on the north side of the Big Thompson on 28 January 1868. The post office's first post master Hiram Tadder suggested "Namaqua" as the name for the post office. For speculations on what "Namaqua" meant, see page 64 of Source No. 25. The most likely source of the name was "Namequa, the beautiful daughter of Chief Black Hawk, a Sauk Indian from Illinois for whom the mining town of Blackhawk, Colorado was named.

In addition for his appearance, hospitality, horsemanship, and businesses on the Big Thompson, Mariano was also know for "Old Lady Hawkens," his .50 caliber muzzleloader, a rifle handmade for him by Samuel and Jacob Hawken in St. Louis. This rifle was both lightweight and accurate and could easily be carried on horseback. Mariano's Hawkens was "decorated with five small silver-colored stars and had an elaborate silver-colored patch box" and was accompanied by deerskin *parfleche* or bullet pouch (pages 45 and 46 of Source No. 25). See pages 54 and 55 of the same source for photographs of the rifle and its accompanying bullet pouch, powder horn, and tools taken when they were on loan to the Colorado History Museum.

Bill Meirath became so enamored with "Old Lady Hawken's" during his years of research on Mariano Medina that he had a duplicate of the rifle made for himself.

According to Source No. 32, before Mariano died in 1878, he left "Old Lady Hawkens" and its accompanying items to his friend A. H. Jones of Denver City. In 1940 the Jones family loaned the rifle and accouterment to the Colorado History Museum. However, in the 1990s the Museum asked the family to either donate the items to them or pick them up. Jim Gordon, a well-respected professional gun collector, helped the family value the items and offered to organize a fund-raising drive to collect enough money for the Museum to purchase them. The family refused his offer and put the items up for sale. Jim then felt compelled to purchase them himself for his already extensive private collection.

In early 2011, Bill Meirath, his friend Lee Billmire, and Sharon Danhauer (one of the original members of the Medina Family Cemetery Committee) were invited to Glorieta, New Mexico to visit Jim Gordon's extensive gun collection and "Old Lady Hawkens." (For more information on Sharon Danhauer and the help she provided us during our grave-search efforts in the Loveland area, see the "Acknowledgments" section.) Photo E below shows Bill with the "Lady" during that visit.

Photo E: Bill Meirath Holding Mariano Medina's "Old Lady Hawkens" Rifle (Courtesy Sharon Danhauer)

According to page 1 of the 29 June 1878 issue the *Denver Daily Times* (Source No. 2), *Mariano Medina died on 28 June 1878* "at his old home on the Big Thompson" "after a long and painful illness superinduced by wounds received during his eventful life in the Indian country." His obituary in the *Boulder County Courier* (Source No. 3) reports that he died "last week," which was the week before 6 July 1878, and his obituary in the *Fort Collins Courier* (Source No. 4) reports that he died on 25 July 1878.

As discussed above, Mariano was buried outside of the original walled-in area of the Medina Family Cemetery at the southwest corner outside the cemetery's original south wall because, by 1878, the 10 X 25 foot area inside the original walls was full (Source Nos. 6, 10, and 11 and page 31 of Source No. 15).

Specifically, Source No. 6 states:

> "Mariano buried the members of his family side by side, an adobe wall around the graves, while on the gateway was placed the emblem of his Catholic faith. Just outside this wall at the southwest corner lies all that is moral of Mariano himself."

As far as we can determine, Mariano was the seventh person buried in the Medina Family Cemetery.

Genealogy of the Mariano Medina Family

Tacanecy/Marie/"John" Papin ("Papa"), Mariano's first wife. According to pages 10-11 of Source No. 25, about 1844 when Mariano was working as a free trapper along the Snake River in the Utah Territory, he met Louis Elbert Papin ("Papa") and Louis's Flathead or Shoshoni "wife" named "Tacanecy" or "Kansey." When Louis decided to return to "the States," Tacanecy, who was pregnant with Louis's child, refused to go with him because she didn't want to leave her own people behind. Not wanting to completely abandon Tacanecy, Louis offered to trade her to Mariano for some horses and a blanket.

Two early sources (Source Nos. 13 and 14), which Zethyl Gates may not have seen, report instead that Mariano traded a "span of horses" for Louie Papa's mother in the San Luis Valley in 1858. However, since three of Mariano and Tacanecy's children (Children Nos. 1, 2, and 3 under "Children of Mariano Medina" below) were born *before* 1858, these two sources must surely be in error.

In addition to keeping house for Mariano and their children with all that involved in those days, Tacanecy was well-known for the beautiful buckskin moccasins and pants that she made and sold in Mariano's combination store-saloon (page 41 of Source No. 25). As her name above indicates, she was also known as "Marie" and "John" in addition to "Tacanecy."

Ansel Watrous (page 168 of Source No. 7) reports that Tacanecy and Mariano were eventually married by a Catholic priest, which would probably have been either immediately before or after their daughter Marcellina's 9 January 1861 baptism.

Using page 3 of the 15 July 1874 issue of the *Fort Collins Standard* as her source, Zethyl Gates (pages 73-74 of Source No. 25) reports that *Tacanecy died on 12 June 1874* and that she was 67 at the time of her death, which means that she was born about 1807 and that she was either 5 or 12 years older than Mariano, depending upon whether he was born in 1812 or 1820.

Concerning Tacanecy's burial, Zethyl Gates reports that her body was "placed in a plain wooden box and hauled in a lumber wagon pulled by a team of horses . . . to the burial spot. Once more the warm, red earth of the little cemetery on the hill [the original Medina Family Cemetery] folded into its bosom the earthly remains of one of Mariano's family." ***As far as we can determine, Tacanecy was the sixth person buried in the Medina Family Cemetery.***

Louis ("Louie") Papin ("Papa"), Mariano's step-son. Louie was the child with which Tacanecy was pregnant when Mariano took her as his wife when Louis Papin left the Utah Territory for "the States." Louie Papa's headstone in the Lakeside Cemetery in Loveland reports that he was born in 1844 and died in 1935. The records of the Loveland cemeteries report that Louie died on 18 September 1935. His burial place in Lakeside was provided by his long-time friend and employer Frank Bartholf, who donated space in his family's burial plot in Lakeside Cemetery (pages 54 and 55 of Source No. 30). On page 80 of Source No. 25, Zethyl Gates reports that Louie died from eating lye, which he had mistakenly thought was lard.

Since Louie was about 14 years old when Mariano brought his family to the Big Thompson, Louie never learned to read or write, for he was just too old to be sent to Denver for the formal schooling provided his half-brother Antonio and half-sister Marcellina (Children Nos. 1 and 3 under "Children of Mariano Medina" below). Instead Louie herded Mariano's valuable horses and took care of his stock, "a vocation he followed all of his life" (page 77 of Source No. 25).

The sources available to us provided contradictory information about Louie's wives and children.

Louie's first wife. Louie apparently married twice; however, we found three different names for his first wife. According to Zethyl Gates (page 78 of Source No. 25), who cites as her source the marriage records of Denver's Cathedral of the Immaculate Conception, his **first wife** was **Maria Eleanor Williams**, to whom he was married in Denver on 30 August 1866 by the same priest who had baptized his half-sister Marcellina in Marianne's Crossing in 1861. The couple moved to Namaqua to live, where Louis planted a cottonwood tree in honor of their wedding.

However, Source Nos. 13 and 14, respectively, report that Louie's **first wife** was **Rose Davidson** or **Mary Davidson**. Both sources agree that this lady's father ran the dance hall across from the Old Elephant corral in Denver. Source No. 14 repeats the story also told by Zethyl Gates of Louie having planted a cottonwood tree in 1866 in honor of his marriage to this lady. Consequently, these three woman were surely the *same person*. Given that Zethyl's source was Catholic Church records, we accept Maria Eleanor Williams as the correct name of Louie's first wife. In addition, Louie was 87 when he gave the interviews on which Source Nos. 13 and 14 were based and, thus, may have been a little forgetful.

Louie and his first wife divorced in about 1872, although she evidently left Louie shortly after the birth of their second son.

Children of Louie Papa and His First Wife

1. **Louie Papa's Unnamed Daughter.** Harold Dunning reports (page 226 of Source No. 22) that one of the infants buried in the Medina Family Cemetery was a daughter of Louie Papa. Source No. 13, which is based on a 1931 interview of Louie, says that he had two children, one of whom was a little girl, whom Louie describes as "his little white flower who didn't live long." Source No. 14, which also appears to be based on a 1931 interview of Louie, indicates Louie loved this daughter "above all things" and that she died "when she was small." In an email to us dated 29 November 2011 (Source No. 34), Bill Meirath tells us about an unpublished book titled *The Real Pioneers of Colorado* by Maria Davies McGrath dated 1934 which states that Louie and Maria's daughter was their first-born child. Given Zethyl Gates's report (page 78 of Source No. 25) that Louie and his first wife had a son on 10 August 1867, more about whom below, Bill has used 1866 has the birth and death date for their daughter.

   Based on the above information, we are assuming that *Louie had a daughter who died shortly after her birth in 1866 and who was buried in the Medina Family Cemetery.* ***As far as we can determine, this little girl must have been the fourth person buried in the Medina Family Cemetery.***

2. ***Mariano Antonio Papa, Louie Papa's eldest son.*** As noted above, Zethyl Gates (page 78 of Source No. 25) gives his birth date as 10 August 1867 and provides the name used here. However, Source Nos. 13 and 14, which as noted above appear to be based on a 1931 interview of Louie, give this son's name as **Modena Papa**. For more information on this son, see these three sources.

3. ***José Adolfo Papa, Louie's youngest son.*** Zethyl indicates that this boy was born about a year after his older brother. Perhaps Louie does not mention this son in Source Nos. 13 and 14 because the boy did not live to adulthood. On the other hand, Source No. 14 indicates that Mariano or Modena Papa was still alive in 1931 and was living in Pueblo with his mother.

Annie Johnson, Louie's second wife. Louie married Annie Johnson of Namaqua on 25 March 1875, but 1 month later she left both Louie and the country. Louie didn't divorce Annie until about 1891 and never remarried (page 79 of Source No. 25).

Children of Mariano Medina

Details on the four children that Mariano Medina had with Tacanecy follow.

1. **Antonio ("Antoine") Medina.** Antonio was born 2 or 3 years after Mariano took Tacanecy as his wife (page 11 of Source No. 25). If Louie Papa was born in 1844, this would mean that Antonio was probably born some time between 1845 and 1847. The boy was named "Antonio" according to the Spanish custom of naming the first-born son for the father's father. At the time of Antonio's birth, his parents were living at Fort Lewis at the head of the Missouri River in Montana.

   Once the family moved to Namaqua, when Mariano was away, he would sometime leave Antonio in charge of his store and saloon. On one of those days, Antonio had a run in with the notorious Jack Slade, John Kerr's predecessor as the division chief of the Overland Stage Line, during one of Slade's frequent drunken rages. Antonio threatened to shoot Slade with Mariano's spare Hawken's rifle until his mother intervened by taking the rifle away from him (pages 67-68 of Source No. 25).

   (For information on another of Slade's drunken episodes at the Big Thompson Station, see the "History of the Little Thompson Crossing and Stage Station" in the chapter on the Little Thompson Crossing Grave. For more general information on Jack Slade, see the "History of the Virginia Dale Stage Station" in the chapter on the Virginia Dale Stage Station Cemetery.)

   As per pages 68 and 69 of Source No. 25, Namaqua settlers report that Mariano sent Antonio to the Catholic School for Boys in Denver (near the school attended by his sister Marcellina), so the boy did received a fairly good education for the time.

   Antonio's fiery temperature led to his having the dubious distinction of being involved in the first criminal court action in Larimer County: on 5 July 1868 he was charged with the armed assault of Adam Blackhurst on 4 July. After Mariano posted a $1,000 bond, no further actions were taken. Antonio shows up again during the probate hearing for Mariano's will on 29 August 1878. In 1881, he and Louie Papa applied (unsuccessfully) to a court in Pueblo County for part of their father's estate.

   According to page 168 of Watrous's history (Source No. 7):

   > "Antonio grew to be handsome, but a wild and reckless man. At last his conduct became so bad that he was compelled to leave home, and it is reported that he was killed in a drunken row in New Mexico in 1888."

   On the other hand, Zethyl Gates reports (page 69 of Source No. 25) that Professor Francis Whittemore Cragin's *Early Far West Notebooks* (original in the Pioneer Museum in Colorado Springs) state the Antonio died in Pueblo, Colorado. Harold Dunning agrees that Antonio died in Pueblo (page 430 of Source No. 19). Since

Antonio lived to adulthood, Zethyl wondered if Antonio could have had children and descendants somewhere who are "unaware of their proud heritage."

2. **Martin Medina.** According to Zethyl Gates's research (page 67 of Source No. 25), the Catholic records for the Namaqua area do not provide any evidence of Martin's birth or death.

   However, Harold Dunning does indeed mention Martin several times in his three *Over Hill and Vale* volumes:

   - On page 430 of Volume I (Source No. 19), Dunning reports that Mariano had two boys and two girls and that one of those boys was Martin, who died when he was about 15 years old.

   - On page 432 of Volume I, Dunning reports that on 9 December 1903, Edwin D. Clark told him that Martin had died before Edwin and his family settled west of Namaqua in the fall of 1864. (For more about the Clark family, see the chapter on the Clark Family Cemetery.)

   - On page 129 of Volume III (Source No. 23), Dunning reports that Mariano, his wife "John," and three children (Lena, Antoine, and Martin), and step-son Louie Papa were among the 20 people living in the Big Thompson Valley in October 1860.

   In its 1926 pamphlet (Source No. 11), the Loveland Chamber of Commerce lists the order of the graves in the original Medina Family Cemetery from north to south, more about which below in "History of the Medina Family Cemetery." Of importance here is that the pamphlet reports that one of those buried in the cemetery is "a brother older than Lena, who died in 1864." In addition, page 31 of Source No. 15 also mentions that "buried next to Lena" (Child No. 3 below) in the Medina Family Cemetery was "a boy older than Lena who died in 1864."

   Consequently, if we accept that *Martin died in 1864 and was buried in the Medina Family Cemetery* and that he was 15 years old when he died, he would have been born in 1849, after Antonio and before Lena.

   Concerning the cause of Martin's death, Zethyl Gates (page 47 of Source No. 25) repeats the story that Daisy Baber told on page 23 of *Injun Summer* (published in 1952). According to that story, Martin was afraid of horses. His father, who, as we have seen, was a skilled horseman, insisted that the boy must learn to ride and "reportedly tied the boy to the back of a wild bronco and sent the horse and its unwilling rider bucking and twisting out across the prairie. A week later the horse wandered back into the corral with Martin still roped to its back, but the boy was dead."

As far as we can determine, Martin and his parents' good Mexican friend who died about 1864 were the first two individuals buried in what became the Medina Family Cemetery.

3. **Marcellina ("Leni" or "Lena") Medina:** According to Source No. 1, Lena was born in the Utah Territory on 12 April 1857. Recall that on 9 January 1861 she was the first person baptized at Marianne's Crossing. On page 69 of her biography of Lena's father (Source No. 25), Zethyl Gates agrees with Lena's birth date above but says that she was born in the Wyoming Territory.

   When the Catholic church in Denver opened St. Mary's a girls' "finishing school," on 1 August 1864, Lena was among the first 20 students. However, she could not endure the separation from her family and "escaped" from the Sisters and returned home (Source No. 8 and page 70 of Source No. 25).

   Lena was an excellent horsewoman, which led to her expected participation in the lady equestrienne events at Denver's early June 1868 16th Annual Horse Fair. It was reported that she would wear an Indian costume costing $2,000 at the event. However, the crowds at the fair, Lena, and her father were all "keenly disappointed" when she fell ill and was unable to participate. However, everyone's expectations were not completely dashed, for the 23 July 1868 issue of the *Colorado Tribune* reports that:

   > "The daughter of Marianna Modena, who was announced to participate in the lady equestrienne event . . . but failed to put in an appearance on account of sickness, arrived in town a day or two since and last evening rode through town gorgeously attired in the paraphernalia made for the late fair."

   Zethyl Gates reports (page 72 of Source No. 25) that Namaqua's citizens said that "Marcellina was very intelligent, even managing her father's business transactions."

   Ansel Watrous provides additional praise for Lena when he tells us (page 168 of Source No. 7) that Lena "grew into a maiden of symmetrical figure, handsome regular features, large, lustrous eyes and the Spanish type of litheness"; that she was "the apple of her father's eye"; and that she "could ride with all the ease and grace of a princess."

   Sadly, as reported in 14 July 1872 issue of the *Rocky Mountain News*, *Lena died at Namaqua on 10 July 1872. Zethyl Gates refers to Lena's "death and (supposed) burial in the family cemetery [Medina Family Cemetery] so well tended by her father."* Zethyl refers to Lena's "supposed burial" because:

- As discussed in detail below under "Destruction of the Cemetery in January 1960," when the bodies from five of the graves in the original Medina Family Cemetery were moved to Namaqua Park in 1960, only one adult female body was found, with that female being assumed to be Lena's mother Tacanecy. However, when grave markers were made for the reinterments of those five bodies at the Medina Memorial Wall at Namaqua Park, markers were provided for BOTH Tacanecy (Marie "John" Modena) and Lena (as discussed above under "Location and Description of Graves at Medina Memorial Wall at Namaqua Park").

- In an oral interview that Zethyl did of Al Stevens on 12 January 1973 (recording available at the Loveland Public Library), Al repeated for Zethyl a story frequently told to Al by a friend of Al's father. As Al retold the story (page 74 of Source No. 25), the man, who lived across the road from Mariano's cabin, said that on the evening of Lena's death, he saw Tacanecy put Lena's body, which was wrapped in a blanket, on the back of a horse with her and "ride off toward the mountains."

  (Al Stevens was actually Allen Harrison Stevens. His father was Spencer Stevens. They moved to Larimer County in about 1876 and lived in the Chimney Hollow area of Pinewood. For more information on that family, see the chapter on the Charlie P. Stevens Grave. Charlie was Al's brother.)

- Zethyl points out that "toward the mountains" from Namaqua would have been "along Dry Creek (which joins the Thompson River west of Marianna Butte) and in the general direction of the Indian burial which was discovered on the rocky ridge." This "Indian burial" is discussed in detail in a small booklet written and published by Harold Dunning in 1942 (pages 73-74 of Source No. 25). In this booklet, Dunning reports that "in the Museum you will see the skeleton of one of the Arapahoe Indian Chieftains or high-up Indian Squaws found a few miles west of Loveland." He goes on to say that "a large cache of beads and ornaments as well as teeth and several copper bracelets" were found with the burial. Unfortunately, the person who found the body and gave it to the Museum took it back. Dunning reports that when six different doctors examined the body while it was still at the Museum, three thought it was a male and three thought that it was a female. (If the body were available for examination today, current forensic anthropologists could certainly resolve this issue.)

Note that it does not seem to have occurred to Harold Dunning that Lena Medina might be this "Indian burial." In fact, he actually provides evidence that Lena was indeed buried in the Medina Family Cemetery rather than spirited away into the mountains by her mother: On page from page 433 of Source No. 19, Dunning reports that Mrs. Clark told him that "John" had Mrs. Clark "place a large brass crucifix, enameled with black, on Lena's breast when the body was buried" and

that "Mariano insisted on Lena being buried in a purple dress she had worn in the convent [Catholic girls' school in Denver]." (For more information on Julia Clark, her husband Edwin D. Clark, and their family, see the chapter on the Clark Family Cemetery.) In addition, all three of the maps of the cemetery provided in Source No. 10 and pages 24 and 31 of Source No. 15 indicate that Lena is buried in one of the graves.

On page 168 of this *History of Larimer County* (Source No. 7), Ansel Watrous provides additional evidence that Lena was actually buried in the Medina Family Cemetery when he tells us that Lena "died in 1872 and was buried near her father's cabin beside the two children who died in their infancy, in a graveyard enclosed by an adobe wall, with a Catholic emblem surmounting the gate."

Harold Dunning's transcriptions from Lucas Brandt's diary (page 29 of Source No. 15) report that Lena's casket was made by Archie Litle (name also reported as John Lytle) of Old St. Louis, that a priest came from Fort Collins to officiate at Lena's funeral, and that "while Lena was a corpse he [Mariano] kept the candles [around her casket] burning day and night before her funeral."

Thus, while there is at least one piece of evidence that Lena may not have been buried with other members of her family in the original Medina Family Cemetery, we have even more evidence that she actually was. However, if she was originally buried in the Medina Family Cemetery when she died in July 1872, we don't know if her remains are still there or if they were actually moved to the Medina Memorial Wall at Namaqua Park in January 1960. ***In any case, assuming that Lena was actually buried in the Medina Family Cemetery, she was most likely the fifth person buried there.***

4. **Rosita/Rosetta/Alice Medina.** According to Zethyl's research, Catholic records show that Rosita was born to Mariano and Tacanecy in Namaqua on 12 January 1862 (Source No. 1 and page 61 of Source No. 25). When Harold Dunning interviewed Mrs. Frank Bartholf on 5 December 1903, she told him that the Medinas' daughters were named Lena and Alice and that they both died before their mother (page 429 of Source No. 19). On page 430 of Source No. 19, Dunning reports that the two girls and their mother all died at home.

   The same Mrs. Clark referred to above told Dunning (page 433 of Source No.19) that the youngest of Mariano and Tacanecy's daughters was named "Rosetta" and that Mrs. Clark was at the Medinas' home when Rosita died "in late 1854," that she was sick only a few weeks before her death, and that she did not die of consumption. 1854 surely must supposed to be 1864 or some other typographical error was made because, as we saw above, Rosita was born in 1862. In addition, the Edwin D. and Julia Clark and their family did not move to Larimer County until the fall of 1864 (page 432 of Source No. 19).

Thus, we can probably be fairly safe in assuming that Rosita died either in late 1864 or shortly thereafter. The report (probably by Mrs. Edwin D. Clark) that the stone wall wasn't put around the Medina Family Cemetery until after 1864 (page 433 of Source No. 19) makes one wonder if it was erected following the deaths of a "family friend," Martin Medina, and Rosita Medina, ***making these three individuals the first three people buried in the Medina Family Cemetery.***

Susan Carter ("Maze") Howard, Mariano's second wife. Zethyl Gates reports that Susan was the ex-wife of Henry Howard, with whom she had two children, James and Millie, and that, after Henry deserted Susan and her children in August 1875, she divorced him and, before long, moved in with the widowed Mariano Medina (page 75 of Source No. 25). On the other hand, in Source No. 12, which may not have been available to Zethyl, Jefferson McAnnelly reports that after Tacanecy's death:

> ". . .a man named Howard lived in one of Modena's houses and was married and had three children, and Modena, not satisfied to live the balance of his years as a widower, proposed to Howard that he would trade him a span of ponies, wagon and harness for his, Howard's, wife, which offer was accepted and Howard took his children and departed for parts unknown."

McAnnelly goes on to report that Mariano called Susan "Maze" and that the two of them had a son (Rafaelito, as discussed below), "a bright little boy," who "died at the age of 12." Mariano and Susan's marriage was not legalized until 21 July 1877, after complaints from the scandalized local residents resulted in Mariano and Susan being indicted for adultery in September 1876. According to Source No. 12, after Mariano died, Maze "married several times" and, as of the 1930s, "still lives in Larimer county and is quite aged."

5. **Rafaelito Medina, Mariano's fifth child.** According to Zethyl's research for her biography of Mariano, Rafaelito was born on 26 July 1876 and baptized by Father Vincent Reitmeyer on 4 November 1876 (Source No. 1). As Zethyl explains (page 75 of Source No. 25), Rafaelito was "the black-eyed, dimpled, darling of Namaqua" and "a great solace to the aging Mariano."

   Following Mariano's death in June 1878, the 1880 U.S. Census for the Big Thompson area of Larimer County (page 91 of Source No.25) tells us that Ralaelito's mother Susan married Henry Moss and that living with them was Susan's (but not Henry Moss's) son Ralph, age 4 (yielding a birth year of 1876). As Zethyl points out, this is surely Mariano's son Rafaelito. Zethyl tells us that other records report that Susan was appointed Ralph's guardian until April 1882. Since Rafaelito/Ralph would have been only 6 years old in 1882, one could assume that the reason Susan's guardianship ended in April 1882 was that *Rafaelito died in April 1882.*

when he was 12, which would indicate that *Rafaelito died in 1888. McAnnelly also reports that both Mariano and "his little boy by Maze" were "buried in the little cemetery on the old homestead."* P . 115

During her research, Zethyl Gates could not find any formal record of Rafaelito's death and burial and evidently did not come across Source No. 12. But she noted that the undertakers' report from the January 1960 destruction of the original Medina Family Cemetery list a child's grave "south 2 feet and at the foot, or east end, of [what they assumed was] the Modena grave" and label it "Baby Boy Modena." Confronted with that information, in Zethyl's column in the 7 March 1983 issue of the *Loveland Reporter-Herald*, she wonders if "*perhaps that boy was Rafaelito Medina, son of Susan and Mariano Medina.*" ***Except for the baby wrapped in a 1940s newspaper, whether he died in 1882 or 1888 Rafaelito was the last, or eighth, person buried in the Medina Family Cemetery.***

History of Medina Family Cemetery

Establishment of the Original Cemetery

Chronological Order of Nine Burials in the Original Medina Famiy Cemetery:

- First three burials, about 1864: As has been discussed above, the original Medina Family Cemetery began in or about 1864 with the burials of 1) a Mexican friend of Mariano Medina, 2) his and Tacanecy's son Martin, and 3) their daughter Rosita. It was evidently shortly after those three individuals were buried that Mariano had a stacked sandstone wall built around the cemetery enclosing an area of approximately 10 X 25 feet, with the 10-foot walls on the north and south sides and the 25-foot walls on the east and west sides.

During the next 10 years, three additional individuals were buried in the walled-in area of the cemetery:

- Fourth burial, in 1866: Louie Papa's infant daughter with his first wife.
- Fifth burial, in 1872: Marcellina Medina, who was Mariano and Tacancey's daughter.
- Sixth burial, in 1874: Tacanecy/Marie/John Medina, who was Mariano's first wife.

At this point, the original walled-in area of the cemetery was full (Source No. 6). Thus, the next two burials took place outside the original south wall of the cemetery:

- Seventh burial, in 1878: As discussed above, Mariano Medina was buried outside the original walled-in area at the southwest corner of the cemetery's south wall. Specifically, Source No. 11 states that "his head is on a line with the west wall and his body lies parallel with the south wall." Not surprisingly, a drawing done by Harold Dunning for the Loveland Chamber of Commerce for Source No. 11 also shows Mariano's grave in exactly the same location. (See page 6 of Source No. 28 for a reproduction of this map.) In addition, the three maps of the cemetery in Source No. 10 and pages 24 and 31 of Source No. 15 all show Mariano buried outside and south of the original walls of the cemetery.

- Eighth burial, in 1882 or 1888: Rafaelito Medina, Mariano's son with his second wife Susan Carter Howard. As discussed above, some sources, including Zethyl Gates, suggest that the child's grave discovered near the foot of Mariano's grave during the January 1960 destruction of the original Medina Family Cemetery was Rafaelito's grave. In addition, in Source No. 12 Jefferson McAnnelly specifically states that Mariano's son with "Maze" was "buried in the little cemetery on the homestead."

Finally, during the 1960 destruction of the original cemetery, the body of a "modern" baby, the ninth burial in the cemetery, was found wrapped in a newspaper that talked about one of Harry Truman's speeches. Since this body was found "to the south and slightly east" of the third burial discovered in 1960, it was evidently found within the original walled-in area.

Geographical Location of the Nine Burials in the Original Medina Famiy Cemetery: As mentioned above, Bill Meirath pointed out in his 21 October 2011 email to us (Source No. 33) that, with the exception of the grave of the baby wrapped in a "modern" newspaper, his research indicates that the geographical layout of the graves inside the original walled-in area of the Medina Family Cemetery pretty much matches the order of the individuals' deaths and burials going north from the grave of the family friend who died about 1864. See Photo C above and the accompanying transcriptions of the inscriptions of the temporary wooden grave markers placed on the assumed original locations of the nine graves for the Loveland Historical Society's Historic Home Tour on 20 June 2011.

The most complete list of the order of the graves in the original cemetery we could find in historical documents is from the Loveland Chamber of Commerce's 1926 pamphlet (Source No. 11):

> "Inside the walls are the graves of: First, on the north, Marie, or John, wife of Modena; next on the south, Lena . . .; a brother older than Lena, who died in 1864; a Mexican, and great friend of the family, who also died about 1864; Mariana is buried outside the wall at the southwest corner. His head is on a line with the west wall and his body lies parallel with the south wall."

Historical Descriptions of the Original Medina Family Cemetery: A number of descriptions of the original cemetery can be found in historical sources and help explain the feelings of the original Namaqua residents toward the cemetery:

From page 42 of Zethyl Gates's biography of Mariano Medina (Source No. 25):

> "Mariano's family cemetery was viewed with curiosity mixed with respect by the settlers, who expressed surprise at finding it so well kept in such an uncivilized land. It was located on a gentle slope south of the river in full view of the crossing. Rosene Meeker, daughter of Arvilla and Nathan Meeker of the Meeker Massacre episode, described the cemetery as a 'Spanish burial ground . . . surrounded by four walls and a gate in front, and a blue cross on top, looking singular in so lovely a place.' Others describe it as having a wall of adobe or flagstone, three or four feel high, with a small white gate at the entrance on which had been placed a blue cross, a symbol of Mariano's religion."

Pages 51 and 287 of Volume I of Harold Dunning's *Over Hill and Vale* (Source No. 19) have the following to say about the Medina Family Cemetery:

> "Mariano Modena took great pride in his little cemetery, where five of the family are now buried."
>
> "Mariano, as he was popularly known, died in 1878. One of his daughters died in 1872, and the Catholic emblem on her grave is the earliest available record of a Catholic burial in his area." [More evidence that Marcellina actually *was* buried in the cemetery.]

Mrs. P. H. (Edith) Boothroyd (Source No. 8) describes Mariano's family cemetery as "a small enclosure bounded by a fence of rough stone neatly made, a small white gate and cross at the entrance, all roughly done, but in comparison to any of the grave yards I had yet seen in the west, remarkably near and well kept."

Historical maps of the little cemetery (Source No. 10 and pages 24 and 31 of Source No. 15) provide the following, sometimes contradictory, information:

- Source Nos. 10 and page 31 of Source No. 15 show the entrance to the cemetery in the middle of the east wall of the original 10 X 25 foot walls
- All three maps agree that John/Marie was buried in the north-most grave, that Marcellina/Lena was buried just south of John/Marie, and that a Mexican/Friend was buried in south-most grave inside the original 10 X 25 foot walls.

- However, the maps and the text accompanying the maps disagree as to who was buried between Marcellina/Lena and the Mexican/Friend. Source No. 10's map indicates that this was the burial of a "boy older than Lena," which would be Martin (Child No. 2 above), with the accompanying text indicating that her oldest brother Antonio (Child No. 1 above) "died in New Mexico in 1888?". The map on page 31 of Source No. 15 puts a "Boy" in this position, with the accompanying text indicating that "a boy older than Lena died in 1864" and was "buried next to Lena." However, page 24 of Source No. 15 places an "Infant 1865?" (most likely Rosita) in that position.

- Source No. 10 shows the cemetery before Dunning extended the south wall to include Mariano's grave. Thus, it shows his grave outside the southwest corner of the original 10 X 25 foot wall. The accompanying text indicates that the location of Mariano's grave was pointed out to Dunning by his step-son Louie Papa and Lucas Brandt. (See also Source No. 6.) Pages 24 and 31 of Source No. 15 both show the south wall after it was extended in 1942 to enclose Mariano's grave, with a note to the left of Mariano's grave on page 24 indicating that Dunning installed the headstone on Mariano's grave on 18 May 1942. (See also Source No. 16.)

Destruction of the Cemetery in January 1960

Until his death in 1935, Louie Papa (Mariano Medina's step-son) kept both Mariano's buildings in Namaqua and the cemetery walls neat and whitewashed (page 4 of Source No. 29).

Unfortunately, however, by the time the sixth decade of the 20th century came around, no one was any longer taking care of the Medina Family Cemetery. Consequently, possibly because the then-current owner of the property wished to develop the land and the cemetery was in the way, a meeting of the Larimer County Commissioners was held on 20 October 1959 and issued Petition No. 14815 (Source No. 20) that requested the County Court to order the "removal and reinterment of the said 'Modena Graves'" because "the burial ground has been abandoned and through neglect and non-use has become in danger of damage, destruction, desecration, and obliteration."

Following this meeting, as required by law, notice of the upcoming destruction of the Medina Family Cemetery was placed in issues of a local paper. However, the notice was placed in the 23 October, 30 October, and 6 November issues of the *Fort Collins Coloradoan*, where it was less likely that it would be seen by any Loveland-area residents who might object. Thus, when a hearing on the issue was held in the County Courthouse on 7 December 1959, no one was present to object. The resulting Court Order No. 14815 (Source No. 21) states that the names of the persons known to be buried in the "Modena Graves" were Mariano Modena, Unknown Friend, Baby Boy,

Lena Modena, and Marie (John) Modena. (Notice that this is the same list found on the map provided on page 31 of Source No. 15.) The Court Order also states that "the names of the next of kin . . . of the persons buried in the 'Modena Graves' burial ground are unknown."

Then on 17 and 18 January 1960 when the temperatures in Loveland were only in the teens (pages 7-13 of Source No. 28), six bodies from the original Medina Family Cemetery were removed to Namaqua Park, where they were reburied. In his notebook on the Medina Family Cemetery (page 7 of Source No. 28), Bill Meirath reasonably asks, "Why and what was the hurry that they had to be moving graves in such cold weather?" On page 2 of his notebook, Bill provides the complete text of the official report of the three funeral directors who carried out the disinterment and reinterment of the six bodies, which we repeat here:

> "Upon an order from and by the County Court of Larimer County, State of Colorado, dated the 7th of December 1959 and signed by Judge Robert Miller, we were directed by Robert H. Watts, Chairman of the Board of County Commissioners, and Ralph B. Harden, Attorney for Larimer County, to proceed with the removal of the 'Modena Burials' on the 17th and 18th of January 1960. Said removals were effected by Carl W. Kibbey, Harold D. Young, and Ted Fishburn, all licensed funeral directors and embalmers of the State of Colorado, and with Undersheriff William Conlon acting as guard to assure privacy. The stone wall surrounding the cemetery was first removed, then the graves were opened from north to south; the first body disinterred was that of a male found some 2 feet south of the north wall of the enclosure. Some 3 feet farther south the remains of a female were found, presumably that of 'John,' the wife of Modina [*sic*], and with the body were many beads and the skeleton of either a cat or dog which been buried with her. Immediately to the south of her grave was that of an adult male. Some 10 feet farther south was the body of another male, presumably that of Modena, in a black broadcloth covered coffin, adorned with ornaments and a crucifix. To the south 2 feet and at the foot, or east end, of the Modena grave was that of a child. All bodies were buried with the heads to the west and approximately 6 feel deep. All of the remains were removed and placed in suitable containers and taken to the newly located burial space in the state park to the north and east from the original location. The remains were there interred in a reverent and dignified manner in our presence and the presence of Kenneth Schaffer and Albert Griese who operated the grave digging equipment.
>
> "Further, as a matter of public record, it should be stated that the body of an infant was found to the south and slightly to the east of

> the 3rd disinterment that was wraped in a comparatively recent newspaper, date unobtainable but with references made to a speech by Harry Truman. This body was removed with the others and reinterred.
>
> "Subscribed and sworn to me this 19th day of January 1960 by Carl W. Kibbey, Harold Young and Ted Fishburn."

Important points from this official report are repeated below:

- The stone wall around the cemetery was removed before the search for remains began. Note that the stone wall removed in January 1960 would have been the one that Harold Dunning extended in 1942 to include Mariano Medina's grave.
- The graves *that they were able to identify* were opened starting on the north end of the cemetery and then moving south.
- First body, which the funeral directors identified as a male, was found 2 feet south of the north wall.
- The second body, identified as a female, was found 3 feet south of the first body. They assumed that this was the body of Tacanecy/Marie/John Medina, Mariano's wife.
- The third body, identified as an adult male, was found immediately south of the second body.
- The fourth body, identified as another adult male, was found 10 feet south of the third body. They assumed that these were the remains of Mariano Medina.
- The fifth body, identified as a child, was 2 feet to the south and to the east of the fourth body.
- The sixth body, identified as a "modern" infant wrapped in a newspaper that referred to a speech by Harry Truman, was found to the south and slightly to the east of the third body. Since Truman was President between 1945 and 1953, this infant probably died during that period.
- Bodies 1-5, and probably the body of the "modern" infant as well, were reinterred in Namaqua Park.

Thus, as Bill Meirath points out on page 2 of his notebook (Source No. 28), not counting the "modern" infant, the funeral directors who disinterred the bodies in the original

Medina Family Cemetery state in the above report that, from north to south, they found the following five individuals in that cemetery: a male, female, male, male, and child (three males, one female, and one child).

However, when the bodies were reinterred below the Medina Memorial Wall at Namaqua Park, the grave markers, also from north to south, indicate the burials of the following individuals below the wall: male, female, female, male, and a baby boy (two males, two females, and a baby boy). For the transcriptions of the inscriptions of the grave markers below the Medina Memorial Wall, see "Location and Description of Graves at Medina Memorial Wall at Namaqua Park" above.

Note that the inscriptions on the five grave markers below the wall match the list of the five individuals "known to be buried in the 'Modena graves'" included in Court Order No. 14815 issued on 7 December 1959 (Source No. 21): A Friend, Marie (John) Modena, Lena Modena, and Mariano Medina, and Baby Boy. Also note that the sexes of the individuals disinterred from the original cemetery *do not* match sexes of the individuals reinterred below the wall in Namaqua Park!

In his 4 December 2011 email to us (Source No. 32), Bill Meirath points out that he thinks that the difference between the two lists came about because Harold Dunning read the funeral directors' original report (quoted in its entirety above) and told them that the sexes of the five bodies as given in the report could not be correct. Hence, the change to the sexes and identifications of the bodies now seen below the Medina Memorial Wall in Namaqua Park.

So Whose Remains Were Moved to Namaqua Park and Whose Remains Are Still in the Original Medina Family Cemetery?

Individuals Originally Buried in the Medina Family Cemetery: If we accept the list of burials below Photo C above as being an accurate list of the individuals originally buried in the original Medina Family Cemetery, those names, from north to south, would be:

Inside the area enclosed by the original 10 X 25 foot wall.

Adult Female: Tacanecy Medina, buried 1874
[Dunning made and erected a grave marker for her grave by 20 May 1946 (Source No. 17). See photo on page 27 of Source No. 28.]

15-year-old Female: Marcellina Medina, buried 1872
[Dunning made and erected a grave marker for her grave by 20 May 1946 (Source No. 17).]

Infant Female: Louie Papa's Daughter, buried in 1866
[Dunning made and erected a grave marker for her grave on 20 May 1946 (Source No. 17).]

15-year-old Male: Martin Medina, buried about 1864 "Modern" Infant here?
[Bill: I assume that Dunning never marked this grave. Please confirm.]

2- to 3-year old Female: Rosita Medina, buried about 1864
[Bill: I assume that Dunning never marked this grave. Please confirm.]

Adult Male: Mexican Friend of Medina Family, buried about 1864
[Dunning made and erected a grave marker for his grave on 20 May 1946 (Source No. 17).]

South of the area enclosed by the original 10 X 25 foot wall.

Adult Male: Mariano Medina, buried 1878
[Dunning made and erected a marker for his grave on 18 May 1942 (Source No. 16). See photo on page 27 of Source No. 28.]

6-year-old Male: Rafaelito Medina, buried in 1882 or 1888
[Bill: I assume that Dunning never marked this grave. Please confirm.]

Individuals Moved to Namaqua Park in January 1960: In the list below, after in-depth consultation with Bill Meirath (Source No. 34), we have bolded the names of the individuals the funeral directors found in the original Medina Family Cemetery who we think are indeed buried below the Medina Memorial Wall at Namaqua Park.

The first body was found was 2 feet south of the north wall. According to historical records, this should have been Tacanecy. However, the funeral directors' report identifies it as an adult male. In his 21 November and 4 December 2011 (Source No. 34) emails to us, Bill provides several reasons why he is convinced that this body was actually **Tacanecy/John/Marie Medina**'s.

1. Tacanecy is reported as having been "a large woman" (page 45 of Source No. 25). Thus, the funeral directors could have mistaken her body for that of a man.

2. We have already seen that six doctors in the Loveland area could not agree on the sex of the skeleton of the supposed "Indian princess" who some thought might have been Macellina Medina. (See Child No. 3 under "Children of Mariano Medina" above.) Consequently, it is not hard to imagine that three funeral directors, who were not medical doctors, might not be able to make the distinction.

3. The funeral directors couldn't determine if the animal skeleton accompanying the second body was a dog or a cat. Again, not being medical doctors they most likely never would have had comparative anatomy classes.

4. If Dunning's headstones were still in the cemetery when the bodies were disinterred in January 1960, the north-most headstone would have said "John." Since the funeral directors were not familiar with the history of the Medina family and their cemetery, they may have just assumed that "John" was a male. Snow/ice on the headstone that cold January day could have kept them from reading the "Marie" at all or it could have been too faint to read. However, as Bill points out, no records can be found of when the headstones that Dunning made for five of the graves in original Medina Family Cemetery disappeared.

The second body, an adult female, was found 3 feet south of the first body and, assuming that each grave was a least 2.5 feet wide, 7.5 feet (2 ft + 3 ft + 2.5 ft = 7.5 ft) south of the north wall. The funeral directors concluded that this was Tacanecy Medina. However, all written descriptions of the cemetery and the three cemetery maps discussed above (Source No. 10 and pages 24 and 31 of Source No. 15) indicate that **Marcellina/Lena Medina** was buried in this grave. The funeral directors' description of the items found in this grave (many beads and body of a dog or cat) seem more appropriate for a young lady's grave. However, the funeral directors do not mention the "bass crucifix enameled with black" that Mrs. Edwin Clark reports helping Tacanecy place on Lena's breast before she was buried. It may have been an artifact too tempting to rebury in Namaqua Park.

The third body, identified by the funeral directors as an second adult male, was found immediately to the south of the second body. Assuming that the second grave was at least 2.5 feet wide and that "immediately to the south" = 1 foot), this third body would have been at least 10 feet (7.5 ft + 2.5 ft + 1 ft = 10 ft) south of the north wall. This may well have been the grave of **Martin Medina**, since he may have been large enough when he died at 15 years old to have been considered to be an adult by the funeral directors. Recall that two of the cemetery maps and their accompanying text (Source Nos. 10 and page 31 of Source No. 15) indicate that this was a "boy older than Lena who died in 1864. (See Child No. 2 under "Children of Mariano Medina" above.)

The fourth body, identified by the funeral directors' as an adult male, was "some 10 feet south" of the third body. Using 9 feet for "some 10 feet" would make this body 21.5 feet (10 ft + 9 ft + 2.5 ft =21.5 ft) south of the north wall. Recall that the east and west walls of the original walled-in area of the cemetery are assumed to have been 25 feet long, making the south wall 25 feet south of the north wall. Since this male body was thus found inside of the original south wall, it must have been the **Mexican Friend**, who all written records and cemetery maps indicated was buried in this position. In his 4 December 2011 email to us (Source No. 34), Bill Meirath pointed out that the crucifix found on the coffin associated with this body makes it even more likely that this was the body of Mariano Medina's Mexican friend who shared Mariano's Catholic religion.

The fifth body, identified by the funeral directors as a child of undetermined sex, was 2 feet south of the fourth body and at the foot (just east) of that grave. Assuming that the fourth grave was at least 2.5 feet wide, this body would be 26 feet (21.5 ft + 2 ft + 2.5 ft = 26 ft) south of the north wall, which appears to place this body to the south of the of original south wall of the cemetery. Since Mariano Medina's body was buried just south of the southwest corner of the original 10 X 25 foot cemetery wall, we accept Zethyl Gates's suggestion that this could very well be the grave of **Rafaelito Medina** (Child No. 5 under "Children of Mariano Medina" above). Note that when this body was reinterred below the wall at Namaqua Park, it was labeled "Baby Boy 1864," which would have made it Martin Medina, who died in 1864 and who is instead the third body discussed above. Recall that Jefferson McAnnelly reported (Source No. 12) that the son of Mariano and his second wife "Maze" Howard was buried in the Medina Family Cemetery. This son was Rafaelito.

Individuals Still Buried in the Original Medina Family Cemetery: Not counting the "modern" baby, a comparison between the above list of the eight "Individuals Originally Buried in the Medina Family Cemetery" with list of the five bodies of "Individuals Moved to Namaqua Park in January 1960" suggests that the bodies of the following three individuals are *still buried* at the current location of the original cemetery: Mariano Medina (died 1878), Rosita Medina (died 1864), and Louie Papa's infant daughter (died 1866).

If the remains of these three individuals are still in the original Medina Family Cemetery, where are they buried? The 9 feet between the graves of Martin Medina (third body found in January 1960) and Mexican Friend (the fourth body found in January 1960) would certainly be enough space to contain the graves of both Rosita Medina and Louie Papa's daughter, both of whom were very young, and hence small, when they died. *In fact, if there were no burials between the third body and the fourth body, why were Mariano Medina and his son Rafaelito buried outside of the original walled-in area of the Medina Family Cemetery in the first place!* In addition, the two little girls' graves could have been small enough that they could be buried either east or west of or even between the first three bodies found at the original cemetery in January 1960.

Mariano Medina's remains would thus still be buried in the original Medina Family Cemetery south of the location where the three funeral directors found the remains of the Mexican Friend in 1960, for the Mexican Friend's grave was the last grave *before* the south wall and Mariano's grave was outside the southwest corner of the original walls.

In addition, as is the case with a number of other rural cemeteries in Larimer County that started out as family cemeteries (the Mosier Ranch Cemetery and the Fairkytes Cemetery, for example), Namaqua-area residents who were not members of the Medina family could have been buried inside or outside the walls of the Medina Family Cemetery. We already know that a young child was buried there in the early 1940s.

Source No. 5 reports on a child of a Mr. and Mrs. Krosky of Namaqua, who *could* have been buried at the Medina Family Cemetery following its death in February 1891.

Efforts to Preserve and Restore the Original Cemetery

Loveland-area historians Harold Dunning and Zethyl Gates were both upset that the original Medina Family Cemetery had not been preserved and/or restored.

On pages 439-441 of Volume I of his *Over Hill and Vale* series (Source No. 19), Harold Dunning ardently pleaded for the preservation of Mariano's "little graveyard" and asked that it be made into "a show place" that Loveland residents could point to "with pride when future generations want to know who was the first settler."

On the last paragraph of her biography of Mariano (page 84 of Source No. 25), Zethyl Gates said the following:

> "The winds blow restlessly around Marianna Butte; the Indian Springs have almost dried up. The bridge at Mariano's Crossing has been relocated at least twice; the post office, livery barn, stone fort and even Mariano's house are gone. Mariano's 'Spanish Cemetery' has indeed been desecrated now. Only the silent, silvery Big Thompson River remains—that, and the mysteries of Mariano Medina, the Mexican mountain man."

Recall that Harold Dunning published Volume I of *Over Hill and Vale* in 1956, which was 4 years *before* five of the bodies in the original Medina Family Cemetery were moved to Namaqua Park, and that Zethyl Gates first published her biography of Mariano Medina in 1981, which was 21 years *after* the bodies were moved.

Through his friendship with Zethyl Gates prior to her 29 July 2002 death, Bill Meirath became familiar with Mariano Medina and his family's cemetery and with Zethyl's ardent wish that the cemetery be restored. While Zethyl was still with us, Bill got the *Loveland Reporter-Herald* sufficiently interested in the original Medina Family Cemetery that they published two articles related to the cemetery in their 26 and 27 October 1996 issues (Source Nos. 26 and 27).

Based on his own research, as reflected in this notebook on the Medina Family Cemetery (Source No. 28) that he first distributed in May 2007, Bill learned even more about the history of the Medinas and their cemetery and learned that Harold Dunning also wished that the cemetery be preserved. The distribution of that notebook was the beginning of Bill's efforts to preserve and restore the cemetery.

He asked Alfred Vigil and Sharon Danhauer to join his effort, with the result that the three of them gave their first presentation on the history of Mariano Medina, his family,

and their family cemetery and on the need to restore and preserve the cemetery at the Loveland Museum and Gallery during May History Month in 2008 (Source No. 29).

One of the those attending that meeting was Dr. Jason LaBelle, Assistant Professor of Archaeology at Colorado State University. Dr. LaBelle became so interested in the effort to save the cemetery that in February 2009 he had his archaeology students do a surface survey of the land around what was believed to be the site of the cemetery. Based primarily on the location of sandstone rocks that had been moved to the area to make the cemetery walls before the walls were destroyed in 1960, Jason and his students were able to identify the 0.96 acre on which the cemetery had originally been located.

Then in May 2009 Jess Rodriquez (9 October 2011 email from Bill Meirath, Source No. 33), who owned the land containing the original Medina Family Cemetery, agreed to donate the 0.96 acre on which the cemetery was located to the Loveland Historical Society. When the Oregon-California Trails Association (OCTA) held its 27th Annual Convention in Loveland on 18-22 August 2009, Rodriquez received OCTA's "Friend of the Cherokee Trail Award" for his generous donation.

On 19 September 2009, Denver's Channel 9, the NBC station in Denver, did a story as part of its nightly news during which it interviewed Bill Meirath and Jess Rodriquez about the efforts to preserve the Medina Family Cemetery (Source No. 31).

In early January 2010, Rodriquez donated $1,000 to pay for a joint effort of the Colorado Department of Local Affairs and the Colorado State University Cooperative Extension to "explore concept designs for how to enhance and protect" the Medina Family Cemetery.

In April 2010, the Medina Cemetery Committee of the Loveland Historical Society chose a hardscape and landscape design for the cemetery that included a place for trail-related signage in the northeast corner of the preservation site, which is just west of route where the Cherokee and Overland trails passed the cemetery before entering Namaqua itself.

In May 2010, the Colorado-Cherokee Trails Chapter of OCTA decided to use the $2,000 in "profits" from its management of the August 2009 OCTA Convention to pay for trail-related signage at the restored cemetery.

On 9 January 2012, the Loveland Planning Commission approved Jess Rodriquez's plans for the subdivision that includes the Medina Family Cemetery, paving the way for Rodriquez to go ahead and donate the cemetery to the Loveland Historical Society (Source No. 35). **[Bill: Please let me know when the legal transfer from Jess to the LHS takes place!]**

CITY OF LOVELAND
BUDGET OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: **5**
MEETING DATE: 9/4/2012
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:
A resolution establishing a date, time, and place for a Public Hearing on the 2013 Recommended Budget for the City of Loveland, Colorado.

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This is an administrative action. The resolution sets the date for the public hearing of the 2013 Recommended Budget for October 2, 2012.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The City Charter requires an action to set the date, time, and place for a public hearing on the 2013 Recommended Budget, after it has been submitted by the City Manager for Council consideration. This action satisfies that requirement. The resolution sets the date for the public hearing for October 2, 2012, to coincide with consideration of the budget ordinances to adopt the 2013 Budget on first reading.

REVIEWED BY CITY MANAGER: William D Cahill

LIST OF ATTACHMENTS:

1. Resolution establishing the date, time and place for a Public Hearing on the 2013 Recommended Budget for the City of Loveland, Colorado.

RESOLUTION #R-61-2012

A RESOLUTION ESTABLISHING A DATE, TIME, AND PLACE FOR A PUBLIC HEARING ON THE 2013 RECOMMENDED BUDGET FOR THE CITY OF LOVELAND, COLORADO

WHEREAS, pursuant to Section 11-2(b) of the Loveland City Charter, the City Manager is required to submit to the City Council, on or before the first Tuesday in October of each year, a proposed budget for the City for the next ensuing fiscal year; and

WHEREAS, on September 11, 2012, the City Manager submitted the 2013 Recommended Budget, including the 2013-2017 Recommended Capital Projects Program, to the City Council; and

WHEREAS, in accordance with Section 11-4(a) of the Loveland City Charter, the City Council desires to set a date, time, and place for a public hearing on the 2013 Recommended Budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That a public hearing is hereby scheduled to consider the adoption of the 2013 Recommended Budget for October 2, 2012 at 6:30 p.m., at which time objections of the electors of the City of Loveland shall be considered. Said hearing shall be held at the Loveland Municipal Complex, 500 East Third Street, Loveland, Colorado.

Section 2. That the City Clerk shall give notice of said hearing in the manner prescribed by Section 11-4(b) of the Loveland City Charter and § 29-1-106, C.R.S.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 18th day of September, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

CITY OF LOVELAND
POLICE DEPARTMENT
810 East 10th Street • Loveland, Colorado 80537
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 9/18/2012
TO: City Council
FROM: Keith Reester, Director, Public Works Department
PRESENTER: Jason Licon, Airport Director

TITLE:

a) Consideration of a resolution authorizing the City Manager to execute a grant agreement with the State of Colorado, Division of Aeronautics (CDAG #12-FNL-01, Amendment #2) for equipment improvements and funding pertaining to the Fort Collins-Loveland Municipal Airport.
b) Public hearing and consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 Fort Collins-Loveland Municipal Airport budget for the runway weather information system installation project

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the resolution and the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
There are two administrative actions. a) Adoption of the resolution that authorizes the City Manager to execute a Grant from the State of Colorado, Division of Aeronautics for funds in the amount of $74,783.00. The Cities previously applied for and were awarded grants CDAG #12-FNL-01, CDAG #12-FNL-101 and CDAG #12-FNL-02 from the Division as part of a match funding grant with the Federal Aviation Administration to fund certain airport projects; and the Cities have applied for a grant (CDAG #12-FNL-02, Amendment #2) attached hereto as Exhibit A and incorporated by reference (the "Grant Agreement"), from the Division which provides additional funding for such Airport projects, but does not require any additional matching funds from the Cities. The State Aviation Grant will be used for runway weather information system improvements at the airport which will allow for better and more efficient removal of snow and ice from the airport runways in the future. b) The ordinance appropriates funding from a State grant to the airport for the additional funds necessary for the installation of a runway weather information system.

BUDGET IMPACT:

☒ Positive

☐ Negative

☐ Neutral or negligible

SUMMARY:

The State of Colorado department of Transportation-Aeronautics Division has offered the Fort Collins-Loveland Airport an additional grant of $74,783.00. The grant will be used for runway weather information system improvements at the airport which will allow for better and more efficient removal of snow and ice from the airport runways in the future. This project was originally intended to be funded as part of a federal project in 2011, but this portion was left unfunded. This additional grant funding from the State will be used as the remaining funds necessary to pay for the project as it has been bid.

REVIEWED BY CITY MANAGER: William D. Calvillo

LIST OF ATTACHMENTS:

1. A Resolution authorizing the City Manager to Execute the Grant Agreement CDAG: 12-FNL-01, AMENDMENT #2
2. An ordinance enacting a supplemental budget and appropriation to the 2012 Fort Collins-Loveland Municipal Airport budget for the runway weather information system installation project.

RESOLUTION # R-62-2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE STATE OF COLORADO DIVISION OF AERONAUTICS (CDAG #12-FNL-01, AMENDMENT #2) FOR EQUIPMENT, IMPROVEMENTS AND FUNDING PERTAINING TO THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the General Assembly of the State of Colorado has declared in Title 43 of the Colorado Revised Statutes, Article 10, 1991 in C.R.S. 43-10-101 ("the Act") that: "...there exists a need to promote the safe operation and accessibility of general aviation and intrastate commercial aviation in this state; that improvement of general aviation and intrastate commercial aviation transportation facilities will promote diversified economic development across the state; and that accessibility to airport facilities for residents of this state is crucial in the event of a medical or other type of emergency"; and

WHEREAS, the Act created the Colorado Aeronautical Board ("the Board") to establish policy and procedures for distribution of monies in the Aviation Fund and created the Division of Aeronautics ("the Division") to carry out the directives of the Board, including technical and planning assistance to airports and the administration of the state aviation system grant program. (See C.R.S. §43-10-103, C.R.S. §43-10-105, and C.R.S. §43-10-108.5 of the Act); and

WHEREAS, any entity operating a public-accessible airport in the state may file an application for and be a recipient of a grant to be used solely for aviation purposes (an "Application); and

WHEREAS, The Division is authorized to assist such airports as request assistance by means of a Resolution passed by the applicant's duly-authorized governing body, which understands that all funds shall be used exclusively for aviation purposes and that it will comply with all grant procedures and requirements as defined in the Division's Grant program Project Management Manual, revised 1999 ("the Manual"); and

WHEREAS, the City of Fort Collins and the City of Loveland ("the Cities") own and operate in the State the Fort Collins-Loveland Municipal Airport ("the Airport"); and

WHEREAS, the Cities previously applied for and were awarded grants CDAG #12-FNL-01, CDAG #12-FNL-101 and CDAG #12-FNL-02 from the Division as part of a match funding grant with the Federal Aviation Administration to fund certain airport projects; and

WHEREAS, the Cities have applied for a grant (CDAG #12-FNL-02, Amendment #2) attached hereto as Exhibit A and incorporated by reference (the "Grant Agreement"), from the Division which provides additional funding for such Airport projects, but does not require any additional matching funds from the Cities.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That the Council of the City of Loveland ("the Council"), as one of the duly authorized governing bodies of the grant applicant, hereby formally requests assistance from the Colorado Aeronautical Board and the Division of Aeronautics in the form of a state aviation system grant. The City of Loveland states that such grant shall be used solely for aviation purposes, as determined by the State, and as generally described in the Application.

Section 2. That the City of Loveland makes the commitment (a) to keep the Airport facility accessible to, and open to, the public during the entire useful life of the grant funded improvements/equipment; or (b) to reimburse the Division for any unexpired useful life of the improvements/equipment on a pro-rata basis. By signing the Grant Agreement, the City of Loveland further commits to keep open and accessible for public use all grant funded facilities, improvements and services for their useful life, as determined by the Division and stated in the Grant Agreement.

Section 3. That the Council hereby designates Jason Licon, Airport Director, as the Project Director, as described in the Manual, and authorizes the Project Director to act in all matters relating to the work project proposed in the Application in its behalf, and further authorizes the City Manager to execute the Grant Agreement with such modifications in form or substance as the City Manager, in consultation with the City Attorney's Office, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City of Loveland has appropriated or will appropriate or otherwise make available in a timely manner its share of all funds that are required to be provided by the Cities under the terms and conditions of the Grant Agreement.

Section 5. That the City of Loveland, subject to the foregoing, hereby accepts all guidelines, procedures, standards, and requirements described in the Manual as applicable to the performance of the grant work and hereby approves the Grant Agreement submitted by the State, including all terms and conditions contained therein.

Section 6. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this _____ day of September, 2012.

_____

Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

A Resolution Authorizing the City Manager to Execute a Grant Agreement with the State of Colorado Division of Aeronautics (CDAG #12-FNL-01, Amendment #2) for Equipment, Improvements and Funding Pertaining to the Fort Collins-Loveland Municipal Airport

Exhibit A

12-FNL-01

CDOT-Aeronautics Division
CDAG No. **12-FNL-01**
SAP PO No. 291001183
Additional Funds: $ 74,783.00

COLORADO DEPARTMENT OF TRANSPORTATION
Colorado Aeronautical Board

CONTRACT AMENDMENT

Amendment #2	Original Contract Routing # 12 HAV 39750	Amendment Contract Routing # 13 HAV 47772

1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between the **City of Fort Collins** and the **City of Loveland** (hereinafter referred to as "the Grantees") and the State of Colorado acting by and through the Department of Transportation-Aeronautics Division (hereinafter called the "the Division" or "the State").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse the **City of Fort Collins** and the **City of Loveland** for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Contract to participate in Federally Funded design of GA Ramp Rehabilitation. Purchase Snow Removal Equipment, Airport Service Vehicle, Utility Upgrade and Runway Weather Information System (RWIS).

4) CONSIDERATION

Consideration for this Amendment consists of the payments to be made hereunder and the obligations, promises, and agreements herein set forth.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Contract and all prior amendments thereto, if any, are modified as follows:

Section 7A is hereby deleted in its entirety and replaced with the following language:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is $488,467.00 as determined by the State based on available funds.

The maximum amount payable under this Grant to Grantee by the State is 5% of the project cost not to exceed $26,000.00 for Element A, 90% of the project cost not to exceed $22,500.00 for Element B, 90% of the project cost not to exceed $90,000.00 for Element C and 90% of the project cost not to exceed $349,967.00 for Element D, as determined by the State from available funds in Fund 160, GL Account 4511000010 & SAP Vendor 2000212 & SAP Partner N/A (if applicable), and Cost Center

VDG12-033 ($413,684.00) and VDG13-033 ($74,783). Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**. The State and Grantee shall participate in providing the Grant amount as follows:

State:	$ 488,467.00
Local Funds:	$ 77,425.00
Federal:	$ 468,000.00

7) CONSIDERATION – COLORADO SPECIAL PROVISIONS

The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modifications thereto were effective) as part consideration for this Amendment. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as Exhibit A.

8) EFFECTIVE DATE OF AMENDMENT

The effective date hereof is upon approval of the State Controller or their delegate.

9) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

10) AVAILABLE FUNDS

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

11) STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is $100,000 or greater, either on the Effective Date or at anytime thereafter, this **§**14 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation-Aeronautics Division, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements,

which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

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ADDENDUM TO SPECIAL PROVISIONS (Replaces the first paragraph of Paragraph 3, captioned INDEMNIFICATION, of the SPECIAL PROVISIONS)

To the extent authorized by law, the City of Boulder shall indemnify, save and hold harmless the State, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors or assignees pursuant to the terms of this contract.

Special Provisions

These Special Provisions apply to all contracts except where noted in *italics*.

1. CONTROLLER'S APPROVAL. **CRS §24-30-202(1)**. This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL 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, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

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

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

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. **CRS §§24-18-201 and 24-50-507**. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. **CRS §§24-30-202 (1) and 24-30-202.4**. [***Not Applicable to intergovernmental agreements***] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. **CRS §8-17.5-101**. [***Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services***] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

13. CORA Disclosure CRS §24-72-101, et seq.To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act,

Revised 7-1-11

12) Signature Page

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

GRANTEE **City of Loveland** By: _____ Print Name of Authorized Individual Title: _____ Print Title of Authorized Individual _____ *Signature Date: _____	**STATE OF COLORADO** **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation Donald E. Hunt – Executive Director _____ By: David C. Gordon, Aeronautics Division Director Signatory avers to the State Controller or delegate that Grantee has not begun performance or that performance is authorized by federal law or a Statutory Violoation waiver has been requested under Fiscal Rules Date: _____
JOINT GRANTEE **City of Fort Collins** By: _____ Print Name of Authorized Individual Title: _____ Print Title of Authorized Individual _____ *Signature Date: _____	

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By:_____

Colorado Department of Transportation

Date:_____

FIRST READING September 18, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 FORT COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE RUNWAY WEATHER INFORMATION SYSTEM INSTALLATION PROJECT

WHEREAS, the Airport has received funds not anticipated or appropriated at the time of the adoption of the Airport budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Airport budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That revenues in the amount of $74,780 from a State of Colorado Grant in the Airport Fund 600 are available for appropriation. Revenues in the total amount of $74,780 are hereby appropriated for the Runway Weather Information System Installation project and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Airport Fund 600

Revenues		
600-00-0000-38617-AP1205	Contribution - State of Colorado	74,780
Total Revenue		**74,780**
Appropriations		
600-23-290-0000-49360-AP1205	Construction	74,780
Total Appropriations		**74,780**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this ___ day of October, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 9/18/2012
TO: City Council
FROM: Kevin Gingery, Public Works Department
PRESENTER: Kevin Gingery

TITLE:
Public hearing and first reading of an ordinance amending the Loveland Municipal Code at Chapter 13.20 concerning stormwater quality

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt the ordinance on first reading as recommended. The Construction Advisory Board unanimously recommends approval.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This is a legislative item to adopt an ordinance amending Chapter 13.20 concerning stormwater quality. The amendments will bring the Loveland Municipal Code into compliance with the City's state permit and is responsive to a recent audit questionnaire distributed by the Colorado Department of Public Health and Environment ("CDPHE").

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The City of Loveland is obligated to fill out the CDPHE Water Quality Control Division's (Division) targeted permit questionnaire received in April of this year and return it to them by October 15, 2012 after it is signed by the City Manager. The Division is using the questionnaire in lieu of performing a full audit. The changes made to Chapter 13.20 of the Loveland Municipal Code add clarity to the document and enable the City of Loveland to remain compliant with our

Municipal Separate Storm Sewer System (MS4) Permit COR-090000. The ordinance was presented to the Construction Advisory Board ("CAB") on August 22, 2012. The CAB unanimously approved the ordinance and recommended that the ordinance be forwarded to City Council for adoption.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

1. Redlined copy of ordinance
2. Ordinance

FIRST READING September 18, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.20 CONCERNING STORMWATER QUALITY

WHEREAS, the City of Loveland operates a Stormwater Utility, which discharges stormwater into state waters in accordance with the City's Municipal Stormwater Discharge Permit; and

WHEREAS, the Department of Public Works, Stormwater Division recently reviewed the City's Municipal Stormwater Discharge Permit in conjunction with Loveland Municipal Code Chapter 13.20 concerning stormwater quality, and recommends that the City Council amend Chapter 13.20 in order to ensure the City's compliance with its Municipal Stormwater Discharge Permit; and

WHEREAS, on August 22, 2012, the City's Construction Advisory Board reviewed the proposed amendments and unanimously recommended that the City Council amend Chapter 13.20 as set forth herein; and

WHEREAS, the City Council desires to amend Chapter 13.20 as set forth herein to ensure the City's compliance with its Municipal Stormwater Discharge Permit and to protect the water quality of state waters.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 13.20.040 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.040 Definitions.

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the following meanings:

~~A. "Applicant" means a landowner or agent of a landowner who has filed an application for a Storm Water Quality Permit.~~

~~B.~~ "Acknowledgement Certificate" means a document an applicant signs certifying that they have received, read and fully understand the information within the City of Loveland's Stormwater Quality Enforcement Policy and agree to abide by the policies set forth therein.

"Applicant" means a landowner or agent of a landowner who has filed an application for a Stormwater Quality Permit.

~~C.~~ "Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". BMPs also include treatment requirements, operating procedures and

practices to control plant site runoff, spillage of leaks, sludge or waste disposal, or drainage from raw material storage.

~~D.~~ "Builder" means a person undertakes construction activities.

~~E.~~ "Business Owner" means a person who owns title to a commercial property.

~~F.~~ "City Inspector" means the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this chapter.

~~G.~~ "Compliance Date" means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a pretreatment standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable pretreatment standard.

~~H.~~ "Compliance Order" means an administrative order that directs a user to comply with the provisions of this chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

~~I.~~ "Compliance Schedule or Schedule of Compliance" means an enforceable schedule specifying a date or dates by which user must comply with a pretreatment standard, a pretreatment requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

~~J.~~ "Construction Activities" means clearing, grading, excavati~~o~~ng, and other ground disturbance activities. Construction Activities does not include routine maintenance performed by public agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of the facility.

~~K.~~ "Construction Site Stormwater Management Plan (CSSMP)" means a Plan submitted to the City of Loveland that addresses erosion, sediment erosion control and water quality issues pertaining to a Site for which an application for a Storm ~~W~~water Qualify Permit is filed. A CSSMP shall contain such information as, site description, location and description of appropriate Temporary or Permanent BMPs, inspection and maintenance procedures and other matters necessary or appropriate to comply with a Storm ~~W~~water Quality Permit.

~~L.~~ "Developer" means a person who undertakes land disturbance activities.

~~M.~~ "Development" means any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term "development" does not include the maintenance of stormwater runoff facilities.

~~N.~~ "Disturbed Area" means that area of the land's surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses. It also does not include performance of emergency work necessary to prevent or ameliorate an immediate threat to life, property, or the environment. Any person(s) performing such emergency work shall immediately notify the Public Works Engineering Manager of the situation and the actions taken. The Public Works Engineering Manager may, however, require such person(s) to obtain a ~~grading and erosion control~~Stormwater Quality ~~p~~Permit to implement remedial measures to minimize erosion resulting from the emergency.

"Drainageway ~~(Waterway)~~" means an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

~~O. a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water~~.

~~P.~~ "Illicit Discharge" means any discharge to a municipal separate storm sewer system ~~(MS4)~~ that is not composed entirely of stormwater runoff, with some exceptions. These exceptions are discharges from National Pollutant Discharge Elimination System (NPDES) ~~-~~ permitted industrial sources and those stated in Section 13.20.130.

~~Q.~~ "Jurisdictional Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

~~R.~~ "Land Disturbance Activity" means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made ~~watercourse~~drainageway.

~~S.~~ "Landowner" means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

~~T. "MS4" means a municipal separate storm sewer system.~~

~~U.~~ "Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including: roads with drainage systems, municipal streets, ~~inlets/~~catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes~~;~~ designed or used for collecting or conveying stormwater that is not a combined sewer and that is not part of a POTW.

~~V.~~ "Operator" means the entity that has day-to-day supervision and control of Construction Activities or Development occurring at a construction site. This can be the Landowner, the Developer, the general contractor or other agent of one of these parties, in some circumstances. It is anticipated that at different phases of Construction Activities or Development, different parties may satisfy the definition of "Operator," and that the Storm ~~W~~water Quality Permit may apply to all Construction Activities or Development on a site subject to a Stormwater Quality Permit by any such party.

~~W. "Permanent BMPs" means those permanent stormwater quality BMPs such as, but not limited to, grass buffers and swales, modular block porous pavement, porous pavement and landscape detention, sand filter and extended detention basins, constructed wetlands basins and channels, and proprietary (underground) BMPs to be properly installed and regularly maintained in order to treat stormwater runoff and ensure long term water quality enhancements.~~

~~X.~~ "Performance Security" means an irrevocable letter of credit, or cash deposit submitted to the City to ensure the fulfillment of the erosion and sediment control plan.

"Permanent BMPs" means those permanent stormwater quality BMPs such as, but not limited to, grass buffers and swales, modular block porous pavement, porous pavement and landscape detention, sand filter and extended detention basins, constructed wetlands basins and channels, and proprietary (underground) BMPs to be properly installed and regularly maintained in order to treat stormwater runoff and ensure long term water quality enhancements.

"Permit" means a Stormwater Quality Permit issued pursuant to this Chapter 13.20.

~~Y.~~ "Permittee" means the holder of a Storm ~~W~~water Quality Permit.

~~Z. "Permit" means a Storm Water Quality Permit issued pursuant to this Chapter 13.20.~~

~~AA.~~ "Person" means any natural person or any firm, corporation, partnership, association, legal representative, trustee, estate, limited liability Company, or any other entity.

~~BB.~~ "Plan" means a document approved at the site design phase that outlines the measures and practices used to control stormwater runoff at a site.

~~CC.~~ "Publicly Owned Treatment Works" (POT~~S~~W)" means a publicly owned domestic wastewater treatment facility. This includes any publicly owned devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage or treatment of industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances if they are publicly owned or if they convey wastewater to a POTW treatment plant.

~~DD.~~ "Receiving Waters" means any classified stream segment (including tributaries) in the State of Colorado into which stormwater related to construction activities discharges. This definition includes all water courses, even if they are usually dry, such as borrow ditches, arroyos, and other unnamed ~~waterway~~drainageways.

~~EE.~~ "Significant Storm Event" means any storm event, including but not limited to rain and snowmelt, which results in water and/or sediment being transported across the site.

~~FF.~~ "State Water" means any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works or disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

"Stop Work Order" means an order issued by the city which requires that all ~~c~~Construction ~~a~~Activity on a site be stopped.

~~GG.~~ "Stormwater" means precipitation-induced surface runoff.

~~HH. "Stormwater Quality Enforcement Policy" means a policy adopted by the City of Loveland to administer the Stormwater Quality Ordinance.~~

~~II. "Stormwater Quality Permit" means a permit issued to developers by the City of Loveland Public Works Department Stormwater Utility Division to conduct any land disturbance activity equal to or greater than one-half (½) acre OR for land disturbance activities less than one-half (½) acre that are part of a larger common plan of development or sale that would disturb one-half (½) acre or more.~~

~~JJ. "Stormwater" means precipitation-induced surface runoff.~~

~~KK.~~ "Stormwater Discharge Permit (SDP)" means a permit issued to a Developer by the Colorado Department of Public Health & Environment Water Quality Control Division to discharge stormwater runoff from ~~c~~Construction ~~site a~~Activities.

"Stormwater Quality Enforcement Policy" means a policy adopted by the City Manager or his designee to administer the Stormwater Quality Ordinance.

"Stormwater Quality Permit" means a permit issued to developers pursuant to Section 13.20.060 by the City of Loveland Public Works Department Stormwater Utility Division to conduct certain land disturbance activity.

~~LL.~~ "Stormwater Runoff" means that part of snowfall, rainfall or other precipitation which is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into receiving waters.

~~MM.~~ "SWMP" means a Stormwater Management Plan.

~~NN.~~ "SWMP Administrator" means a specific individual(s), position or title designated by the Landowner or Developer who is responsible for developing, implementing, maintaining, and revising the SWMP. The activities and responsibilities of the SWMP Administrator shall address all aspects of the facility's SWMP.

~~OO.~~ "Temporary BMPs" means ~~those~~ temporary ~~and permanent~~ sediment and erosion control BMPs such as, but not limited to, silt fenc~~e~~ing, wattles, vehicle tracking control pads, inlet filters, diversions, rundowns, sediment traps and ponds, dewatering structures, rip rap, and erosion control mats, and waste control BMPs, such as, but not limited to, concrete washouts, to be installed and regularly maintained to prevent erosion and keep sediment and waste from discharging off-site until the site is sufficiently stabilized.

~~PP.~~ "Vegetative Cover" means grasses, shrubs, bushes, trees, ground cover and other plants.

Section 2. That Section 13.20.050 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.050 ~~City of Loveland's~~ Compliance with Storm Drainage Standards and Criteria.

All applications for Storm ~~W~~water Quality Permits shall be reviewed for compliance with the City of Loveland's Storm Drainage Standards, the Larimer County Urban Area Street Standards, and the City of Loveland Storm Drainage Criteria, as amended.

Section 3. That Section 13.20.070 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.070 Security Requirement.

As a condition for the issuance of a Stormwater Quality Permit, Applicants ~~shall~~ may be required to provide Performance Security in the form of an agreement for sediment/erosion control Best Management Practices (BMPs) cash deposit or an agreement for sediment/erosion control Best Management Practices (BMPs) irrevocable letter of credit, which agreement shall be approved as to the form and sufficiency by the City Attorney. The amount of the Performance Security shall be based upon the estimated cost of the work required to ensure compliance with the Permit's terms and conditions and requirements of this chapter. In determining the cost of work, a fifteen (15%) contingency shall be included.

Section 4. That Section 13.20.100 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.100 Establishment of Fees and Charges.

City council shall establish all fees and charges deemed necessary by the City to implement the requirements of this chapter.

Section 5. That Section 13.20.110 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.110 Maintenance Requirements.

Developers, Builders, Business Owners, and Landowners shall be responsible for ensuring that all BMPs identified in the Stormwater Quality Permit application are properly installed, maintained and are in good working order as hereafter provided.

A. Developers shall be responsible for ensuring that:
   1. Any Temporary and/or Permanent BMPs are installed as call for in a CSSMP and are properly maintained and are in good working order~~;~~.
   2. The site is fully developed, stabilized, and acceptable vegetative cover has been established and maintained~~;~~.
   3. Any deficiencies noted by the City prior to the expiration of the two-year warranty period for public improvements have been corrected~~;~~.
   4. Individual lots have been sold to one or more Builders.~~; and~~
   5. Stormwater runoff quality requirements of individual lots are shared with Builders at time of closing.

B. Builders shall be responsible for ensuring that:
   1. Any Temporary and/or Permanent BMPs installed prior to lot purchase from Developer and/or Landowner as part of CSSMP are being properly maintained and are in good working order~~;~~.
   2. Acceptable vegetative cover has been established and maintained~~;~~.
   3. Any Temporary and/or Permanent BMPs called for in the CSSMP and/or necessary for the site(s) has been properly installed, maintained and remain in good working order until the property has been sold to a Business, Landowner.~~; and~~
   4. Stormwater runoff quality requirements of individual site(s) are shared with purchasers at time of closing.

C. Business Owners and Landowners shall be responsible for ensuring that:
   1. Any Temporary BMPs installed prior to lot purchase from Developer, Landowner, and/or Builder as part of CSSMP are properly maintained and remain in good working order until the lot is stabilized~~;~~.
   2. Acceptable vegetative cover has been established and maintained~~;~~.
   3. If not installed prior to individual lot purchase, Temporary and/or Permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and maintained until the property is sufficiently stabilized.~~; and~~
   4. If not installed prior to individual lot purchase, Temporary and/or Permanent BMPs will be installed within ten (10) days from date of purchase around the perimeter of the site where needed to prevent sediment from moving off-site.
   5. Business Owners and Landowners shall be responsible for the maintenance of all Temporary and Permanent BMPs constructed or installed on their property pursuant to this chapter.
   ~~4.~~6. All Temporary BMPs shall be removed within fourteen (14) calendar days after work on the site has been completed and the measures are no longer needed.

Section 6. That Section 13.20.130 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.130 Illicit Discharges.

A. It is unlawful and constitutes a nuisance for any person to discharge or cause to be discharged or spilled, or to maintain a condition upon any property that may result in the

discharge of, any substance other than naturally occurring stormwater runoff into the City's storm drainage system (any of which shall constitute an "Illicit Discharge"). ~~Notwithstanding the foregoing, an "Illicit Discharge" under this Code Section 13.20.130~~

B. The following shall not ~~include the following~~be considered an illicit discharge prohibited under subsection A. above (any of which shall constitute an "allowable non-stormwater discharge"):
   1. Landscape irrigation.
   2. Lawn watering.
   3. Diverted stream flows.
   4. Irrigation return flow.
   5. Rising ground waters.
   6. Uncontaminated ground water infiltration (defined at 40 C.F.R. 35.2005(20)).
   7. Uncontaminated pumped ground water.
   8. Springs.
   9. Flows from riparian habitats and wetlands.
   10. Water line flushing.
   11. Discharges from potable water sources.
   12. Foundation drains.
   13. Air conditioning condensation.
   14. Water from crawl space pumps.
   15. Footing drains.
   16. Individual residential car washing.
   17. Dechlorinated swimming pool discharges.
   18. Water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction.
   19. Discharges resulting from emergency firefighting activities.
   20. Discharges specifically authorized under a separate CDPS permit.
   21. Discharges addressed in the Colorado Department of Public Health and Environment, Water Quality Control Division's Low Risk Policy guidance documents.
   22. Other waters determined by the city to be non-contaminated and acceptable for return to the storm drainage system and receiving waters.

   ~~diverted stream flows; landscape irrigation; return flows from irrigation; water from footing & foundation drains; runoff from non-commercial car washing; de-chlorinated water from swimming pools, spas and hot tubs; lawn watering; discharges from residential roof drains; water from fire hydrants including water used for firefighting; uncontaminated groundwater infiltration; uncontaminated pumped groundwater; rising ground waters; water from crawl space pumps; springs; discharges from potable water sources; air conditioning condensation; flow from riparian habitats and wetlands, and; other waters determined by the City's Risk Management Division to be non-contaminated and acceptable for return to the storm drainage system and receiving waters~~.

C. Nothing contained in this ~~S~~section ~~13.20.130~~ shall be construed to relieve any person discharging or causing to be discharged ~~water~~ any substance into the storm drainage system from any liability for damage caused by the quantity, quality, or manner of ~~water~~ discharge~~d~~.

Section 7. That Section 13.20.140 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.140 Permanent BMPs.

A. Permanent BMPs shall be required for all new or redevelopment projects that disturb greater than or equal to one (1) acre, including projects less than one (1) acre that are part of a larger common plan of development or sale.

B. ~~Any Business Owner or Landowner shall adequately operate and maintain a~~All Permanent BMPs ~~on their property that are required in connection with the City's approval of the annexation, subdivision, or improvement of their real property pursuant to approved plats, plans, specifications, studies, agreements or permits~~shall be properly operated and maintained. ~~Any Business Owner or Landowner failing to adequately operate and maintain such BMPs shall be subject to the remedies in Section 13.20.150.~~

Section 8. That Section 13.20.150 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.150 Remedies for Noncompliance.

A. City ~~I~~inspector. If a City inspector determines that~~:~~ eroded soils are leaving a Disturbed Area, a Stormwater Quality Permit or SWMP has been violated, or any provision of this chapter has been violated, the City inspector

~~1. eroded soils are leaving a Disturbed Area;~~

~~2. there is any violation of a Storm Water Quality Permit and/or a SWMP ;~~

~~3. there is evidence of an illicit discharge prohibited under Section 1.32.130;~~

~~4. there is a failure to adequately operate and maintain a Permanent BMP; or~~

~~5. there is any other violation of the provisions or requirements of this chapter;~~

~~the City inspector~~ may~~, in writing,~~ direct, in writing, the Business Owner, Landowner, Developer, Builder and/ or agents or representatives of such person on the site to repair, replace and/or install any Temporary or Permanent BMPs required under a Storm ~~W~~water Quality Permit and/or a~~n~~ SWMP ~~-~~for the site, suggest that additional BMPs ~~-~~be installed if deemed necessary by the City inspector to minimize the identified condition or mitigate an illicit discharge~~–~~, including the issuance of stop work orders and/or suspension or revocation of any Permit. It shall be unlawful for any Business Owner, Landowner, Developer, Builder or the agents or representatives of such persons to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site, correct violation of a Storm ~~W~~water Quality Permit and/or a SWMP, or eliminate and/or mitigate an illicit discharge, or remedy any other violation of the requirements of this chapter.

B. Right of entry.

In accordance with the terms of the signed Acknowledgement Certificate the City inspector may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction and where the City has given verbal notice to the Landowner(s), or such owner's agent(s) or representative(s) if such owner(s) or representative(s) is/are immediately accessible, enter upon any property or site for examination of the same to ascertain whether a violation of the requirements of this chapter exists, and shall be exempt from any legal action or liability on account thereof. The City will verbally

communicate a findings summary of such inspection at the conclusion of the inspection to the Landowner, or such owner's agent(s) or representative(s) if such owner(s) or representative(s) is/are immediately available. The City will mail a written summary of the findings of such inspection within thirty (30) days of such inspection to the legal address of the non-compliant site.

C. Remediation procedures.
   1. Compliance orders.
      a. Whenever the City determines that any activity is occurring that is not in compliance with a Stormwater Quality Permit, SWMP, and/or the requirements of this chapter, the City may issue a written compliance order to the Operator or Landowner containing a compliance schedule. The schedule shall contain specific actions that must be completed, including dates for the completion of the actions. It shall be unlawful for any Operator or Landowner to fail to comply with any compliance order requirement.
      b. Should any person cause, permit, cause to be permitted, or maintain a condition on any property that may result in an Illicit Discharge, the City may issue a written compliance order setting forth the action required to mitigate the Illicit Discharge. It shall be unlawful for any person to fail to comply with a written compliance order for mitigation of an Illicit Discharge within twenty-four (24) hours after the date specified in the compliance order.
      c. Should any person cause responsible for the operation and maintenance of any Permanent or Temporary BMP, the City may issue a written compliance order setting forth the action required to operate and maintain the Permanent or Temporary BMP. It shall be unlawful for any person to fail to comply with a written compliance order for operation or maintenance of a Permanent or Temporary BMP within twenty-four (24) hours after the date specified in the compliance order.
   2. Suspension and revocation of Permit.
      The City may suspend or revoke a Stormwater Quality Permit for violation of any provision of this chapter, violation of the Permit or SWMP, and/or misrepresentations by the Permittee or the Permittee's agents, employees, or independent contractors.

D. Stop work orders.
   Whenever the City determines that any activity is occurring that is not in compliance with a Storm ~~W~~water Quality Permit, a~~n~~ SWMP, and/or the requirements of this chapter, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

E. Violations and penalties.
   1. It shall be unlawful for any person to violate any provision of a Stormwater Quality Permit, a~~n~~ SWMP, and/or the requirements of this chapter~~, as adopted and modified by the City~~.

2. Any person violating any provision of a Stormwater Quality Permit, a~~n~~ SWMP, ~~and/~~or the requirements of this chapter~~, as adopted and modified by the City, (including but not limited to a violation of Section 13.20.130 regarding any Illicit Discharge or Section 13.20.140 regarding a Permanent BMP),~~ shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Section 1.12.010 of this Code.
3. In the event of an Illicit Discharge or failure to operate or maintain a Permanent or Temporary BMP~~in Violation of Section 13.20.130 or a violation of Section 13.20.140 regarding Permanent BMPs~~, the City may, after written issuance of a compliance order for mitigation and the failure to perform such mitigation within twenty-four (24) hours after the date specified in the written compliance order (or such addition a time for mitigation as may be specified by the City), enter the ~~e~~affected property and perform or cause to be performed the mitigation work and assess the charge(s) for such work against the person, in accordance with the procedures set forth in Section 13.20.090. The remedy set forth in this ~~S~~subsection ~~13.20.140(C)(4)(iii)~~ shall be in addition to the penalties that may be imposed pursuant to Section 1.12.010 ~~of this Code~~.

~~F. Illicit discharges.~~

~~Should any person discharge or cause to be discharged or spilled or maintain a condition upon any property that may result in the discharge of any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for: diverted stream flows; landscape irrigation; return flows from irrigation; water from footing & foundation drains; runoff from non-commercial car washing; dechlorinated water from swimming pools, spas and hot tubs; lawn watering; discharges from residential roof drains; water from fire hydrants including water used for firefighting; uncontaminated groundwater infiltration; uncontaminated pumped groundwater; rising ground waters; water from crawl space pumps; springs; discharges from potable water sources; air conditioning condensation; flow from riparian habitats and wetlands, and; other waters determined by the City's Risk Management Division to be non-contaminated and acceptable for return to the storm drainage system and receiving waters, the City may, after notifying the person of the required removal of said substance and the person fails to perform such removal within twenty-four (24) hours of the date specified in the letter of notification, enter the effected property and perform or cause to be performed the required work and assess the charge(s) for such work against the person, in accordance with the procedures set forth in Section 13.20.090.~~

~~G. Business Owner or Landowner.~~

~~Should any Business Owner or Landowner fail to adequately maintain the Temporary or Permanent BMPs or fail to remove Temporary BMPs within the time limit provided in this Chapter, the city may, after notification of the required maintenance and/or removal and the Business Owner or Landowner fails to perform such maintenance and/or removal, enter the affected property and perform or cause to be performed the required work and assess the charge for such work , in accordance with the procedures set forth in Section 13.20.090.~~

Section 9. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance

has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

FIRST READING September 18, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 13.20 CONCERNING STORMWATER QUALITY

WHEREAS, the City of Loveland operates a Stormwater Utility, which discharges stormwater into state waters in accordance with the City's Municipal Stormwater Discharge Permit; and

WHEREAS, the Department of Public Works, Stormwater Division recently reviewed the City's Municipal Stormwater Discharge Permit in conjunction with Loveland Municipal Code Chapter 13.20 concerning stormwater quality, and recommends that the City Council amend Chapter 13.20 in order to ensure the City's compliance with its Municipal Stormwater Discharge Permit; and

WHEREAS, on August 22, 2012, the City's Construction Advisory Board reviewed the proposed amendments and unanimously recommended that the City Council amend Chapter 13.20 as set forth herein; and

WHEREAS, the City Council desires to amend Chapter 13.20 as set forth herein to ensure the City's compliance with its Municipal Stormwater Discharge Permit and to protect the water quality of state waters.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 13.20.040 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.040 Definitions.

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the following meanings:

"Acknowledgement Certificate" means a document an applicant signs certifying that they have received, read and fully understand the information within the City of Loveland's Stormwater Quality Enforcement Policy and agree to abide by the policies set forth therein.

"Applicant" means a landowner or agent of a landowner who has filed an application for a Stormwater Quality Permit.

"Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage of leaks, sludge or waste disposal, or drainage from raw material storage.

"Builder" means a person undertakes construction activities.

"Business Owner" means a person who owns title to a commercial property.

"City Inspector" means the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this chapter.

"Compliance Date" means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a pretreatment standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable pretreatment standard.

"Compliance Order" means an administrative order that directs a user to comply with the provisions of this chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

"Compliance Schedule or Schedule of Compliance" means an enforceable schedule specifying a date or dates by which user must comply with a pretreatment standard, a pretreatment requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

"Construction Activities" means clearing, grading, excavating, and other ground disturbance activities. Construction Activities does not include routine maintenance performed by public agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of the facility.

"Construction Site Stormwater Management Plan (CSSMP)" means a Plan submitted to the City of Loveland that addresses erosion, sediment erosion control and water quality issues pertaining to a Site for which an application for a Stormwater Qualify Permit is filed. A CSSMP shall contain such information as, site description, location and description of appropriate Temporary or Permanent BMPs, inspection and maintenance procedures and other matters necessary or appropriate to comply with a Stormwater Quality Permit.

"Developer" means a person who undertakes land disturbance activities.

"Development" means any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term "development" does not include the maintenance of stormwater runoff facilities.

"Disturbed Area" means that area of the land's surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses. It also does not include performance of emergency work necessary to prevent or ameliorate an immediate threat to life, property, or the environment. Any person(s) performing such emergency work shall immediately notify the Public Works Engineering Manager of the situation and the actions taken. The Public Works Engineering Manager may, however, require such person(s) to obtain a Stormwater Quality Permit to implement remedial measures to minimize erosion resulting from the emergency.

"Drainageway" means an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

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"Illicit Discharge" means any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater runoff, with some exceptions. These exceptions are discharges from National Pollutant Discharge Elimination System (NPDES) permitted industrial sources and those stated in Section 13.20.130.

"Jurisdictional Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

"Land Disturbance Activity" means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made drainageway.

"Landowner" means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including: roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes designed or used for collecting or conveying stormwater that is not a combined sewer and that is not part of a POTW.

"Operator" means the entity that has day-to-day supervision and control of Construction Activities or Development occurring at a construction site. This can be the Landowner, the Developer, the general contractor or other agent of one of these parties, in some circumstances. It is anticipated that at different phases of Construction Activities or Development, different parties may satisfy the definition of "Operator," and that the Stormwater Quality Permit may apply to all Construction Activities or Development on a site subject to a Stormwater Quality Permit by any such party.

"Performance Security" means an irrevocable letter of credit, or cash deposit submitted to the City to ensure the fulfillment of the erosion and sediment control plan.

"Permanent BMPs" means those permanent stormwater quality BMPs such as, but not limited to, grass buffers and swales, modular block porous pavement, porous pavement and landscape detention, sand filter and extended detention basins, constructed wetlands basins and channels, and proprietary (underground) BMPs to be properly installed and regularly maintained in order to treat stormwater runoff and ensure long term water quality enhancements.

"Permit" means a Stormwater Quality Permit issued pursuant to this Chapter 13.20.

"Permittee" means the holder of a Stormwater Quality Permit.

"Person" means any natural person or any firm, corporation, partnership, association, legal representative, trustee, estate, limited liability Company, or any other entity.

"Plan" means a document approved at the site design phase that outlines the measures and practices used to control stormwater runoff at a site.

"Publicly Owned Treatment Works" (POTW)" means a publicly owned domestic wastewater treatment facility. This includes any publicly owned devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage or treatment of industrial

wastes of a liquid nature. It also includes sewers, pipes and other conveyances if they are publicly owned or if they convey wastewater to a POTW treatment plant.

"Receiving Waters" means any classified stream segment (including tributaries) in the State of Colorado into which stormwater related to construction activities discharges. This definition includes all water courses, even if they are usually dry, such as borrow ditches, arroyos, and other unnamed drainageways.

"Significant Storm Event" means any storm event, including but not limited to rain and snowmelt, which results in water and/or sediment being transported across the site.

"State Water" means any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works or disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

"Stop Work Order" means an order issued by the city which requires that all Construction Activity on a site be stopped.

"Stormwater" means precipitation-induced surface runoff.

"Stormwater Discharge Permit (SDP)" means a permit issued to a Developer by the Colorado Department of Public Health & Environment Water Quality Control Division to discharge stormwater runoff from Construction Activities.

"Stormwater Quality Enforcement Policy" means a policy adopted by the City Manager or his designee to administer the Stormwater Quality Ordinance.

"Stormwater Quality Permit" means a permit issued to developers pursuant to Section 13.20.060 by the City of Loveland Public Works Department Stormwater Utility Division to conduct certain land disturbance activity.

"Stormwater Runoff" means that part of snowfall, rainfall or other precipitation which is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into receiving waters.

"SWMP" means a Stormwater Management Plan.

"SWMP Administrator" means a specific individual(s), position or title designated by the Landowner or Developer who is responsible for developing, implementing, maintaining, and revising the SWMP. The activities and responsibilities of the SWMP Administrator shall address all aspects of the facility's SWMP.

"Temporary BMPs" means temporary sediment and erosion control BMPs such as, but not limited to, silt fencing, wattles, vehicle tracking control pads, inlet filters, diversions, rundowns, sediment traps and ponds, dewatering structures, rip rap, and erosion control mats, and waste control BMPs, such as, but not limited to, concrete washouts, to be installed and regularly maintained to prevent erosion and keep sediment and waste from discharging off-site until the site is sufficiently stabilized.

"Vegetative Cover" means grasses, shrubs, bushes, trees, ground cover and other plants.

Section 2. That Section 13.20.050 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.050 Compliance with Storm Drainage Standards and Criteria.

All applications for Stormwater Quality Permits shall be reviewed for compliance with the City of Loveland's Storm Drainage Standards, the Larimer County Urban Area Street Standards, and the City of Loveland Storm Drainage Criteria, as amended.

Section 3. That Section 13.20.070 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.070 Security Requirement.

As a condition for the issuance of a Stormwater Quality Permit, Applicants may be required to provide Performance Security in the form of an agreement for sediment/erosion control Best Management Practices (BMPs) cash deposit or an agreement for sediment/erosion control Best Management Practices (BMPs) irrevocable letter of credit, which agreement shall be approved as to the form and sufficiency by the City Attorney. The amount of the Performance Security shall be based upon the estimated cost of the work required to ensure compliance with the Permit's terms and conditions and requirements of this chapter. In determining the cost of work, a fifteen (15%) contingency shall be included.

Section 4. That Section 13.20.100 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.100 Establishment of Fees and Charges.

City council shall establish all fees and charges deemed necessary by the City to implement the requirements of this chapter.

Section 5. That Section 13.20.110 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.110 Maintenance Requirements.

Developers, Builders, Business Owners, and Landowners shall be responsible for ensuring that all BMPs identified in the Stormwater Quality Permit application are properly installed, maintained and are in good working order as hereafter provided.

A. Developers shall be responsible for ensuring that:
    1. Any Temporary and/or Permanent BMPs are installed as call for in a CSSMP and are properly maintained and are in good working order.
    2. The site is fully developed, stabilized, and acceptable vegetative cover has been established and maintained.
    3. Any deficiencies noted by the City prior to the expiration of the two-year warranty period for public improvements have been corrected.
    4. Individual lots have been sold to one or more Builders.
    5. Stormwater runoff quality requirements of individual lots are shared with Builders at time of closing.
B. Builders shall be responsible for ensuring that:
    1. Any Temporary and/or Permanent BMPs installed prior to lot purchase from Developer and/or Landowner as part of CSSMP are being properly maintained and are in good working order.
    2. Acceptable vegetative cover has been established and maintained.
    3. Any Temporary and/or Permanent BMPs called for in the CSSMP and/or necessary for the site(s) has been properly installed, maintained and remain in good working order until the property has been sold to a Business, Landowner.

4. Stormwater runoff quality requirements of individual site(s) are shared with purchasers at time of closing.

C. Business Owners and Landowners shall be responsible for ensuring that:
1. Any Temporary BMPs installed prior to lot purchase from Developer, Landowner, and/or Builder as part of CSSMP are properly maintained and remain in good working order until the lot is stabilized.
2. Acceptable vegetative cover has been established and maintained.
3. If not installed prior to individual lot purchase, Temporary and/or Permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and maintained until the property is sufficiently stabilized.
4. If not installed prior to individual lot purchase, Temporary and/or Permanent BMPs will be installed within ten (10) days from date of purchase around the perimeter of the site where needed to prevent sediment from moving off-site.
5. Business Owners and Landowners shall be responsible for the maintenance of all Temporary and Permanent BMPs constructed or installed on their property pursuant to this chapter.
6. All Temporary BMPs shall be removed within fourteen (14) calendar days after work on the site has been completed and the measures are no longer needed.

Section 6. That Section 13.20.130 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.130 Illicit Discharges.

A. It is unlawful and constitutes a nuisance for any person to discharge or cause to be discharged or spilled, or to maintain a condition upon any property that may result in the discharge of, any substance other than naturally occurring stormwater runoff into the City's storm drainage system (any of which shall constitute an "Illicit Discharge").

B. The following shall not be considered an illicit discharge prohibited under subsection A. above (any of which shall constitute an "allowable non-stormwater discharge"):
1. Landscape irrigation.
2. Lawn watering.
3. Diverted stream flows.
4. Irrigation return flow.
5. Rising ground waters.
6. Uncontaminated ground water infiltration (defined at 40 C.F.R. 35.2005(20)).
7. Uncontaminated pumped ground water.
8. Springs.
9. Flows from riparian habitats and wetlands.
10. Water line flushing.
11. Discharges from potable water sources.
12. Foundation drains.
13. Air conditioning condensation.
14. Water from crawl space pumps.
15. Footing drains.
16. Individual residential car washing.
17. Dechlorinated swimming pool discharges.

18. Water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction.
19. Discharges resulting from emergency firefighting activities.
20. Discharges specifically authorized under a separate CDPS permit.
21. Discharges addressed in the Colorado Department of Public Health and Environment, Water Quality Control Division's Low Risk Policy guidance documents.
22. Other waters determined by the city to be non-contaminated and acceptable for return to the storm drainage system and receiving waters.

C. Nothing contained in this section shall be construed to relieve any person discharging or causing to be discharged any substance into the storm drainage system from any liability for damage caused by the quantity, quality, or manner of discharge.

Section 7. That Section 13.20.140 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.140 Permanent BMPs.

A. Permanent BMPs shall be required for all new or redevelopment projects that disturb greater than or equal to one (1) acre, including projects less than one (1) acre that are part of a larger common plan of development or sale.
B. All Permanent BMPs shall be properly operated and maintained.

Section 8. That Section 13.20.150 of the Loveland Municipal Code is hereby amended to read as follows:

13.20.150 Remedies for Noncompliance.

A. City inspector. If a City inspector determines that eroded soils are leaving a Disturbed Area, a Stormwater Quality Permit or SWMP has been violated, or any provision of this chapter has been violated, the City inspector may direct, in writing, the Business Owner, Landowner, Developer, Builder and/ or agents or representatives of such person on the site to repair, replace and/or install any Temporary or Permanent BMPs required under a Stormwater Quality Permit and/or a SWMP for the site, suggest that additional BMPs be installed if deemed necessary by the City inspector to minimize the identified condition or mitigate an illicit discharge, including the issuance of stop work orders and/or suspension or revocation of any Permit. It shall be unlawful for any Business Owner, Landowner, Developer, Builder or the agents or representatives of such persons to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site, correct violation of a Stormwater Quality Permit and/or a SWMP, or eliminate and/or mitigate an illicit discharge, or remedy any other violation of the requirements of this chapter.
B. Right of entry. In accordance with the terms of the signed Acknowledgement Certificate the City inspector may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction and where the City has given verbal notice to the Landowner(s), or such owner's agent(s) or representative(s) if such owner(s) or representative(s) is/are immediately accessible, enter upon any property or site for examination of the same to ascertain whether a violation of the requirements of this chapter exists, and shall be exempt from any legal action or liability on account thereof.

The City will verbally communicate a findings summary of such inspection at the conclusion of the inspection to the Landowner, or such owner's agent(s) or representative(s) if such owner(s) or representative(s) is/are immediately available. The City will mail a written summary of the findings of such inspection within thirty (30) days of such inspection to the legal address of the non-compliant site.

C. Remediation procedures.
   1. Compliance orders.
      a. Whenever the City determines that any activity is occurring that is not in compliance with a Stormwater Quality Permit, SWMP, and/or the requirements of this chapter, the City may issue a written compliance order to the Operator or Landowner containing a compliance schedule. The schedule shall contain specific actions that must be completed, including dates for the completion of the actions. It shall be unlawful for any Operator or Landowner to fail to comply with any compliance order requirement.
      b. Should any person cause, permit, cause to be permitted, or maintain a condition on any property that may result in an Illicit Discharge, the City may issue a written compliance order setting forth the action required to mitigate the Illicit Discharge. It shall be unlawful for any person to fail to comply with a written compliance order for mitigation of an Illicit Discharge within twenty-four (24) hours after the date specified in the compliance order.
      c. Should any person cause responsible for the operation and maintenance of any Permanent or Temporary BMP, the City may issue a written compliance order setting forth the action required to operate and maintain the Permanent or Temporary BMP. It shall be unlawful for any person to fail to comply with a written compliance order for operation or maintenance of a Permanent or Temporary BMP within twenty-four (24) hours after the date specified in the compliance order.
   2. Suspension and revocation of Permit.
      The City may suspend or revoke a Stormwater Quality Permit for violation of any provision of this chapter, violation of the Permit or SWMP, and/or misrepresentations by the Permittee or the Permittee's agents, employees, or independent contractors.

D. Stop work orders. Whenever the City determines that any activity is occurring that is not in compliance with a Stormwater Quality Permit, a SWMP, and/or the requirements of this chapter, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

E. Violations and penalties.
   1. It shall be unlawful for any person to violate any provision of a Stormwater Quality Permit, a SWMP, and/or the requirements of this chapter.

2. Any person violating any provision of a Stormwater Quality Permit, a SWMP, or the requirements of this chapter shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Section 1.12.010 of this Code.
3. In the event of an Illicit Discharge or failure to operate or maintain a Permanent or Temporary BMP, the City may, after written issuance of a compliance order for mitigation and the failure to perform such mitigation within twenty-four (24) hours after the date specified in the written compliance order (or such addition a time for mitigation as may be specified by the City), enter the affected property and perform or cause to be performed the mitigation work and assess the charge(s) for such work against the person, in accordance with the procedures set forth in Section 13.20.090. The remedy set forth in this subsection shall be in addition to the penalties that may be imposed pursuant to Section 1.12.010.

Section 9. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **8**
MEETING DATE: 9/18/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:
An ordinance repealing and reenacting Section 16.38.030 of the Loveland Municipal Code regarding change in use credit for Capital Expansion Fees

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt the ordinance on first reading. The Planning Commission recommends, by a vote of six to one, that City Council approval the amendments as proposed.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This is a legislative action. The purpose of the Code amendment is to clarify how Capital Expansion Fee (CEF) credits are calculated and applied when a change to an existing use occurs.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The ordinance clarifies the application of CEF credits for individual lots and for instances where multiple lots are part of a redevelopment plan approved by the City. Section 16.38.030, which has been in the Municipal Code since 1997, establishes a CEF credit for all existing uses in the City, regardless of whether CEFs were paid when the use was established. The creation of these credits is based on the principle that the impacts from existing uses have been mitigated by the existing infrastructure and levels of service currently provided by the City. The CEF program is intended to provide funding for City-wide capital projects necessary to mitigate

impacts created from new development. With respect to the CEF program, new development occurs when a vacant property is developed or when the use of a developed property changes to a higher intensity use. The CEF credit program also creates an incentive for redevelopment. The proposed amendments were presented to the Construction Advisory Board on August 22, 2012 and the Title 18 Committee on August 23, 2012. The Planning Commission considered the amendments on August 27, 2012 at a public hearing and recommends, by a vote of six to one, that City Council approval the amendments as proposed by City staff in the attached ordinance.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

A. Ordinance
B. City staff Council Memorandum

FIRST READING September 18, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REENACTING SECTION 16.38.030 OF THE LOVELAND MUNICIPAL CODE REGARDING CHANGE IN USE CREDIT FOR CAPITAL EXPANSION FEES

WHEREAS, Loveland Municipal Code Chapter 16.38 authorizes the City of Loveland to impose and collect capital expansion fees to fund growth-related costs incurred in providing for new and expanded capital facilities made necessary by new development; and

WHEREAS, Code Section 16.38.030 currently provides that under certain circumstances, credit can accrue to be applied to the payment of capital expansion fees whenever an existing use is changed; and

WHEREAS, the City Council desires to repeal and reenact Section 16.38.030 in order to clarify the application of the existing credit provisions to new uses established on the same or adjacent premises, including multiple lots, which are a part of a site being developed or redeveloped.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 16.38.030 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read in full as follows:

16.38.030 Change in use credit.

A. Definitions. As used in this Section 16.38.030, unless the context requires otherwise, the following terms shall have the meanings set forth below:
   1. "Capital expansion fee" means the fees imposed upon every additional dwelling unit of residential development and every square foot of retail, non-retail, and industrial development pursuant to Section 16.38.020.
   2. "Certificate of occupancy" means any temporary or permanent certificate of occupancy issued under Code Chapter 15.08.
   3. "Credit" means the change in use credit for capital expansion fees determined in accordance with paragraph B. below.
   4. "Development" means any improvement of property, other than redevelopment, for which a full building permit is issued, any change in use of property, any use of property which has been vacant for a year or more, or any use of property subject to compliance with the City of Loveland Site Development Performance Standards and Guidelines.

5. "Letter of completion" means evidence issued by the city's building division that construction authorized by a building permit has been substantially completed where: (a) uses are not determined at time of building permit application and the building permit authorizes construction of core and shell only; or (b) the permit authorizes an expansion or remodel for an existing use, with no change in use.
6. "Lot" means a portion of a subdivision intended as a unit for transfer or ownership or for development, which has access to a public right of way.
7. "Redevelopment" means renovation, modification, or reconstruction of an existing residential structure or an existing retail, non-retail, commercial, or industrial structure.
8. "Site" means two or more contiguous lots which are being developed or redeveloped pursuant to the same site plan.
9. "Site plan" means a site development plan approved pursuant to Code Chapters 18.46 and 18.47, or if no site development plan is required under Chapters 18.46 and 18.47, a site plan submitted with an application for a building permit.
10. "Use" means a land use authorized and approved pursuant to the applicable provisions of Title 18 of this code and as defined by the Institute of Transportation Engineers with respect to capital expansion fees for streets.

B. Change in Use Credit. Whenever an existing use on a lot is changed, a credit for capital expansion fees shall be calculated and made available for application as provided in paragraphs C. and D. below for the payment of any capital expansion fee imposed by Section 16.38.020, in accordance with the following:
    1. The amount of the credit shall be the amount of capital expansion fees that would be due for a discontinued use as calculated in accordance with the then current capital expansion fees schedule. If no use is then in existence, the credit shall be based on capital expansion fees that would be due for the last previous use for which a certificate of occupancy or letter of completion was issued by the city.
    2. The amount of the credit shall be established at the time capital expansion fees for a new use are due under Section 16.38.020.
    3. If a change in use occurs in only a portion of a structure that is physically separated and permitted for a single use, the credit shall be calculated only on that portion of the structure for which the use is changed. For example, if a lot includes a single structure of 20,000 square feet and the existing use being changed only pertains to a 5,000 square foot portion of the structure that is physically separated and permitted for a single use, the credit shall be determined based only on that 5,000 square feet.

C. Application of Credit on Single Lot.
    1. The credit shall be applied to capital expansion fees due for new uses established on the lot.
    2. If capital expansion fees for a new use on a lot are greater than the amount of the credit, the difference shall be due at the time set forth in Section 16.38.020.
    3. If capital expansion fees for a new use on a lot are less than the amount of the credit, no additional capital expansion fees shall be due for the new use on the lot.
    4. Any excess capital expansion fee credit after application to a new use established on the lot from which it arose may be applied thereafter to each additional new use or change in use on the lot on a first-come, first-served basis, based on the

date upon which a complete application for such development has been accepted by the City, except to the extent the credit has been previously used on other lots as provided in paragraph D. or E. below. Once an excess credit is established, the amount of that credit shall not be adjusted based on an increase in capital expansion fees, inflation or on any other basis.

D. Application of Credit to Site with Multiple Lots. Any remaining excess credit after application to a new use established on the lot from which it arose may be applied to each additional new use or change in use on adjacent lots within a site on a first-come, first-served basis, based on the date upon which a complete application for development for each new use has been accepted by the city.

E. Application of Credit Offsite. Any credit not used on a single lot or within a site may be used for capital expansion fees due for any new use established outside the lot or site only with buildings moved from the lot or site on a first-come, first-served basis, based on the date upon which a complete application for development has been accepted by the City.

F. Nature of Credit. Any capital expansion fee credit established under this Section 16.38.030 shall not constitute a property right of any kind and shall not be owned by the property owner or transferable or assignable by the property owner to any third party. Except as provided in paragraphs D. and E. above, credit shall remain with the lot from which it arises.

G. Effectiveness. This Section 16.38.030 shall be effective as of and shall apply to any change in use completed, as evidenced by issuance of a certificate of occupancy or letter of completion, on or after February 1, 2012.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

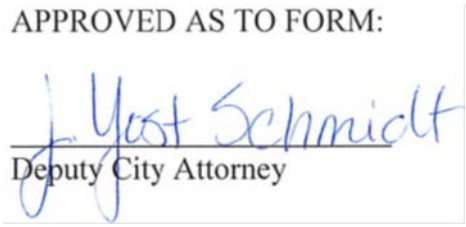
ADOPTED this _____ day of _____, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

City of Loveland

DEVELOPMENT SERVICES
ADMINISTRATION
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www.cityofloveland.org

To: Loveland City Council
From: Greg George, Development Services Director
Date: September 18, 2012
Re: Capital Expansion Fee Credits

A. Exhibits:

1. E-mail from Planning Commission member Chip Leadbetter
2. E-mail from Planning Commission member Troy Krenning
3. Letter from Planning Commission Chair Buddy Meyers

B. Introduction: Recently an application was approved by the City to redevelop property that included multiple contiguous lots with multiple buildings and Capital Expansion Fee (CEF) credits resulting from existing uses. As the redevelopment project proceeded questions came up regarding how the CEF credit resulting from the initial change in use of one of the existing buildings should be applied to the additional new uses within the proposed redevelopment site. Section 16.38.020, below, sets forth the current provisions for applying CEF credits.

16.38.030 Change in use credit.
Whenever an existing use is changed, there shall be a credit in the amount of the then current charges, for the type of use being discontinued, for the capital expansion fee imposed by Section 16.38.020. Such credit shall be applied, first, to the amounts due for such fees on account of any new use established on the same or adjacent premises which are a part of a site being developed or redeveloped, and second, to the amounts due for such fees on account of any new use established elsewhere with buildings moved from the original premises. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

C. Interpretations: City staff reviewed Section 16.38.030 and has made the following interpretations to clarify its application in the circumstances described above.

1. **Amount of Credit:** The amount of the credit is equal to the CEFs that would be due for the discontinued use at the time a new use is established. For example, if the new use is established by issuance of a Certificate of Occupancy on August 23, 2012, then the available credit is calculated based on the fee schedule in place on August 23, 2012. If

the existing building is vacant, then the CEF credit is calculated based on the last use for which the City issued a Certificate of Occupancy.

2. **Application to individual lots:** When the CEF credit is established based on a change in use on a single lot, that credit will be applied only to new uses on that lot. If, for example, the existing use on a lot establishes a CEF credit of $80,000 and the CEFs due for the new use are $30,000, then a CEF credit of $50,000 remains. The remaining credit would be tracked by the City and could be applied to the reuse of the existing building, a building addition, and/or a new building on that lot. If the credit is insufficient to cover the CEFs due for a new use, building addition, and/or a new building then the balance due must be paid.

   When the existing use on a lot contains individual tenant spaces, such as a retail commercial center, the CEF credit for a change in use would be calculated based on the square footage of the tenant spaces for which the change of use is proposed. For example, if the proposed change in use in a tenant space is from general retail to a fast food restaurant, the credit would be established based on the square footage of the existing general retail use. This credit would be applied to the CEFs due for the fast food restaurant. If a tenant space is occupied by a use in a certain use category and the new use also fits under that same use category, then there is no change in use.

3. **Application to multiple lots within a premise:** When CEF credits are established based on a proposal to redevelop existing uses on multiple contiguous lots the City must approve a Site Development Plan (SDP) to officially recognize the redevelopment site (the "same or adjacent premises") on which CEF credits may be used. The CEF credit is then calculated based on the existing uses within the SDP. The SDP can include reuse of existing buildings, building additions, and/or new buildings. The credit is available to be applied to new uses within the SDP on a first come, first served basis, as those new uses are legally established by issuance of a Certificate of Occupancy. For example, if existing uses within a SDP create a combined CEF credit of $90,000 and the CEFs for the first new use are $50,000, then the remaining credit of $40,000 would be applied to the second new use, and subsequent new uses, as those uses are officially established by issuance of a Certificate of Occupancy. If the remaining CEF credit is insufficient to cover the CEFs for a new use, then the balance due must be paid.

4. **Nature of CEF credits:** CEF credits are administered, tracked, and applied by the City to changes in use approved by the City. CEF credits do not constitute a property right of any kind and are not owned by the lot owner or transferrable or assignable by the lot owner to any third party.

5. **Relocation of existing building:** A CEF credit may also be applied to a new use established with a building moved from an individual lot or from within a SDP.

D. Correspondence from Planning Commission: City staff received correspondence from three Planning Commission members (Exhibits 1, 2 and 3) after the Planning Commission public hearing on August 27, 2012. At the August 27th meeting Alan Krcmarik presented a status report on the general topic of updating Loveland's CEF program. Several of the issues raised in the correspondence received from the three Planning Commission members pertain to the more general topic of the Loveland CEF program. The issues raised by the Planning Commission members relative to the CEF credit provisions currently in the Loveland Municipal Code are summarized below, with a clarifying response by City staff.

1. **Chip Leadbetter:**
   a) **CEF transfers:** CEF credits do stay with individual lots, unless adjacent individual lots are included in a redevelopment Site Development Plan (SDP) approved by the City. A single individual may own all the lots when the SDP is approved or the lots may be owned by separate owners. In the case of separate ownerships, all owners of the individual lots must sign the application form and agree on all standards and special conditions applicable to the SDP. One such standard would be that CEF credits shall be calculated and applied to new uses within the SDP in accordance with the provisions of Section 16.38.030 of the Loveland Municipal Code. If property owners want to have CEF credits applied to only their individual property, they should not become part of a redevelopment SDP approved by the City.

   b) **CEF credit accounting:** CEF credits are established when there is a change in use. Those credits are calculated as a dollar amount based on the CEF fee schedule in place when the change in use is approved by the City. If, after the change in use, there is a CEF credit remaining that dollar amount will not be recalculated anytime in the future. The initial CEF credits and any remaining credits are calculated only once, when there is a change in use. CEF credits remaining after a change in use will be tracked within the City's permit tracking system (Innoprise) and applied by the City as redevelopment occurs on the property in the future. Developers of the property in the future would be informed of any CEF credit at the Conceptual Review Team (CRT) meeting required prior to submittal of a development application.

2. **Troy Krenning:**
   a) **CEFs should carry to the next use, but not beyond:** Based on the principle that the impacts from existing uses have been mitigated by the existing infrastructure and levels of service currently provided by the City, it would seem unfair to require an additional payment of CEFs in the scenario where a drive through coffee shop is changed to a two man professional office and then three years later a different drive through coffee shop wants to occupy the same building.

b) **Basis for determining fees:** The issue regarding if CEFs should be based on a plan or on standards is being addressed as part of the work Alan Krcmarik is doing on updating the Loveland CEF program.

3. **Buddy Meyers:**
   a) **Where does the "cash" for this credit come from to cover the improvements that must be made as part of the redevelopment?** The answer is twofold. First, CEF credits do not have a cash value for purposes of providing any sort of a refund. CEF credits may only be applied to offset CEFs due for a change in use. CEF credits will not be refunded as cash at any time in the future. Second, CEFs are used by the City to fund capital projects throughout the City to mitigate impacts resulting from urban growth in general. CEFs are not available to a developer to fund improvements necessary for the project to comply with City development standards. For example, if a change in use requires that a right turn lane be constructed to meet City site access standards, then those improvements must be made by the developer, separate and apart for the payment of CEFs.

   b) **It is a flaw in the system for properties that never paid into the CEF program to receive the same credit as ones that have actually contributed to the CEF program:** From its original adopted in 1984, the CEF program has required the payment of CEFs for new development. As mentioned earlier, granting CEF credits to existing uses that never actually contributed to the CEF program was based on the principle that the impacts from uses existing prior to 1984 had been mitigated by the existing infrastructure and levels of service provided by the City prior to 1984.

      If property containing an existing coffee shop prior to 1984 is purchased by a different business owner and redeveloped for the same use, there are no additional CEFs due. In this circumstance, the City is recognizing that the impacts from the existing use have been mitigated by existing City infrastructure and services and, therefore, there are no additional impacts to be mitigated.

      If the coffee shop use existing prior to 1984 was first changed to a two person professional office and then five years later changed back to a coffee shop, again, there should be no additional impacts to be mitigated based on the recognition that the impacts from the original coffee shop use were mitigated by existing City infrastructure and services. The recognition that CEF credits may remain after a change in use to a lower intensity use is necessary to allow the changes in use under this scenario to occur.

   c) **CEF credits pose an opportunity for speculation**: The establishment by the City of CEF credits for existing uses should be recognized in all land sales transactions. The market value of "distressed properties" should include the value of any CEF credits.

Robert Paulsen

From: Leadbetter, Chip <CLeadbetter@CTLThompson.com>
Sent: Tuesday, August 28, 2012 8:03 AM
To: Vicki Mesa; Buddy; Carol Dowding; John Crescibene; Mike Ray; Ward IV - Ralph Trenary; Rich Middleton; Rob Molloy; Stephanie Fancher; Troy Krenning
Cc: Robert Paulsen
Subject: Thoughts on CEFs from last night

Follow Up Flag: Follow up
Flag Status: Flagged

Fellows,

I wish I had been able to piece together the thought fragments I had while in the Commission meeting, but it took me some time after the meeting to reflect on the information presented and develop a coherent understanding. I may still not have some of it right at this point, but I am pretty sure some of the concepts might be useful.

It seems to me that the primary disconnects on the CEF discussion were two-fold.

1. CEF Transfers

The idea of "stripping" CEFs from some properties to benefit another property. I believe this was pretty well resolved near the end when the explanation that all CEF credit calculations are based on a single lot. Collins Cashway had some buildings increasing use while others decreasing, but all were on the same property. The aggregate value of the property changes in CEFs was the goal. This makes sense, but what kept nagging at me was the concept that somehow CEF credits can be moved around when several properties which are included in a development plan. I admit that this still is fuzzy to me, but it was mentioned several times. It contradicts the idea that CEF credits stay on the lot and cannot be transferred to other lots. The only way I make sense of this is the "use value" of each lot being changed is identified, applied, and the summation of the changes is determined so as to identify what the developer is responsible to pay overall. Each lot retains it's "use value" and no credits are actually transferred over lot lines. I am still not completely solid on this concept and hopefully someone has a better explanation. I know I could certainly use it.

2. CEF Credit Accounting

The issue with properties that decrease in "use value" and how to deal with excess CEF credit. As an example, a Starbucks that converts to a 2-man office and the resulting excess CEF value. What was presented was the property will retain whatever "maximum use value" it had at whatever time in the past. Therefore, a Starbucks that converts to a 2-man office will be retained with the property in the event the property is ever upgraded to a higher use again. Although this is an effort of absolute fairness, it can become an accounting nightmare, and probably the foundation of Buddy's argument or at least a big part of it. This may have something to do with terminology. I didn't fully gather if the CEF credit was measured in dollars that was recorded for that lot, which had to be adjusted for inflation if the credit was to be used at a future time. This seemed difficult for me as the basis for identifying the change in "use value" of a property was to occur at the time the use changed, so how would a dollar amount on a past CEF credit apply to what might be a different valuation system in the future? Or is it simply the "past maximum use value" on the order of some other measurement system that is recorded for a property (ie, a certain use level with a defined number of generated trips, not dollars), which is then used for future valuations and determination of CEF fees? Another issue is how are the various credits to be recorded and maintained, and who will be responsible?

All of this becomes incredibly complicated, or certainly appears so. The primary focus of the CEF credit system is to encourage redevelopment. As long as the "use value" of the property is increasing, the CEF calculation occurs at the time of the use change and no additional records are needed. Very simple and very

EXHIBIT 1

clean. It only gets complicated when a property reduces the "use value" (starbucks to 2-man office). From the discussion, I understand that the events where "use value" goes down is extremely rare. However, it must be accounted for in the code. It seems mighty nice to offer to keep track of past usage for evaluation of CEF credits, but it isn't very practical as it adds a huge amount of complexity to an otherwise very simple and fair system.

It may be more practical to always assign the "use value" of a property to be whatever the current use is at the time of a proposed change. There are no CEF payouts for excess value on a use change. To use an example... a Starbucks is to be converted to a small office. The use is lower, so the developer pays no CEFs to make the change as the new use is lower than the previous use. The difference in value is considered to be "gifted" to the City, figuratively only as nothing actually changes hands. Later, a new developer wants to turn the now office back into a Starbucks and has to pay the CEFs appropriate for the increased use. Each CEF calculation takes place at the time of use change and is exclusively based on the current use and the planned use, and nothing of historical use matters. There are no issues with inflation, book-keeping old credits or any other long term value, or de-value, considerations. You may say it isn't "fair", but in both cases, the developers know exactly what it takes to make the use change they want to make, it is in the code. You may say it would be contrary to the intent of encouraging redevelopment, and it may, but only on a very few properties as the downgrade of "use value" is reportedly very rare. Besides, very often, past use of the property and the "historical maximum use value" may not even be known to the future developer, so they won't be aware they are losing something. But of course they aren't actually losing anything because the code does not offer something that would be lost. That developer who is looking to put up a Starbucks will simply be looking at available property for what it currently is, and not what is also may be worth in credits on some City ledger. There may not be as strong an incentive to turn a historical Starbucks back into a Starbucks, but he will only be paying the difference or he can find another property of similar "use value" that will minimize his CEFs.

Fairness is optimal, but not at any cost. Creating an overly complex system that requires considerable attention in support of only a very few instances is not reasonable in my judgment. The operation of the record-keeping requires resources. Errors in that record-keeping and the application of value adjustment with time will always add risk to the City for what is likely not a considerable reward.

R.B. "Chip" Leadbetter, III, PE
Northern Colorado Division Manager

CTL|Thompson, Inc.
351 Linden Street, Suite 140
Fort Collins, CO 80524
Phone: (970) 206-9455
Fax: (970) 206-9441
www.CTLT.com

EXHIBIT 1

Robert Paulsen

From: TROY KRENNING <troydklaw@msn.com>
Sent: Tuesday, August 28, 2012 2:58 PM
To: cleadbetter@ctlthompson.com; Vicki Mesa; bjmeyers04@aol.com; 2dowdings@skybeam.com; johncsremodel@msn.com; micray@tristategt.org; Ward IV - Ralph Trenary; richrdmidd@aol.com; rmmolloy@msn.com; ssfancher@live.com
Cc: Robert Paulsen
Subject: RE: Thoughts on CEFs from last night

Follow Up Flag: Follow up
Flag Status: Flagged

I agree with Chip. Going up in use, applicant required to make up difference in CEF's. Going down in use, good move on part of the developer, no CEF money due. Going back up in use, pay the CEF difference between existing downgraded use to new upgraded use. I would hate to see the City becoming caught up in the middle as bookeeper for developers over CEF's and/or historians over prior building uses. Maybe a rule of CEF's carry to the next use, but not beyond.

I also thought a lot about the "standards" being employed by the departments, except streets. I think that each department who wishes to be included in the CEF moneypot should be required to follow the example of the street department and develop a "plan" instead of relying on "standards." I know the "standard" that we should have one police officer per 1,000 residents is no longer considered a reliable measurment, but it is easy to calculate. Instead of adjusting the price of a CEF, I'd prefer to see council zero in on the need for CEF's. The City banking a LOT of money from CEF's. Can we really measure the some of the costs that we collect for simply based on a "standard?"

I know that we passed a motion and it is headed for Council. Can our emails be included in the packet?

Troy D. Krenning, Esq

Gookin, Krenning & Associates, LLC
770 N. Lincoln
Loveland, CO 80537
(970) 292-8290
(888) 465-8045 FAX

Subject: Thoughts on CEFs from last night
Date: Tue, 28 Aug 2012 08:03:25 -0600
From: CLeadbetter@CTLThompson.com
To: Vicki.Mesa@cityofloveland.org; Bjmeyers04@aol.com; 2dowdings@skybeam.com; johncsremodel@msn.com; micray@tristategt.org; Ralph.Trenary@cityofloveland.org; richrdmidd@aol.com; rmmolloy@msn.com; ssfancher@live.com; troydklaw@msn.com
CC: Robert.Paulsen@cityofloveland.org

Fellows,

EXHIBIT 2

I wish I had been able to piece together the thought fragments I had while in the Commission meeting, but it took me some time after the meeting to reflect on the information presented and develop a coherent understanding. I may still not have some of it right at this point, but I am pretty sure some of the concepts might be useful.

It seems to me that the primary disconnects on the CEF discussion were two-fold.

1. CEF Transfers

The idea of "stripping" CEFs from some properties to benefit another property. I believe this was pretty well resolved near the end when the explanation that all CEF credit calculations are based on a single lot. Collins Cashway had some buildings increasing use while others decreasing, but all were on the same property. The aggregate value of the property changes in CEFs was the goal. This makes sense, but what kept nagging at me was the concept that somehow CEF credits can be moved around when several properties which are included in a development plan. I admit that this still is fuzzy to me, but it was mentioned several times. It contradicts the idea that CEF credits stay on the lot and cannot be transferred to other lots. The only way I make sense of this is the "use value" of each lot being changed is identified, applied, and the summation of the changes is determined so as to identify what the developer is responsible to pay overall. Each lot retains it's "use value" and no credits are actually transferred over lot lines. I am still not completely solid on this concept and hopefully someone has a better explanation. I know I could certainly use it.

2. CEF Credit Accounting

The issue with properties that decrease in "use value" and how to deal with excess CEF credit. As an example, a Starbucks that converts to a 2-man office and the resulting excess CEF value. What was presented was the property will retain whatever "maximum use value" it had at whatever time in the past. Therefore, a Starbucks that converts to a 2-man office will be retained with the property in the event the property is ever upgraded to a higher use again. Although this is an effort of absolute fairness, it can become an accounting nightmare, and probably the foundation of Buddy's argument or at least a big part of it. This may have something to do with terminology. I didn't fully gather if the CEF credit was measured in dollars that was recorded for that lot, which had to be adjusted for inflation if the credit was to be used at a future time. This seemed difficult for me as the basis for identifying the change in "use value" of a property was to occur at the time the use changed, so how would a dollar amount on a past CEF credit apply to what might be a different valuation system in the future? Or is it simply the "past maximum use value" on the order of some other measurement system that is recorded for a property (ie, a certain use level with a defined number of generated trips, not dollars), which is then used for future valuations and determination of CEF fees? Another issue is how are the various credits to be recorded and maintained, and who will be responsible?

All of this becomes incredibly complicated, or certainly appears so. The primary focus of the CEF credit system is to encourage redevelopment. As long as the "use value" of the property is increasing, the CEF calculation occurs at the time of the use change and no additional records are needed. Very simple and very clean. It only gets complicated when a property reduces the "use value" (starbucks to 2-man office). From the discussion, I understand that the events where "use value" goes down is extremely rare. However, it must be accounted for in the code. It seems mighty nice to offer to keep track of past usage for evaluation of CEF credits, but it isn't very practical as it adds a huge amount of complexity to an otherwise very simple and fair system.

It may be more practical to always assign the "use value" of a property to be whatever the current use is at the time of a proposed change. There are no CEF payouts for excess value on a use change. To use an example... a Starbucks is to be converted to a small office. The use is lower, so the developer pays no CEFs to make the change as the new use is lower than the previous use. The difference in value is considered to be "gifted" to the City, figuratively only as nothing actually changes hands. Later, a new developer wants to turn the now office back into a Starbucks and has to pay the CEFs appropriate for the increased use. Each CEF calculation takes place at the time of use change and is exclusively based on the current use and the planned use, and nothing of historical use matters. There are no issues with inflation, book-keeping old credits or any other long term value, or de-value, considerations. You may say it isn't "fair", but in both cases, the developers know exactly what it takes to make the use change they want to make, it is in the code. You may say it would be contrary to the intent of encouraging redevelopment, and it may, but only on a very few properties as the downgrade of "use value" is reportedly very rare. Besides, very often, past use of the property and the "historical maximum use value" may not even be known to the future developer, so they won't be aware they are losing something. But of course they aren't actually losing anything because the code does not offer something that would be lost. That developer who is looking to put up a Starbucks will simply be looking at available property for what it currently is, and not what is also may be worth in credits on some City ledger. There may not be as strong an incentive to turn a historical Starbucks back into a Starbucks, but he will only be paying the difference or he can find another property of similar "use value" that will minimize his CEFs.

EXHIBIT 2

Fairness is optimal, but not at any cost. Creating an overly complex system that requires considerable attention in support of only a very few instances is not reasonable in my judgment. The operation of the record-keeping requires resources. Errors in that record-keeping and the application of value adjustment with time will always add risk to the City for what is likely not a considerable reward.

R.B. "Chip" Leadbetter, III, PE
Northern Colorado Division Manager

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4 September 2012

To The City Council of the City of Loveland Colorado,

I am writing this to you not as a position paper for the Planning Commission, but from my own perspective as one of the Commissioners, a private citizen and based upon knowledge gained during my tenure on the Planning Commission.

The topic of concern is in regard to the current city code and related methodologies for Capital Expansion Fees collected by the city or credited as allowed by the code today. This increased awareness was brought about as a result of an excellent job done by the city finance staff, Alan Krcmarik, Executive Fiscal Advisor, in educating the Planning Commission on the topic of Capital Expansion Fees, calculations, O&M issues relating to them and by recent code changes heard by the Planning Commission that have been referred onto the City Council.

So you might understand my position, comments and financial risk concerns comes from my private business background and part of my career spent as the Chief Financial Officer (CFO) of private and publicly held enterprises and in auditing.

The current code (16.38.020 and 16.38.030) as it is written has what I perceive is a very large financial risk and reporting issues for the city of Loveland. The code as written today has the city "crediting" 100% of current rates for CEFs on a redevelopment project. This has multiple financial risk related to it for the city as follows:

> The property under re-development is gaining a large value from this CEF credit at current rates. Perhaps far beyond what it was initially or what it has paid over some period of time. This net value gained could be rather large for older properties and does not necessarily reflect true financial contributions of the property to the city over its life.
>
> The current 100% of credit should be accounted somewhere on the city's balance sheet or operating statement to reflect the liability of this credit or a reflection of the expense to cover this credit. This should be reported for the entire city since it applies to all properties. This then begs to question where does the "cash" for this credit come from to cover the improvements that must be made as part of the redevelopment. Will this come from various city departmental budgets which would not have planned for this impact or from a tax or fee increases to the residents of the city?
>
> Under the code, as written today, properties before the enactment of CEFs, which by code implies they did not pay in, receive this same credit as ones that have actually

contributed to the CEF program, which I believe is a flaw in the current approach. These properties are deriving net new value that the rational nexus used to justify the credit for properties post CEF enactment does not support. There is an argument that states while they paid for it at original assessment time, "so it must be there with some value".

However, in the accounting of assets world of General Accepted Accounting Practices (GAAP) and in Financial Standard Practices (FSP) a term depletion of assets comes into play. Assets are depleted over time, they are consumed and used and you cannot apply value at today's rates or values to them. If you were to do this then you have to record this, in the private sector as income, of some sort. This should not be confused with depreciated value, they are not the same. One is true use the other is a "book" value accounting practice. Under the current approach the city is not considering the depleted asset aspects of the items covered in the CEFs.

In a change of use scenario the impact maybe minimal if the initial development was done recently and no major changes to streets, wastewater, power, etc. are required. But in the case of the older heritage areas of Loveland the impact could be severe to the city. Especially in the case of where no use change is made and the re-development is for a use exactly as defined today, the city would be financially responsible for all the expenses to bring the streets up to standard, raise the power supply infrastructure to code and service levels, upgrade wastewater services, etc..

An example of this would be if a developer were to choose to redevelop, for the sake of argument let's use the area from St. Louis to Madison from 3rd Street to 5th Street. And the use(s) stay the same as it today, the city would be legally responsible to solely be bare all the expenses related to upgrading all the infrastructure cost related to the area, contributions to other funds that share in the CEFs and the developer would incur 0% of the expense. This is an example I believe of the worst case scenario.

From a accounting and financial management perspective the city should be reflecting the credit CEFs across all properties in the city at a specific point in time. This is a future financial liability, a debt if you will, that the city owes and should be reflected in its financial reports, if it is going to use this practice on-going. Then adjust that libility up or down as the use changes, new CEF rates for the existing use are made to properly reflect the now current liability. This is a huge undertaking and an even larger financial exposure for the city over time and is not being recognized in the financial reports. The exposure the city has as a result of this code and the related financial exposure could be catastrophic.

I would propose that the city change the code to stop giving a 100% credit on properties where uses have not changed since prior to 1984 or 1987. Older properties should not get an equal share of a CEF credit as a newer property, if you consider depletion of assets, the current state of the infrastructure required to support the current use and the state of the property. This is just not good financial management practice and stewardship of the city's finances.

The whole justification for CEF was that "growth" pay its way and if we are giving these credits at 100%, growth is not paying its way on older properties, the existing base will and is paying!

Or perhaps more a more reasonable approach is if the city is desiring to stimulate re-development use the CEF credit as a guiding principle, not a finite give away, and adjust the amount based upon when the original use was implemented, time since it was implemented and credit on a formula that derives a percentage value (%) value of today's value. This would significantly reduce the city's potential financial risk on paper, cash and O&M impacts for existing budgets in a fiscal year. It would make each redevelopment effort a case by case basis and require direct input and review by the finance function of the city to provide guidance to the city staff making the decisions on credit granting. Then this liability and impact could be properly reflected and paid for from existing budgets or reserves. It would also provide a control switch to assure the city does not get over committed on credit granting and related impacts as the current code facilitates this condition arising.

Currently I was advised that we do not have a good accounting of how CEFs this is handled. Also the various city departments are not prepared for these impacts at this time or even in some cases aware of the potential impact.

The current code and pending new amendments also pose an opportunity for speculation. An entity individual could buy up "distressed sites", hold them, let the CEFs accrue value and sell them by speculating on the CEF value as part of the "perceived" value of the site, having never spent any money or time redeveloping it initially. Part of the CEF rational nexus is that the current use is paying into the city by its operations on or with the site. But if they are not producing or conducting operations on the property it is a net loss to the city multiple times from lost tax and fee revenues and the "hit" with a CEF credit as it exist today.

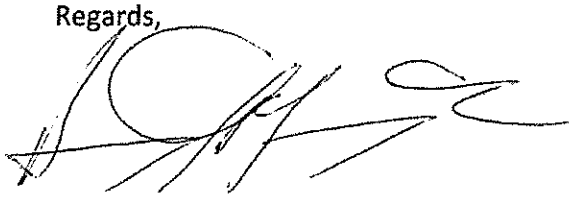
We should also consider adjusting the CEF levy to reflect some amount of O&M coverage. Perhaps a portion of the first year should be factored in when determing the CEF charges. It seems that while we have CEFs planned well, we cannot cover O&M expenses related to the

capital improvement being constructed or made operational so we delay or do not execute. It's a classic Catch-22 scenario. Adding some factor for O&M, at least year one would seem to be prudent and responsible.

If the topic of CEFs is being looked at let's fix the broad issue and not just "tweak" it to accommodate individual projects or the "gotcha" de jour.

Thank you for your time.

Regards,



Buddy Meyers
2429 Cameo Ct.
Loveland, Co 80538

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 27, 2012

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 27, 2012 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Molloy, Dowding, Crescibene, Krenning and Leadbetter. Commissioners Absent: Fancher and Ray. City Staff present: Kerri Burchett, Current Planning; Alan Krcmarik, Executive Economic Advisor; Dave Klockeman, City Engineer; Robert Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

COMMISSIONER COMMENTS

There were no comments.

STAFF MATTERS

Current Planning Manager Robert Paulsen commented that the Planning Commission has been invited to a joint study session with the City Council on October 9th to continue the discussion on oil and gas regulations. He stated there are items scheduled for the September 10th and September 24th Planning Commission meetings, and that staff will be scheduling a study session with the Planning Commission in October to review Title 16 and Title 18 code amendments.

CITIZEN REPORTS

There were no citizen reports.

COMMITTEE REPORTS

There were no committee reports.

REGULAR AGENDA

1. Zoning Board of Adjustment Findings, 2012.

This item was an informational report from the ZBA hearing officer on the 2012 variance decisions.

Commissioner Crescibene, who also serves as the Zoning Board of Adjustment Hearing Officer, gave a brief report on the four variance applications heard to date in 2012. He noted that all but one of the variances was approved.

Vice Chairman Middleton inquired as the final outcome of the denial of Variance #12-01.

Commissioner Crescibene reported that following denial of the variance, the carport structure was removed.

2. Development Permitting Process Flowcharts for Residential and Non-Residential Development

This item was an informational review of the recently developed process flowcharts that map the City's development permitting process from initial application to certificate of occupancy.

Kerri Burchett, Current Planning, reported that staff is presenting the process flowcharts to the Planning Commission for informational purposes and that any direction or comments will be forwarded to the Title 18 Committee for consideration prior to the completion of code amendments to Chapter 16.40 of the subdivision code. Ms. Burchett also indicated that staff would initiate an outreach effort to inform development community members of the charts and associated code amendments.

Ms. Burchett stated that the City's Development Review Team (DRT) went through a mapping process and then created flowcharts to provide to applicants to help them understand the various sequencing of the development review, site inspection and building permit process. Specifically, with the purpose of providing clear benchmarks for the timing of site improvements, financial securities, and building permit submittals. She stated that by going through this process the DRT was able to identify areas that could be more efficient, clarify responsibilities of each coordinating City division, and evaluate the financial security component to determine what items required financial security and when that security was truly needed by the City.

She stated that the next step would be to draft a code amendment that would streamline the process and clarify the financial component for applicants. She commented that she would continue to work with the Title 18 Committee in this effort.

Chairman Meyers complimented Ms. Burchett and the entire DRT for their work on documenting the process.

Mr. Paulsen commented that the completion of the charts was of significant value because sequencing of the entire development permitting process had never been done before; he emphasized the need to eliminate uncertainty and to provide clarity for applicants.

3. Capital Expansion Fee Progress Report

This item is an informational report on the City's Capital Expansion Fee program and the update process that has been underway in 2012.

Alan Krcmarik, Economic Fiscal Advisor, gave a detailed presentation regarding the history and methods of the program, including a fee comparison over time, a fee comparison with other jurisdictions, an evaluation of levels of service, and the updated calculation of fees. He stated that three additional topics will be discussed at the City Council's August 28 study session:

1. Options to Adjust Multi-family Capital Expansion Fees
2. Options for the annual Adjustment for Inflation
3. Review possible fees to cover Operating and Maintenance costs

Commissioner Krenning commented on the customer satisfaction survey indicating that satisfaction was marginally reduced and he believed that the reason is due to the economy and that people are finally seeing that government has been stretched very thin and there isn't enough staff available to make immediate responses. He also expressed concern that Loveland's CEF level was fourth from the top of the list of surrounding cities.

Mr. Krcmarik clarified that within the market parameters they were given, Loveland did rank among the top four in CEF fees. He explained how the fees were calculated.

Commissioner Molloy asked if Mr. Klockeman was going to present the 2035 Transportation Plan to the Commission in 2012 and asked where collected and unused CEFs are kept.

Dave Klockeman, City Engineer, reported he would be presenting the 2035 Transportation Plan in 2012 and clarified that most CEFs are collected city-wide and not for specific projects. He clarified that if funds were collected for a specific project those funds remain in a specified account until needed. He clarified that projects are prioritized each year and the projects are funded accordingly.

Commissioner Dowding asked if plans to fund alternative transit had been identified in the 2035 Transportation Plan.

Mr. Klockeman clarified that transit funding and long-term funding for COLT would be presented under a separate plan.

Mr. Krcmarik explained the fee comparisons for various city services, noting the majority of CEFs collected are from residential construction. He stated fees for commercial and industrial were only different if the use was for streets.

Vice Chair Middleton questioned how commercial square footage was determined. **Mr. Krcmarik** stated that Larimer County Tax Assessor information is used; the fees are based on square footage.

Chairman Meyers stated he would prefer a flattened, standardized rate on unit sizes. He stated Council suggested that new growth pay for the capital

Vice Chairman Middleton questioned how the years are determined when calculating O&M projections. Mr. Krcmarik clarified there is no applied standard and that different departments have different timeframes.

Commissioner Krenning asked if the City, by ordinance, could move CEFs into the General Fund.

Deputy City Attorney Judy Schmidt stated that is not allowed and that there is a statutory requirement regarding the use of the fees.

Commissioner Krenning stated that Police CEFs should be lowered if the crime rate has declined.

Ms. Schmidt stated that eliminating or reducing an impact fee would be a policy decision to be made by City Council.

Commissioner Krenning stated he did not believe that emergency services should be a part of the CEF program; rather, he indicated that such services should be funded through the City's General Fund.

Ms. Schmidt stated that there must be a nexus between new development/growth and the need for expanded facilities funded by the fees.

Commissioner Krenning suggested certain elements of CEFs be reduced to keep fees down to make Loveland more affordable. He reiterated that he does not support CEFs for emergency services.

Commissioner Molloy indicated support for CEFs for emergency services and commented that he did not feel that CEFs are being used for their intentions.

Commissioner Krenning questioned the reliability of standard based fees and how they are established. He stated that the standard for law enforcement, which was originally established in the late 1960's by the FBI, was 1 officer per 1,000 population. He stated that standard is no longer supported.

There was a brief discussion regarding how benchmarks are determined and **Mr. Krcmarik** clarified the budget office makes recommendations to City Council which ultimately come from the City Manager.

Commissioner Krenning complimented the staff for their presentation and generally acknowledged city employees for doing a good job.

4. Capital Expansion Fee Credits

This is a public hearing item to consider proposed code amendments that are designed to clarify the establishment of CEF credits when a change of use occurs. This item is a legislative matter requiring a recommendation by the Planning Commission to the City Council.

Robert Paulsen, Current Planning Manager, gave a brief staff presentation on this item. He noted that the amendment has been reviewed by the Title 18 Committee and was presented to the Construction Advisory Board. He indicated that adjustments to the ordinance were made in response to issues raised by the Title 18 Committee.

Mr. Paulsen stated that the amendment provides clarifications to the CEF provisions when a change in use occurs. He emphasized that the proposed code language was designed to clarify existing code provisions and to reflect the methodology used by staff in administering CEF credits. He indicated that the amendment did not represent a policy change. Mr. Paulsen explained that when a change in use occurs, the amount of CEF credit would be equal to the CEFs that would be due for the discontinued use at the time a new use is established, based on the current rate schedule. If the building were vacant, then the CEF credit would be calculated based on the last known use. The new use would be required to pay the difference between the credited amount and the amount calculated for the new use.

Mr. Paulsen stated this arrangement establishes an incentive for someone to redevelop property and reduce their CEF payments using the existing credits.

Chairman Meyers asked if there we no CEFs collected how a CEF would be calculated.

Mr. Krcmarik stated that they would look at what is currently in place and use the terminology "then current use".

Ms. Schmidt stated that this credit is not being created with the code change and it is currently in the code. The purpose of the change is to clarify how the credit is applied. Capital expansion fees as adopted are intended to pay for growth. She stated that at the time of redevelopment, the applicant would pay then current CEFs and the credit would be based on then-current CEF's for the discontinued used. The theory of providing the credit is to recognize that the discontinued use is already served by the existing public infrastructure and that CEFs would only be paid for any additional impacts created by the new use. She commented that overall, the CEFs due at the

time a use is changed would normally result in payment of additional fees, unless there is a reduction in the intensity in the use.

Chairman Meyers stated that he can see where there would be a shortfall in the system and stated that if it is being done anyway where is the incentive.

Mr. Klockeman used the example of the Jax store which replaced the vacant Shopko building and the uses were the same so there were no additional CEFs required. He stated a Paint store replaced a small hotel and the store received the credits from the hotel that previously occupied the site and paid the difference because the intensity in use was greater.

Ms. Schmidt emphasized that this item is not to reconsider the policy decision which has been in place for a long time, and the credit could only be used one time in the life of the development.

After a discussion on how credits are allocated on a development, **Mr. Klockeman** reported that the credit is only for the portion of a development that is being changed and not the entire development. He clarified that the fees, when they are applied for, would be valued at the then current rate.

Ms. Schmidt reiterated that a change to the policy related to credits would need to be addressed by City Council as the change in use credit being determined at the time it occurs is stated in the existing Code.

Chairman Meyers expressed concerns about continuing the practice of applying the current fees to the previous and proposed uses.

Commissioner Krenning stated that he sees this as amendment to the code to adapt to its current policy and did not understand what the controversy was and felt the term credit should be replaced with waiver.

Mr. Paulsen reiterated that the purpose was to clarify the existing Code language and reflect current practices.

Chairman Meyers stated that he had concerns regarding how the CEFs would be tracked.

Commissioner Krenning stated that he felt this was a baseline and made sense.

Chairman Meyers stated that he was looking for the true intent and additional clarity and was concerned about a potential funding gap being created.

Commissioner Molloy stated that the amendment is to help with redeveloping a particular site which promotes new development.

Vice Chairman Middleton emphasized that the goal, as he saw it, was to promote redevelopment.

Chairman Meyers stated there was too much ambiguity for him to make a decision.

Commissioner Dowding stated that the amendment to the Ordinance clarifying the existing Code language was good and that it was not the purview of the Commission to change the policy.

Commissioner Crescibene concurred with Commissioner Dowding. He also stated that he supported the promotion of redevelopment.

Vice Chairman Middleton stated that he believed redevelopment was better than no development.

PUBLIC INPUT

Ed Klen, 6909 Shannon Court, asked if all CEFs could be stripped from buildings and applies to the main building and could the buildings remain standing or would they have to be removed.

Ms. Schmidt stated that such a transfer of credits would not be allowed under the proposed code language.

Mr. Klockeman explained how credits are applied noting only excess credits can be applied to a different lot and that the base credit would stay with the original lot.

Commissioner Krenning made a motion to recommend that City Council approve the amendment to Chapter 16.38.030 as described in the August 27, 2012 staff memorandum to the Planning Commission and as specified in the draft ordinance identified as Exhibit A to the August 27, 2012 memorandum. Upon a second by Commissioner Molloy, the motion passed 6-1. The vote was as follows: Yeas: Commissioners Dowding, Leadbetter, Middleton, Crescibene, Molloy and Krenning. Nays: Chair Meyers.

Adjournment

Commissioner Dowding made a motion to adjourn. Upon a second by Commissioner Middleton the motion was unanimously adopted.

Rich Middleton, Vice Chair

Vicki Mesa, Secretary

CITY OF LOVELAND
CULTURAL SERVICES /MUSEUM •ART IN PUBLIC PLACES
503 N. Lincoln Avenue • Loveland, Colorado 80537
(970) 962-2410 • FAX (970) 962-2910 • TDD (970) 962-2833

AGENDA ITEM: **9**
MEETING DATE: 9/18/2012
TO: City Council
FROM: Susan Ison, Cultural Services Department
PRESENTER: Susan Ison, Cultural Services Director
Betsey Hale, Economic Development Director

TITLE:
A public hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a fund raising position and materials and architect fees for a conceptual design of the museum expansion

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the ordinance on first reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
There are two parts to this administrative action.
1. Appropriation of funds in the amount of $36,830 from the Kroh Charitable Trust for the capital campaign. The amount requested is for the remainder of 2012. Continuation of the campaign in 2013 will be submitted as a supplemental request.
2. Appropriation of funds in the amount of $30,000 from Cultural Services' Capital Expansion Fees (CEFs) to hire an architect to develop conceptual drawings of the proposed museum expansion. The drawings would be used for public input and for fundraising purposes.

BUDGET IMPACT:
☒ Positive
☐ Negative
☐ Neutral or negligible
Funding from an outside source provides for the fund raising position. CEF fees collected will fund the conceptual design.

SUMMARY:
For the Loveland Museum/Gallery expansion to move forward as presented in the capital plan, a successful fundraising campaign is a necessary first step. In early 2011, the Kroh Charitable Trust donated approximately $630,000 to the museum. The funds still reside in Home State Bank and are worth approximately $650,000 at this time. The Kroh Will stipulated that the disbursement of the funds be at the discretion of the Cultural Services Board.

In April, 2011, the Cultural Services Board approved the use of the funds for a Development Administrator and associated costs to spearhead a capital campaign. A successful capital campaign can be greatly assisted by hiring an architect to develop conceptual drawings of the museum expansion.

This action is not final project approval. It is the only the first step necessary to the capital campaign. This funding request uses only $30,000 in City resources for design, with the resources for the fundraiser position coming from non-City resources (the Kroh Trust).

Attached information: The attachments include information about planning that has occurred to date:

- The space requirements and expansion study was completed in 2010 and will be updated when an architect is hired.
- The feasibility study by Kenney & Associates was completed in 2011, to assess the relocation of the expansion from the north to the south.
- Research on museums in communities of comparable size has been completed, to judge visitation patterns and operations for other similar museums
- The economic evaluation, project funding concept, and project road map have been completed following the Council's study session In December 2011.

Project Funding Concept: The attached funding concept is based upon CEF resources within the control of the Council, a portion of the Council Reserve intended for downtown projects, New Market Tax Credit private investment, and a fundraising campaign. The success of the funding concept relies upon:

- City Council approval of the Cultural and General Government CEF contributions
- City Council approval of the use of $1 million of the Council Reserve, out of the $4.6 million intended for downtown projects
- Successful placement of New Market Tax Credits with private investors
- Successful fundraising of $4 million

The total anticipated revenues exceed the project need by a few hundred thousand dollars, allowing for some margin of error.

No funding for construction will be committed until the completion of the entire funding package. The only funding expended in advance of that will be design and pre-development costs.

If the capital campaign is successful, further requests will be presented to City Council prior to the target construction date in 2015.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

- Introduction
- Appropriation Ordinance
- Economic Development Evaluation
- Space Requirements and Expansion Study
- Site Analysis
- Feasibility Study
- Museums in Communities of Comparable Size
- Visitation Overview
- Key Project Priorities
- Project Road Map
- Project Funding Draft
- Capital Project Forms
- Components of Museum Expansion

FIRST READING September 18, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR A FUND RAISING POSITION AND MATERIALS AND ARCHITECT FEES FOR A CONCEPTUAL DESIGN OF THE MUSEUM EXPANSION

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That revenues in the amount of $35,830 from The Kroh Trust in the General Fund 100 and revenues in the amount of $30,000 from reserves in the Cultural Services Capital Expansion Fee (CEF) Fund 267 are available for appropriation. Revenues in the total amount of $65,830 are hereby appropriated for a professional fund raising position and operating supplies and a conceptual design for the museum Expansion Project and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
General Fund 100

Revenues		
001-52-720-0000-35304-MUSFR	Contributions	35,830
Total Revenue		**35,830**
Appropriations		
001-52-720-0000-41011-MUSFR	Regular Salary	13,460
001-52-720-0000-41543-MUSFR	Insurance	2,170
001-52-720-0000-41544-MUSFR	FICA	1,030
001-52-720-0000-41545-MUSFR	Retirement	670
001-52-720-0000-42015-MUSFR	Computer Supply	2,000
001-52-720-0000-43021-MUSFR	Printing	6,500
001-52-720-0000-43899-MUSFR	Other Purchased Services	10,000
Total Appropriations		**35,830**

Supplemental Budget
Cultural Services CEF Fund 267

Revenues		
Fund Balance		30,000
Total Revenue		**30,000**
Appropriations		
267-52-720-0000-49355-GF1203	Design/Architect	30,000
Total Appropriations		**30,000**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this ___ day of October, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

LOVELAND

MUSEUM GALLERY

This packet contains:

Introduction

Appropriation Ordinance

- To appropriate funds from Cultural Services CEFs for architect to develop conceptual plan
- To appropriate funds from the Kroh Charitable Trust donation to hire a Development Administrator

Economic Development Evaluation

- Provided by the Economic Development Department

Space Requirements and Expansion Study

- The study began in 2008, the year after the Home State Bank property was acquired for the expansion. It was revised in 2010. Further revisions are in order, but they are minor and best left to be made when work begins with an architect.

Site Analysis

- Memos regarding the analysis of the Chase Bank Building site and an inquiry into the availability of the Reporter-Herald building.
- Parking Analysis: Provided by the Economic Development Department

Feasibility Study

- Kenney & Associates Inc. was retained to prepare a feasibility study to relocate the expansion from the north site to the parking lot directly south of the Museum.

Museums in Communities of Comparable Size

- Wildlife Experience Museum
- The Museum of Contemporary Art
- Whatcom Museum
- Aspen Art Museum
- Massachusetts Museum of Contemporary Art
- Vero Beach Museum of Art

Visitation Overview

- Map of attendees Fall 2011 – August 2012

Key Project Priorities

- Key priorities identified for inclusion in the architect Request for Qualifications (RFQ).

Project Road Map

- Schedule for Phase 1 of Museum Expansion.
- Any subsequent phase is determined by successful fundraising.

Project Funding Draft

- The funding concept is based upon CEF resources within the control of the Council, a portion of the Council Reserve intended for downtown projects, New Market Tax Credit private investment, and a fundraising campaign.

Capital Project Forms

- Forms are reviewed and revised, if needed, annually by Cultural Services and Facilities at the request of the Budget Office for the General Fund Agencies Recommended Capital Program.

Components of Museum Expansion

- Children's Interactive Mini-Museum
- Age of Bronze Exhibit
- Bureau of Reclamation Map Exhibit
- The Many Faces of Loveland
- Sculpture Garden Provided by the Art in Public Places Program
- Plaza/Gathering Place

INTRODUCTION

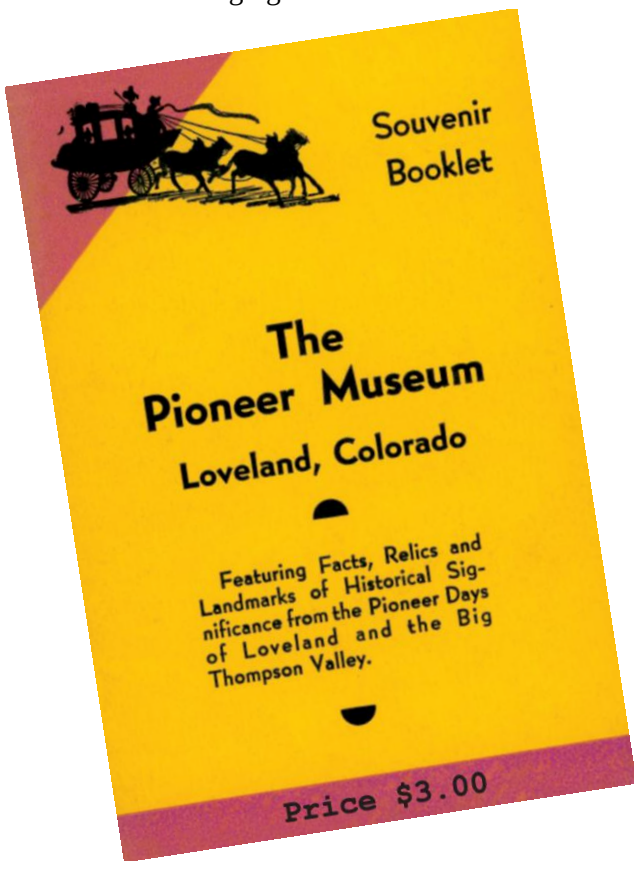
September 18, 2012

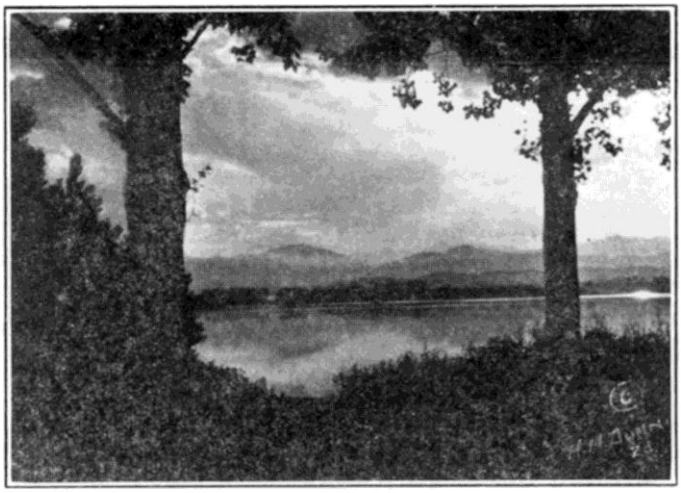
The mission of the Loveland Museum/Gallery is ***to promote and enrich quality of life by providing diverse cultural experiences through history, artistic expression and community celebration.***

Our History.

Founded in 1937 by local historian Harold Dunning as the Loveland Pioneer Museum, it became a municipal museum in 1945. Thanks to a bequest of $126,000 and a ½ block of land to build a museum, the original 12,000 sq. ft. museum was built in 1956. The collection, some of which dates back to Mr. Dunning's acquisitions in 1937, contains approximately 37,000 objects.

In 1992 the museum more than doubled in size to 27,000 sq. ft. transforming from a history museum with a very small gallery space into a history and art museum—changing the name from the





Loveland Museum to the Loveland Museum/Gallery. The galleries exhibit local, regional and international art exhibits. Approximately 50,000 visitors arrive each year—from every state and numerous other countries. It is anticipated that the expansion will increase visitation by at least 50%.

Loveland has been cited repeatedly as one of the 100 Best Art Towns in America in books of the same name by John Villani. While artists of all media reside in Loveland, the City is known for the strong bronze casting industry with two successful bronze casting foundries. The creative sector provides nearly 8% of the overall workforce, which is four times the national average and two times the state average.

Appropriation Ordinance

Appropriation Ordinance

Adoption of Appropriation

1. To appropriate $30,000 from the Cultural Services CEFs for architect to develop conceptual plan

2. To appropriate $35,830 from funds donated by the Kroh Charitable Trust donation to hire a Development Administrator

Economic Development Evaluation

Economic Development Evaluation

Building on Recent Efforts and Plans:

The Loveland Downtown Team and City Council have spent over three years trying to re-energize development efforts in the Downtown. The Museum Expansion project is a major investment by the community in the downtown and will help draw events, visitors, and economic activity.

The Museum Expansion project is consistent with the following policy documents adopted by Council in 2010, 2011, and 2012.

1. The Hip (Heart Improvement Plan) Streets: the Downtown Loveland Strategic Plan.
2. The Office for Creative Sector Development Strategic Plan (OCSD)
3. The Destination Loveland Strategic Plan
4. The City of Loveland Economic Development Strategy
5. The Vision Book which was completed to help sell developers on the Downtown as a regional draw and an activity center

The City Comprehensive Plan adopted by Council in 2005 also supports the expansion of the museum and other cultural centers.

Policy and Strategy Analysis

Downtown Redevelopment: Goal three of the Downtown Strategic Plan states, "Identify and support strategies to enhance and expand the cultural offerings in Downtown." The first action item is to "Complete the museum expansion and address the space needs of the Rialto Theater. " With the completion of the Rialto Theater Center, the space needs have been addressed. As more restaurants and breweries open in downtown it is paramount to have activities and cultural centers which keep visitors and Loveland residents in the Downtown area. Events and exhibitions at the expanded museum will attract more resident and non-resident spending in the downtown. The estimated guest number in 2011 was 50,000. It is entirely possible that attendance numbers could increase by 50% or 25,000 guests. This is based on the attendance numbers reflected at museums in similar size cities: Rock Springs, Arkansas; Bellingham, Washington; Aspen, Colorado; and Waltham, Massachusetts. Through innovative, exciting, and creative programming, other museums have been able to nearly triple attendance during the recent recession and sluggish economic recovery.

Creative Sector: The City has made a strong commitment to the growth and retention of jobs and economic activity in the Creative Sector which includes entrepreneurs and businesses in both the art and science arenas. Businesses such as Road Narrows Robotics, Interweave Press/Aspire Media and Ten Fold Collective are located in downtown Loveland because of the cultural amenities and historic character.

The average annual wage of a creative sector employee in Loveland was $42,000 in 2010, with the overall average annual wage for Loveland jobs being $37,000. The presence of "creatives" in downtown, adds to the demand for restaurant and retail establishments. Creatives are more likely to live in a downtown to be located close to their job and to avoid long commute times.

Loveland is a leader in the United States and Colorado for the presence of Creative Sector businesses.

- Local ownership of arts businesses per capita is ***150% higher*** than the national average and
- ***70% higher*** than the State.
- According to Dunn and Bradstreet, creative industries employment in Loveland is ***41% higher*** than the national average and
- ***28% higher*** than the State.
- The Census Bureau report shows Loveland has a ***41% higher*** than national average for its share of employees in Arts and Cultural Businesses.

This sector is an economic opportunity to tap. The Creative Sector in Loveland is strong and has the potential to be an even stronger economic contributor to the City's economic health.

Destination Loveland:
Goal number five of the Destination Loveland Plan states, "Encourage and support destination visitor programming, attractions and events."

Action item two states "Assist the Cultural Services and Economic Development departments with the expansion of existing destination venues such as the museum/gallery expansion, Rialto Bridge and Pulliam Building, as identified in the City Capital Projects plan and the Downtown Revitalization Strategy."

According to the Shop America Alliance in a 2010 study,

- 78% of all leisure travelers or 118.3 million adults are cultural and heritage travelers.
- Out of town cultural and heritage travelers spend an average of $994 on their trips versus $611 by the non-cultural traveler.
- These travelers are more interested in experiences where the destination, its buildings and surroundings have retained their historical character.
- 32% of cultural and heritage travelers shop in museum stores. These travelers stay an average of six nights on a trip. This is significant as ***Loveland has become and will continue to be a lodging hub*** in Northern Colorado. The additional lodging tax revenue will be reinvested in Loveland.

Support for the museum/gallery expansion is consistent with the comments of Mr. Bill Hudnut, former Mayor of Indianapolis who recommended Loveland's Downtown, ***"Be who you are."*** He highlighted Loveland's Arts and Cultural community in his 2010 presentation. The Museum Expansion project links directly to Loveland's history and bolsters its image as an Arts-based community.

Economic Development: "Make Loveland a destination which attracts businesses, visitors and consumers," is goal two of the City's economic development strategy. Action step four directs the City to "Establish a science and cultural facilities district to fund the development of infrastructure such as the museum and gallery expansion, downtown plaza, and Rocky Mountain Center for Innovation and Technology related projects." The completion date for this effort is 2014 and this step is evidence the business leaders who developed the strategy support the expansion of the museum and also support the use of a tax district to fund it. Action step five of the strategy encourages the City to "carry out the actions of the Downtown Strategic Plan and develop destination events and attractions."

Goal one of the ED Strategy is to, "Make Loveland the Heart of Innovation and Creativity in Colorado. Action step two is to Carry out the work of the Office for Creative Sector Development and accomplish the goals as stated." Those goals are:

1. Retain the 2700 creative sector jobs which exist in Loveland and add 1000 by 2014
2. Create, strengthen and maintain partnerships among P-20 educators, creative sector businesses, the city and others to facilitate innovative education and training.
3. Increase the number of non-resident attendees to Loveland events by 50% and non-resident spending by $1.5 million.
4. Promote financial sustainability by 2014 for the OCSD.

Support for the museum expansion is consistent with the business leaders on the working group, 10 year vision for Loveland and will have a direct and indirect effect on the accomplishment of the OCSD goals of increasing visitor attendance and spending as well as retaining and creating jobs.
The members of the working group were:

Marilyn Schock; McKee Medical/Banner Health Systems
Terry Precht; Vergent Products
Doug Rutledge; KL&A Engineering
Chris Lombardi, Velocity Real Estate
Mary Bahus-Meyer; Full Circle Marketing
Karen Richardson; Sculpture Depot
Troy Stromme; Group Publishing
Frank Roundy, SA Composites

Space Requirements and Expansion Study

CITY OF LOVELAND

Cultural Services – Loveland Museum/Gallery

SPACE REQUIREMENTS AND EXPANSION STUDY

REVISED DRAFT

March 2010

The mission of the Cultural Services Department is to promote and enrich quality of life by providing diverse cultural experiences through history, all forms of artistic expression and in community celebration.

Prepared by:

City of Loveland

Public Works/Facilities Management

Loveland Museum/Gallery future planning assumptions

- The City of Loveland Capital Improvement Plan (CIP) includes a 26,000 square foot expansion of the Museum/Gallery. At the direction of the Cultural Services Department Director, this study reflects the space requirements gathered through interviews with the Cultural Services' staff. Further refinement of the space program will need to be completed to reconcile the difference in the space requirements included in the CIP and the space requirements identified through this study.
- Current and projected staff figures were provided by the Cultural Services Department.
- Staff numbers shown in the Program database reflect the total number of people reporting to the Cultural Services Department, not FTEs.
- Projected space needs are based upon addressing current deficiencies and projected program/functional requirements.
- Existing square feet was derived from the existing City space planning drawings.
- Gross square feet (GSF) includes the program net square feet, building common, exterior building walls, building core and primary and secondary building circulation. Secondary building circulation factor was removed from the exhibit areas at the direction of the Cultural Services Director. The secondary circulation is considered a part of the exhibit space.
- Vacation of the east portion of the alley running east and west between the existing Museum and the proposed addition. If alley not vacated, the floor stacks would need to be refined.
- Property setbacks are unknown and need to be addressed with the City's Development Review Team.
- Parking requirements are unknown. Options for parking may include the potential for underground and/or surface parking on-site.

The study process included the following steps:

1. Review of existing plans and data
2. Kickoff meeting with the Cultural Services Department
3. Interviews with each Cultural Services Department staff member
4. Tour current facility and specific departmental spaces
5. Development of a database of existing space requirements
6. Projection of space requirements based upon anticipated changes to internal programs, services, and improvement and growth of the collection
7. Calculation of Departments/Sections by probable floor locations (stacks)
8. Application of stack calculation in bubbles of Section areas on a sketch building floor plan

Next steps in study process:

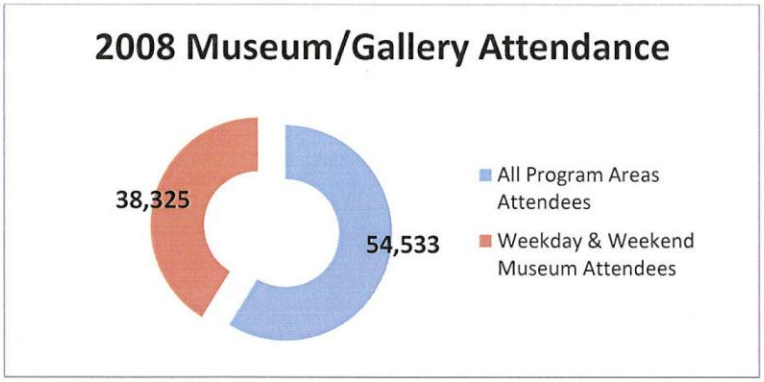
- Refinement of the space program needs
- Refinement of probable floor locations (stacks)

Optional Expansion solution attributes

- The existing Museum/Gallery space being reverted to the History exhibition space and the addition consisting of the Art exhibition space, Auditorium, Children's exhibition space, classrooms as well as an open outdoor courtyard for sculpture and event space.

SUMMARY OF DATA

The Cultural Services Department staff calculates the attendance at the Museum/Gallery including various program attendance and visits to the Museum. The total attendance for all programs in 2008 is reflected in the following graph:



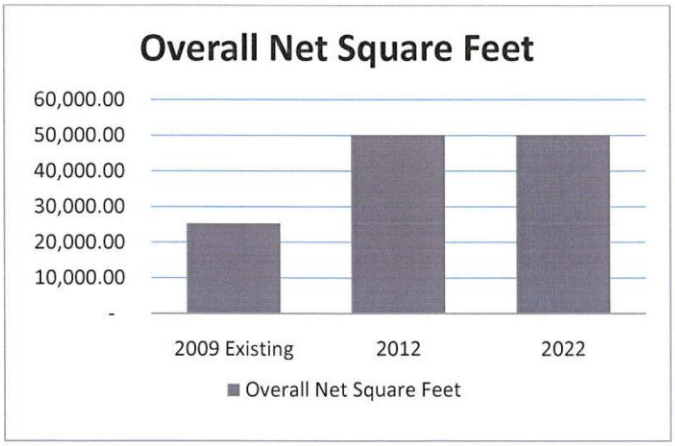
*Data received from Cultural Services Department staff

Department Staff

Staff	Current	2012	2022
Total Staff in Program	9	13	13

Existing Facilities

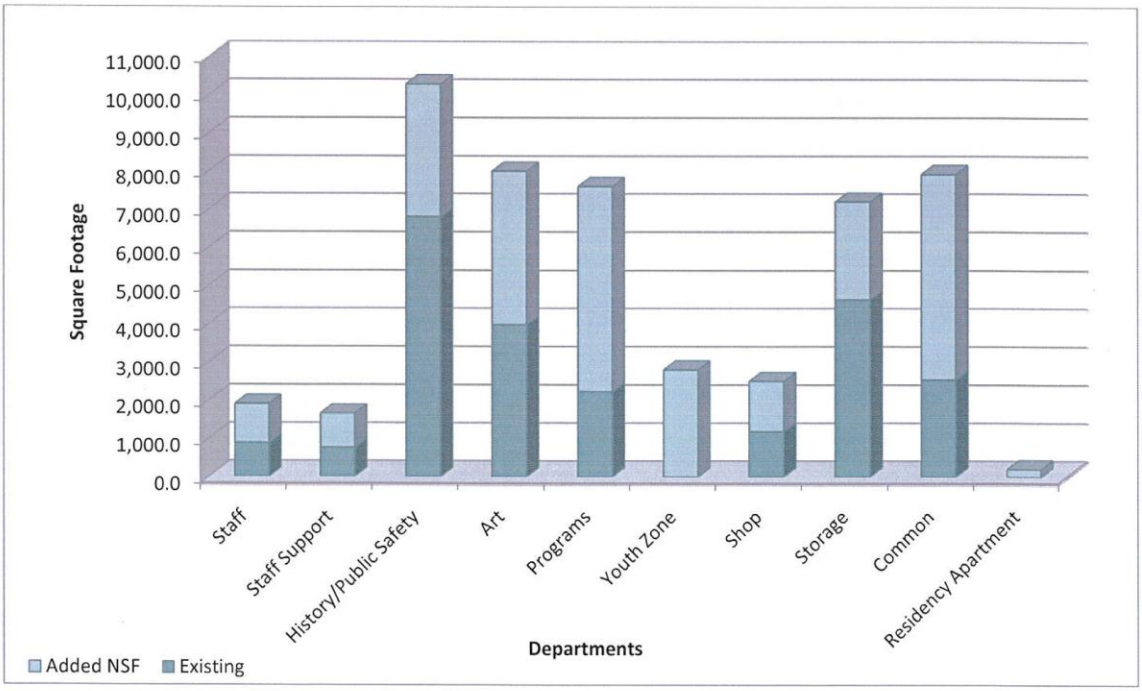
The 1992 addition to the Museum included several exhibit storage areas, which are no longer adequate both in terms of square footage and climate controls required for permanent and traveling exhibits. Program (classroom and presentation) space is also limited and not adequate to serve community demands and expanded museum program opportunities.



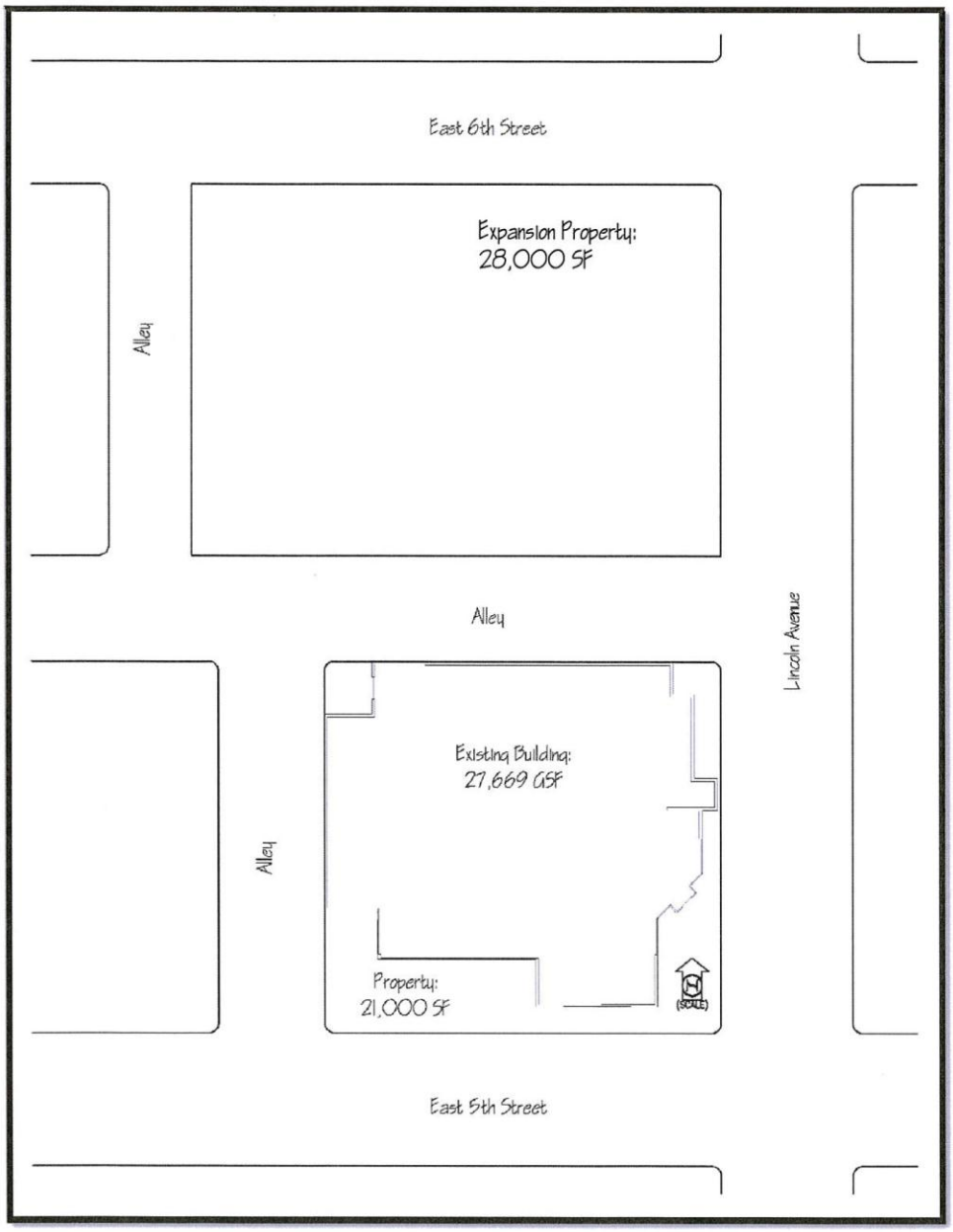
SPACE REQUIREMENTS

	Gross Square Feet		Net Square Feet		
	Existing	Proposed	Existing	2012	2022
Staff	882.0	1,896.0	882.0	1,896.0	1,896.0
Staff Support	753.6	1,650.0	753.6	1,650.0	1,650.0
History/Public Safety	6,803.3	10,290.0	6,803.3	10,290.0	10,290.0
Art	3,983.3	8,000.0	3,983.3	8,000.0	8,000.0
Programs	2,231.3	7,600.0	2,231.3	7,600.0	7,600.0
Youth Zone	0.0	2,800.0	0.0	2,800.0	2,800.0
Shop	1,186.2	2,500.0	1,186.2	2,500.0	2,500.0
Storage	4,643.8	7,200.0	4,643.8	7,200.0	7,200.0
Common	2,537.8	7,921.9	2,537.8	7,921.9	7,921.9
Residency Apartment	0.0	200.0	0.0	200.0	200.0
Building Core	2,293.0	0.0	2,293.0	0.0	0.0
Circulation	2,354.7	7,848.6	2,354.7	0.0	0.0
	27,669.0	57,057.9	25,341.3	50,057.9	50,057.9
Outdoor Venue	0.0	4,500.0	0.0	4,500.0	4,500.0

*For purposes of these calculations, Gross Square Feet (GSF) includes all building core and circulation. Net Square Feet (NSF) does not include building circulation. The building core figure in this table is used to reconcile the existing GSF with the proposed GSF.



SCHEMATIC SITE PLAN



Stack Option

	COMMON BLDG	PUBLIC	STAFF	SECTION	TOTALS
Floor 1					15,095.6
					11,874.9
COMM-BLDG					
Public - Elevator	107.9				
Support - Dock	462.0				
Support - Freight Elevator	330.0				
Public - Stairwell and Landing	792.0				
Public - Restrooms	382.8				
COMM-PUBLIC					
Auditorium		2,475.0			
Reception		342.5			
Lobby/Reception/Greeting		1,980.0			
Conference Room - 20		616.5			
Catering Kitchen		330.0			
COMM-STF					
Copy/Workcenter			205.5		
Office Supply Storage			137.0		
Art Exhibit Holding Area			856.0		
Storage - History & Art Collection			2,086.5		
Storage - Educational Outreach Storage			214.0		
Storage - Public Art Collection Storage			107.0		
Storage - Tables & Chairs - Auditorium			330.0		
Storage - A/V Storage for Auditorium			198.0		
Storage - Tables & Piano			132.0		
HISTORY					
History Exhibit Space				7,535.0	
ART					
Art Gallery (Regional)				2,200.0	
Art Gallery (Community Programming)				1,100.0	
SHOP					
Preparator Shop				2,808.0	
Painting Booth				117.0	
PROGRAM					
Gift Shop				385.0	
STAFF				740.9	
	2,074.7	5,744.0	4,266.0	14,885.9	26,970.6
	Floor 1 Status				2,625.1

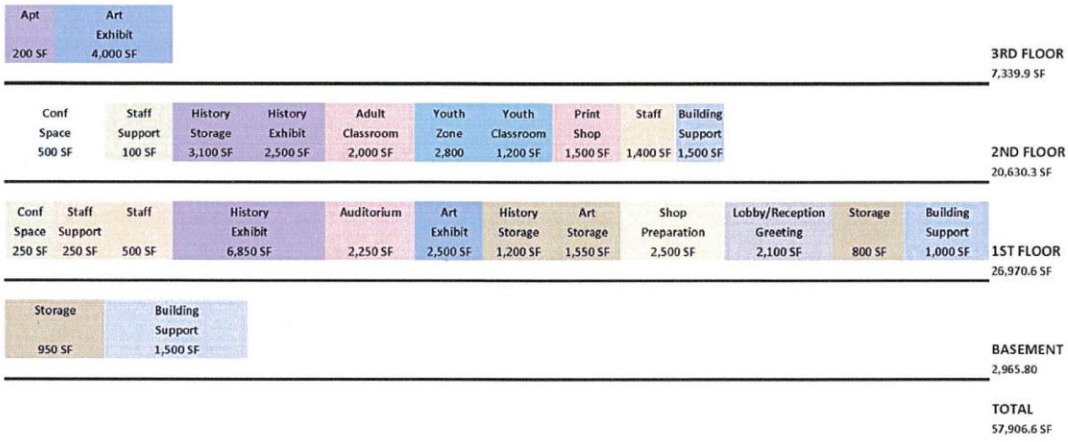
Stack Option

	COMMON BLDG	PUBLIC	STAFF	SECTION	TOTALS
Floor 2					7,433.3
					13,197.0
COMM-BLDG					
Public - Elevator	107.9				
Public - Restrooms	594.0				
Public - Stairwell and Landing	792.0				
Support - Freight Elevator	330.0				
COMM- PUBLIC					
Conference Room - 16		479.5			
Conference Room - 6		342.5			
COMM-STF					
Copy/Workcenter			137.0		
Staff Breakroom/Kitchen			132.0		
Storage - History & Art Collection			3,424.0		
Staff Restrooms			211.2		
HISTORY					
History Exhibit Space				1,457.5	
Public Safety Large Equipment Exhibit Space				412.5	
Public Safety Exhibit Space				924.0	
History Lab Space				357.5	
Research Room - History Collection				632.5	
PROGRAM					
Classrooms - Adult				1,320.0	
Classrooms - Pottery Studio				880.0	
Print Shop				1,650.0	
Classrooms - Youth				1,320.0	
STAFF				2,046.2	
YOUTH				3,080.0	
	1,823.9	822.0	3,904.2	14,080.2	20,630.3
	Floor 2 Status				1,303.0

Stack Option

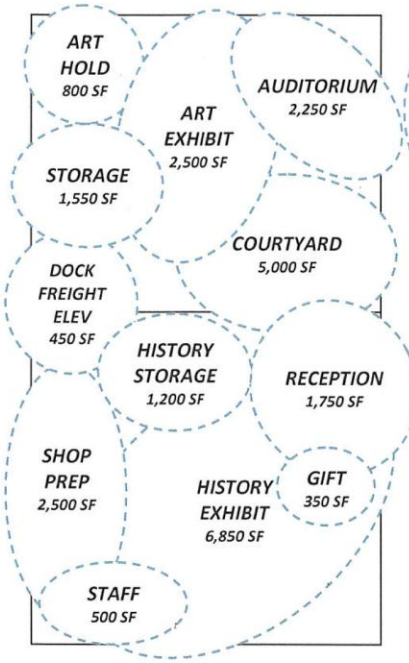
	COMMON BLDG	PUBLIC	STAFF	SECTION	TOTALS
Floor 3					-
					7,339.9
COMM-BLDG					
Public - Elevator	107.9				
Public - Restrooms	594.0				
Support - Freight Elevator	330.0				
Residency Apartment	214.0				
Public - Stairwell and Landing	594.0				
ART					
Art Galley (National/International)				5,500.0	
	1,839.9	-	-	5,500.0	7,339.9
	Floor 3 Status				(539.9)
Basement					5,138.9
					(2,173.1)
COMM-BLDG					
Public - Elevator	107.9				
Public - Restrooms	184.8				
Public - Stairwell and Landing	462.0				
Support - Mechanical	158.4				
Support - Electrical/Telephone	376.2				
Janitor Closet with Storage	330.0				
Support - Freight Elevator	330.0				
COMM-STF					
Storage - Publication/Brochure Storage			107.0		
Storage - Classrooms/Events Supplies & Equipment			374.5		
Storage - Business Records			535.0		
	1,949.3	-	1,016.5	-	2,965.8
	Floor Basement Status				2,173.1
Building Summary					
Grand Totals	5,847.8	6,566.0	9,186.7	28,966.1	57,906.5
Outdoor Venue - Courtyard		4,500.0			

STACK PLAN

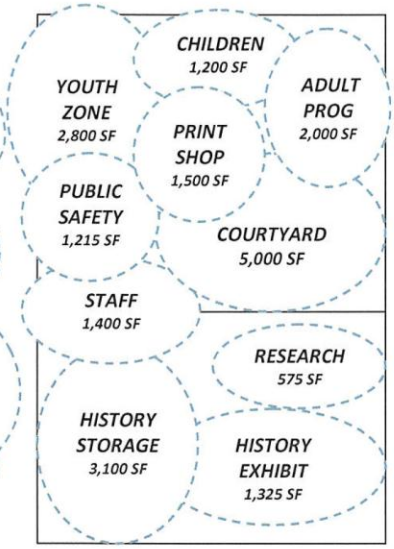

Apt
200 SF
Art Exhibit
4,000 SF
3RD FLOOR
7,339.9 SF
Conf Space
500 SF
Staff Support
100 SF
History Storage
3,100 SF
History Exhibit
2,500 SF
Adult Classroom
2,000 SF
Youth Zone
2,800
Youth Classroom
1,200 SF
Print Shop
1,500 SF
Staff
1,400 SF
Building Support
1,500 SF
2ND FLOOR
20,630.3 SF
Conf Space
250 SF
Staff Support
250 SF
Staff
500 SF
History Exhibit
6,850 SF
Auditorium
2,250 SF
Art Exhibit
2,500 SF
History Storage
1,200 SF
Art Storage
1,550 SF
Shop Preparation
2,500 SF
Lobby/Reception Greeting
2,100 SF
Storage
800 SF
Building Support
1,000 SF
1ST FLOOR
26,970.6 SF
Storage
950 SF
Building Support
1,500 SF
BASEMENT
2,965.80
TOTAL
57,906.6 SF

SECTION BUBBLE DIAGRAM

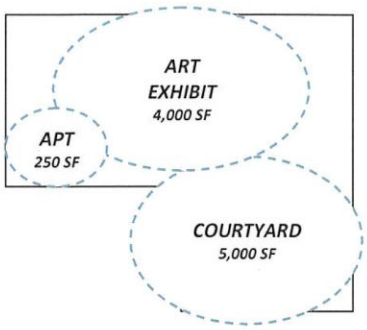
1st Floor



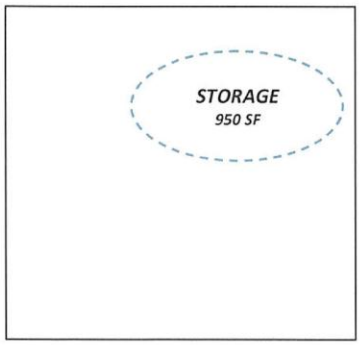
2nd Floor



3rd Floor

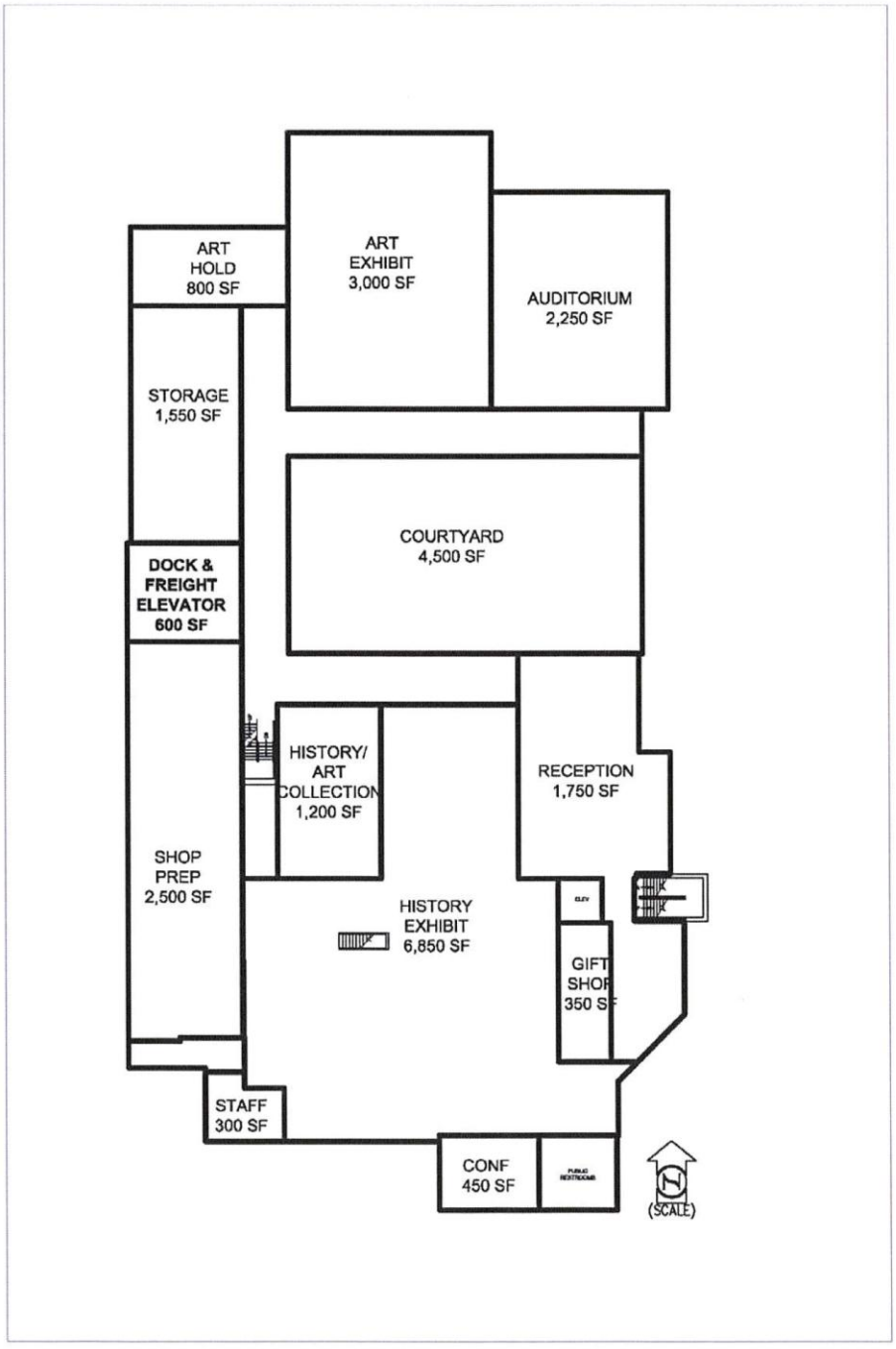


Basement

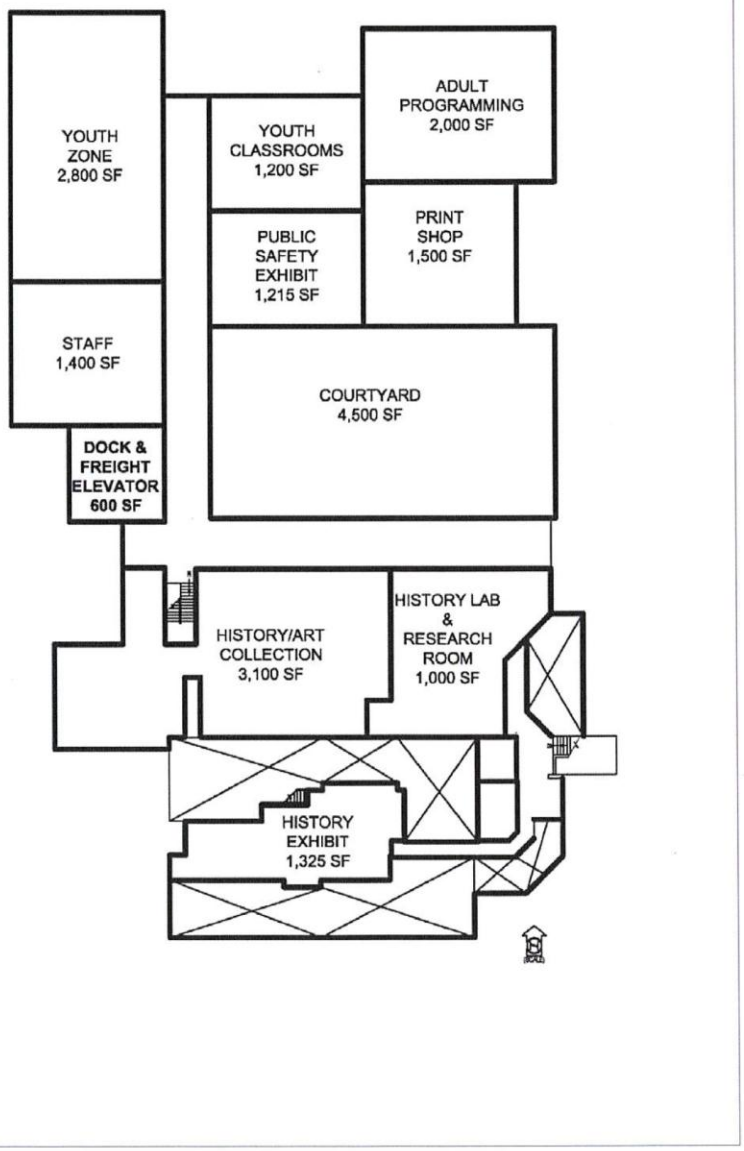


Comments:

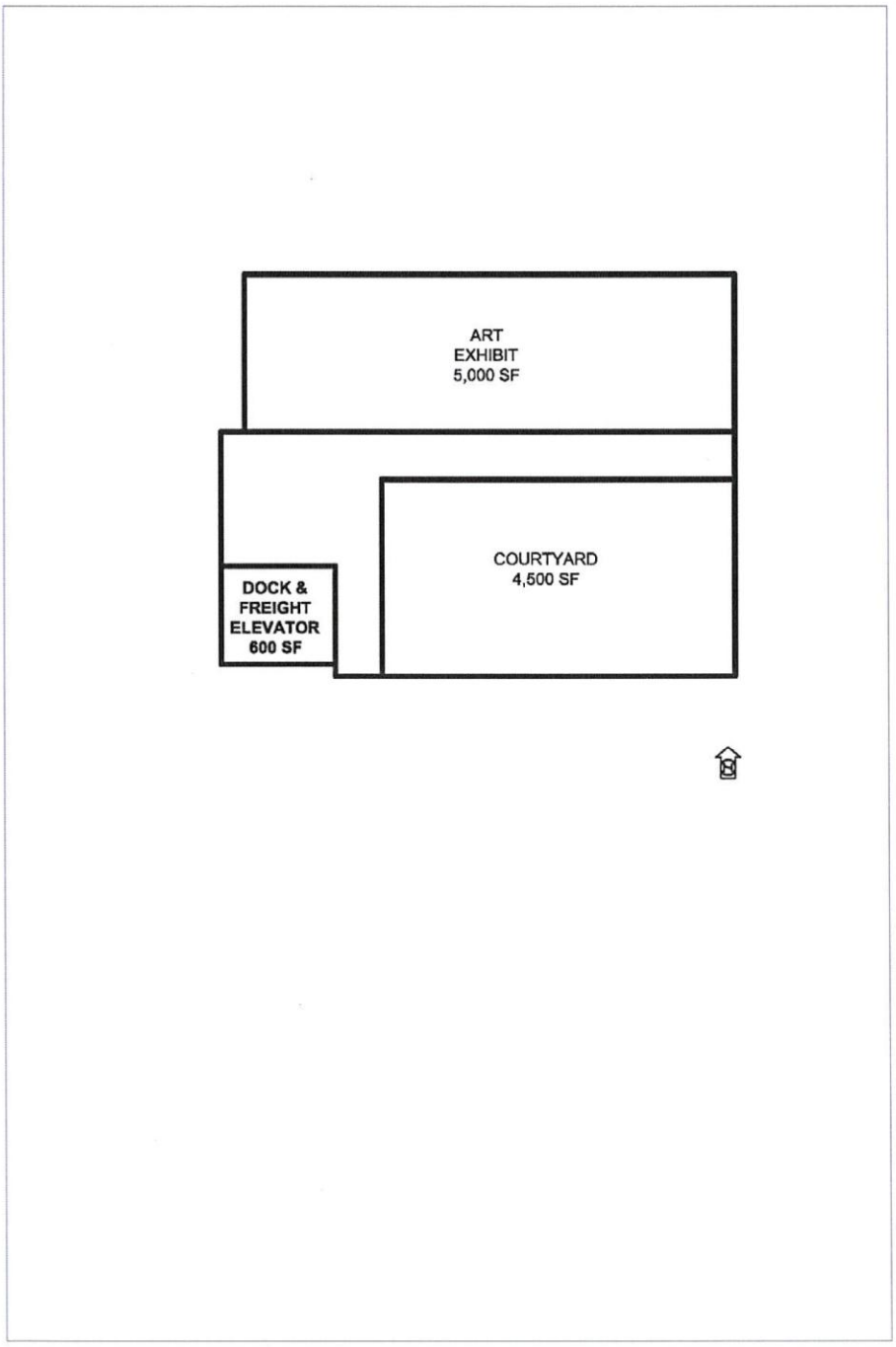
- Bubble of space approximate the area calculated, but are not exact representations of that area requirement.
- Bubble of space do not include all building common requirements.
- Bubbles of space do not imply wall locations or physical separations.
- Bubbles reflect relative size and adjacency requirements as applied to a building perimeter.



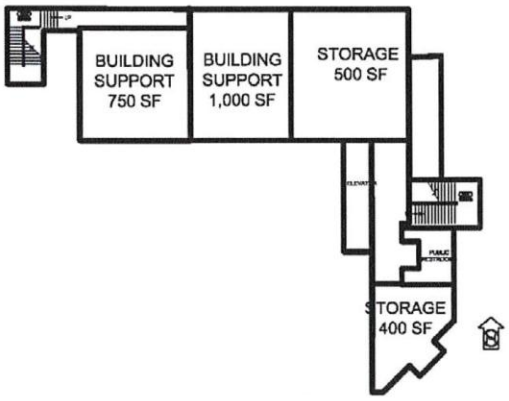
FIRST FLOOR BLOCK PLAN



SECOND FLOOR BLOCK PLAN



THIRD FLOOR BLOCK PLAN



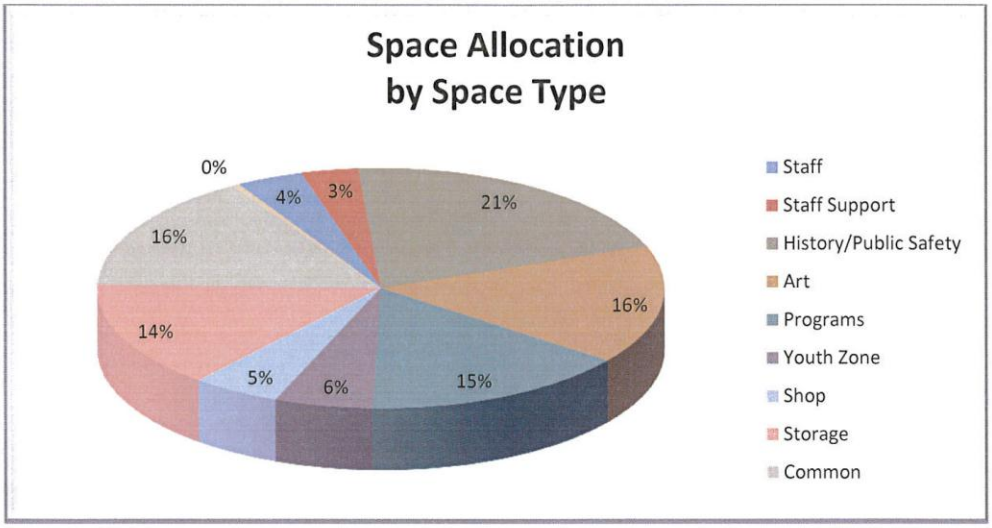
LOWER FLOOR BLOCK PLAN

SPACE CALCULATION

This study uses the IFMA (International Facilities Management Association) definition of space calculations. Circulation is defined by IFMA; the study interpretation is included in *italics*:

- Secondary circulation: The portion of a building required for access to some subdivision of space (whether bounded by walls or not) that is not defined a primary circulation. *The space required to access individual workstations, support spaces and equipment within a planning group.*
- Primary circulation: The portion of a building that is a public corridor or lobby, or is required for access by all occupants on a floor to stairs, elevators, toilet rooms and building entrances. *The space required to access planning groups as a unit.*

ALLOCATION OF SPACE BY PROGRAM



ORGANIZATION

The programming report is based upon the following hierarchy:

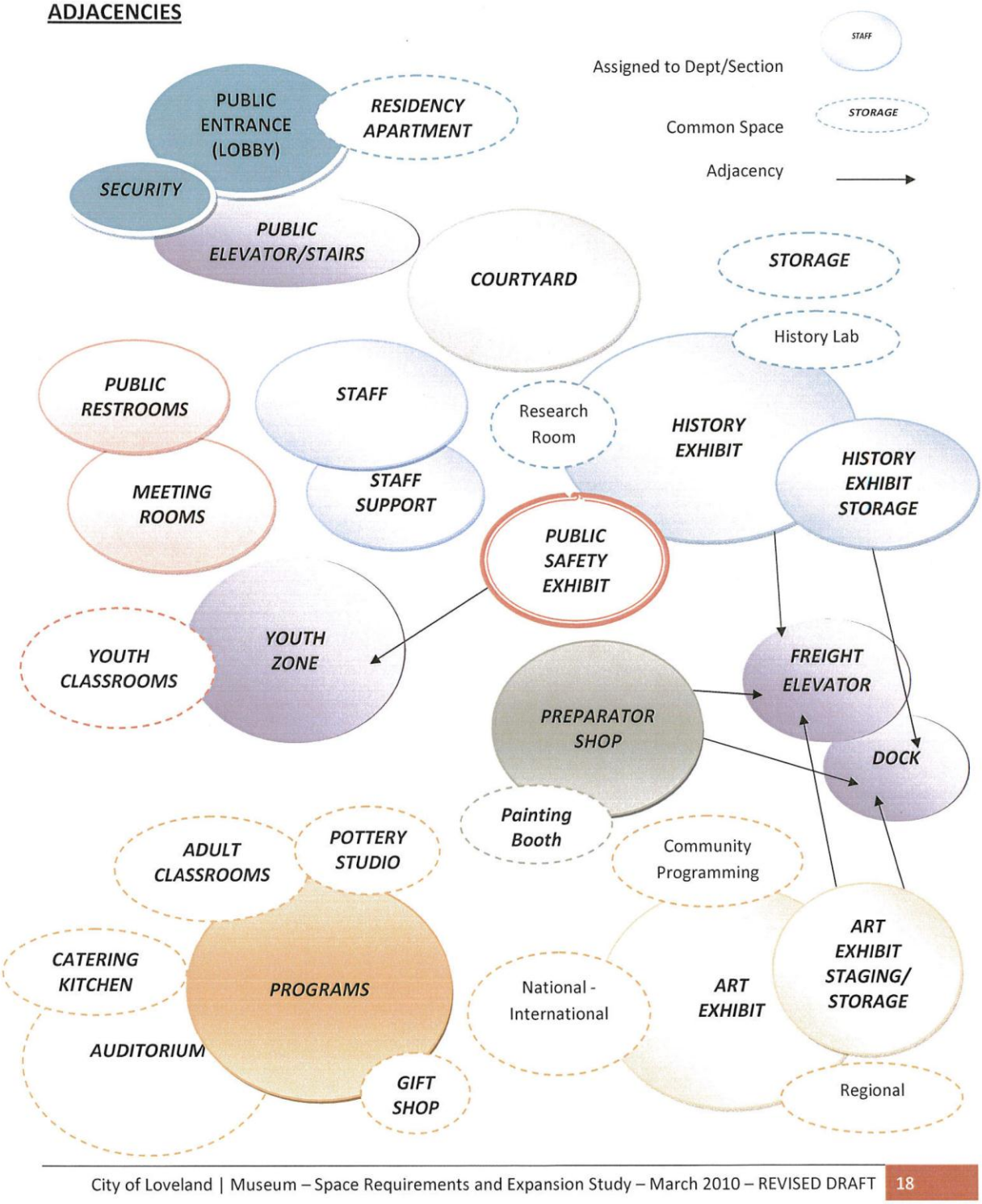
Department		Sections	
STAFF	Staff	STAFF	Staff
SUPPORT	Support	SUPPORT-STF	Support – Staff
HISTORY	History	HIST-PUB	History – Public
		HIST-STF	History – Staff
ART	Art	ART-PUB	Art – Public
		ART-STF	Art – Staff
SHOP	Shop	SHOP-STF	Shop – Staff
YOUTH	Youth Zone	YOUTH-PUB	Youth – Public
		YOUTH-STF	Youth – Staff
PROGRAM	Programs	PROGRAM-PUB	Program – Public
		PROGRAM-STF	Program – Staff
STORAGE	Storage	STORAGE	Storage
PUBLIC SAFETY	Public Safety	PUBLIC SAFETY-PUB	Public Safety – Public
		PUBLIC SAFETY-STF	Public Safety – Staff
RESIDENCY	Residency	RESIDENCY	Residency
OUTDOOR	Outdoor Venue	OUTDOOR-PUB	Outdoor – Public

In every facility, there exist spaces that are Common, either a service area for building function or shared spaces not a part of any planning group. Common space items, though listed in a planning group, may be distributed individually, unlike an organization planning group. Sometimes a space under the control of a specific group is listed with Common to provide flexibility in location.

Common planning groups for this report include:

Department		Sections	
COMMON	Common	COMM-BLDG	Common – Building
		COMM-PUB	Common – Public
		COMM-STF	Common – Staff

ADJACENCIES



Site Analysis

Site Analysis

In 2007 the Home State Bank site, north of the present museum, was purchased for future expansion of the Loveland Museum/Gallery. Through the downtown visioning process that took place in May/June of 2010, the community encouraged the City to look at moving the proposed Museum expansion to the south parking lot at 5th and Lincoln.

In 2011 the City received a comprehensive proposal from Brinkman Partners to develop the North Catalyst Site (a.k.a. the Home State Bank site) in response to the Downtown Request for Proposals (RFP). In anticipation of moving the museum expansion to the south, the City hired Kenney and Associates to complete a feasibility analysis for locating the museum on the south site. The analysis concludes that the site could support a 27,000 square foot building on three levels with additional space for a civic plaza/sculpture garden on site. At a Study Session in December, 2011, City Council approved the relocation of the expansion from the north to the south.

In early 2012, inquiries from the community were received asking the City to consider other downtown sites—the Chase Bank Building to the north between 6th and 7th streets and the Reporter-Herald building to the west of the museum.

Chase Bank Building

A project team with members Ken Cooper, Keith Reester and Susan Ison met with the Ward family, owners of the Chase Bank Building, and toured the building on May 4. The family would consider selling the building for $8 million, which is dramatically higher than the $3 million sale price some anticipated. The building is about 72,700 square feet, so the asking price of $8 million is more than $110 per square foot. And though the building seems to be in relatively fine shape, it would be expensive to remodel. It is anticipated the City would spend at least another $100 per square foot in total project costs to remodel it.

The original south building was built in 1962, with the larger "tower" added to the north in 1979. The tower has Twin T concrete construction throughout and experience at the City's Maintenance Operations Center (MOC) confirms minimal flexibility with that situation. The desire to provide open areas with vaulted ceilings in a new museum would not be practical in the tower. Window lines exist on the tower's perimeter, but are smaller than what would be designed and built today.

The older south building does have a mezzanine entrance area and, though constructed with poured concrete, features unique day lighting and design. The remainder of the south building is more consistent with a typical bank building: hallways, vaults, conference areas and private offices. The project team believes the south building entrance would provide options for an inviting museum entrance, but the remainder of the entire Chase building is not a good fit with the project needs and expectations, including the desire to create a building which would help draw visitors to downtown.

The building is located on eight parcels of land, totaling about 3.2 acres. However, the roughly 1/3 of an acre of parking on the 3.2 acre site will not be available for sale. The campus is not located on a flood plain and a Phase 1 environmental study is current, indicating the site is clean and clear. During the tour, floor tiles in the south building were observed that are certainly asbestos, and asbestos is contained around some of the ducting as well.

Since the tour, the following upgrades have been completed on the building:

- New Trane Chiller—April 2000
- Climate Control System—October, 2000
- DDC Installations—January, 2001
- Elevator modernization—December, 2005
- HVAC distribution duct work has been replaced (not all at once)
- T8 lighting upgrades as spaces turnover

With the many limitations of the building and parking, prospects of a very expensive remodel, and the relatively poor fit with the project goals for the Museum Expansion & Remodel, our project team does not recommend action related to a purchase of the Chase Bank Building.

Reporter-Herald Building

Bill Cahill has on three separate occasions spoken to Dean Lehman regarding his interest in selling the Reporter-Herald building to the City for the museum expansion. Mr. Lehman has declined each time, conclusively removing that site from consideration for the expansion.

However, Mr. Lehman is open to discussion on the City leasing part of the Reporter-Herald parking lot on the west side of Cleveland to use as public parking. No details on the transaction have been discussed to date. The concept is that the City may lease part of it short-term to provide additional downtown public parking.

Parking Analysis

Museum Parking:

While zero parking spaces are required based on the municipal code, anticipated parking requirements for the proposed museum are informed by title 18.42 of the municipal code, and could be defined as, "*1 space for every 2 students or visitors at maximum capacity, plus 2 spaces for every employee"* (Section 18.42, p. 18-138 – Galleries, art and dance studios, photo studios).

Based on an estimate of a 27,000 square foot building, with occupancy of approximately 450 - 500, the Museum/Gallery would require parking of about 225 to 250 spaces.

Based on the "*Downtown Loveland – Parking Assessment and Recommendations*," the Downtown core/primary study area has 2,309 public parking spaces. This includes on street parking (1,624) and public off street parking (685).

The primary study area is defined as 1st Street north to 8th Street, from Washington Avenue to Garfield. The study was also done prior to the City adding the surface lot at 3rd and Lincoln, which added an additional 58 parking spaces.

The City is also exploring additional opportunities to add parking at 6th and Cleveland, 5th and Cleveland and 7th and Lincoln. Further, the City purchased the property on 3rd Street between Lincoln and Cleveland with the intention of developing the property and adding additional public parking.

Feasibility Study

Feasibility Study

for

Loveland Museum - Gallery and City of Loveland

June 15, 2011

LOVELAND MUSEUM GALLERY

City of Loveland

prepared by:

kenney associates inc

architects landscape architects urban designers planners

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June 15, 2011

Susan Ison
Director, Cultural Services
503 N. Lincoln Ave.
Loveland, CO 80537

Mike Scholl
Planner
500 E. 3rd St. Suite 310
Loveland, CO 80537

RE: Loveland Museum / Gallery South Expansion Feasibility Study

Susan and Mike,

Kenney & Associates has gathered information regarding the feasibility of expanding the Loveland Museum / Gallery south, over 5th Street and into the current City owned surface parking lot. The following information is what we've discovered. We've separated everything into a number of categories within the headings below.

Limiting Factors of Physical Property
-Zoned ***Be*** Established Business District
-Also located within the Core Character Area (area within 3rd - 6th and Garfield – Washington)
-Cannot close 5th Street between Lincoln and Cleveland
-Need to maintain access easement to the McKee building on the western edge of project

Setbacks and Easements
-Zero setbacks are allowed and encouraged in the Core Character Area
-May need to maintain access easement to the McKee building on the western edge of project as mentioned above
-Setbacks may be dictated by proposed fire protection and fire walls based on proposed code defined Construction Type and type of wall or opening being constructed. See Code information below regarding level of fire protection in relation to property line.

Utility Sizes and Locations
-Museum is currently supplied is through a 300 KVA transformer #7872 with 120/208 V three phase power located north of the building
-One underground power line on the south side of 5th Street. (see attached Electrical line drawing)

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-Two overhead lines connecting three street lamps. One on the north side of 5th Street adjacent the Reporter-Herald building moving east to a lamp along the center of the existing Museum, the final lamp is located across 5th Street to the southwest near the entrance to the existing parking lot. (see attached Electrical line drawing)
-Two electrical transformers are located on the central southern edge of the property will need to be relocated into a sub-grade vault.
-One 8" PVC water main located under the northern edge 5th Street. No building will be allowed over the water main. A bridged structure is acceptable as long as the utility company can access the street for any necessary repairs. (see attached Water line drawing)
-One 8" VCP waste line flowing east in the alley between 5th and 6th Streets
-One 10" VCP waste line flowing east in the alley between 4th and 5th Streets
-One 24" RCP storm line flowing east in the middle of 5th Street. (see attached Storm Water line drawing)
-One inlet on each side of 5th Street at the eastern third of the property
-We may need to relocate a couple storm inlets once the new impervious areas are determined.

Allowed Height and Area base on Zoning and Construction Type / Occupancy
-Allowed Height based on draft of **Be** Zoning District Update is 70'
-Any building with gross floor area over 25,000 needs Planning approval. In this case Planning approval would be necessary.
-Existing Museum is Construction Type III A with Occupancy Classification A-3
-2006 IBC allows 3 stories (65 feet) and 14,000 s.f. per floor with no increases.
-With only the sprinkler increase we are allowed 4 stories (85 feet) and 28,000 s.f. per floor.
-The City Zoning standards will likely govern the height and area of the new building
-Allowable area and height are equal for the 2006 and 2009 IBC

Preliminary Code Study (2006 IBC)

-Construction Type:	III A - sprinkled (chapter 6)
-Occupancy Classification:	Art Gallery A-3 (chapter 3)
	Museum A-3
	Storage Areas S-1
	Business Offices B
-Occupancy Separation:	A-3 / S-1, B = 1 hour (table 508.3.3)
-Max. Building Height & number of stories (table 503):	
	A-3 = 3 stories, 65 feet
	S-1 = 3 stories, 65 feet

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B = 5 stories, 65 feet

-Automatic sprinkler system increase (section 504.2) allows (1) additional story and an additional 20 feet to all noted values above.

A-3 = 4 stories, 85 feet
S-1 = 4 stories, 85 feet
B = 6 stories, 85 feet

*Note: City regulations limit overall height to 70 feet.

-Allowable Floor Area (table 503): A-3 = 14,000 s.f. per floor
S-1 = 26,000 s.f. per floor
B = 28,500 s.f. per floor

-Automatic sprinkler system increase (section 506.3) allows double the above values.

A-3 = 28,000 s.f. per floor
S-1 = 52,000 s.f. per floor
B = 57,000 s.f. per floor

-Fire Resistive Requirements (table 601):

	Structural Frame –	1 hour
	Exterior Bearing Walls -	2 hours
	Interior Bearing Walls -	1 hour
	Interior Non Bearing Walls -	0
	Floor Construction -	1 hour
	Roof Construction -	1 hour

-Fire Resistive Requirements for Exterior Walls (table 602):

A-3, B	0- less than 5' from property line	1 hour
	5' – less than 10' from property line	1 hour
	10' – less than 30' from property line	1 hour
	Greater than 30'	0
S-1	0- less than 5' from property line	2 hours
	5' – less than 10' from property line	1 hour
	10' – less than 30' from property line	1 hour
	Greater than 30'	0

-Corridor Fire Resistive Rating (table 1017.1):
0 with sprinkler system

-Shaft enclosures (section 707.4):
Four stories or more = 2 hours
Less than four stories = 1 hour

-Exterior Door Fire Resistive Rating (table 715.4):
2 hour wall (S-1) = 90 min. door
1 hour wall (A-3, B) = 45 min. door

-Exterior Window Fire Resistive Rating (table 715.5):
2 hour wall (S-1) = 90 min. window
1 hour wall (A-3, B) = 45 min. window

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Preliminary Code Study (2009 IBC)

-Construction Type: III A - sprinkled (chapter 6)

-Occupancy Classification: Art Gallery A-3 (chapter 3)
Museum A-3
Storage Areas S-1
Business Offices B

-Occupancy Separation: A-3 / S-1, B = 1 hour (table 508.4)

-Max. Building Height & number of stories (table 503):
A-3 = 3 stories, 65 feet
S-1 = 3 stories, 65 feet
B = 5 stories, 65 feet

-Automatic sprinkler system increase (section 504.2) allows (1) additional story and an additional 20 feet to all noted values above.
A-3 = 4 stories, 85 feet
S-1 = 4 stories, 85 feet
B = 6 stories, 85 feet

*Note: City regulations limit overall height to 70 feet.

-Allowable Floor Area (table 503): A-3 = 14,000 s.f. per floor
S-1 = 26,000 s.f. per floor
B = 28,500 s.f. per floor

-Automatic sprinkler system increase (section 506.3) allows double the above values.
A-3 = 28,000 s.f. per floor
S-1 = 52,000 s.f. per floor
B = 57,000 s.f. per floor

-Fire Resistive Requirements (table 601):

Structural Frame –	1 hour
Exterior Bearing Walls -	2 hours
Interior Bearing Walls -	1 hour
Interior Non Bearing Walls -	0
Floor Construction -	1 hour
Roof Construction -	1 hour

-Fire Resistive Requirements for Exterior Walls (table 602):

A-3, B	0- less than 5' from property line	1 hour
	5' – less than 10' from property line	1 hour
	10' – less than 30' from property line	1 hour
	Greater than 30'	0
S-1	0- less than 5' from property line	2 hours
	5' – less than 10' from property line	1 hour
	10' – less than 30' from property line	1 hour
	Greater than 30'	0

-Corridor Fire Resistive Rating (table 1018.1):
0 with sprinkler system

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-Shaft enclosures (section 708.4):
Four stories or more = 2 hours
Less than four stories = 1 hour
-Exterior Door Fire Resistive Rating (table 715.4):
2 hour wall (S-1) = 90 min. door
1 hour wall (A-3, B) = 45 min. door

-Exterior Window Fire Resistive Rating (table 715.5):
2 hour wall (S-1) = 90 min. window
1 hour wall (A-3, B) = 45 min. window

How to connect to the existing building

We propose the new addition could attach to the existing building on the South side within the George Peters Park. Using existing openings in the building that are currently covered with graphics could prove beneficial to the connection. The adjacent interior space is used for circulation and is beyond the point of sale so control in and out is maintained and we would not need to adjust any of the offices or workshops in the southwest corner of the existing building. See attached site plan illustrating the physical relationship.

Future of 5th Street

-Cannot close 5th Street.
-Allowed to bridge over 5th Street.
-Minimum bridge clearance at 18'-6" (dependant to Public Works street repair equipment)
-Street can be reduced to 24'-0", must maintain two-way traffic.
-One-way traffic will not be allowed
-A complete Traffic Impact Study will be required

Lot Mergers

-We would need to merge the (7) lots that make up the current surface parking area.
-Need to work with Public Works and Engineering on access easements over 5th Street R.O.W.

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Vehicular and pedestrian access from Lincoln and Cleveland Avenues

-Vehicle traffic will remain
-Proposed new entrance would allow access and parking from both Lincoln and Cleveland Avenues.
-Street parking along 5th Street will be eliminated east of the new building bridge and likely be reduced on the west side.
-The remaining parking west of the new building bridge would maintain parking for the Reporter-Herald and McKee buildings.
-Provide drop off zones along 5th Street.
-The elimination of street parking will allow better pedestrian access from both Lincoln and Cleveland Avenues.

Identify positive and negative impacts of adjacent properties

Positive

-Additional space for community to view art exhibits.
-Civic Plaza open space on east side of building.
-Invigorate Downtown growth.
-Expands pedestrian traffic and connectivity beyond 4th Street, Lincoln and Cleveland Avenues.
-Last remaining overhead power lines can be buried.

Negative

-Removes (57) surface parking spaces in the parking lot, cost for new surface parking, $5,500 / stall.
-Removes (14) angled street parking spaces along 5th Street.
-Need to maintain access to east side of McKee building.
-View to east from a couple of small second story windows at McKee will be eliminated.

Approximate building square footage and construction estimate

-Based on Museum – Space Requirements and Expansion Study March 2010 the findings call for approximately 26,000 s.f.

We propose the following square footage calculations:

-Street Level	11,400 s.f.
-Second Level	8,900 s.f.
-Third Level	7,200 s.f.
-Total =	27,500 s.f.

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The total area represented above only necessitates the area required based on the expansion study. Any additional living or studio space would need to be calculated into the total. The site and allowed building areas can easily accommodate further scope as the project requires.

The initial building construction would be roughly $225 - $250 per square foot. Using some recent construction costs from the newly installed surface parking lot at 3rd and Lincoln, we can assume approximately $5,500 per parking stall to replace any necessary parking. This does not include property costs and is surface parking only. Any structured parking, possibly in the future development to the north of the existing Museum would be the cost of that developer.

Construction estimate

New Building		
27,500 s.f.	($225 - $250 / s.f.)	=$6,187,500 - $6,875,000
Remodel Existing main/upper/exterior		
26,400 s.f.	($150 / s.f.)	=$3,960,000
Site Work		
Street improvements, landscape, site furnishings, relocate electrical transformers		=$413,000
Furniture, Fixtures and Equipment		=$400,000
Professional Services		
Architectural, civil, mechanical plumbing, electrical, T.I.S., lot merger, entitlement.		=$1,547,125 - $1,650,250
10% Contingency		=$1,014,750 - $1,083,500
Total		**=$13,522,375 - $14,381,750**

*The above estimate does not include any City plan check or permit fees.

**The City of Loveland currently uses a value of $5.80 / s.f. annually for ongoing building maintenance, utility costs and security which would be another continual annual cost of $159,500.

Conclusion

Kenney & Associates believes the project would make a vibrant addition to downtown Loveland. There are a number of hurdles to overcome but nothing that would bring the project to a halt. The existing surface parking will be a large concern, if and where to replace it. The City zoning rules do not require additional

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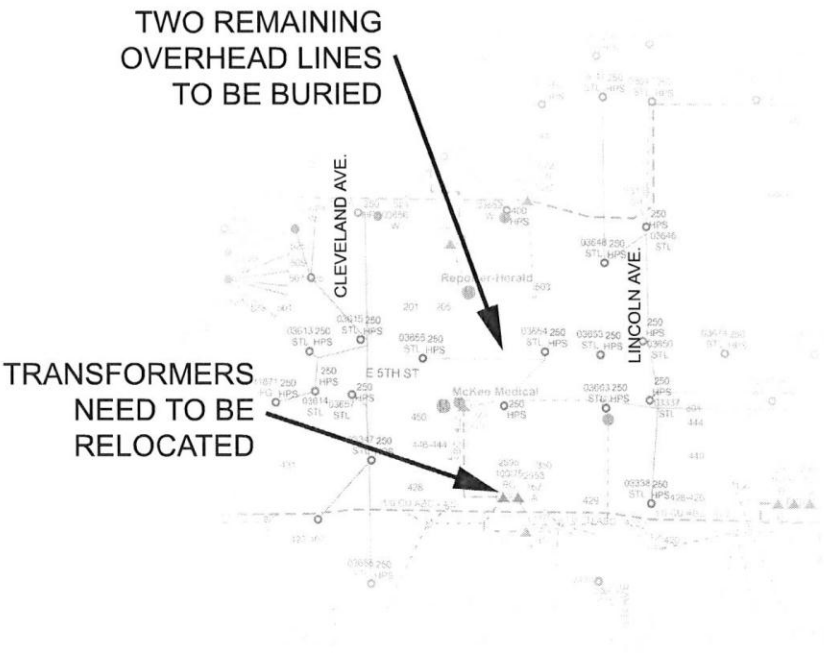
parking based on use and location although it would be in the best interest to provide some adjacent parking. The City does own a surface parking lot directly west of Cleveland Avenue on 5th Street that will remain operational. The remainder of the utility constraints can easily be worked with.

The building itself will also present a bit of a circulation and accessibility challenge, though nothing that cannot be overcome. Linking the existing and proposed building over 5th Street has its limitations but we have some exceptional design ideas that can prove harmonious and rewarding for this prospering area of Downtown Loveland.

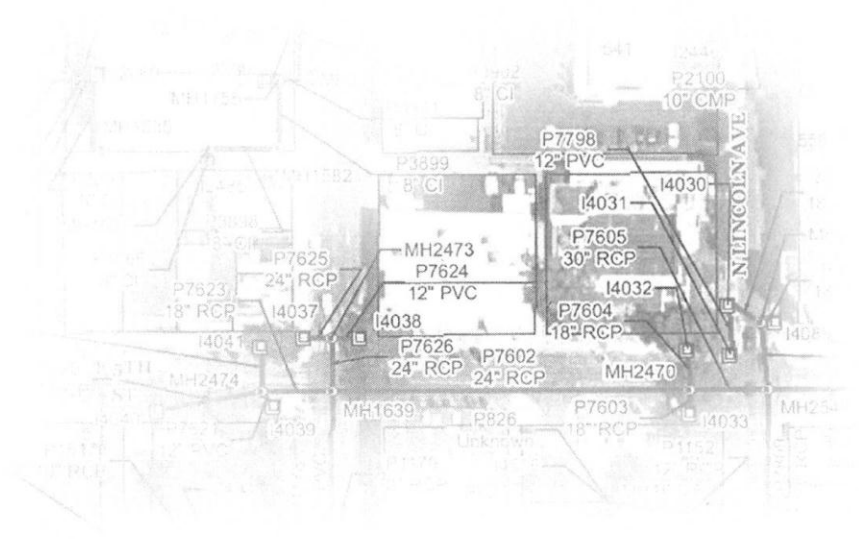


ELECTRICAL LINES AND LOCATIONS

LOVELAND MUSEUM GALLERY

City of Loveland

kenney associates inc
architects landscape architects urban designers planners



STORM WATER LINES AND LOCATIONS

LOVELAND MUSEUM GALLERY

City of Loveland

kenney associates inc
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Museums in Communities of Comparable Size

Wildlife Experience Museum -- Parker

Population: 46,437

Museum Exhibit Space: 150,000 sq. ft.

Attendance: 250,000

Closest Large City: Denver, CO (14 miles)

THE WILDLIFE EXPERIENCE
MORE THAN A MUSEUM ®

Museum of Contemporary Art – Rock Springs, AK

Population: 35,193

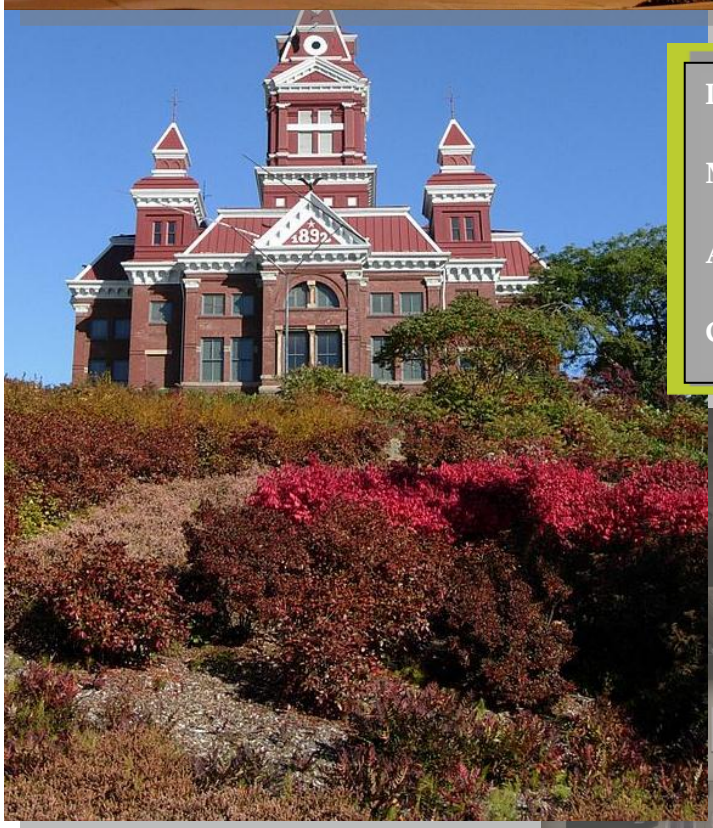
Museum Exhibit Space: 14,000 sq. ft.

Attendance: 220,362

Closest Large City: Little Rock, AK (55 miles)

MOCA The Museum of Contemporary Art

Whatcom Museum – Bellingham, WA



Population: 81,050

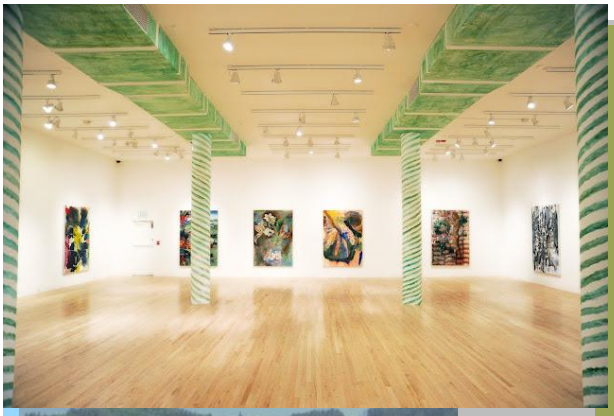
Museum Exhibit Space: 80,000 sq. ft.

Attendance: 111,705

Closest Large City: Seattle, WA (91 miles)

WHATCOM MUSEUM

Aspen Art Museum – Aspen, CO



Population: 6,000 full-time residents

Museum Exhibit Space: 3,000 sq. ft / currently adding 12,500 = 15,500

Attendance: 36,000

Closest Large City: Grand Junction, CO (128 miles)

ASPEN **ART** MUSEUM

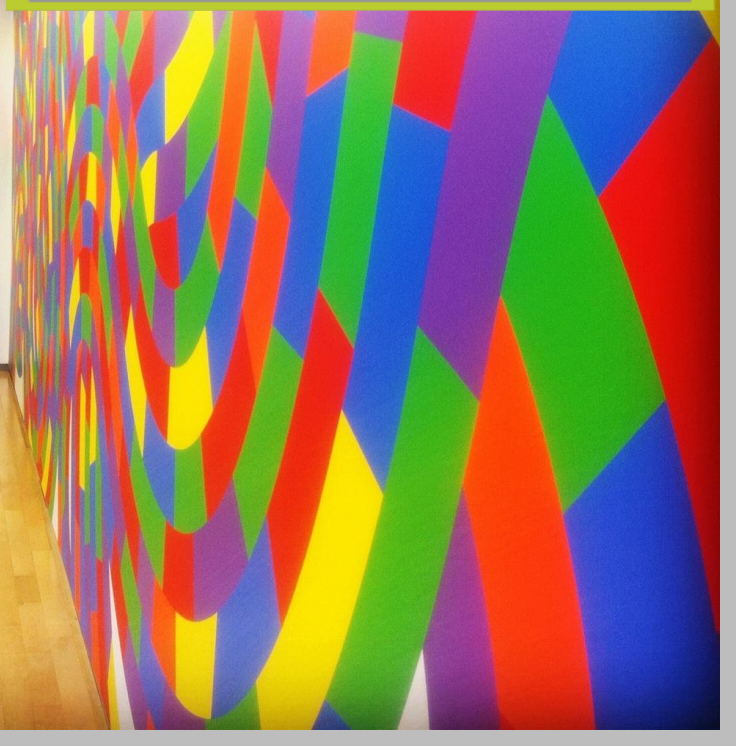
MASS MoCA – North Adams, MA

Population: 13,708

Museum Exhibit Space: 110,000

Attendance: 120,000

Closest Large City: Springfield, MA (65 miles)



MASS MoCA

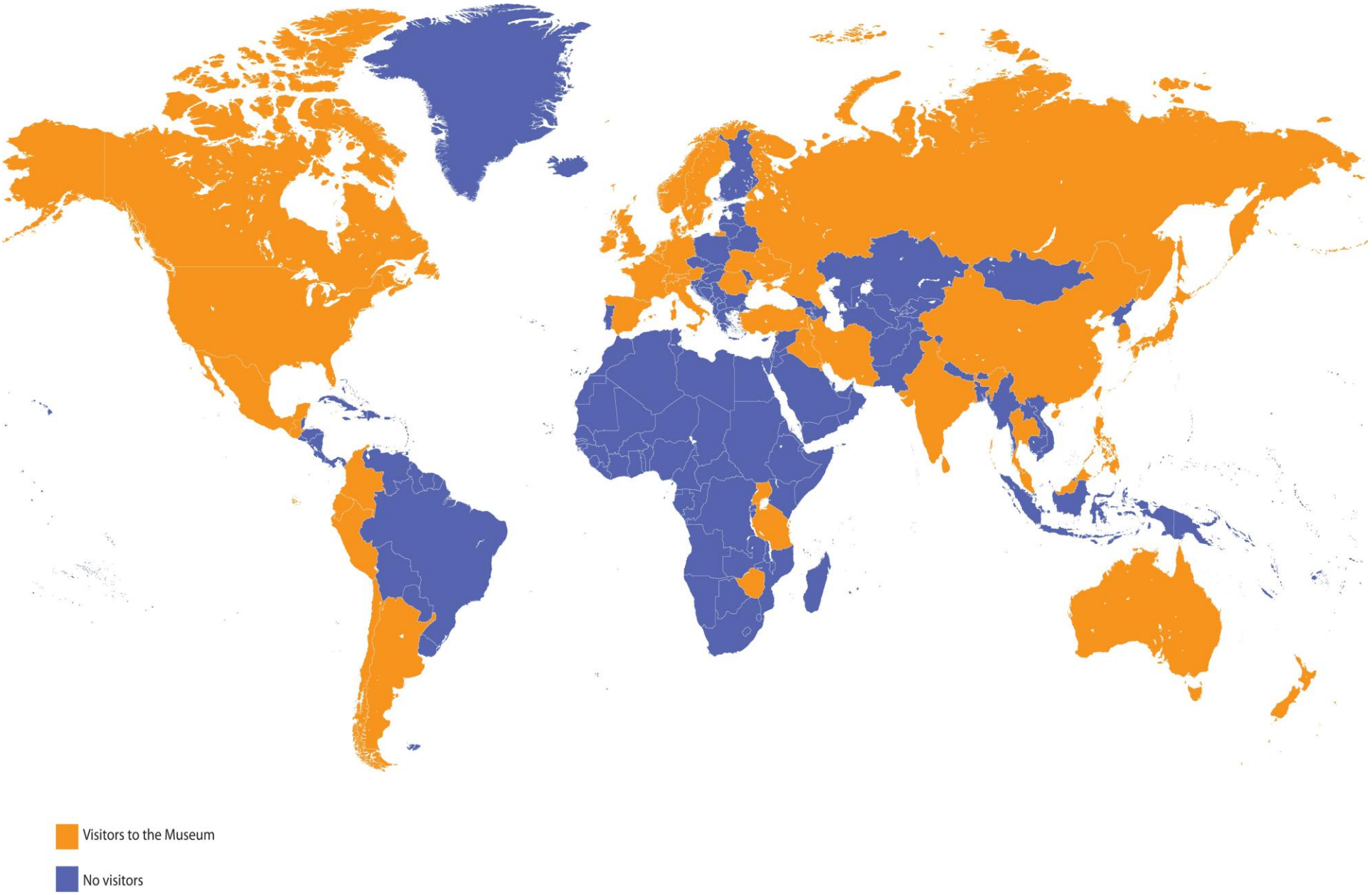
Vero Beach Museum of Art -- Florida

Population: 16,939 City/130,000 Metro

Museum Exhibit Space: 55,412 / currently expanding to 85,316

Attendance: 84,000

Closest Large City: West Palm Beach, FL (79 miles)


Visitors to the Museum
No visitors

Key Priorities

Key Priorities

Loveland Museum/Gallery Project Team

Ken Cooper	Alan Krzmarik	Keith Reester
Mike Scholl	Bonnie Steele	Brent Worthington
	Susan Ison	

The project team has identified key priorities to be included in the architect R.F.Q.

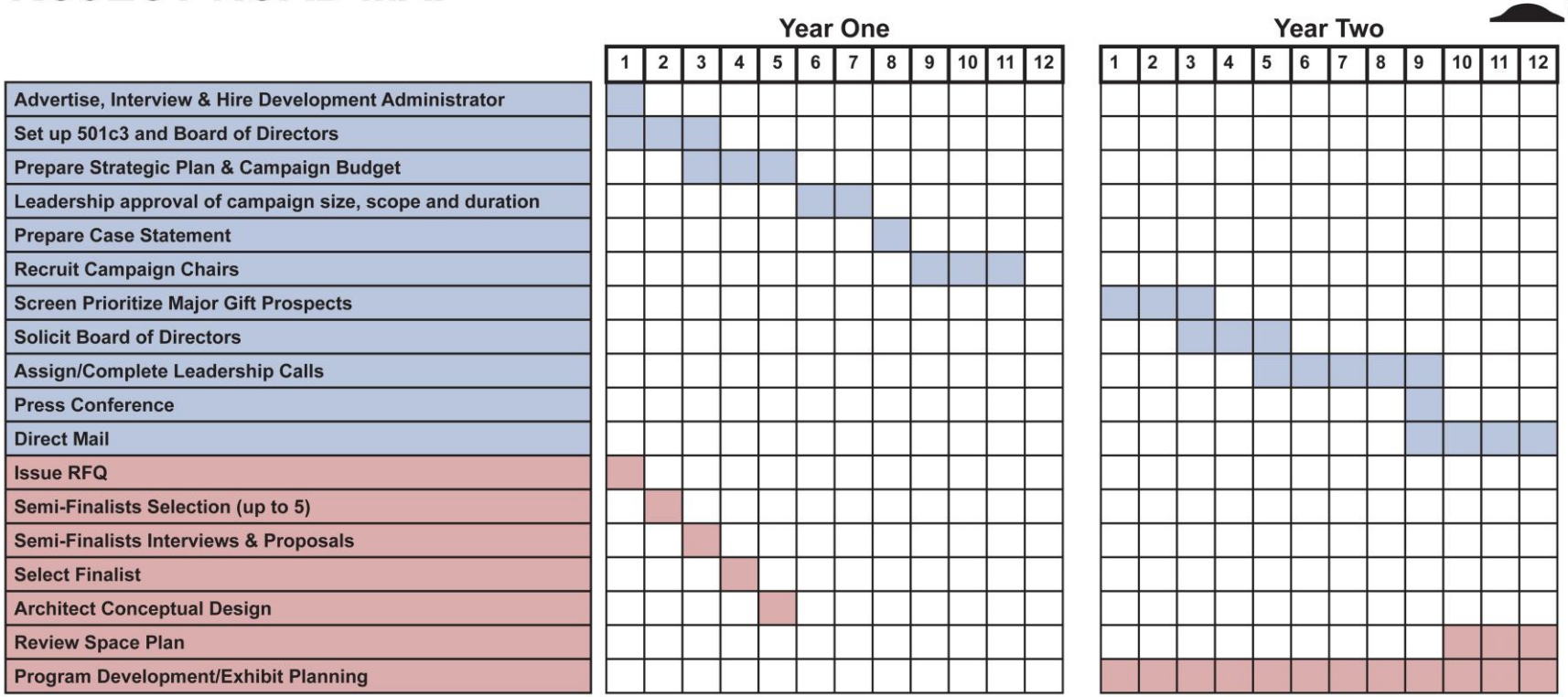
A building that will:

- Convey a sense of community pride
- Be warm and welcoming
- Be a destination for out-of-town visitors
- Serve as a gathering place
- Enrich the downtown environment
- Integrate the new building with the existing building
- Have prominent visibility from Highway 287
- Be environmentally sustainable

Project Road Map

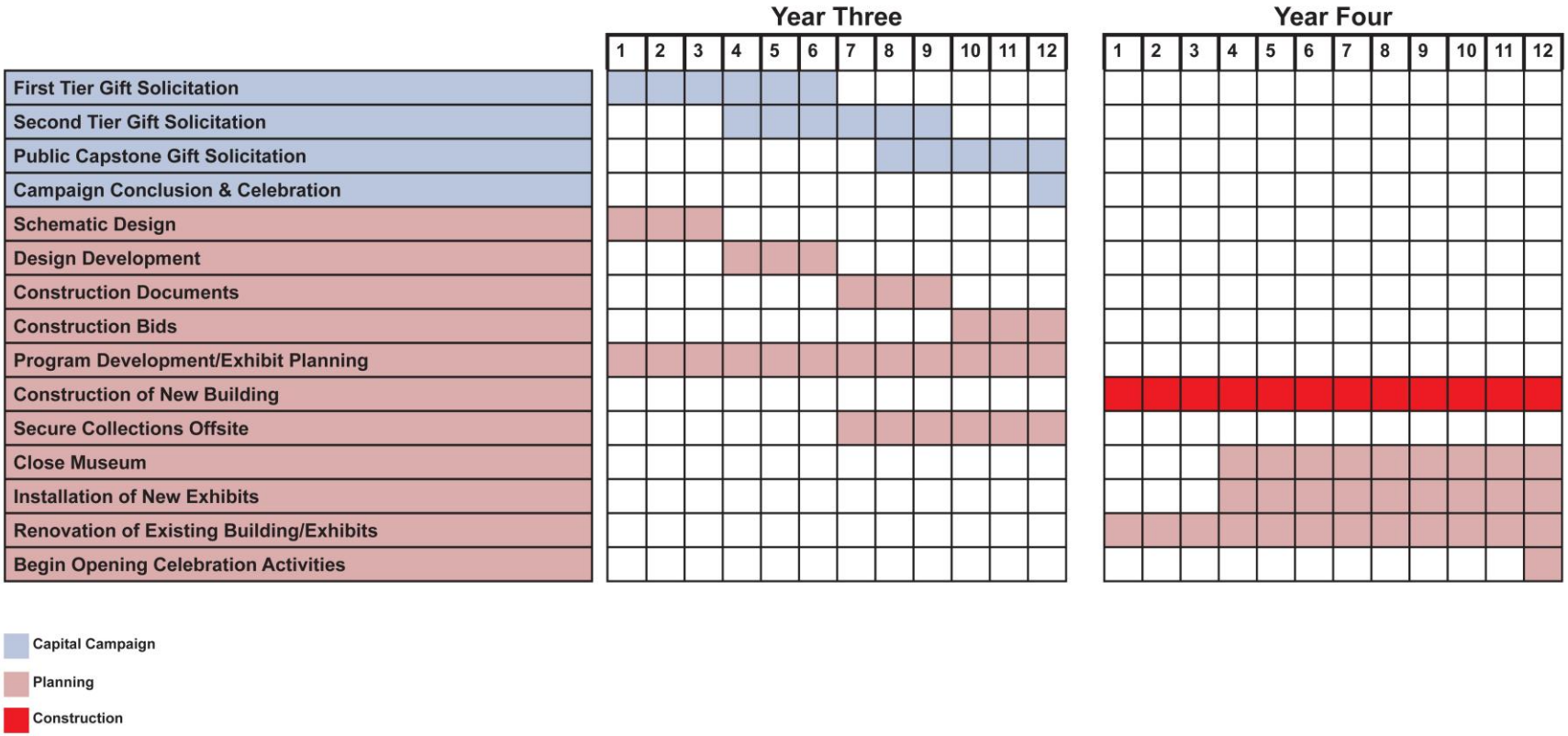
PROJECT ROAD MAP

LOVELAND MUSEUM GALLERY



PROJECT ROAD MAP

LOVELAND MUSEUM GALLERY



Project Funding Draft

Project Funding – Project Cost Estimate $15.51 million

Commitment of City funds at this time is restricted to $30,000 in Cultural Services CEFs

DRAFT

Funding Sources	Amount
Cultural Services CEF Balance to Date	2,828140
General Government CEFs (match)	2,692820
Cultural Services CEFs (TIF from Brinkman Project)	900,000
General Government CEFs (match)	900,000
Erion Foundation	100,000
Kroh Charitable Trust	100,000
City Council Reserves	1,000,000
New Market Tax Credits	3,500,000
Fundraising	4,000,000
Total Funding	**16,020,960****

** Potential finding sources exceed project cost estimate to allow for variances

Cultural Services CEFs
Projected balance at the beginning of 2014 in the 10-year Capital Plan.

General Government CEFs (match)
The fund balance is sufficient to provide a Cultural Services/General Government CEFs match, consistent with the practice in other recent fundraising efforts, such as the Library expansion.

Cultural Services CEFs (from Brinkman)
Payment for Home State Bank site.

General Government CEFs (match)
Consistent with Cultural Services/General Government CEFs match.

Erion Foundation
Reimbursement from Brinkman for donation received from Erion Foundation for the museum expansion.

Kroh Charitable Trust
Reimbursement from Brinkman for donation received from the Kroh Charitable Trust for the museum expansion.

New Market Tax Credits
Amount based on project's estimated cost and the amount eligible for tax credits. The museum expansion is in an eligible census tract. The application for New Market Tax Credits would be in the later stages of the project.

City Council Reserves
Dependent on City Council support to use reserves which have been earmarked for downtown projects in the Capital Plan.

Fundraising
Based on discussions with fundraising professionals and local funding sources, and on the success of the Library's capital campaign, this goal should be achievable.

Capital Project Forms

Museum Expansion

****

Department:
Cultural Services / Public Works

Division:
Museum

Project Manager:
Ken Cooper

Phone Number:
970.962.2635

Email:
coopek@ci.loveland.co.us

Project Category:
TBD

Project Number:
TBD

Duration:
2013 - 2014

****

Total Project Cost: $15,520,960

About the Project

In May 2007, the Home State Bank property was purchased as a site for future expansion of the Loveland Museum/Gallery. The building is currently being used to address pressing space needs for: youth and adults classes; storage of approximately 10,000 historic objects; and a Fire Exhibit. However, a development proposal for the site may require a relocation, currently proposed to the south of the existing Museum.

Museum and Facilities staff have completed an assessment of exhibit, programming, and collection storage needs. A draft space allocation plan has been completed. While much planning and public input still remain, suggestions have been received from citizens and some other City departments, such as Police and Fire. Strong interest has also been expressed in a children's "museum" component.

At a study session in December, 2011, direction was received from City Council to proceed with selection of an architect to develop conceptual plans and to hire a Development Administrator to begin a capital campaign for $5 million.

The expansion project will approximately double the size of the Museum. Figures below assume:

- 10% for design/architecture/ engineering
- 65% for construction
- 7% for furniture/fixtures/equipment
- 5% for permits/fees
- 13% for contingency

Funding Sources

Revenue	Gen. Gov. CEF	Cult. Svc. CEF	Outside Revenue	Total
2013	$58,000	$2,270,140	$0	$2,328,140
2014	$3,115,060	$77,760	$10,000,000	$13,192,819
Total	**$3,173,060**	**$2,347,900**	**$10,000,000**	**$15,520,959**

Project Cost Estimates By Year

Elements	Planning	Construction	Total
2013	$2,328,140	$0	$2,328,140
2014	$0	$13,192,820	$13,192,820
Total	**$2,328,140**	**$13,192,820**	**$15,520,960**

Estimated Initial Operations Impact

Expenditures	Personnel	Supplies	Purchased Services	FTEs	Facilities Management
2015	$351,000	$50,000	$30,000	6.35	131,000
Total	**$351,000**	**$50,000**	**$30,000**	**6.35**	**131,000**

Capital Program Form

Department:	Cultural Services / Public Works
Division:	Museum / Facilities Management
Project Name:	Museum Expansion
Year to be Funded:	2012 completion
Potential Funding Sources:	Museum CEF's, General Fund, and private donations

Project Description:

On March 20, City Council approved on 2nd reading the purchase of the current Home State Bank building and property just north of the Museum for $1.1mm. This purchase allows the City to continue its plans to eventually double the size of the Museum by completing a 26,000 sq. ft. expansion in 2012. The project may also include a considerable downtown parking structure as part of the expansion, though the costs figured into this document do not include any parking structure. The figures below assume…

10% for design/architecture/engineering
65% for construction
7% for furniture/fixtures/equipment
5% for permits/fees
13% for contingency
Variable for land costs

Project Cost Summary		
	Planning Costs	3,258,500.00
	Construction Costs	11,257,460.00
	Equipment Costs	1,005,000.00
Total Costs		$15,520,960.00

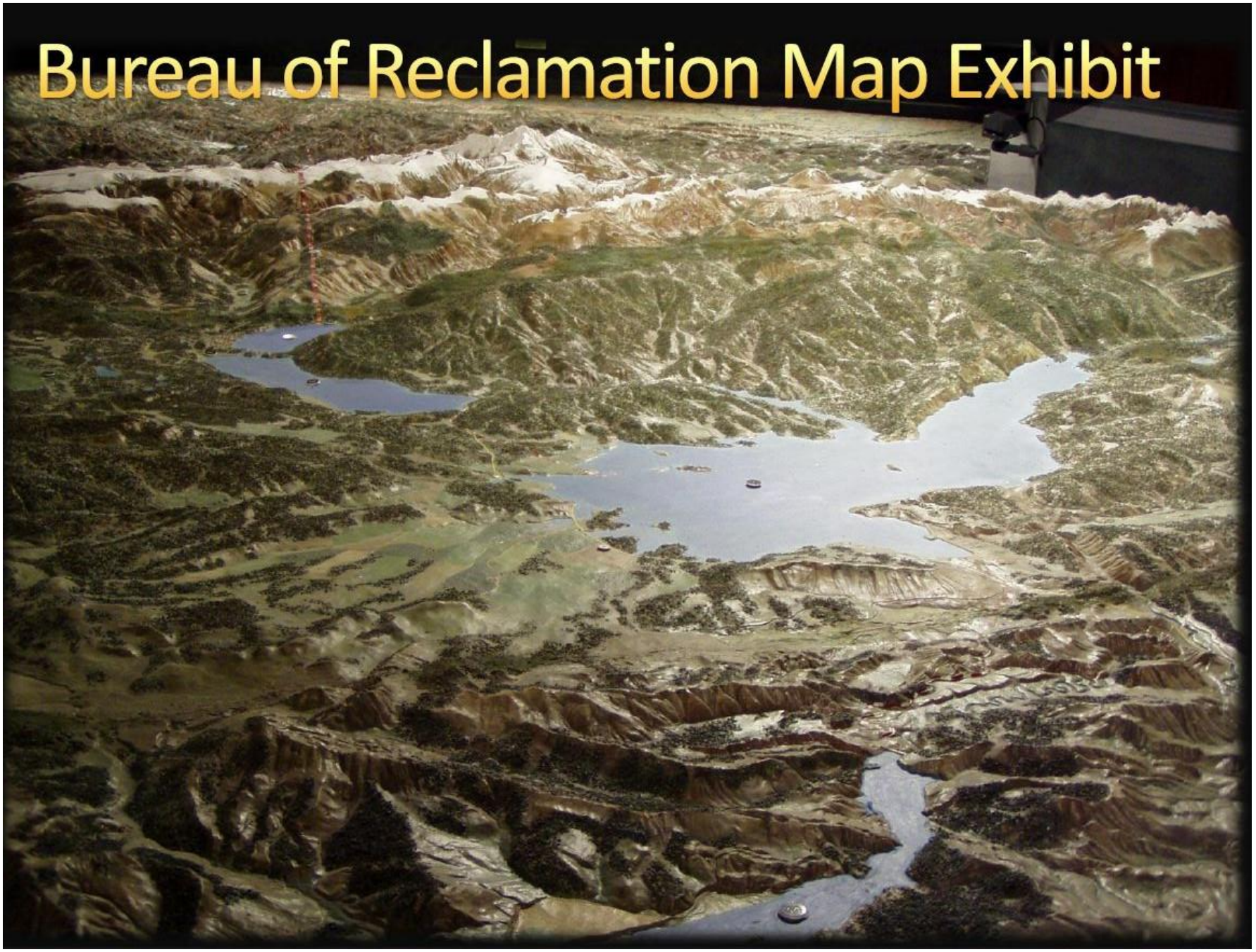
Project Name:	Museum Expansion		
	Category	**Description**	**Amount**
Planning Phase:			
409-09-10	**Land**		
		Land Acquisition	$1,100,000.00
		Legal Fees	
		Environmental Audits/Testing	
		Other Land Expenses	$6,000.00 for appraisals
	Land Total		$ 1,106,000.00

409-09-55	**Design/Arch/Engineering**		
		Consultant Basic Fees	$1,435,000.00
		Consultant Supplemental Svcs	
		Other Design Expenses	
		Bldg Permit & Plan Review Fees – 5%	$717,500.00
	Design Total		$ 2,152,500.00
	Total Planning Costs		$3,258,500.00
Construction Phase:			
409-09-60	**Construction**		
		Construction & Contracts	
		Landscaping	
		Improvements (other than bldgs.)	
		Telecommunications	
		Technology	
		Utility Charges	
	Construction Total		$ 11,257,460.00
	Equipment		
409-09-47		Furniture & Equipment	$955,000.00
409-09-48		Computer Equipment	$50,000.00
		Other	
	Equipment Total		$ 1,005,000.00
	Total Project Costs		$15,520,960.00
If Phased, show funding required in each year:			
		Year 1 – 2007 land	$1,106,000.00
		Year 2 – 2010 design/arch/eng	$2,152,500.00
		Year 3 – 2011 construction	$12,262,460.00

Components of Museum Expansion

Children's Interactive Mini-Museum

65


Bureau of Reclamation Map Exhibit

The Many Faces of Loveland

Sculpture Garden Presented by AIPP

Plaza/Gathering Place

Plaza view looking northwest @ Lincoln Ave. (Museum Expansion and Civic Plaza Site)

The Civic Plaza can be used as an outdoor space for the Museum and Gallery, a daily park or community gathering space, and for special events.

LOVELAND

MUSEUM

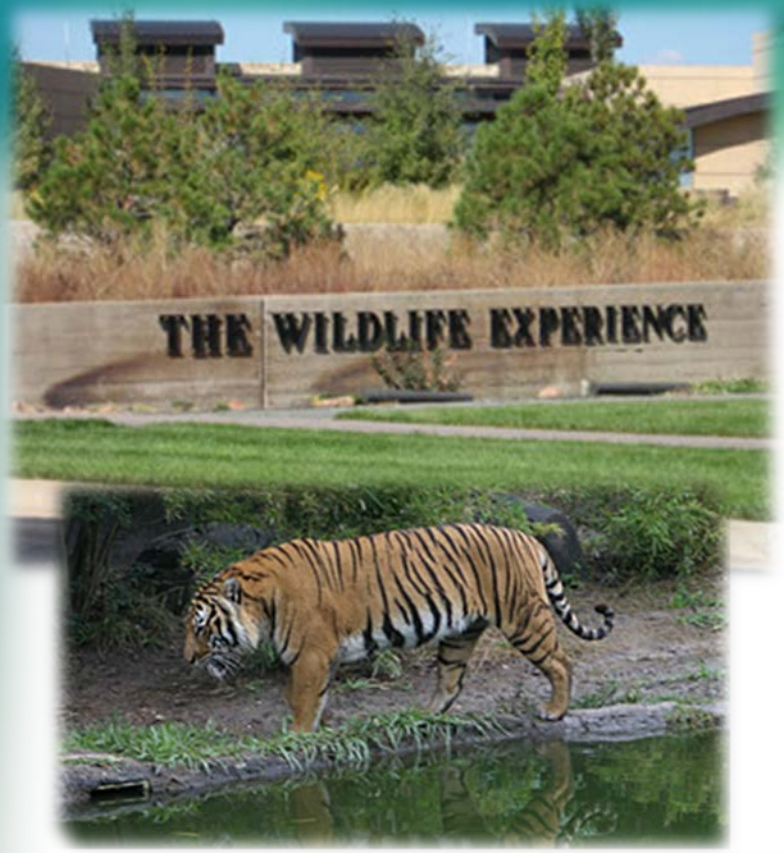
GALLERY

Request for City Council

- Adoption of appropriation ordinance

1) To appropriate $30,000 funds from the Cultural Services CEFs for architect to develop conceptual plan
2) To appropriate $35,830 from funds donated by the Kroh Charitable Trust donation to hire a Development Administrator

The Wildlife Experience – Parker, CO



Population: 46,437

Museum Exhibit Space: 150,000 sq. ft.

Attendance: 250,000

Closest Large City: Denver (14 miles)

THE WILDLIFE EXPERIENCE
MORE THAN A MUSEUM ®

Museum of Contemporary Art – Rock Springs, AK

Population: 35,193

Museum Exhibit Space: 14,000 sq. ft.

Attendance: 220,362

Closest Large City: Little Rock, AK (55 miles)

Whatcom Museum – Bellingham, WA

WHATCOM MUSEUM

Population: 81,070

Museum Exhibit Space: 80,000 sq. ft.

Attendance: 111,705

Closest Large City: Seattle, WA (91 miles)

Aspen Art Museum - Colorado

Population: 6,000 full time residents

Museum Exhibit Space: 3,000 sq. ft. / expanding to 15,500 in 2013

Attendance: 36,000

Closest Large City: Grand Junction, CO (128 miles)

MASS MoCA – North Adams, MA

Population: 46,437

Museum Exhibit Space: 110,000 sq. ft.

Attendance: 120,000

Closest Large City: Springfield, MA (65 miles)

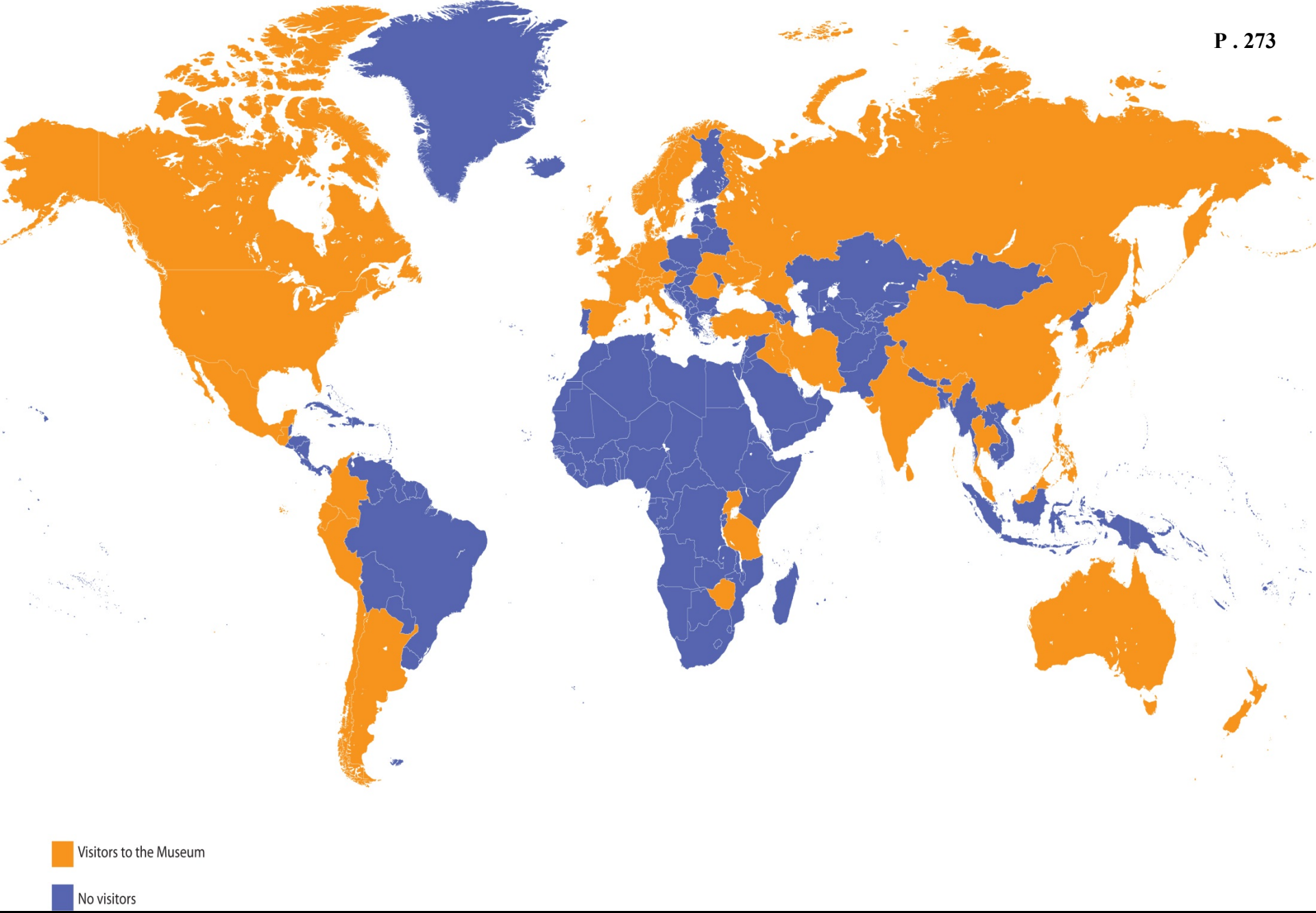
Vero Beach Museum of Art -- Florida

Population: 16,939 City / 130,000 Metro Area

Museum Exhibit Space: 55,412 sq. ft. / expanding to 85,316 by 2013

Attendance: 84,000

Closest Large City: West Palm Beach (79 miles)



- Museum/Gallery Visitors Fall 2011 - August 2012

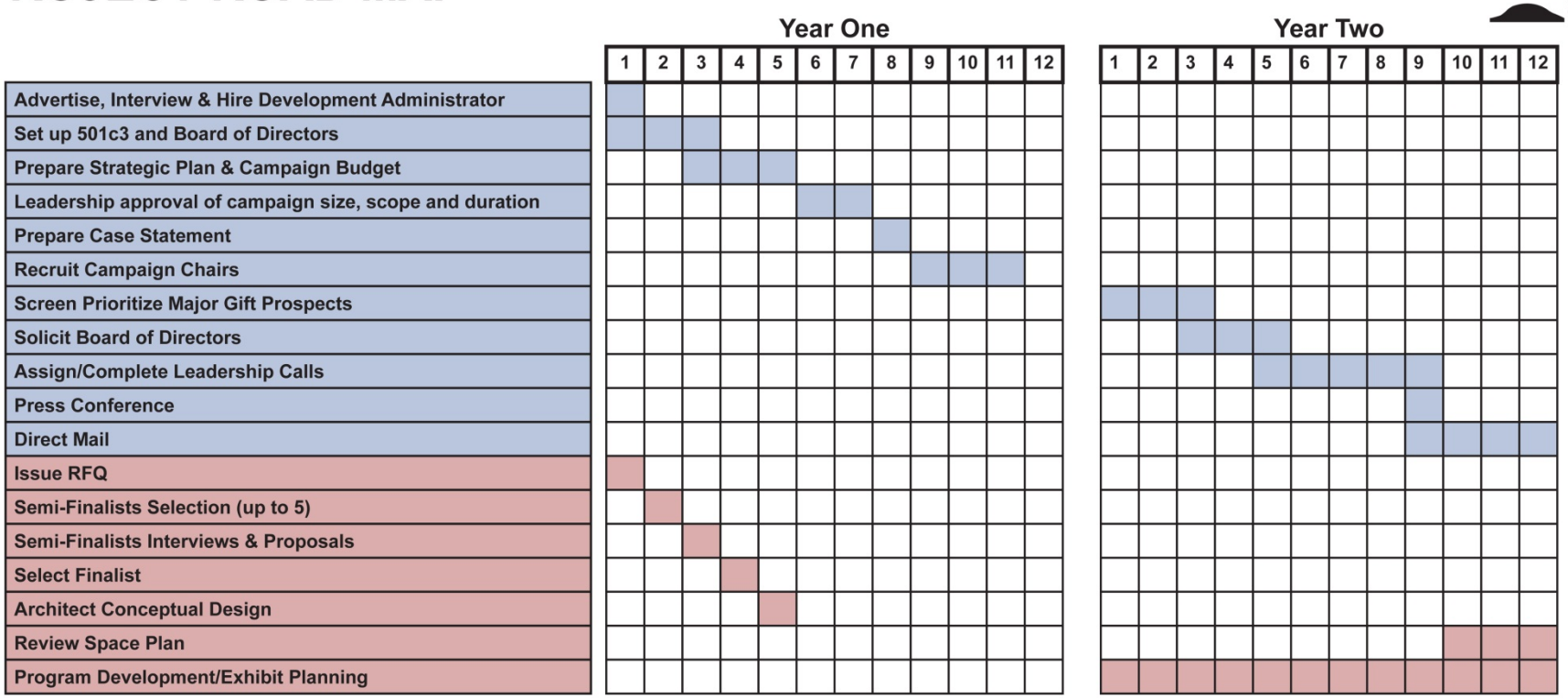
Key Project Priorities

A building that will:

- Convey a sense of community pride
- Be a destination for out-of-town visitors
- Enrich the downtown environment
- Serve as a gathering place
- Integrate the new building with the existing building
- Have prominent visibility from Highway 287
- Be environmentally sustainable

PROJECT ROAD MAP

LOVELAND MUSEUM GALLERY

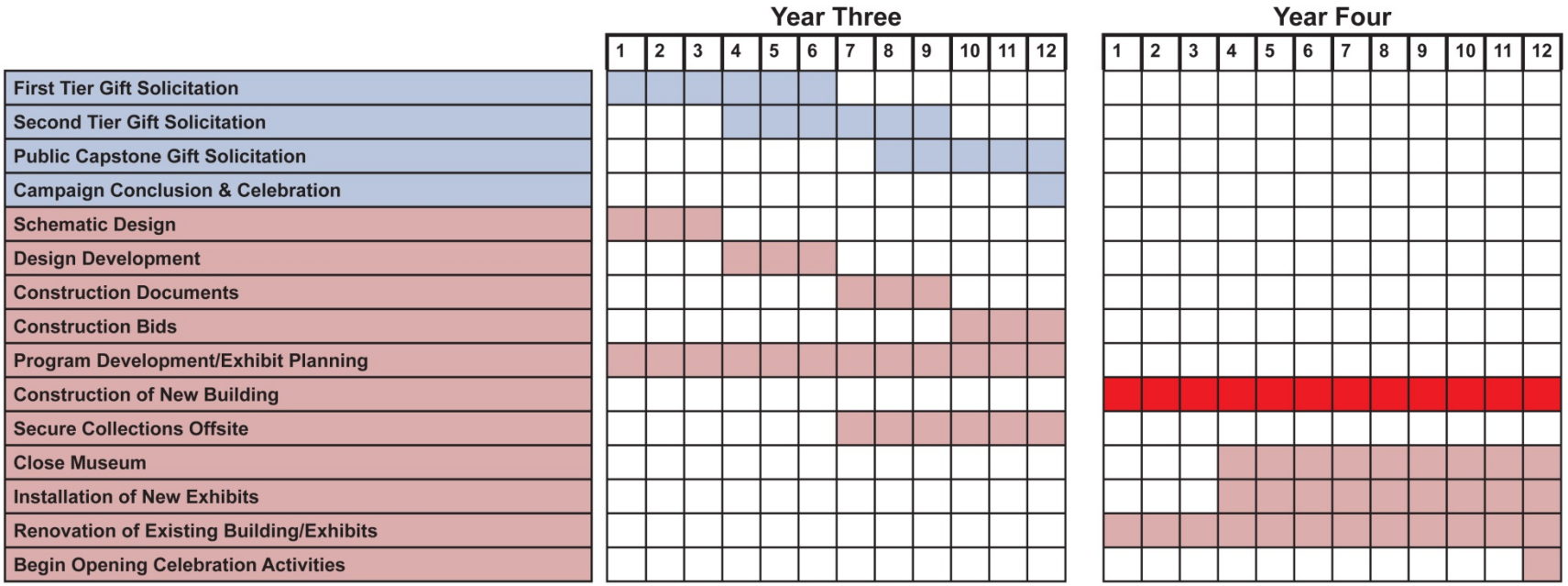


Capital Campaign

Planning/Construction

PROJECT ROAD MAP

LOVELAND MUSEUM GALLERY



Project Funding – Project Cost Estimate $15.51 Million

Commitment of City funds at this time is restricted to $30,000 in Cultural Services CEFs.

Funding Sources	Amount
Cultural Services CEF Balance to Date Projected balance at the beginning of 2014 in the 10-year Capital Plan.	2,828,140
General Government CEFs (match) The fund balance is sufficient to provide a Cultural Services/General Government CEFs match, consistent with the practice in other recent fundraising efforts, such as the Library expansion.	2,692,820
Cultural Services CEFs (TIF from Brinkman Project) Payment for Home State Bank site.	900,000
General Government CEFs (match) Consistent with Cultural Services/General Government CEFs match.	900,000
Erion Foundation Reimbursement from Brinkman for donation received from Erion Foundation for the museum expansion.	100,000
Kroh Charitable Trust Reimbursement from Brinkman for donation received from the Kroh Charitable Trust for the museum expansion.	100,000
City Council Reserves Dependent on City Council support to use reserves which have been earmarked for downtown projects in the Capital Plan.	1,000,000
New Market Tax Credits Amount based on project's estimated cost and the amount eligible for tax credits. The museum expansion is in an eligible census tract. The application for New Market Tax Credits would be in the later stages of the project.	3,500,000
Fundraising Based on discussions with fundraising professionals and local funding sources, and on the success of the Library's capital campaign, this goal should be achievable.	4,000,000
Total Funding	**16,020,960

** Potential funding sources exceed project cost estimate to allow for variances.

Children's Interactive Mini-Museum

Age of Bronze Exhibit

Plaza/Gathering Place

Questions


"LET'S MAKE THIS THE FRIENDLIEST MUSEUM IN THE LAND."
– Harold Marion Dunning
The Loveland Museum/Gallery was started by author, collector, curator and mountain guide Harold Marion Dunning, who began collecting pioneer artifacts and stories as early as 1919.
1937
Harold Marion Dunning displayed his personal collection during the Larimer County Fair. This display was so popular that citizen support for a permanent museum grew.
"This is a picture of the first museum in Loveland, it was started by me, Harold Marion Dunning in about 1937. That fall, during the Larimer County Fair, I put on a display in the corner building at 5th & Cleveland with the help of the Loveland Nature Club. This display proved to me and Ward Olsen, then Sec. of the Chamber of Commerce, that Loveland should have a permanent museum."
1938
Beginning this year, the Loveland Museum was located just west of the current building in a converted garage owned by Otto and Cora (Osborn) Timpke.
"The next year, 1938, Ward Olsen rented the old Timpke garage at 227 East 5th St., and told me to go to work and make a permanent museum. I was happy, for this is just what I wanted. I worked hard for years collecting valuable things from far and near. Pioneer articles that otherwise would be lost by now. Years of work I loved to do. Hundreds of hours spent arranging and rearranging displays and showing people thru."
46
of Loveland took over operations of the Museum in
the Timpkes both passed away in 1953, leaving the
Osborn estate and property to the City of Loveland for
ablishment of a museum.
"You will see many, many things on display
are numberless Indian relics,
specimens of birds,


THE GOVERNOR'S INVITATIONAL ART SHOW & SALE
MUSEUM GALLERY