

<p>DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO Court Address: 201 LaPorte Avenue Fort Collins, CO 80521-2761 Phone Number: (970) 494-3500</p>	
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BUCK 2ND, LLLP, a Colorado limited liability partnership,

Plaintiff

v.

CITY OF LOVELAND, COLORADO, a municipal corporation,

Defendant.

▲ FOR COURT USE ONLY ▲

<p>Attorneys for Defendant City of Loveland, a Municipal Corporation: Alicia R. Calderón, #32296 Assistant City Attorney Laurie R. Stirman, #39393 Assistant City Attorney Loveland City Attorney's Office 500 E. Third Street, Suite 330 Loveland, CO 80537 (970) 962-2544 alicia.calderon@cityofloveland.org laurie.stirman@cityofloveland.org</p>	<p>Case Number: 15CV30938 Courtroom: 5B</p>
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ANSWER

COMES NOW the City of Loveland, a municipal home rule corporation, by and through undersigned counsel, and submits the following Answer to the Complaint:

PARTIES

1. Defendant, hereafter the "City", is without information to admit or deny the allegation in paragraph 1 as to the limited liability partnership. The City admits Buck 2nd is a developer in Colorado.

2. The City admits the allegation in paragraph 2 that Loveland is a home rule municipality in Colorado, and denies that it is situated in Loveland County. Loveland is a city located in Larimer County.

JURISDICTION AND VENUE

3. The City admits the Court has jurisdiction because it is a home rule municipality located in Larimer County, and the action arises from an agreement entered into in the City of Loveland, Larimer County, Colorado. The City denies any other allegations contained in paragraph 3.
4. The City admits Venue is proper pursuant to C.R.C.P.98(c) because this agreement was entered into in Larimer County. The City denies the allegation that this is a contract for services.

GENERAL ALLEGATIONS

5. The City admits the allegations in paragraph 5.
6. The City admits the allegation in paragraph 6 that Buck 2nd installed street improvements as required by City standards to facilitate the development of lands known as Buck 1st thru 4th Subdivisions and Giuliano 1st thru 3rd Subdivisions. The City denies the allegation that the street improvements were installed pursuant to the Agreement (Plaintiff's Exhibit A) or that the street improvements were at the request of the City.
7. The City admits the allegation in paragraph 7.
8. The City admits the allegation in paragraph 8 that the Agreement contains no provision for when full payment may be due and makes all payments subject to appropriation.
9. The City denies all allegations contained in paragraph 9.
10. The Agreement speaks for itself and no response is required to paragraph 10.
11. The Agreement speaks for itself and no response is required. To the extent a response is required, the City admits the Agreement does not set forth interest, late payments or other accruals.
12. The document, Plaintiff's Exhibit C, speaks for itself and no response is required. To the extent a response is required, the City denies the allegation that Buck 2nd went to significant cost and expense in developing streets it needed for its development. The City admits Exhibit C is a "Final Acceptance Letter" for completed street improvements.

13. The City denies any and all allegations in paragraph 13. The City specifically denies appropriation of funds for payment and denies that multiple requests were made for payment. The City denies the allegation that the City delayed payment and that any delay in payment is contrary to the Agreement. The City denies that it has proposed an alternative payment schedule as there is no schedule in the Agreement. The City denies that payment subject to appropriation is unreasonable.
14. The City admits the allegation in paragraph 14 that Buck 2nd is owed the principal amount of \$664,528.89. Exhibit D speaks for itself and no response is required. To the extent a response is required, the City admits an email outlining the proposed payment schedule was sent. The City denies all other allegations contained in paragraph 14.
15. The City admits the allegation in paragraph 15 that no payment has been made to Buck 2nd for the street improvements identified in the Agreement. The City denies the remaining allegations in paragraph 15 that all conditions necessary for bringing a Complaint have occurred, been waived or excused or otherwise satisfied.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

16. The City hereby incorporates all responses set forth above in paragraphs 1- 15 as if set forth fully herein. No further response is required as to paragraph 16, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
17. The City admits the allegation in paragraph 17.
18. The City denies the allegations in paragraphs 18 - 21.

SECOND CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

19. The City hereby incorporates all responses set forth above in paragraphs 1- 18 as if set forth fully herein. No further response is required as to paragraph 22, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
20. The City admits the allegation in paragraph 23 that the Agreement requires the City to make payments once funds have been appropriated and that the Agreement does not specify when payment is due after appropriation. The City denies the remaining allegations in paragraph 23.
21. The City denies the allegations in paragraphs 24-26.

THIRD CLAIM FOR RELIEF
(Promissory Estoppel)

22. The City hereby incorporates all responses set forth above in paragraphs 1- 21 as if set forth fully herein. No further response is required as to paragraph 27, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
23. As to the allegations in paragraph 28, the City admits it promised to pay Buck 2nd for streets oversizing, and the Agreement speaks for itself. The City denies it promised to provide payments for completed street improvements.
24. The City denies the allegations in paragraph 29, and further, specifically denies the implied allegation that Buck 2nd built the street improvements in reliance upon a streets oversizing agreement.
25. The City denies all allegations in paragraph 30.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

26. The City hereby incorporates all responses set forth above in paragraphs 1-25 as if set forth fully herein. No further response is required as to paragraph 31, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
27. The City denies the allegation in paragraph 32 that Buck 2nd conferred significant benefits by constructing the street improvements. The City admits Buck 2nd is a developer and constructed the street improvements for its residential developments, and only the oversizing of streets was above the developer's specific need.
28. The City denies the allegations in paragraph 33. More specifically, the City denies the allegation that the street improvements provide a benefit to the City. The streets would not have been built or otherwise needed without the Buck 1st thru 4th Subdivisions and Giuliano 1st thru 3rd subdivisions. The City admits that it has made no payment to date.
29. Paragraph 34 of the Complaint is conclusory and no response is required. To the extent a response is required, the City denies the allegations in paragraph 34.
30. The City denies the allegations in paragraph 35.

FOURTH CLAIM FOR RELIEF (*sic*)
(Account Stated)

31. The City hereby incorporates all responses set forth above in paragraphs 1-30 as if set forth fully herein. No further response is required as to paragraph 36, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
32. The City denies the allegations in paragraph 37.
33. The City admits there has been at least one request for payment of the principal amount. The City denies any other allegation in paragraph 38.
34. The City denies the allegation in paragraph 39.
35. The City admits the allegation in paragraph 40.
36. The City admits the allegation that the City does not dispute the amount due to Buck 2nd is that set forth in the Agreement as alleged in paragraph 41.
37. The City denies the allegation in paragraph 42. This date precedes the acceptance of the streets oversizing.
38. The City admits the allegation in paragraph 43 that it has admitted its obligations under the Agreement subject to the terms of the Agreement. The City denies the allegation in paragraph 43 that the Purchase Order or Final Acceptance Letter is an affirmation of liability.
39. The City denies the allegations in paragraph 44.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment)

40. The City hereby incorporates all responses set forth above in paragraphs 1-39 as if set forth fully herein. No further response is required as to paragraph 45, and to the extent that any response may be required, the City denies any allegation not specifically admitted above.
41. The City denies all allegations in paragraphs 46-48.
42. As to paragraph 49, the City denies the allegation that a speedy hearing is necessary or that it should be advanced on the calendar. The City objects to the request to reserve the right to request a speedy hearing.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief can be granted.
2. Plaintiff fails to meet the statute of limitations for contract claims.
3. The Court lacks subject matter jurisdiction to review the reasoning behind a City's discretionary, legislative decision of whether and when to appropriate funds.
4. Plaintiff's theory of contract breach makes the contract void *ab initio* and illegal under the State Constitution and City Charter.
5. Plaintiff has not met the condition precedent for payment, and thus, payment is not due. The condition precedent is City Council appropriation of the funds.
6. Plaintiff has not completed the subdivisions and completion is a condition precedent for payment in full being due under the Larimer County Urban Area Street Standards.
7. The Complaint is frivolous and groundless, and Plaintiff knew or should have known the terms of the Agreement it signed. Plaintiff assumed the risk that payments would occur over time when appropriated. The Agreement plainly stated reimbursement was subject to appropriations. Plaintiff has known since at least 2014 and been told numerous times that payment was subject to City Council appropriation and that the project was not due for its first payment until 2017.
8. The Agreement speaks for itself. Payment is due in installments and as money is appropriated. There is no breach, and Plaintiff's claims are barred.
9. The City reserves the right to assert any other defenses which may be disclosed as discovery and investigation are accomplished and hereby request leave of Court to amend this Answer, if necessary, at a later date.

WHEREFORE, having fully answered Plaintiff's Complaint, The City prays the same be dismissed and denied and that the City have judgment for its costs, reasonable attorney fees, and such other and further relief as the Court may deem proper.

Respectfully submitted this 30th day of March, 2016.

CITY OF LOVELAND

Original signature on file

By: /s/ Alicia R. Calderón
Alicia R. Calderón, #32296
Assistant City Attorney

By: /s/ Laurie R. Stirman
Laurie R. Stirman, #39393
Assistant City Attorney

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing ANSWER was served by ICCES e-Service on this 30th day of March, 2016 to the following:

Erich L. Bethke
Charles Fuller
Senn Visciano Canges P.C.
1700 Lincoln Street, #4500
Denver, CO 80203

/s/ Kayla Demmler
Original signature on file