

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521-2761 <u>(970) 498-6100</u></p>	
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**Plaintiff: THE CITY OF LOVELAND, a Colorado  
Municipal Corporation,**

**v.**

**Defendants: ROGER GOMEZ; JPMORGAN CHASE  
BANK, N.A.; and FIRST NATIONAL BANK OF  
OMAHA.**

<p>Attorneys for Defendant City of Loveland, a Municipal Corporation: Alicia R. Calderón, #32296 Assistant City Attorney Vincent Junglas, #43697 Assistant City Attorney Loveland City Attorney's Office 500 E. Third Street, Suite 330 Loveland, CO 80537 (970) 962-2544 Alicia.Calderon@cityofloveland.org Vincent.Junglas@cityofloveland.org</p>	<p>Case Number:  Courtroom:</p>
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**COMPLAINT TO QUIET TITLE AND FOR  
DECLARATORY JUDGMENT**

COMES NOW the Plaintiff, the City of Loveland [“the City”], by and through undersigned counsel, and pursuant to C.R.C.P. 105 and C.R.C.P. 57(a), brings this action to quiet title and for declaratory judgment for a utility easement as described herein.

In support hereof, the City states, alleges and avers as follows:

**I. PARTIES, VENUE, AND JURISDICTION**

1. The City is a home rule municipal corporation with a legal address of 500 E. Third Street, Loveland, Larimer County, Colorado.

2. On information and belief, Defendant Roger Gomez owns the real property previously under the address of 3508 W. Eisenhower Boulevard, which after a subdivision of the property into two lots with Larimer County, is now under the address of 3510 W. Eisenhower Boulevard.
3. On information and belief, Defendant JPMorgan Chase Bank, N.A., holds a lien on the property and has an interest in this property.
4. On information and belief, Defendant First National Bank of Omaha, holds a lien on the property and has an interest in this property.
5. Venue and jurisdiction in this court are proper pursuant to C.R.C.P. 98(a) and C.R.C.P. 105, as the property at issue is located in Larimer County, Colorado.

## **II. GENERAL ALLEGATIONS**

6. The City hereby incorporates paragraphs 1 through 5 as if fully set forth herein.
7. The easement located within 3510 W. Eisenhower Boulevard (hereafter "Utility Easement") lies along what formerly was known as the Colorado and Southern Railway Company's ("the Railroad") "Arkins branch". In 2016, Plaintiff subdivided his property to create two lots: 3508 W. Eisenhower and 3510 W. Eisenhower. The easement is located on the lot that is now 3510 W. Eisenhower.
8. The City owns a utility easement along the southern portion of the property at 3510 W. Eisenhower Boulevard, which is the subject matter of the action. The legal description for the easement is as follows:

A parcel of land located in the Northwest Quarter (NW 1/4) of Section Sixteen (16), Township Five North (T. 5 N.), Range Sixty-nine West (R. 69 W.) of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Commencing at the northeast corner of the Northwest Quarter (NW 1/4) of said Section Sixteen (16); thence West along the north line of said Section Sixteen (16) a distance of 250 feet; thence South 540.82 feet to a point on the northerly right of way line of The Colorado and Southern Railway Company which is the true point of beginning; thence South 81° 50' West 175.78 feet along said northerly right of way line; thence South 8° 10' East 100 feet to a point on the southerly right of way line of said railroad; thence North 81° 50' East 175.78 feet along said southerly right of way line to a point; thence North 8° 10' West 100 feet to the true point of beginning; containing 17,578 square feet more or less.

9. In May of 1936 the City entered into an agreement with the Railroad to use the subject property for the construction, placement, and utilization of an underground twelve (12) inch standard cast iron pipe for municipal water distribution. The Railroad authorized the City to construct, maintain, use, or operate the twelve inch pipe.
10. The waterline was installed within the aforementioned year. Pursuant to the agreement the City paid a yearly license fee of twelve dollars until, at some unknown date, the Railroad and the City agreed the license fee did not need to be paid any longer. *See 1936 Rail Road Agreement, Exhibit 1.*
11. October 15, 1954, the City of Loveland entered into an agreement and contract with the Railroad, to use the subject property for the placement and utilization of an underground thirty-four (34) inch steel pipe line for municipal water distribution. The waterline was installed within the following year. Pursuant to the agreement the City paid a yearly license fee until the City and the Railroad agreed at some unknown date that the City no longer needed to pay the license fee. *See 1954 Rail Road Agreement, Exhibit 2.*
12. In, on, or about 1970-1971, the City of Loveland installed an overhead single power transmission line upon the subject property which was converted in the mid-1980's, to a double power transmission line. While the City owns the line, the Platte River Power Authority is contractually obligated to maintain the line.
13. The subject parcel of property was sold by the Railroad in 1971 to private owners, John and Peggy Miller. The Railroad executed a Quitclaim deed with the Millers September 15, 1971. *See Quitclaim Deed, Exhibit 3.* Since that time, the property has been transferred several times, and in 2013 Roger Gomez received title.
14. In 1981, the City records indicate the residential property received service off the 12 inch water main. In 1999, the owner had a leak on the owner's side of the meter and worked with the City to determine the location of the leak. It was found to be between the house and the shop and other out buildings.
15. On February 28, 2011 a water service issue was reported to the City at 3508 W. Eisenhower Boulevard. City staff went out to repair the water main and repair the service line to the residence. The customer was not getting any volume or pressure and had a new service line tapped in up to the house from the water line in the easement at issue.
16. The power lines have had maintenance performed periodically, including tree trimming and other maintenance of the power line, which is known as the West Tap Line. In 2008 and 2010 Platte River Power Authority had tree trimming performed on the line, and the line itself had maintenance in 2010 and 2015. These transmission power lines are clearly visible.
17. Any reasonable person would have notice as to the power lines and water lines. The power

lines are obvious to anyone standing on the property, and the water lines have a small marker in the ground for a valve attached to the water mains which can be used to drain or flush the water pipes.

18. Roger Gomez is not an heir, successor, personal representative, or assignee of the Railroad.
19. Upon information and belief, JPMorgan Chase Bank, N.A. and First National Bank of Omaha are the lienholders on the property who may have an interest in the subject matter of this action.

### **III. FIRST CLAIM FOR RELIEF (Declaratory Judgment)**

20. The City hereby incorporates paragraphs 1 through 19 as if fully set forth herein.
21. The City has consistently utilized the 1936 and 1954 water lines that have been in existence continually for 80 years and 62 years respectively. The City has acquired a prescriptive easement pursuant to C.R.S. §38-41-101, et seq. and acquiescence from prior owners of the subject property. *See Enke v. City of Greeley, 504 P.2d 1112 (Colo. App. 1972).*
22. Under the Uniform Declaratory Judgment Act, C.R.S. §13-51-101, et seq., and C.R.C.P. 57, this Court has jurisdiction to resolve uncertainty and debate regarding the conditions applying to the City's use and ownership of the subject property. The Court may determine and declare the relative rights, duties and obligations under the agreement and deed to terminate the uncertainty and any possible controversy giving rise to this proceeding.
23. Upon information and belief, all persons or entities known to the City who might have a claim or any interest which would be affected by the requested declaration of rights have been named as parties to this proceeding. The Railroad Company sold the real property and did not transfer any license for the water and power lines running through the property. The license granted by the Railroad did not and was not transferred to any subsequent real property owner of the parcel.

### **IV. SECOND CLAIM FOR RELIEF (Quiet Title)**

24. The City incorporates paragraphs 1 through 23 as if set forth fully herein.
25. The City holds a prescriptive easement for water and power lines running at the property at the current address of 3510 W. Eisenhower Boulevard in Loveland, Colorado.
26. An easement by prescription is acquired when the use is open or notorious, continuous

without effective interruption for an eighteen-year period, and either adverse or pursuant to an attempted but ineffective grant. C.R. S. § 38-41-101 *et. seq.*; *Weisiger v. Harbour*, 62 P.3d 1069, 1071 (Colo.App.2002), cited in *Clinger v Hartshorn*, 89 P.3d 462 (Colo. App. 2003).

27. The City has maintained water pipes within an easement located at the southern portion of the property of 3510 W. Eisenhower since 1936 for a twelve inch pipe and since 1954 for a thirty-four inch pipe. The City has maintained a transmission electrical power line above the water lines since 1971. These water and power lines have been in place continuously without effective interruption for 80 years, 62 years, and 45 years respectively.
28. Since 1971, private owners have held the parcel of land without any recorded easement, making this easement adverse. The Railroad license terminated upon sale of the land to private ownership, and the City has not paid any license fees to any landowner since the property transferred to private ownership.
29. In the alternative, the City holds an implied easement by estoppel for water and power lines on the property holding an address of 3510 W. Eisenhower Boulevard in Loveland, Colorado.
30. An easement is implied by estoppel when 1) the owner of the servient estate “permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked,” 2) the user substantially changed position in reasonable reliance on that belief, and 3) injustice can be avoided only by establishment of a servitude. *Lobato v Taylor*, 71 P.3d 938, 950-951 (Colo. 2002).
31. The owner of the servient estate permitted use of the land under circumstances where it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked. The Railroad permitted the City to install water pipelines and electric transmission lines on the property. All subsequent owners of the property have acquiesced to the existence of the water and power lines or been aware of their existence.
32. Since the 1980s, private owners of the real property at 3508 W. Eisenhower (previously all one lot) have benefitted from the water lines. Building(s) have been connected to the City water pipes in the easement for their water service.
33. The City substantially changed its position in reasonable reliance on the belief that the water and power lines would remain and that an easement exists for these utilities. They are part of the municipal utility infrastructure. Injustice can only be avoided by establishment of a servitude.
34. The City should be declared to have a utility easement for water and power lines that may

be recorded.

**V. PRAYER FOR RELIEF**

WHEREFORE, the City prays for an order making findings that the City has acquired a prescriptive easement or implied easement by estoppel in the subject property.

The City further prays for declaratory and equitable relief under C.R.C.P. 57 and C.R.C.P. 105 as follows:

- a) That the City is owner of an exclusive utility easement in, over, across, and within the subject property located at 3510 W. Eisenhower Boulevard for above and below ground wires, lines, pipes, poles or other equipment, appurtenances, and structures associated with electric and water systems owned and operated by the City.
- b) That Defendant be barred from interfering with, tampering, or encroaching upon any portion of the easement, and that Defendants have no interest or claim that will impinge, encroach or otherwise harm or injure the utility easement.
- c) That the City is entitled to all costs incurred in obtaining the relief sought herein, to the extent that any defendants do not file a disclaimer and contest the City's claims made in this action;
- d) And for such other relief as the Court may deem proper.

Plaintiff does not demand a jury trial

Dated this 27<sup>th</sup> day of July, 2016

The original pleading signed by Alicia Calderón and Vincent Junglas is on file at the Loveland City Attorney's Office.

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

By: /s/ Vincent Junglas  
Vincent Junglas, #43697  
Assistant City Attorney

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**Plaintiff's Address:**

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Loveland, CO 80537