

DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO Court Address: 201 LaPorte Avenue Fort Collins, CO 80521-2761 Phone Number: (970) 494-3500	<p style="text-align: center;">▲ FOR COURT USE ONLY ▲</p>
GIULIANO & FATHER CONSTRUCTION, INC., a Colorado corporation, and  GIULIANO ADDITION, LLLP, a Colorado limited liability partnership,  Plaintiffs,  v.  CITY OF LOVELAND, COLORADO, a municipal corporation,  Defendant.	
Attorneys for Defendant City of Loveland, a Municipal Corporation: Alicia R. Calderón, Assistant City Attorney, #32296 Laurie R. Stirman, Assistant City Attorney, #39393 Loveland City Attorney's Office 500 E. Third Street, Suite 300 Loveland, CO 80537 (970) 962-2544 alicia.calderon@cityofloveland.org laurie.stirman@cityofloveland.org	Case Number: 2016CV30358  Courtroom: 3C
<b>ANSWER</b>	

COMES NOW the City of Loveland, a municipal home rule corporation, by and through undersigned counsel, and submits the following Answer to the Complaint as ordered by the Court on September 24, 2016:

### PARTIES

1. Defendant, hereafter the “City,” is without information to admit or deny the allegation in paragraph 1 of the Complaint as to Plaintiffs’ status as a corporation or more than one corporation. The City admits Giuliano & Father Construction 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 denies the Court has jurisdiction for reasons stated in the Motion to Dismiss and the Reply, so the City denies the allegations in paragraph 3 of the Complaint.
4. The City admits venue would be proper under C.R.C.P. 98(a) because the remaining claims involve a water booster pump station and the City's water utility system. The City denies the allegations that there is any contract for services to be performed in Larimer County.

### **GENERAL ALLEGATIONS**

5. Paragraphs 5 through 15 of the Complaint address Affordable Housing Units, and those claims have been dismissed. No response should be required. To the extent a response is required, the City denies the allegations.
6. The City denies the allegations in paragraph 16 of the Complaint. There is more than one plan for each subdivision, and there is no plan with the dates referenced in paragraph 6 of the Complaint.
7. The City denies the allegations in paragraph 17 of the Complaint.
8. The City admits the allegations in paragraph 18 of the Complaint that at some date the "Pump House" went into operation and the City submitted its final acceptance notice and assumed ownership and responsibility for "Buck's Water Booster Station."
9. The City is without knowledge or information sufficient to form a belief as to the allegations in paragraph 19 of the Complaint, and therefore, denies the same.
10. The City denies the allegations in paragraph 20 of the Complaint.
11. The City is without knowledge or information sufficient to form a belief as to the allegations in paragraph 21 of the Complaint, and therefore, denies the same.
12. The City admits in part the allegations in paragraph 22 of the Complaint that the City provided water flow data for an engineering study, and the City denies the allegation of a currently inadequate water booster station.
13. The City is without knowledge or information sufficient to form a belief as to the allegations in paragraphs 23 and 24 of the Complaint, and therefore denies the same. The

City admits it received an engineering study with estimated costs for upgrades needed to serve an additional 56 residential units.

14. The City denies the allegations in paragraph 25 of the Complaint.
15. The City denies the allegations in paragraph 26 of the Complaint.
16. The City denies the allegations in paragraph 27 of the Complaint.
17. Paragraphs 28 through 47 of the Complaint, Claims One through Four, have been dismissed and no response should be required. To the extent a response is required, the City denies the allegations.

#### **FIFTH CLAIM FOR RELIEF**

18. The City hereby incorporates by reference all responses to allegations in the preceding paragraphs as if fully incorporated herein. Paragraph 48 of the Complaint makes no new allegations, and no response is required.
19. The City denies the allegations in paragraph 49 of the Complaint.
20. The State statutes cited in paragraph 50 speak for themselves, and the City has filed a Motion to Dismiss addressing these statutes and allegations. The City denies all allegations in paragraph 50 of the Complaint.
21. The City denies the allegations in paragraphs 51 and 52 of the Complaint.
22. Paragraph 53 contains no allegations, and to the extent any are contained therein, the City denies them. The City objects to the request to reserve the right to request a speedy hearing.

#### **SIXTH CLAIM FOR RELIEF**

23. The City hereby incorporates by reference all responses to allegations in the preceding paragraphs as if fully incorporated herein. Paragraph 54 of the Complaint makes no new allegations, and no response is required.
24. The City denies the allegations in paragraphs 55-58 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs fail to state a claim upon which relief can be granted.

2. The Court lacks subject matter jurisdiction due to Plaintiffs' failure to exhaust administrative remedies.
3. Plaintiffs fail to establish any facts to support alleged promises made or to show how their vested property rights have been violated.
4. The Complaint is frivolous and groundless, and Plaintiffs knew or should have known that when their Public Improvements Construction Plans expired that they would have to resubmit those plans. Plaintiffs, by their own admission, were aware of the necessary improvements for the water booster station when they developed or added any additional residential units to the P2 water booster zone.
5. Zoning and permitting are within the local government jurisdiction and not the courts, and Plaintiffs improperly seek judicial interference in local government land use and planning decisions.
6. 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 Plaintiffs' 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 11<sup>th</sup> day of October, 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

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing ANSWER was served via ICCES e-Service on this 11<sup>th</sup> day of October, 2016 to the following:

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

/s/ Kayla Demmler  
*Original signature on file*