

DISTRICT COURT, LARIMER COUNTY, COLORADO  
Court Address: 201 LaPorte Avenue, Suite 100  
Fort Collins, CO 80521

**Plaintiff:**

CITY OF LOVELAND, a Colorado Municipal  
Corporation

v.

**Defendant:**

ROGER GOMEZ

Kathie Troutd Riley  
Kathie Troutd Riley, P.C.  
2903 Aspen Drive, Unit D  
Loveland, CO 80538  
Phone Number: (970) 663-6316  
FAX Number: (970) 663-6239  
E-mail: ktr@kathielaw.com  
Atty. Reg. #: 15941

▲ COURT USE ONLY ▲

Case Number:

**2016CV30703**

Div.:4A Ctrm:

**DEFENDANT'S MOTION TO AMEND COUNTERCLAIMS AND EXCLUSION  
FROM C.R.C.P. 16.1**

Defendant, Roger Gomez, by and through counsel, Kathie Troutd Riley, P.C., respectfully requests leave of the Court to amend his Counterclaims pursuant to C.R.C.P. 15(a) and exclusion from C.R.C.P. 16.1, and states:

CERTIFICATION AS TO DUTY TO CONFER

On January 19, 2018, undersigned counsel and Ms. Calderon and Mr. Turner, counsel of record for the City of Loveland, met to discuss the recent developments in this case. Undersigned counsel explained that she would be moving to amend the Counterclaims to more fully address all inverse condemnation issues and to seek exclusion from C.R.C.P. 16.1. Counsel for the City acknowledged that it would also be moving to amend its complaint and did not indicate opposition to Defendant's amendment. That understanding is set forth in the report to the Court filed January 19, 2018. Counsel for the City indicated that they would "need to think about" Defendant's request for exclusion from C.R.C.P. 16.1.

1. This litigation was commenced by the City of Loveland in July of 2016. In the prayer for relief, the City requested the Court to grant it an easement of some unspecified dimensions and scope. The City further requested an order barring Defendant from "encroaching" on any portion of the easement.

2. The City's disclosures failed to afford any further detail about the dimensions and scope of the easement it demanded or detail about the use restrictions the City demanded.

3. In the first judicial settlement conference, the immediate obstacle to discussion was that the City had not surveyed the area that it wished to claim as an easement, so Defendant had no way to know the location and dimensions. Further, the City had not defined the scope of the easement or specify the use restrictions it intended to impose.

4. The judicial settlement conference was continued so that the City could obtain a survey and Defendant could obtain answers necessary to engage in discussions.

5. The survey conducted on or about December 14, 2017, revealed that the 34-inch water main was installed by the City +/- 3.75 feet south of the northernmost boundary of the Railroad Right of Way on the east, with the separation between the 34-inch water main and the northernmost boundary of the Railroad Right of Way progressively decreasing until the 34-inch water main ultimately crossed over the northernmost boundary of the Railroad Right of Way and entirely onto private land not subject to the Railroad Right of Way. On the west of the Subject Property, the 34-inch water main is +/- one (1) foot north of the Railroad Right of Way, entirely on Defendant's land upon which the City had no authority to install the water main.

6. The survey further revealed, and counsel for the City has stated, that it is the City's intent to acquire an easement fifteen (15) feet north of the 34-inch waterline. This easement would fall almost entirely on Defendant's land outside of the Railroad Right of Way.

7. Until December 28, 2017, when counsel met and undersigned counsel was provided a copy of the survey map, Defendant was unaware that the 34-inch water main was located in part on his land outside of the old Railroad Right of Way or that the City wished to acquire additional land outside of the old Railroad Right of Way. A copy of the surveyor's scale drawing is attached.

8. As a result of the issues revealed by the December 2017 survey, Defendant requests leave of the Court to amend his Counterclaims to fully plead a claim for inverse condemnation.

9. Although the City refused to follow the procedures set forth in Title 38, Articles 1 through 7 to condemn a portion of Defendant's land for public use, including the appraisal process, based upon the information available to Defendant as to the value of commercial property located on West Eisenhower in Loveland and his intended use of that property, the compensation and damages exceed \$100,000.00. Under C.R.C.P. 16.1(c), Defendant would be limited to a maximum award of \$100,000.00, including attorney fees, penalties or punitive damages.

10. Justice would not be served by permitting Defendant to amend his counterclaims to fully address the newly discovered issues yet not permitting him to exclude this matter from C.R.C.P. 16.1 so that he can seek the full measure of compensation and damages to which he would be entitled.

WHEREFORE, Defendant respectfully requests as follows:

- (1) Granting of leave to amend his Counterclaims and acceptance by the Court of **DEFENDANT ROGER GOMEZ'S FIRST AMENDED COUNTERCLAIMS AND DEMAND FOR JURY OF FREEHOLDERS** filed herewith; and
- (2) Acceptance by the Court of the **NOTICE TO ELECT EXCLUSION FROM C.R.C.P. 16.1 SIMPLIFIED PROCEDURE** filed herewith, deeming it timely filed pursuant to C.R.C.P. 16.1(d), calculated from the at-issue date of the amended pleadings.

Dated this 23<sup>rd</sup> day of January 2018.

KATHIE TROUDT RILEY, P.C.

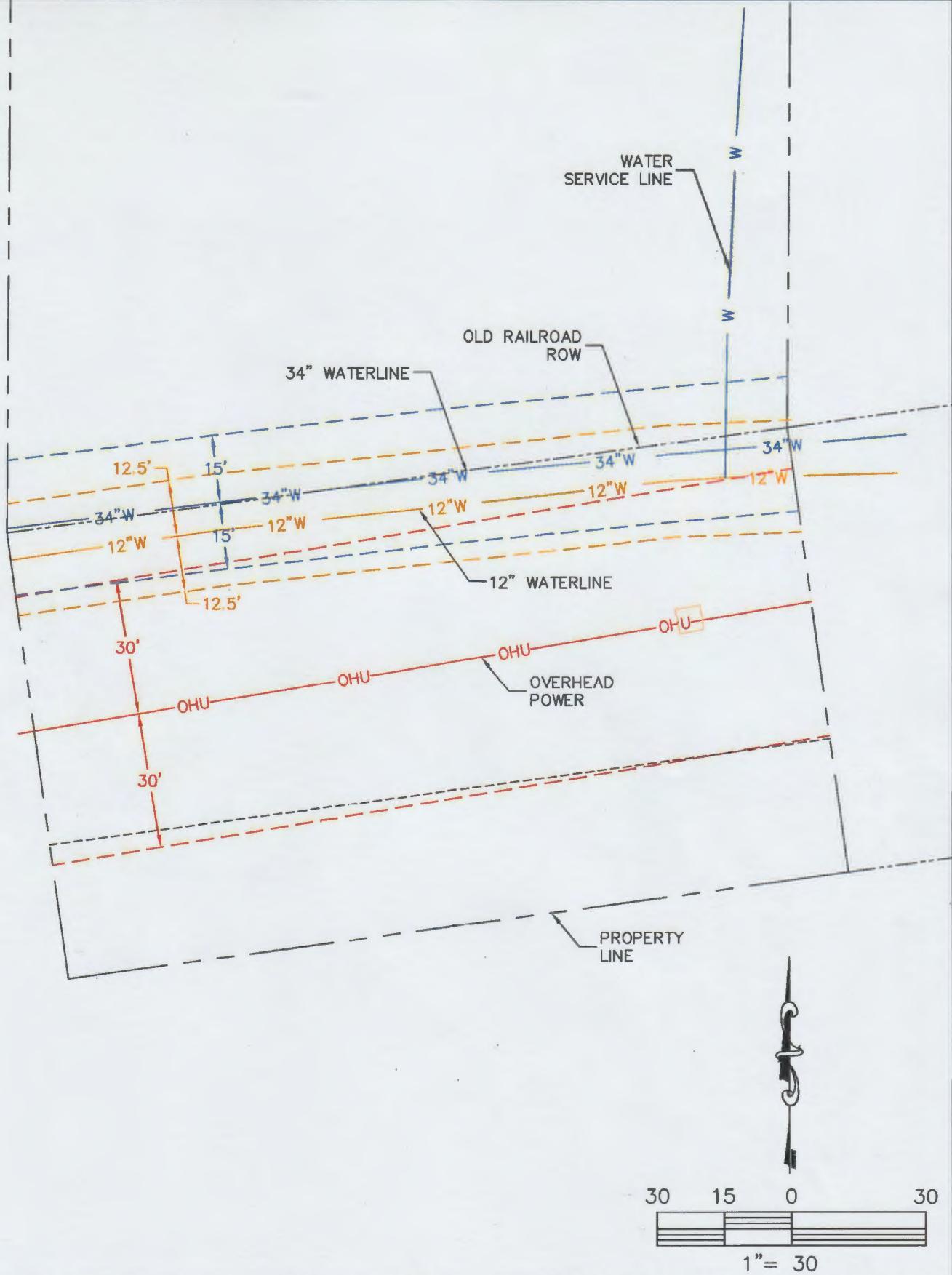
*(Duly signed original on file at the offices of  
Kathie Troudt Riley, P.C.)  
By /S/ Kathie Troudt Riley  
Kathie Troudt Riley, 15941  
Attorney for Defendant*

#### CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **DEFENDANT'S MOTION TO AMEND COUNTERCLAIMS AND EXCLUSION FROM C.R.C.P. 16.1** upon all parties herein by service through ICCES this 23<sup>rd</sup> day of January 2018, as follows:

Alicia R. Calderon  
Derek Turner  
Loveland City Attorney's Office  
500 E. 3<sup>rd</sup> Street, Suite 300  
Loveland, CO 80537

*(Duly signed original on file at the offices of  
Kathie Troudt Riley, P.C.)  
By /S/ Kathie Troudt Riley  
Kathie Troudt Riley, 15941*

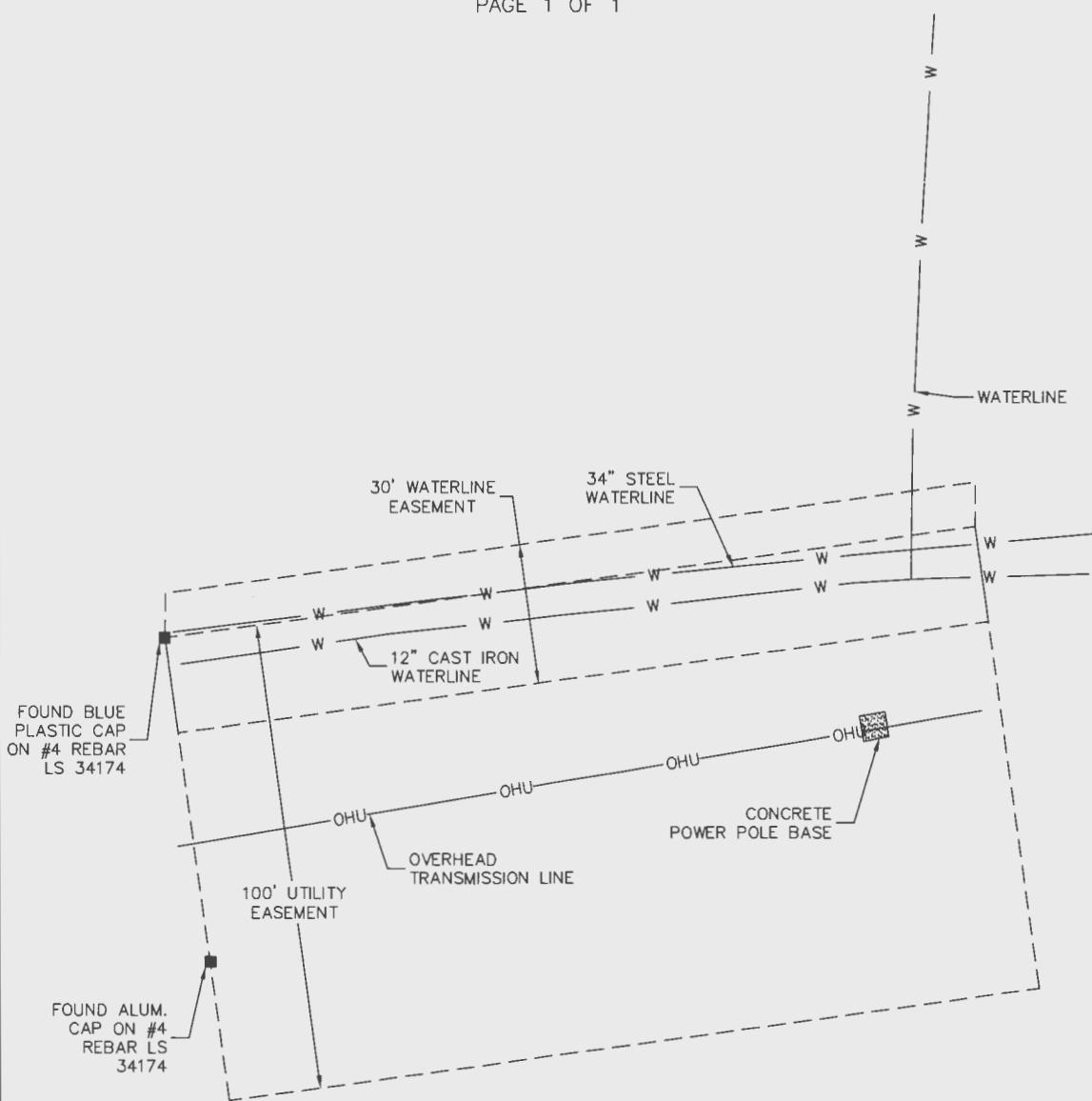


CITY OF LOVELAND  
DEPARTMENT OF  
WATER AND POWER

## GOMEZ PROPERTY FIGURE

DATE: 12/14/17  
DATE REVISED: YYYY

# FIGURE 1

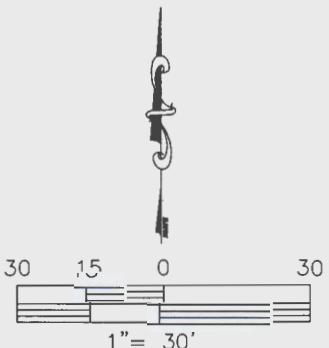


# PRELIMINARY

David B. Dusdal - On Behalf Of King Surveyors  
Colorado Registered Professional  
Land Surveyor #28650

NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: 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. (13-80-105 C.R.S. 2012)



**KING SURVEYORS**  
650 E. Garden Drive | Windsor, Colorado 80550  
phone: (970) 686-5011 | fax: (970) 686-5821  
email: [contact@KingSurveyors.com](mailto:contact@KingSurveyors.com)

PROJECT NO: 20160815  
DATE: 12/12/2017  
CLIENT: CITY OF LOVELAND  
DWG: 20160815EXH-UTIL-LOCATES  
DRAWN: MM CHECKED: DD