

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>
CITY OF LOVELAND, a Colorado Municipal Corporation, Plaintiff.  v.  ROGER GOMEZ; JP MORGAN CHASE BANK, N.A., and FIRST NATIONAL BANK OF OMAHA, Defendants.	
Attorneys for Defendant City of Loveland, a Municipal Corporation: Alicia R. Calderón, #32296 Assistant City Attorney II Derek Turner, #44091 Assistant City Attorney II Loveland City Attorney's Office 500 E. Third Street, Suite 330 Loveland, CO 80537 (970) 962-2540 Alicia.Calderon@cityofloveland.org Derek.Turner@cityofloveland.org	Case Number: 16CV 30703  Courtroom: 4A
<p style="text-align: center;"><b>RESPONSE TO DEFENDANT'S MOTION TO AMEND COUNTERCLAIMS &amp; EXCLUSION FROM C.R.C.P. RULE 16.1</b></p>	

COMES NOW the City of Loveland, a municipal home rule corporation, (the "City") by and through undersigned counsel, and submits the following Response to Defendant's Motion to Amend Counterclaims and Exclusion from C.R.C.P. Rule 16.1:

1. The City filed a Quiet Title Action because the City believes it has an existing easement, and City staff have acted in accordance with this belief and understanding since the southern parcel, called the Railroad parcel, was sold to the adjacent landowners in 1971. This is not a condemnation action because the easement was perfected long ago.
2. Defendant demanded monetary compensation from the City alleging he was the beneficiary of the Railroad license agreement, prompting the City to bring its

action.

3. During the first settlement conference, Defendant wanted to know the exact dimensions of the easement in order to request specific conditions or limitations to his use of the property within the easement area. Defendant was proposing construction within only the electric line easement area, and the City agreed to request a more detailed survey of each easement area rather than one easement area.
4. The City disclosed a preliminary survey of the water lines and one of the power lines in its initial disclosures dated October 26, 2016, document number twenty-five. There is no surprise to Defendant or good cause for exclusion from Rule 16.1.
5. The City seeks standard utility easement conditions, and the City provided those forms to Defendant. Those easement forms are public and can be found on the City's website. There are no substantially changed circumstances. The discussion of specific conditions only arose at the settlement conference because Defendant sought different conditions from the standard City utility easement.
6. The City objects to exclusion from C.R.C.P. Rule 16.1. The City's Amended Complaint sets out the easement area with the detailed legal description. The City is not seeking a greater easement area than in its original pleading; the easement area only shifted approximately fifteen feet north.
7. C.R.C.P. Rule 16.1 limits maximum monetary judgments to \$100,000. Defendant is not entitled to damages, and even if he were, an easement of this size would not be valued above \$100,000. Purchasing this area in fee would not even exceed the \$100,000 value. There is no reason for exclusion from Rule 16.1, and Defendant has not met the burden for such a showing.
8. Defendant failed to file a notice of exclusion from C.R.C.P. Rule 16.1 within the 35 days required under 16.2(d). The case has been at issue since September 8, 2016. Previous counsel for Defendant agreed C.R.C.P. Rule 16.1 was applicable.
9. Defendant's motion fails to demonstrate substantially changed circumstances sufficient to render the application of Simplified Procedure under this Rule unfair. Defendant has not shown good cause for the timing of the motion to terminate this case from C.R.C.P. Rule 16.1.
10. The survey of the easement area provided more detailed information, but it has not expanded the total easement area. The easement area remains the same or quite similar, and the claims have not changed.

Dated this 29th day of January, 2018.

CITY OF LOVELAND

*Original signature on file*

By: /s/ Alicia R. Calderón

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Assistant City Attorney

By: /s/ Derek Turner

Derek Turner, #44091

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing **Response to Motion to Amend Counterclaims and Exclusion from C.R.C.P. Rule 16.1** was served by Colorado Courts e-Service on this 29th day of January, 2018 to the following:

Kathie Troudt Riley

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*Attorney for Defendant Roger Gomez*

/s/ Kayla Demmler

*Original signature on file*