

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO  201 LaPorte Ave., Suite 100  Fort Collins, CO 80521-2761  Ph.: 970-494-3500</p>		
<p>Plaintiffs      DONETTE M. NORRIS, and DAWN C. WINTERS, individuals  v.  Defendant      CITY OF LOVELAND, a Colorado home-rule municipality</p>		<b>▲ COURT USE ONLY ▲</b>
<p>DAVID M. HERRERA, #12818  JEFFREY B. CULLERS, # 41969  Herms &amp; Herrera, LLC  Attorneys for Plaintiffs  3600 South College Avenue, Suite 204  Fort Collins, Colorado 80525  Phone Number (970) 498-9999  Fax Number (970) 472- 5365  E-Mail: <a href="mailto:david@hhlawoffice.com">david@hhlawoffice.com</a>, <a href="mailto:jeff@hhlawoffice.com">jeff@hhlawoffice.com</a></p>		<p>Case No:  Div:</p>
<b>COMPLAINT AND JURY DEMAND</b>		

Come now Donette M. Norris, Dawn C. Winters, and James Castell(collectively "Plaintiffs") by and through their attorney, David M. Herrera of the Law Firm of Herms & Herrera, and file this Complaint and Jury Demand against The City of Loveland (hereinafter "Loveland") as follows:

#### **I. Venue and Jurisdiction**

1. Venue is proper in Larimer County and in this court pursuant to C.R.C.P. 98(c), because this matter involves a contract claim arising from a homeowner's insurance contract for a home in Larimer County, and a tort claim occurring in Larimer County.
2. Jurisdiction is proper over Plaintiffs and Defendant City of Loveland because the action in this case arises from the commission of a tortious act on property in Larimer County, Colorado.
3. Plaintiffs complied with the jurisdictional requirement of C.R.S. §24-10-109 by serving written Notice of Claim on the City of Loveland within 180 days of the subject incident, sent via U.S.P.S. Certified First Class Mail, and addressed to "City of Loveland, Attn: John R. Duval, City Attorney, 500 E. Third Street, Suite 300, Loveland, CO 80537."

## **II. General Allegations**

4. Plaintiff Donette M. Norris (“Norris”) is an individual residing at 1232 Ulmus Dr., Loveland, CO 80538.
5. Plaintiff Dawn Winters (“Winters”) is an individual residing at 2468 Oleander Court, Loveland, Colorado 80538.
6. Winters and Norris own the real property at 2468 Oleander Court, Loveland, Colorado 80538, a single family home (hereinafter “the Property”).
7. Defendant City of Loveland (“Loveland”) is a home rule municipality of the State of Colorado, situated in Larimer County with an official mailing address of 500 East Third Street, Loveland, Colorado 80537.
8. At all times material to this action, Plaintiffs resided at the Property.
9. On or about March 25, 2016, water began flowing into the basement of the Property.
10. Winters immediately contacted Liberty Mutual Insurance Company (“Liberty”) to file a homeowner’ insurance claim for the damages the water leakage was causing.
11. Liberty’s agents came to the property and performed some water clean – up work in the basement.
12. On or about April 1 2016, Plaintiffs contacted Loveland to determine if there was a leak in its water line, causing water to flow into Plaintiffs’ basement.
13. Loveland informed Plaintiffs that there was no leak in its water line, and took no further action.
14. Plaintiffs installed two sump pumps, in addition to the one they already had on the Property, and the three pumps pumped out approximately 40 gallons of water every ten minutes from the basement.
15. Because the water continued to flow into Plaintiffs’ basement, significant damage was done to the basement.
16. On information and belief, on or about November 3, 2016, water began flowing from the ground onto the property adjacent to Plaintiff, around the neighbor’s water meter. The address of the neighbor’s property is 2445 Oleander Ct.
17. On information and belief, Plaintiffs’ neighbor called Loveland to report the flowing water.

18. On information and belief, personnel from Loveland came to the neighbor's home, trenched an area in the street in front of Plaintiffs' home, and repaired a leak in Loveland's water pipes.

19. Shortly after Loveland made the repairs, the water flow to Plaintiffs' basement began to diminish and within three days, the water completely stopped flowing into Plaintiffs' basement.

20. Water continued to flow into the Plaintiffs' basement from on or about March 25, 2016 through November 6, 2016.

21. The source of the water in Plaintiffs' basement was a leak in the water line maintained by Loveland.

**First Claim for Relief:  
Negligence - Failure to Maintain**

22. Plaintiff incorporate by reference and reallege the above paragraphs as if fully set forth herein.

23. A "public water facility" is defined as "structures and related apparatus used in the collection, treatment, or distribution of water ... that is operated and maintained by a public entity." § 24-10-103(5.7).

24. Loveland is the owner of a public water facility that services the Property.

25. Loveland as a public entity owed a nondelegable duty to protect Winters and Norris, as owners of the Property, from injuries due to a negligent act or omission in operating or maintaining the public water facility.

26. In this case, Loveland knew or should have known in the exercise of reasonable care that the physical condition of the public water facility or the use thereof constituted an unreasonable risk of injury to Winters and Norris.

27. Loveland failed to keep the public water facility in the same general state of repair or efficiency as initially constructed or failed to preserve the facility from decline or failure.

28. The failure to maintain such facility proximately caused damages to Winters and Norris in an amount to be proven at trial.

**Second Claim for Relief:  
Negligence - Failure to Repair**

29. Plaintiff incorporate by reference and reallege the above paragraphs as if fully set forth herein.

30. A “public water facility” is defined as “structures and related apparatus used in the collection, treatment, or distribution of water … that is operated and maintained by a public entity.” § 24-10-103(5.7).

31. Loveland is the owner of a public water facility that services the Property.

32. Loveland as a public entity owed a nondelegable duty to protect Winters and Norris from injuries due to a negligent act or omission in operating or maintaining the public water facility.

33. In this case, Loveland knew or should have known in the exercise of reasonable care that the physical condition of the public water facility or the use thereof constituted an unreasonable risk of injury to Winters and Norris.

34. Once the City of Loveland learned of the deteriorated condition of the public water facility, the City failed to make repair to a state as initially constructed.

35. The failure to repair such facility proximately caused damages to Winters and Norris in an amount to be proven at trial.

**Third Claim for Relief:  
Negligence - Failure to Properly Investigate**

36. Plaintiff incorporate by reference and reallege the above paragraphs as if fully set forth herein.

37. A “public water facility” is defined as “structures and related apparatus used in the collection, treatment, or distribution of water … that is operated and maintained by a public entity.” § 24-10-103(5.7).

38. Loveland is the owner of a public water facility that services the Property.

39. Loveland as a public entity owed a nondelegable duty to protect Winters and Norris from injuries due to a negligent act or omission in operating or maintaining the public water facility.

40. In this case, Loveland knew or should have known in the exercise of reasonable care that a failure to properly investigate possible leaks or damage to its water facilities would create an unreasonable risk of injury to Winters and Norris.

41. After being informed of the water damage to the Property, Loveland failed to investigate and remedy the problem.

42. The failure to investigate and remedy the problem proximately caused damages to Winters and Norris in an amount to be proven at trial.

43. Plaintiffs hereby demand a trial by jury.

WHEREFORE, the Plaintiffs respectfully requests that this Court enter judgment in their favor and against Defendant City of Loveland and grant damages in an amount exceeding \$15,000 that will be proven at trial, costs, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 26<sup>th</sup> day of March, 2018.

HERMS & HERRERA, LLC

/s/ Jeffrey B. Cullers [Signature on File]

Jeffrey B. Cullers  
David M. Herrera  
Herms & Herrera, LLC  
Attorneys for Plaintiffs

This above was filed electronically pursuant to Rule 121, §1-26. The Original was duly executed and is on file at the office of Herms & Herrera, LLC.