

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 210 Fort Collins, CO 80521 970-494-3500	▲ COURT USE ONLY ▲
Plaintiff(s): LOVELAND EISENHOWER INVESTMENTS, LLC, a California limited liability company, v. Defendant(s): THE CITY OF LOVELAND, THE GREELEY AND LOVELAND IRRIGATION COMPANY, a Colorado non-profit corporation and JOHN DOES 1 through 50.	
Josh A. Marks, Atty. Reg. # 16953 BERG HILL GREENLEAF RUSCITTI LLP 1712 Pearl Street Boulder, CO 80302 Tel: (303) 402-1600 Fax: (303) 402-1601 jam@bhgrlaw.com	Case Number: 2016CV30362 Div.: 4C Ctrm.:
THE CITY OF LOVELAND’S ANSWER TO PLAINTIFF’S COMPLAINT AND JURY DEMAND	

Defendant, City of Loveland, through its undersigned counsel, Josh A. Marks of Berg Hill Greenleaf Ruscitti LLP, hereby files the following Answer to Plaintiff’s Complaint and Jury Demand (the “Complaint”), and as grounds therefore states as follows:

1. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 1 of plaintiff’s Complaint, and therefore denies the same.
2. This Defendant admits the allegations contained in paragraph 2 of plaintiff’s Complaint.
3. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 3 of plaintiff’s Complaint, and therefore denies the same.

4. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 4 of plaintiff's Complaint, and therefore denies the same.

5. This Defendant admits the allegations contained in paragraph 5 of plaintiff's Complaint.

6. This Defendant admits the allegations contained in paragraph 6 of plaintiff's Complaint.

7. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 7 of plaintiff's Complaint, and therefore denies the same.

8. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 8 of plaintiff's Complaint, and therefore denies the same.

9. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 9 of plaintiff's Complaint, and therefore denies the same.

10. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 10 of plaintiff's Complaint, and therefore denies the same.

11. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 11 of plaintiff's Complaint, and therefore denies the same.

12. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 12 of plaintiff's Complaint, and therefore denies the same.

13. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 13 of plaintiff's Complaint, and therefore denies the same.

14. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 14 of plaintiff's Complaint, and therefore denies the same.

15. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 15 of plaintiff's Complaint, and therefore denies the same.

16. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 16 of plaintiff's Complaint, and therefore denies the same.

17. This Defendant admits that there are a total of 1590.4 contractual inches of water available to the Contract Users under the Chubbuck Agreement, equivalent to 41.3504 cubic feet per second, but this Defendant is without sufficient information or knowledge to admit or deny the balance of the allegations contained within paragraph 17 of plaintiff's Complaint, and therefore denies the same.

18. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 18 of plaintiff's Complaint, and therefore denies the same.

19. This Defendant admits the City has previously acquired Chubbuck Inches and has converted them for municipal use, but denies the balance of the allegations contained in paragraph 19 of plaintiff's Complaint.

20. This Defendant admits the allegations contained in paragraph 20 of plaintiff's Complaint.

21. This Defendant admits the allegations contained in paragraph 21 of plaintiff's Complaint.

22. This Defendant denies the allegations contained in paragraph 22 of plaintiff's Complaint.

23. This Defendant denies the allegations contained in paragraph 23 of plaintiff's Complaint.

24. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 24 of plaintiff's Complaint, and therefore denies the same.

25. This Defendant admits that the Company objected to the City's most recent change case of Chubbuck Inches, but this Defendant is without sufficient information or knowledge to admit or deny the balance of the allegations contained within paragraph 25 of plaintiff's Complaint, and therefore denies the same.

26. This Defendant admits the allegations contained in paragraph 26 of plaintiff's Complaint.

27. This Defendant either lacks sufficient information or denies the allegations contained in paragraph 27 of plaintiff's Complaint.

28. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 28 of plaintiff's Complaint, and therefore denies the same.

29. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 29 of plaintiff's Complaint, and therefore denies the same.

30. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 30 of plaintiff's Complaint, and therefore denies the same.

31. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 31 of plaintiff's Complaint, and therefore denies the same.

32. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 32 of plaintiff's Complaint, and therefore denies the same.

33. This Defendant denies the allegations contained in paragraph 33 of plaintiff's Complaint.

34. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 34 of plaintiff's Complaint, and therefore denies the same.

35. This Defendant either denies or is without sufficient information or knowledge to admit or deny the allegations of paragraph 35 of plaintiff's' Complaint, and therefore denies the same

36. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 36 of plaintiff's Complaint, and therefore denies the same.

37. This Defendant denies the allegations contained in paragraph 37 of plaintiff's Complaint.

38. This Defendant denies the allegations contained in paragraph 38 of plaintiff's Complaint.

39. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 39 of plaintiff's Complaint, and therefore denies the same.

40. This Defendant denies the allegations contained in paragraph 40 of plaintiff's Complaint.

41. This Defendant admits the allegations contained in paragraph 41 of plaintiff's Complaint.

42. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 42 of plaintiff's Complaint, and therefore denies the same.

43. With regard to the allegations contained in paragraph 43 of plaintiff's Complaint, this Defendant states that the Annexation Agreement speaks for itself, and this Defendant denies the remainder of the allegations of paragraph 43 of plaintiff's Complaint to the extent they do not accurately describe the document.

44. With regard to the allegations contained in paragraph 44 of plaintiff's Complaint, this Defendant states that the Annexation Agreement speaks for itself, and this Defendant denies the remainder of the allegations of paragraph 44 of plaintiff's Complaint to the extent they do not accurately describe the document.

45. With regard to the allegations contained in paragraph 45 of plaintiff's Complaint, this Defendant states that the Annexation Agreement speaks for itself, and this Defendant denies the remainder of the allegations of paragraph 45 of plaintiff's Complaint to the extent they do not accurately describe the document.

46. Paragraph 46 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 46 is construed as requiring a response, however, this Defendant denies the same.

47. With regard to the allegations contained in paragraph 47 of plaintiff's Complaint, this Defendant states that Section 19.04.090 of the Code speaks for itself, and this Defendant denies the remainder of the allegations of paragraph 47 of plaintiff's Complaint to the extent they

do not accurately describe the document.

48. This Defendant denies the allegations contained in paragraph 48 of plaintiff's Complaint.

49. This Defendant denies the allegations contained in paragraph 49 of plaintiff's Complaint.

50. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 50 of plaintiff's Complaint, and therefore denies the same.

51. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 51 of plaintiff's Complaint, and therefore denies the same.

52. This Defendant admits the allegations contained in paragraph 52 of plaintiff's Complaint.

53. This Defendant admits that LEI was not a party to the Settlement Agreement, but this Defendant is without sufficient information or knowledge to admit or deny the balance of the allegations contained within paragraph 53 of plaintiff's Complaint, and therefore denies the same.

54. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 54 of plaintiff's Complaint, and therefore denies the same.

55. This Defendant denies the allegations contained in paragraph 55 of plaintiff's Complaint.

56. This Defendant denies the allegations contained in paragraph 56 of plaintiff's Complaint.

57. This Defendant denies the allegations contained in paragraph 57 of plaintiff's Complaint.

58. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 58 of plaintiff's Complaint, and therefore denies the same.

59. This Defendant is without sufficient information or knowledge to admit or deny

the allegations contained within paragraph 59 of plaintiff's Complaint, and therefore denies the same.

60. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 60 of plaintiff's Complaint, and therefore denies the same.

61. This Defendant admits that LEI cannot convert its Chubbuck Inches to municipal use on its own, but this Defendant is without sufficient information or knowledge to admit or deny the balance of the allegations contained within paragraph 61 of plaintiff's Complaint, and therefore denies the same.

62. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 62 of plaintiff's Complaint, and therefore denies the same.

FIRST CLAIM FOR RELIEF
(Breach of Contract – the City)

63. This Defendant incorporates the allegations contained in paragraphs 1 - 62 above in response to paragraph 63 of Plaintiff's Complaint.

64. This Defendant denies the allegations contained in paragraph 64 of plaintiff's Complaint.

65. This Defendant denies the allegations contained in paragraph 65 of plaintiff's Complaint.

66. This Defendant denies the allegations contained in paragraph 66 of plaintiff's Complaint.

SECOND CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing – the City)

67. This Defendant incorporates the allegations contained in paragraphs 1 - 66 above in response to paragraph 67 of Plaintiff's Complaint.

68. This Defendant denies the allegations contained in paragraph 68 of plaintiff's Complaint.

69. This Defendant denies the allegations contained in paragraph 69 of plaintiff's Complaint.

70. This Defendant denies the allegations contained in paragraph 70 of plaintiff's Complaint.

71. This Defendant denies the allegations contained in paragraph 71 of plaintiff's Complaint.

THIRD CLAIM FOR RELIEF
(Declaratory Relief – Unlawful Delegation of Authority – the City)

72. This Defendant incorporates the allegations contained in paragraphs 1 - 71 above in response to paragraph 72 of Plaintiff's Complaint.

73. Paragraph 73 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 73 is construed as requiring a response, however, this Defendant denies the same.

74. Paragraph 74 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 74 is construed as requiring a response, however, this Defendant denies the same.

75. Paragraph 75 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 75 is construed as requiring a response, however, this Defendant denies the same.

76. Paragraph 76 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 76 is construed as requiring a response, however, this Defendant denies the same.

77. Paragraph 77 of plaintiff's Complaint consists of a legal conclusion to which no response from this Defendant is required or provided. To any extent paragraph 77 is construed as requiring a response, however, this Defendant denies the same.

78. This Defendant denies the allegations contained in paragraph 78 of plaintiff's Complaint.

79. This Defendant admits that the City and LEI have a dispute concerning the City's ability to enter into the Settlement Agreement, but this Defendant denies the balance of the allegations contained in paragraph 79 of plaintiff's Complaint.

80. This Defendant denies the allegations contained in paragraph 80 of plaintiff's Complaint.

81. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 81 of plaintiff's Complaint, and therefore denies the same.

ANSWER TO FOURTH CLAIM FOR RELIEF
(Permanent Injunction – the City and the Company)

82. This Defendant incorporates the allegations contained in paragraphs 1 — 81 above in response to paragraph 82 of Plaintiff's Complaint.

83. This Defendant denies the allegations contained in paragraph 83 of plaintiff's Complaint.

84. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained within paragraph 84 of plaintiff's Complaint, and therefore denies the same.

85. This Defendant denies the allegations contained in paragraph 85 of plaintiff's Complaint.

86. This Defendant denies the allegations contained in paragraph 86 of plaintiff's Complaint.

87. This Defendant denies the allegations contained in paragraph 87 of plaintiff's Complaint.

FIFTH TO SEVENTH CLAIMS FOR RELIEF

88-100. These allegations and claims appear to relate to claims against the other Defendants, and are not addressed by this Defendant.

GENERAL DENIAL

101. This Defendant denies any allegation not specifically addressed above.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims may be barred by the applicable statute of limitations and/or

laches.

3. Plaintiff's claims may be barred or limited by the Colorado Governmental Immunity Act.

4. Plaintiff's declaratory judgment claim may not be ripe or capable of resolving a present dispute.

5. Plaintiff may be barred from certain forms of relief, such as damages by virtue of release and/or agreement.

6. Plaintiff's damages may be barred or limited by its failure to mitigate or reduce its damages.

7. Plaintiff's implied covenant of good faith and fair dealing claim is barred by the lack of an underlying contractual term or obligation of performance.

8. This Defendant reserves the right to add additional affirmative defenses as they become known through the course of disclosure and/or discovery.

WHEREFORE, this Defendant respectfully requests this Court dismiss this action plus award this Defendant its costs and attorney's fees in defense of this matter, plus such further relief as this Court deems appropriate.

THE CITY OF LOVELAND, COLORADO DEMANDS TRIAL BY A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 25th day of May, 2016.

BERG HILL GREENLEAF RUSCITTI LLP

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Josh A. Marks

Josh A. Marks
Attorney for Defendant City of Loveland

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2016, a true and correct copy of the foregoing **THE CITY OF LOVELAND'S ANSWER TO PLAINTIFF'S COMPLAINT AND JURY DEMAND** was served electronically via ICCES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

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Loveland Irrigation Company*

*[Pursuant to Rule 121, the signed original is on file at
Berg Hill Greenleaf Ruscitti LLP]*

s/ Sakhone Louangrath-Vongphandy

Sakhone Louangrath-Vongphandy