

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521 Tel: 970-494-3500		▲ COURT USE ONLY ▲  <hr/> Case No.: 2016cv230  Division: 5C	
<b>Plaintiff: LARRY SARNER, an individual, <i>pro se</i></b>  <b>v.</b>  <b>Defendants: CITY OF LOVELAND; and ANGELA MYERS, LARIMER COUNTY CLERK AND RECORDER</b>			
<i>Attorneys for Defendant City of Loveland:</i>  <table> <tr> <td>           Thomas W. Snyder, #33106            Thomas A. Isler, #48472            KUTAK ROCK LLP            1801 California St., Suite 3000            Denver, CO 80202            Tel: 303-297-2400            Fax: 303-292-7799            thomas.snyder@kutakrock.com            thomas.isler@kutakrock.com         </td> <td>           Alicia R. Calderón, #32296            Assistant City Attorney            City Attorney's Office            Civic Center            500 E. Third St., Suite 330            Loveland, CO 80537            Tel: 970-962-2545            Alicia.calderon@cityofloveland.org         </td> </tr> </table>			Thomas W. Snyder, #33106 Thomas A. Isler, #48472 KUTAK ROCK LLP 1801 California St., Suite 3000 Denver, CO 80202 Tel: 303-297-2400 Fax: 303-292-7799 thomas.snyder@kutakrock.com thomas.isler@kutakrock.com
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<p align="center"><b>DEFENDANT CITY OF LOVELAND'S RESPONSE TO PLAINTIFF'S MOTION TO DEEM BOND SUFFICIENT</b></p>			

Defendant City of Loveland (the "City"), by and through its counsel, hereby submits this response to Plaintiff Larry Sarnier's Motion to Deem Bond Sufficient, filed August. 30, 2016, and states as follows:

1. This is a special statutory proceeding brought under C.R.S. § 1-11-203.5. The statute provides that "the contestor *shall file* with the clerk of the court *a bond*, with sureties, running to the contestee and conditioned *to pay all costs, including attorneys fees*, in case of failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if sufficient, approve it." C.R.S. § 1-11-203.5(1) (emphasis added).

2. On August 30, 2016, Plaintiff nevertheless filed a Motion to Waive Bond Requirement. On that same day, the City filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, which sought dismissal based on Plaintiff's failure to post the statutorily-required

bond. On August 31, 2016, the City filed its Response to Plaintiff's Motion to Deem Bond Sufficient.

3. On September 1, 2016, this Court issued its Order re Bond and Jurisdiction. In accordance with the requirements of the statute, the Court stated in its Order that it would not accept jurisdiction over this matter until Plaintiff posted a sufficient bond for costs and attorneys' fees. The Court's Order deemed \$10,000 to be sufficient and gave Plaintiff until noon September 6, 2016 or it would dismiss this case.

4. Later on September 1, 2016 (and after this Court had issued its Order), Plaintiff filed the instant Motion to Deem Bond Sufficient. Plaintiff argues that \$50 is a sufficient bond.

5. For the reasons set forth in its Response to Plaintiff's Motion to Waive Bond Requirement, which is incorporated by reference herein, the City opposes Plaintiff's Motion and reiterates that, as the Court has already ordered, the statute requires the posting of a meaningful bond to reflect anticipated costs and attorneys' fees.

6. Indeed, it is significant that on September 1, 2016, Plaintiff also filed a motion to amend the Petition in which he proposed to drop one of his original claims, to which the City had already incurred costs and attorneys' fees for reviewing, analyzing, and responding in its Verified Answer. The Plaintiff's change in claims, after the City had incurred costs and fees, underscores why a bond is required.

7. For the foregoing reasons, the Plaintiff's Motion to Deem Bond Sufficient should be denied and this case should be dismissed in accordance with the Court's September 1<sup>st</sup> Order.

Respectfully submitted this 6<sup>th</sup> day of September, 2016.

KUTAK ROCK LLP

s/ Thomas W. Snyder  
Thomas W. Snyder, #33106

*Attorneys for Defendant City of Loveland*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of September, 2016, a true and correct copy of the foregoing was served as indicated below on the following:

Served via electronic mail and U.S. Mail, first class postage prepaid:

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