

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	
Plaintiff: LARRY SARNER, an individual, <i>pro se</i> v. Defendants: CITY OF LOVELAND; and ANGELA MYERS, LARIMER COUNTY CLERK AND RECORDER			
<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
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	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		
DEFENDANT CITY OF LOVELAND'S RESPONSE TO PLAINTIFF'S SECOND MOTION TO AWARD COSTS TO CONTESTOR			

Defendant City of Loveland (the “City”), by and through its counsel, hereby submits this response to Plaintiff Larry Sarner’s Second Motion to Award Costs to Contestor (the “Motion”), filed November 28, 2016, and states as follows:

1. On November 3, 2016, the Court held a trial/hearing on Sarner’s ballot question contest, pursuant to C.R.S. § 1-11-203.5.
2. On November 5, 2016, the Court dismissed the Complaint and entered judgment in favor of the City. *See* Order re Ballot Title Questions at 13.

3. Sarner now seeks “to be awarded costs from the Contestee, City of Loveland.” Mot. at 1.

4. Reasonable costs may be awarded only to the “prevailing party.” C.R.C.P. 54(d). Sarner is not the prevailing party because his complaint was dismissed in its entirety, and the Court entered judgment in favor of the City. Accordingly, Sarner is not entitled to costs under C.R.C.P. 54(d).

5. Defendant City of Loveland requests that the Court deny the Motion.

Respectfully submitted this 6th day of December, 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 6th day of December, 2016, a true and correct copy of the foregoing **DEFENDANT CITY OF LOVELAND'S RESPONSE TO PLAINTIFF'S SECOND MOTION TO AWARD COSTS TO CONTESTOR** was served as indicated below on the following:

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

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Pro se Plaintiff

s/ Becky Franson