

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100</p> <hr/> <p>Plaintiff: ERIC SUTHERLAND,</p> <p>v.</p> <p>Defendant: THE CITY OF FORT COLLINS</p> <p>Indispensable Party: Angela Myer [SIC], Larimer County Clerk and Recorder</p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: kschutt@wicklaw.com</p> <p>John R. Duval, #10185 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 221-6520 Email: jduval@fcgov.com</p>	<p>Case Number: 2017 CV 219</p> <p>Courtroom: 5C</p>
<p>DEFENDANT CITY'S VERIFIED ANSWER, REQUEST FOR EXPEDITED HEARING AND REQUEST FOR SETTING OF CONTESTOR'S BOND AMOUNT PURSUANT TO C.R.S. §1-11-203.5</p>	

COMES NOW, the Defendant City of Fort Collins ("City"), by and through its counsel, the Fort Collins City Attorney's Office and Wick & Trautwein, LLC, and respectfully submits the following Answer to the Plaintiff's Petition for a Contest Concerning the Form and Content of the City of Fort Collins Broadband Authorization Election Ballot Question ("Petition"). The City further requests an expedited hearing to occur within 10 days of the filing of this Answer, and the setting of a bond to be posted by the Plaintiff, both as required by C.R.S. §1-11-203.5. In support thereof, the City answers, avers and states as follows:

1. The City admits the allegations of Paragraph 1 of the Petition.
2. The City denies Paragraph 2 of the Petition as stated. The proposed Charter amendment is attached to the Petition and also as *Exhibit 1* to this Answer, and speaks for itself.

3. The City denies the allegations of Paragraph 3 of the Petition.
4. The City admits the allegations of Paragraph 4 of the Petition on information and belief.
5. The City admits the allegations of Paragraph 5 of the Petition.
6. With regard to the allegations of Paragraph 6 of the Petition, the City admits that Angela Myers [Not “Myer” as named in the Plaintiff’s Petition] is the Clerk & Recorder for Larimer County, Colorado, and in that capacity is responsible for managing coordinated elections occurring in Larimer County. To the extent Ms. Myers is an indispensable party as asserted by the Plaintiff, it is the Plaintiff’s burden to join said indispensable party, and his failure to do so should result in dismissal of this action.
7. With regard to the allegations of Paragraph 7 of the Petition, the City admits this Court is the proper venue for a proceeding such as the one alleged in the Petition, but denies that the Court yet has proper jurisdiction due to the Plaintiff’s failure to post the bond mandated by C.R.S. §1-11-203.5(1). That statutory section provides, in pertinent part, that “[B]efore the district court is required to take jurisdiction of the contest, 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 attorney’s fees, in case of a failure to maintain the contest. The judge shall determine the sufficiency of the bond and, if sufficient, approve it.” [Emphasis added]. On information and belief, Plaintiff has not yet filed any bond, let alone one deemed to be sufficient to pay all costs, including attorney’s fees, in case of his failure to maintain the contest, and thus this Court cannot yet take jurisdiction of this action. The City estimates in good faith that it will reasonably incur costs and attorney’s fees through the summary adjudicative hearing in the amount of \$3,500, and asks the Court to enter an order requiring the Plaintiff to immediately post a bond in this amount before the Court accepts jurisdiction of this case.
8. With regard to the allegations of Paragraph 8 of the Petition, the City admits that its City Council took formal action by affirmative vote to adopt Ordinance 101, 2017 to set the ballot title language, and that a copy of said Ordinance is attached to the Plaintiff’s Petition. The Ordinance speaks for itself. The City denies the remaining allegations of Paragraph 8 of the Petition, and affirmatively states that the Ordinance was signed by the Mayor of the City of Fort Collins on August 21, 2017, as reflected in the copy attached hereto as *Exhibit 1* to this Answer.
9. Paragraphs 9 through 16 of the Petition contain the Plaintiff’s legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. The cited provisions of the Fort Collins Charter and Colorado Revised Statutes, as well as the cited case law, speak for themselves. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

10. Paragraphs 17 through 20 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. Further, the City specifically denies there is a missing comma in the ballot measure or that any alleged missing comma constitutes a misleading or confusing grammatical error as alleged by the Plaintiff. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

11. Paragraphs 21 through 24 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. Further, the City specifically denies the ballot measure contains any misleading or confusing language regarding the source of revenues that would be made available or to be pledged to repay any debt authorized by the ballot question. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

12. Paragraphs 25 through 28 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. Further, the City specifically denies that the submission clause fails to conform to the form and content requirements of the Taxpayer Bill of Rights ["TABOR"], or that TABOR even applies to this ballot measure. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

13. Paragraphs 29 through 33 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. Further, the City specifically denies that the submission clause fails to conform to the form and content requirements of the TABOR amendment by allegedly omitting the wording prescribed by Article X, Section 20(3) of TABOR, or that TABOR even applies to this ballot measure. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

14. Paragraphs 34 through 36 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. Further, the City specifically denies that the submission clause does not conform with the anti-consolidation clause of Article X, Section 20(3) of TABOR, or that TABOR even applies to this ballot measure. The City intends to seek leave of Court to submit a separate legal brief addressing these issues.

15. Paragraphs 37 through 39 of the Petition again primarily contain the Plaintiff's legal arguments and conclusions rather than factual allegations, and as such do not require an admission or denial on the part of the City. Nevertheless, the City generally denies said legal arguments, as stated. The City further specifically denies that any alternative to the ballot title is required, or that the Plaintiff's proposed alternative ballot language is appropriate or necessary.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to post the mandatory bond required by C.R.S. §1-11-203.5(1), and thus this Court is not required to take jurisdiction of this action.

2. Plaintiff's Petition consists largely of legal arguments and conclusions rather than a short and plain statement of the claim, contrary to the general pleading requirements set forth in Rule 8 of the Colorado Rules of Civil Procedure. As stated above, the City is not required to admit or deny said legal arguments and conclusions under the general rules of pleading. The City reserves the right to submit its legal arguments on the issues raised in the Petition prior to the hearing required by C.R.S. §1-11-203.5, and intends to seek leave of Court to submit a separate legal brief prior to said hearing.

3. The subject ballot measure described in Ordinance 101, 2017 complies with applicable provisions of the Fort Collins City Charter and the City Code, as well with any applicable provisions of Colorado state election laws. The ballot question is not subject to TABOR because it does not now seek voter approval to issue any revenue bonds to fund telecommunication facilities or services.

4. The Petition fails to state a claim upon which relief can be granted.

5. The Plaintiff's Petition is frivolous, groundless or vexatious entitling the City to an award of its reasonable costs and attorney's fees incurred in defense of this action.

6. The Plaintiff may have failed to join an indispensable party to this action. It is the Plaintiff's burden to join all indispensable parties, and his failure to do so requires dismissal of this action.

7. The City reserves the right to add or delete affirmative defenses based on information gathered in the process of defending the Plaintiff's claims.

WHEREFORE, Defendant City of Fort Collins respectfully prays that the Court enter judgment in its favor and against the Plaintiff, upholding the validity of the challenged Ordinance and ballot question, and award the City its reasonable attorney's fees, expert witness fees, costs and such further relief as the Court shall deem just and proper.

The City further requests this Court to: (a) immediately set this matter for an expedited hearing to occur within 10 days of the filing of this Answer, and (b) issue an order requiring the Plaintiff to immediately post a bond in the amount of \$3,500 to sufficiently cover the costs and attorney's fees the City estimates it will reasonably expend defending this matter through the summary adjudicative hearing, all as mandated by C.R.S. §1-11-203.5.

DATED this 24TH day of August, 2017.

WICK & TRAUTWEIN, LLC

By: s/Kimberly B. Schutt
Kimberly B. Schutt, #25947
Attorneys for Defendant

And

FORT COLLINS CITY ATTORNEY'S OFFICE

By: s/John R. Duval
John R. Duval, #10185
Attorneys for Defendant

[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC and the Fort Collins City Attorney's Office]

VERIFICATION

STATE OF COLORADO }
 } ss:
COUNTY OF LARIMER }

The undersigned, Delynn Coldiron, the Fort Collins Interim City Clerk, and Rita Knoll, Fort Collins Chief Deputy City Clerk, both being first duly sworn, state under oath that due to the recent resignation of Wanda Winkelmann as the Fort Collins City Clerk, they are currently assuming and sharing the duties of the designated election official for the City of Fort Collins, and that they have each read the above and foregoing Verified Answer, Request for Expedited Hearing and For Setting of Contestor’s Bond Amount Pursuant to C.R.S. §1-11-203.5, that they each know the contents therein, and that the same are true to the best of their respective knowledge and belief.



Delynn Coldiron
Interim City Clerk



Rita Knoll
Chief Deputy City Clerk

The foregoing instrument was subscribed and sworn to before me this the 24th day of August, 2017, by Delynn Coldiron and Rita Knoll.

Witness my hand and official seal.





Notary Public
My Commission Expires: June 16, 2018

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT CITY'S ANSWER, REQUEST FOR EXPEDITED HEARING AND FOR SETTING OF CONTESTOR'S BOND PURSUANT TO C.R.S. §1-11-203.5** was filed via Integrated Colorado Courts E-Filing System (ICCES) and served this 24TH day of August, 2017, on the following:

Eric Sutherland
3520 Golden Current Blvd.
Fort Collins, CO 80521

A courtesy copy was also emailed to Mr. Sutherland at sutherix@yahoo.com

s/ 
Cary C. Alton

[The original certificate of electronic filing signed by Cary C. Alton is on file at the Fort Collins City Attorney's Office]