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| DISTRICT COURT, LARIMER COUNTY, COLORADO<br>Larimer County Justice Center<br>201 Laporte Avenue, Suite 100<br>Fort Collins, CO 80521-2761<br>(970) 498-6100                                                                                                                                              | DATE FILED: October 8, 2019 2:07 PM<br>FILING ID: 1AB2F7B0518BB<br>CASE NUMBER: 2018CV220 |
| <b>Plaintiff: STACY LYNNE</b><br><br>v.<br><br><b>Defendants: NOAH BEALS, Senior Planner, City of Fort Collins, in his individual and official capacity, and JEREMY CALL, Senior Associates – Logan Simpson Design, Contractor for the City of Fort Collins, in his individual and official capacity</b> | COURT USE ONLY                                                                            |
| Kimberly B. Schutt, #25947<br>WICK & TRAUTWEIN, LLC<br>P.O. Box 2166<br>Fort Collins, CO 80522<br>Phone: (970) 482-4011<br>Email: <a href="mailto:kschutt@wicklaw.com">kschutt@wicklaw.com</a>                                                                                                           | Case Number: 2018 CV 220<br><br>Courtroom: 3C                                             |
| <b>DEFENDANT BEALS' VERIFIED BILL OF COSTS AND REQUEST FOR ENTRY OF JUDGMENT</b>                                                                                                                                                                                                                         |                                                                                           |

COMES NOW Defendant, Noah Beals, through his counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and respectfully submits the following Verified Bill of Costs and Request for Entry of Judgment for Costs pursuant to C.R.C.P. 121 §1-22(1), seeking reimbursement of costs related to the attorney fee judgment entered September 25, 2019.

As grounds supporting Defendant's request for entry of judgment, Defendant states as follows:

1. On September 17, 2019, the Court held a hearing on the attorney's fees to be awarded to the Defendant for defense of this action, which was dismissed on the Defendant's C.R.C.P. 12(b)(1) motion to dismiss. At that hearing, the Defense called an expert witness, Daniel Muffly, to provide opinion testimony to support a finding that the fees incurred were both reasonable in amount and necessarily incurred in defense of this action.

2. As Mr. Muffly testified at the hearing, and as is reflected in the retention letter and billing records attached to this Bill of Costs, Mr. Muffly provided his expert services at the rate of \$275 per hour, which is his usual hourly rate as an attorney. His services generally consisted of reviewing the relevant attorney fees affidavits of defense counsel and the underlying court file

documentation referenced in those affidavits, and appearing in court to provide testimony relating to his opinions that the fees incurred in defense of this action were reasonable.

3. Mr. Muffly's expert witness fees are itemized below and totaled \$2,337.50. Those fees have been paid by defense counsel on behalf of the Defendant, as Mr. Duval testified at the hearing and as is reflected in the attached documentation reflecting the payments made.

4. These expert witness fees were properly incurred and related to the judgment for attorney's fees entered on September 25, 2019. That order of judgment specifically referred to the opinions of Mr. Muffly and found them relevant to the Court's determination of the issues to be resolved at the hearing on September 17<sup>th</sup>.

5. Accordingly, the Defendant respectfully submits this timely Verified Bill of Cost pursuant to C.R.C.P. 121 §1-22(1). That rule directs a party claiming costs to file a Bill of Costs within 21 days of the entry of an order or judgment, or within such greater time as the court may allow. The Bill of Costs is required to itemize and provide a total of the costs claimed, as this Verified Bill of Costs does.

6. The Supreme Court of Colorado discussed the proper standard for a court to award expert witness fees as costs in *Laleh v. Johnson*, 403 P.3d 207, 2011, (Colo. 2017):

"The decision to award an expert witness's or a master's costs is within the trial court's sound discretion. *See* CRE 706(a); *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 389 (Colo. 1994) (holding that the trial court did not abuse its discretion by awarding expert witness fees); C.R.C.P. 53(a); *Rasheed v. Mubarak*, 695 P.2d 754, 759 (Colo. App. 1984) ("With respect to ... the trial court's assessment of masters' costs, we find no abuse of discretion."). A trial court's award of costs for an expert or a master will not be disturbed on appeal absent clear abuse of discretion. *See Trinity Universal Ins. Co. v. Streza*, 8 P.3d 613, 619 (Colo. App. 2000)."

7. The Court would be properly exercising this sound discretion to award the following itemized costs in this case:

BILL OF COSTS

|                                               | <u>Cost</u>              | <u>Date Incurred</u> |
|-----------------------------------------------|--------------------------|----------------------|
| Gast Johnson & Muffly, P.C. – expert services | \$577.50                 | 8/1/19               |
| Gast Johnson & Muffly, P.C. – expert services | \$632.50                 | 8/29/19              |
| Gast Johnson & Muffly, P.C. – expert services | \$1127.50                | 9/26/19              |
| <b>TOTAL:</b>                                 | <b><u>\$2,337.50</u></b> |                      |

WHEREFORE, Defendant Beals respectfully requests this Court enter a further judgment in his favor and against the Plaintiff for awardable costs expended in the aggregate amount of \$2,337.50.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of October, 2019.

WICK & TRAUTWEIN, LLC

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

**VERIFICATION**

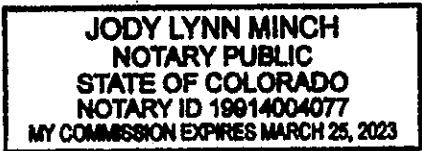
Kimberly B. Schutt, being of lawful age and duly sworn upon oat, states that she is the attorney of record for Defendant Beals and hereby certifies that the foregoing reasonable itemized transcription cost was actually and necessarily incurred in the defense of this matter on behalf of Defendant Beals.

Kimberly B. Schutt  
Kimberly B. Schutt, Esq

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

Subscribed and sworn to before me this 8 day of October, 2019 by Kimberly B. Schutt.

Witness my hand and official seal.



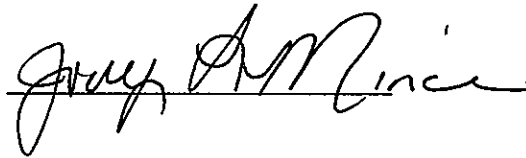
Jody Lynn Minch  
Notary Public

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEALS' VERIFIED BILL OF COSTS AND REQUEST FOR ENTRY OF JUDGMENT** was filed via the Colorado Courts E-Filing System and served this 8<sup>th</sup> day of October, 2019, on the following:

Stacy Lynne  
305 W. Magnolia Street #282  
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at *stacy\_lynne@comcast.net*

A handwritten signature in black ink, appearing to read "Gary A. Mince". The signature is written in a cursive style and is positioned above a horizontal line.