DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521 **Plaintiff: VIRGINIA FARVER,** **v.** **Defendants: CITY OF FORT COLLINS, FORT COLLINS ELECTRIC UTILITY; and DOES 1-100.**	DATE FILED: September 13, 2016 3:16 PM FILING ID: 6B6FB9BD42DCD CASE NUMBER: 2016CV144 COURT USE ONLY
Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929 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	Case Number: 2016 CV 144 Courtroom: 5B

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

COMES NOW all of the above-named defendants ("Defendants"), by and through counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and John R. Duval of the Fort Collins City Attorney's Office, and for their Answer to the Plaintiff's First Amended Complaint, state to the Court as follows:

GENERAL DENIAL

The *pro se* plaintiff, Virginia Farver ("Plaintiff"), has filed a 45-page First Amended Complaint consisting of 198 numbered allegations, challenging the implementation of the Advanced Meter Fort Collins Project ("Project") by the City of Fort Collins ("City") through the City's Electric Utility ("Electric Utility"). The primary arguments made in the Complaint relate to the Plaintiff's claim that the Project was allegedly adopted and implemented by the Electric Utility without proper authorization and oversight by the Fort Collins City Council, and thus the City's implementation of the Project and collection of a meter-reading fee from citizens refusing to participate in the Project are contrary to law. Plaintiff also now raises allegations that the City's adoption of the program was done in violation of the Colorado Sunshine Act of 1972, C.R.S. § 24-6-101, et seq., and violated her due process rights under Article II, section 25 of the

Colorado Constitution. Plaintiff seeks declaratory and injunctive relief from the Court based on the purported invalidity of the Project, and reimbursement of the fees she has paid to the City for manual meter reading.

Suffice it to say, the Plaintiff's First Amended Complaint fails to comply with C.R.C.P. 8's requirement that litigants provide a "short and plain statement" of their claim. While the Defendants have very meritorious grounds for challenging the numerous legal flaws in the Complaint through the filing of a motion to dismiss, the Defendants will instead wait and file a thorough Motion for Summary Judgment to have the Court address the various legal claims and defenses, since that type of proceeding would likely be a better use of the Court's time and resources.

In the meantime, the Defendants will instead generally deny the Plaintiff's assertions that the Project was never properly authorized and implemented by the City. The City's contrary argument was succinctly stated in Deputy City Attorney John Duval's January 12, 2016 letter to the Plaintiff denying her Notice of Claim. A copy of that letter is attached to this Answer as Exhibit "A" and incorporated herein by reference. The City also generally denies that the City's adoption and implementation of the Project was done in violation of the Colorado Sunshine Act, or constituted a violation of Plaintiff's due process rights under Article II of the Colorado Constitution.

Subject to this general denial, the Defendants will also answer the Plaintiffs' extensive allegations to the best of their ability, as set forth below. In doing so, Defendants note that Plaintiff's First Amended Complaint contains a number of allegations which appear to be headings for the statements that follow. To the extent that said headings are considered to be affirmative allegations of any kind, the Defendant generally admit and deny said allegations consistently with the substantive admissions and denials contained within this Answer.

ANSWER

1. Paragraph 1 of the Complaint does not appear to call for an admission or denial, but the Defendants admit that Virginia L. Farver is the named plaintiff in the Complaint.

2. With regard to the allegations in Paragraph 2 of the Complaint, the Defendants are without personal knowledge as to the Plaintiff's reason for bringing this action, but deny that the Colorado Governmental Immunity Act [CGIA],, C.R.S. §24-10-101, et seq., provides her any remedy or places any affirmative duty on the Defendants for the circumstances outlined in the Complaint. The statute speaks for itself. The Defendants therefore deny the allegations of Paragraph 2.

3. Paragraphs 3 and 4 of the First Amended Complaint are labeled as "Introduction," and do not appear to contain any substantive allegations, but rather contain an overview of the Plaintiff's opinions on Smart Meters. To the extent paragraphs 3 and 4 of the "Introduction" contain any substantive allegations, the Defendants generally admit and deny them consistent with their other admissions and denials contained throughout this Answer.

4. With regard to Paragraph 5 of the First Amended Complaint, the Defendants deny that the CGIA in C.R.S. §24-10-109, confers jurisdiction here. The Act speaks for itself. Defendants admit that C.R.S. §13-80-102 provides for a two-year statute of limitation as stated in section (h). Again, the statute speaks for itself.

5. With regard to Paragraph 6 of the First Amended Complaint, the Defendants admit that venue is proper in the Larimer County District Court.

6. With regard to Paragraph 7 of the First Amended Complaint, the Defendants deny that immunity has been waived under the Colorado Governmental Immunity Act, to the extent the Act applies to this action for declaratory and injunctive relief. The Act speaks for itself.

7. With regard to Paragraph 8 of the First Amended Complaint, the Defendants admit that the Plaintiff sent a letter dated September 23, 2015, purporting to be a notice of claim related to the Project. Defendants further admit that the letter was sent via certified mail to the address stated in Paragraph 8, and that said letter was received by the City. However, Defendants deny that immunity has been waived under the CGIA or that the Act confers jurisdiction here. Defendants may assert that Plaintiff did not provide timely notice of the due process claims, as required by the CGIA, depending on further disclosure and discovery.

The Defendants further admit the allegations of Paragraph 8 relating to the letter sent by Deputy City Attorney John Duval dated January 12, 2016. The letter from John Duval, attached to this Answer as Exhibit A, speaks for itself.

8. Paragraph 9 of the First Amended Complaint does not call for an admission or denial from these Defendants.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the First Amended Complaint and, therefore, deny such allegations.

10. Paragraphs 11 through 12 of the First Amended Complaint quote from various sections of C.R.S. §24-10-101 et seq., known as the Colorado Sunshine Act. The paragraphs do not appear to contain any substantive factual allegations that require an admission or denial from these Defendants. Defendants simply assert that the quoted statutes speak for themselves and deny any implications in these paragraphs that Defendants failed to comply with these statues.

11. Defendants admit the allegations of Paragraph 13 of the First Amended Complaint.

12. Defendants deny the allegations of Paragraph 14 of the First Amended Complaint, as stated. The City admits that, as reflected in the quoted letter from John Duval, attached hereto as Exhibit A, the choice and decision of what kind of meter to be used in the City was delegated to the City Manager and Director of Utility Services, subject to City Council's appropriation of

needed funds. The January 12, 2016 letter from John Duval, attached to this Answer as Exhibit A, speaks for itself.

13. Defendants deny the allegations of Paragraphs 15 and 16 of the First Amended Complaint.

14. Paragraphs 17 through 18 of the First Amended Complaint quote from various sections of C.R.S. §24-10-101 et seq., known as the Colorado Sunshine Act. The paragraphs do not appear to contain any substantive factual allegations that require an admission or denial from these Defendants. Defendants simply assert that the quoted statutes speak for themselves, and deny any implications in these paragraphs that Defendants failed to comply with these statues.

15. Paragraph 19 of the First Amended Complaint quotes from Article II, Section 6 of the City Charter. The paragraph does not appear to contain any substantive factual allegations that require an admission or denial from these Defendants. Defendants simply assert that the quoted sections of the City Charter speak for themselves, and deny any implications in these paragraphs that Defendants failed to comply with the relevant provisions of the City Charter.

16. Defendants deny Paragraph 20 of the First Amended Complaint.

17. Paragraph 21 of the First Amended Complaint quotes from Article II, Section 7 of the City Charter. The paragraph does not appear to contain any substantive factual allegations that require an admission or denial from these Defendants. Defendants simply assert that the quoted sections of the City Charter speak for themselves, and deny any implications in these paragraphs that Defendants failed to comply with the relevant provisions of the City Charter.

18. Paragraphs 22 through 28 of the First Amended Complaint make a number of assertions regarding "analog meters" and "smart" electric meters and alleged distinctions between the different types of meters. The Defendants generally admit there are various differences between the older electric meters and the newer "smart" meters, the most significant difference being that the "smart" meter can be read remotely rather than requiring that it be read at its location by an individual meter reader. Prior to adoption and implementation of the Project, the City's manual reading of analog meters was generally done monthly (it was generally not estimated nor done once per quarter) and its cost was built into the calculation of the rate charged to the customer. Since it was an embedded cost charged to all customers, it was not separated out and itemized on utility bills.

The Defendants generally admit that the Project involved replacing most of the older electro-mechanical electric meters with a communicating digital electric meter (often referred to as a "smart" meter) on homes and businesses throughout Fort Collins. The Defendants further state that not all meters in use before the Project were electro-mechanical, nor did all of them have an analog display, although the vast majority did. Solid state, or digital electric meters, have been used by utilities for over 20 years, and meter communications with some commercial customers have been utilized within the City since the 1980's.

Defendants generally deny that Plaintiff's description of the appearance and function of a smart meter is accurate as to the type of smart meters being utilized within the City pursuant to the Project. The smart meters used in the Electric Utility's implementation of the Project actually do have a glass case similar to the analog meters they replaced, and they only store information for the premises on which they were installed (not data regarding "many customers' electricity usage).

Further, the Defendants state that transmission power of the smart meters used in the City is not remotely adjustable by the Electric Utility. The system implemented as part of the Project by the Electric Utility utilizes low power transmission and depends on a mesh network to pass messages from meters that would otherwise be out of range of dedicated data collection points that are intentionally separated from the meters.

With regard to the range of the smart meters utilized within the City as part of the Project, the Plaintiff's allegations are not accurate. The range of said meters is dependent upon environmental conditions that impact signal propagation; those conditions include barriers such as trees, buildings, vehicles, and interference from other sources. Also, the Electric Utility cannot select the power level for the smart meters within the City.

The Defendants generally deny the remaining allegations of Paragraphs 22 through 28 of the Complaint, as stated by the Plaintiff.

19. With regard to Paragraphs 29 through 30 of the First Amended Complaint, Defendants admit that the smart meter network does not require 100% participation. This characteristic is why the Electric Utility is able to offer to customers, such as the Plaintiff, the option of having a non-transmitting meter rather than a transmitting smart meter. It is also true that a smart meter signal does not need to reach all the way to the Electric Utility, only to the nearest meter that can pass messages on to collector meters. However, the Electric Utility does not use collector meters; it instead uses dedicated collectors mounted on streetlight poles. The mesh network utilized within the City is also not designed around a 1.8 mile range. Therefore, the Defendants generally deny the remaining allegations in Paragraph 29 through 30 as to how the smart meter network in the Project could operate within the City, as stated by the Plaintiff; said allegations are not accurate to the system utilized within the City.

20. With regard to Paragraphs 31 through 32 of the First Amended Complaint, the Defendants generally deny the Plaintiff's assertions regarding the health impacts of wireless radiation as stated by the Plaintiff. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the International EMF Scientist Appeal, but Defendants deny the relevancy of said allegations to the limited issues to be decided by the Court in this action.

21. Paragraph 33 of the First Amended Complaint apparently has been deleted and does not call for an admission or denial from these Defendants.

22. On information and belief, the Defendants admit the allegations of Paragraph 34 of the First Amended Complaint.

23. The Defendants admit Paragraphs 35 and 36 of the First Amended Complaint.

24. With regard to Paragraph 37 and 38 of the First Amended Complaint, the Defendants admit that the Fort Collins City Council (of which the Mayor is a member), in conjunction with the City Manager, governs the City of Fort Collins according to the Fort Collins City Charter. Article I, Section II of the Charter legally describes this form of government as a "Council Manager government." Article II of the Charter describes the powers and duties of the City Council, whereas Article III of the Charter describes the powers and duties of the City Manager. The Defendants further admit that the website cited in the Complaint is one of the places where the Charter can be found, and that a complete and current copy of the City Charter and Code (current through ordinance adopted April 19, 2016) can be found on the City's website at www.fcgov.com/cityclerk/code.php

25. The Defendants deny the allegations of Paragraph 39 of the First Amended Complaint, as stated. Defendants admit that the utility involved in the Project is formally known as the Fort Collins Electric Utility, although it is informally referred to by other names. The Defendants also admit that the Electric Utility currently provides service to over 73,000 homes and businesses in an area over 55 square miles.

26. The Defendants admit the allegations of Paragraph 40 of the First Amended Complaint.

27. Paragraph 41 of the First Amended Complaint apparently has been deleted and does not call for an admission or denial from these Defendants.

28. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the First Amended Complaint and, therefore, deny such allegations. The Defendants further deny that the Plaintiff has properly pled a claim against unknown defendants under C.R.C.P. 9(a)(2).

29. The Defendants deny the allegations of Paragraph 43 of the Plaintiff's First Amended Complaint, as stated. The statute speaks for itself and does not provide the pleading requirements for this First Amended Complaint. Further, Defendants state that Plaintiff's status as a *pro se* plaintiff does not excuse her from compliance with pleading requirements or other applicable rules of procedure; under Colorado law, she is held to the same rules and standards as attorneys. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *Loomis v. Seely*, 677 P.2d 400, 401 (Colo. App. 1983). To the extent that Paragraph 43 contains any further substantive allegations, Defendants deny the same.

30. Defendants deny the allegations of Paragraphs 45 through 48 of the Plaintiff's First Amended Complaint.

31. Defendants deny the allegations of Paragraph 49 of the First Amended Complaint, as stated. Defendants generally admit that the Project entailed removal of analog electric meters from the vast majority of homes and businesses in the City, but denies that all of them were replaced with smart meters. Customers, including the Plaintiff, were given a choice of whether to have an analog meter replaced with a smart meter or to instead have a newer digital meter that does not communicate wirelessly to allow for remote reading. The Defendants admit that the Plaintiff objected to the replacement of the analog meter on her home, citing health concerns, but deny that it was "her" meter; under the City Code, all meters on businesses and homes within the City are property of the Fort Collins Utilities. To the extent Paragraph 49 of the First Amended Complaint contains any further substantive allegations, the Defendants deny said allegations.

32. With regard to Paragraph 50 of the First Amended Complaint, the Defendants admit that Darin Atteberry, Steve Catanach and Kraig Bader have all been disclosed by the City as potential witnesses and that they have knowledge and information regarding the Project, as set forth in detail in the Defendants' Rule 26 disclosures and any supplements thereto. Defendants deny the remaining allegations of Paragraph 50.

33. With regard to Paragraph 51 of the First Amended Complaint, Defendants admit that the Plaintiff made an open records request in early 2015. Defendants further admit that the Plaintiff exchanged numerous communications with City Clerk Wanda Nelson, and a staff person in her office, Christine Macrina, during that timeframe, in which City staff made repeated efforts to clarify what documents the Plaintiff was seeking due to the vague and constantly changing scope of her requests. City representatives made repeated efforts to understand what she was asking for and to respond as best as they could under the circumstances. Those efforts included having several City staff members, including Deputy City Manager Jeff Mihelek, having a phone conference with the Plaintiff in order to further clarify and discuss what records the Plaintiff was seeking from the City. The Defendants further admit that Jeff Mihelich sent Plaintiff a letter dated April 21, 2015. Said letter speaks for itself.

34. With regard to the allegations of Paragraph 52 and 53 of the First Amended Complaint, the Defendants admit that certain decisions regarding electric services are delegated to the Electric Utility, including the choice and decision of what kind of meter to be used in the City, subject to City Council's appropriation of needed funds. Defendants state that the delegation of authority is reflected within the City Charter and City Code, and was discussed in the letter from John Duval attached hereto as Exhibit A. Defendants deny the remaining allegations of Paragraphs 52 and 53 of the First Amended Complaint.

35. Paragraph 54 of the First Amended Complaint appears to simply be an introductory statement and thus does not call for an admission or denial from these Defendants. To the extent Paragraph 54 contains any substantive allegations, these Defendants admit and deny any such allegations consistent with the preceding and following paragraphs of this Answer.

36. The Defendants generally admit the allegations in Paragraphs 55, 56, 57, 58, 59, 60 and 61 of the First Amended Complaint, to the extent that Deputy City Manager Jeff Mihelich sent a letter dated April 21, 2015 containing those statements, among others. The letter speaks

for itself. The Defendants deny the date allegation in paragraph 59 of the Complaint, as the actual date referenced in Mr. Mihelich's letter is October 27, 2009.

37. With regard to the allegations contained in Paragraph 62 of the First Amended Complaint, the Defendants generally admit that the Plaintiff communicated on one or more occasions with City personnel during that timeframe to express objections to the City's Advanced Meter Fort Collins Project.

38. With regard to the allegations of Paragraph 63 of the First Amended Complaint, the Defendants admit that Dennis Sumner made a courtesy phone call to the mobile phone of Craig Farver on or about November 18, 2013, to discuss the fact that the Farvers had not accepted certified letters sent to their home notifying them that the City would terminate their power service due to their failure to either allow for installation of a "smart" meter or for the alternative option of a digital meter without the wireless communication technology. The Defendants further admit that Mr. Sumner made concerted and repeated efforts for over 20 minutes to explain that the alternative meter option did not contain the "smart" wireless technology about which the Plaintiff was concerned, and offered several times to allow the Plaintiff and her husband to inspect the two different meters, and to provide whatever information they needed to understand how the alternative digital meter worked. The Defendants deny that Dennis Sumner was the head of the Fort Collins Utility at the time of the phone call, or that he contacted the Plaintiff herself by telephone immediately prior to calling Craig Farver. The Defendants further admit that the phone call between Craig Farver and Dennis Sumner was recorded, and that the recording of that discussion speaks for itself. As to the remaining allegations of Paragraph 34 of the Complaint, it is the Defendants' understanding that the Plaintiff's adult son died of brain cancer, but they have no personal knowledge as to the other information regarding what took place in California. To the extent Paragraph 63 of the First Amended Complaint contains any further substantive allegations, the Defendants deny them as stated.

39. With regard to the allegations of Paragraph 64 of the First Amended Complaint, the Defendants admit that the City received a letter dated November 27, 2013 addressed to Steve Catanach from the law firm of Jorgensen, Brownell & Pepin, and that the letter represented that the firm represented Ms. Ruth Ann Shay regarding a notice that her power service would be terminated. The letter speaks for itself. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 64 of the First Amended Complaint and, therefore, must deny such allegations.

40. With regard to Paragraph 65 of the First Amended Complaint, the Defendants generally admit that representatives of the City removed the original electric meter from the Plaintiff's home and installed in its place a digital meter, and that police officers were present. The Defendants deny that Dennis Sumner was the head of the Fort Collins Utilities. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 65 of the First Amended Complaint and, therefore, deny such allegations.

41. Defendants admit and deny the allegations of Paragraph 66 of the First Amended Complaint, regarding the phone call between Dennis Sumner and Craig Farver, as set forth in Paragraph 38 above.

42. With regard to the allegations of Paragraph 67 of the First Amended Complaint, the Defendants admit that the City began charging an $11 fee for manual meter-reading at Plaintiff's residence (for an account listed in the name of Craig Farver) as of April 2014, and that the monthly utility bill including the $11 fee has been continually paid since that time. The Defendants further admit that the City could, pursuant to City ordinances, terminate service to Plaintiff's residence if the monthly utility bill was not paid. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 67 of the First Amended Complaint and, therefore, must deny such allegations.

43. With regard to the allegations of Paragraph 68 of the First Amended Complaint, the Defendants admit that the Plaintiff wrote a letter dated February 10, 2015 addressed to "City of Fort Collins" which contained in part the quoted statements. The letter, in its entirety, speaks for itself.

44. The Defendants admit the allegations of Paragraph 69 of the First Amended Complaint.

45. With regard to the allegations of Paragraph 70, 71 and 72 of the First Amended Complaint, the Defendants admit that the Plaintiff exchanged numerous communications with Wanda Nelson and Christine Macrina during that timeframe, in an effort to further clarify what documents the Plaintiff was seeking due to the vague and constantly changing scope of her requests. The copies of multiple email communications speak for themselves and generally reflect the statements set forth in paragraphs 71 and 72 of the Complaint, among many other statements not set forth in the First Amended Complaint. The Defendants deny ever failing or refusing to provide the Plaintiff with any documents she requested; to the contrary, City representatives made repeated efforts to understand what she was asking for and to respond as best as they could under the circumstances.

46. With regard to Paragraph 73 of the First Amended Complaint, the Defendants admit the Plaintiff requested a phone conference, which the City willingly provided, in an effort to further clarify and discuss what records the Plaintiff was seeking from the City. To the extent that Paragraph 73 of the First Amended Complaint contains any further substantive allegations, the City admits and denies the allegations consistent with paragraph 45 of this Answer as set forth above.

47. The Defendants generally admit the allegations of Paragraphs 74 and 75 of the First Amended Complaint. The email communications referenced in the paragraphs speak for themselves.

48. With regard to the allegations of Paragraphs 76 through 81 of the First Amended Complaint, the Defendants generally admit that the Plaintiff participated in a phone conference

with several City representatives, including Deputy City Manager Jeff Mihelich, on or about April 13, 2015, and that the purposes of the phone conference was to discuss her open records request. The Defendants further admit that the Plaintiff has submitted a written statement which appears to contain her impressions of that phone conference. The Defendants deny that the written statement is anything other than the Plaintiff's own impressions from that phone conference. To the extent that Paragraphs 76 through 81 of the Complaint contain any further substantive allegations, the Defendants deny them, as stated. The Defendants again refer to the letter from John Duval attached to this Answer as Exhibit A, which is incorporated herein by reference, as to the City's process for authorization and implementation of the Project.

49. With regard to the allegations of Paragraphs 82 through 87 of the First Amended Complaint, the Defendants admit that the Plaintiff requested a letter from City representatives following the phone conference of April 13, 2015, and that the City obliged her request by providing a letter dated April 21, 2015, signed by Deputy City Manager Jeff Mihelich. That letter, which contains in part the excerpts quoted in paragraphs 84 and 85 of the First Amended Complaint, speaks for itself. To the extent these paragraphs 82 through 87 contain any further substantive allegations, the Defendants deny said allegations.

50. With regard to the allegations of Paragraph 88 of the First Amended Complaint, the Defendants deny that the Plaintiff has been injured or the claimed nature of her injuries. Defendants are without personal knowledge as to when the Plaintiff allegedly learned certain facts, however, subject to further discovery, Defendants deny that April 13, 2015 was the date on which she first knew or should have known of any claimed injury.

51. With regard to the allegations of Paragraphs 89 through 95 of the First Amended Complaint, the Defendants admit that Plaintiff submitted to the City a notice of claim dated September 23, 2015, asking the City to accept the claim and pay her compensation for injuries and damages. The Defendants further admit that Deputy City Attorney John Duval provided a responsive letter dated January 12, 2016, which is attached to this Answer as Exhibit A. The letter from John Duval speaks for itself. For the reasons stated in the letter, the Defendants deny the validity of any claim made by the Plaintiff or that she is entitled to any compensation. To the extent that Paragraphs 89 through 95 contain any further substantive allegations, the Defendants deny the same.

52. Paragraphs 96 through 115 of the First Amended Complaint do not appear to contain any substantive factual allegations, but instead contain the Plaintiff's recitation of the arguments she made in her notice of claim with references to various provisions of the City Charter, state statutes, and Mr. Duval's letter of January 12, 2016. Defendants generally deny the "allegations" and arguments raised by the Plaintiff in these paragraphs. The referenced provisions of the City Charter and state statutes speak for themselves, as does the Duval letter attached hereto as Exhibit A. Plaintiff's arguments are more appropriately made in a motion and not in a "short and concise statement of the claim for relief" required by C.R.C.P. 8.

53. With regard to the allegations of Paragraph 116 through 120 of the First Amended Complaint, the Defendants admit that notice dated November 19, 2013 was sent to the Plaintiff's

residence and that its subject was the potential termination of utility service. The Defendants further admit that notice was sent to Plaintiff's residence after multiple other communications were sent regarding the need to upgrade the electric and/or water metering equipment at the property. The Defendants also admit that similar notices were sent to other Electric Utility customers who likewise failed to respond to prior multiple communications regarding the same issue and/or failed to cooperate in the installation of a "smart" meter or the offered alternative digital meter, which were required for the provision of utility service following implementation of the Project. The referenced notice speaks for itself and follows the City Code provisions regarding the City's operation and provision of utility services and the legal obligations of citizens related thereto. Defendants deny that Plaintiff was penalized or injured. To the extent said paragraphs of the First Amended Complaint contain any further substantive allegations, the Defendants deny the same.

54. With regard to the allegations of paragraph 121 of the First Amended Complaint, the Defendants again state that the letter from John Duval, attached to this Answer as Exhibit A, speaks for itself.

55. Paragraphs 122 through 139 of the First Amended Complaint do not appear to contain any substantive factual allegations, but instead again contain the Plaintiff's recitation of the arguments she made in her notice of claim referring to various provisions of the City Charter, City Code, state statutes, and Mr. Duval's letter of January 12, 2016. Defendants generally deny the "allegations" and arguments raised by the Plaintiff in these paragraphs. The referenced provisions of the City Charter, City Code and state statutes speak for themselves, as does the Duval letter attached to this Answer as Exhibit A. Plaintiff's arguments are more appropriately made in a motion and not in a "short and concise statement of the claim for relief" required by C.R.C.P. 8.

56. With regard to Paragraphs 140 through 143 of the First Amended Complaint, the Defendants admit that the City sent a letter to the Plaintiff dated April 23, 2013 which made the quoted statement. Again, these paragraphs contain no substantive factual allegations but instead contain legal arguments made by the Plaintiff which are more appropriately made in a motion and are not in a "short and concise statement of the claim for relief" required by C.R.C.P. 8. Defendants generally deny these "allegations" and arguments made by the Plaintiff, and further deny that the Project was implemented without proper authorization or oversight. To the extent these paragraphs contain any further substantive allegations, the Defendants deny the same.

57. With regard to the allegations of Paragraph 144 of the First Amended Complaint, the Defendants admit that the Director of Utility Services reports to the City Manager, as set forth in the applicable provisions of the City Code. To the extent Paragraph 144 of the First Amended Complaint contains any further substantive allegations either directly or by reference, these Defendants deny the same.

58. Paragraphs 145 through 147 of the First Amended Complaint were apparently deleted and thus do not call for an admission or denial on the part of these Defendants.

59. Paragraph 148 of the First Amended Complaint appears to simply be a heading and thus does not call for an admission or denial on the part of these Defendants.

60. Paragraph 149 of the First Amended Complaint appears to be simply the title of the Plaintiff's first cause of action, and thus does not require an admission or denial. To the extent said paragraph contains any substantive allegations, the Defendant deny the same.

61. In answer to Paragraph 150 of the First Amended Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 60 of this Answer.

62. The Defendants deny all allegations of Paragraphs 151 through 161 of the First Amended Complaint that the City's adoption and implementation of the Project was done in violation of the Colorado Sunshine Act, C.R.S. § 24-6-101 et seq., that the Plaintiff was injured or that they are liable to the Plaintiff.

63. Paragraph 162 of the First Amended Complaint appears to be simply the title of the Plaintiff's second cause of action, and requires no admission or denial. To the extent said paragraph contains any substantive allegations, the Defendant deny the same.

64. In answer to Paragraph 163 of the First Amended Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 63 of this Answer.

65. The Defendants deny all allegations of Paragraphs 164 through 171 of the First Amended Complaint that they failed to exercise appropriate oversight over the Fort Collins utilities, that the Plaintiff was injured or that they are liable to the Plaintiff. The Defendants further deny any allegations in these Paragraphs as to the applicability of the Colorado Sunshine Act and the Colorado Governmental Immunity Act.

66. Paragraph 172 of the First Amended Complaint appears to be simply the title of the Plaintiff's third cause of action, and requires no admission or denial. To the extent said paragraph contains any substantive allegations, the Defendant deny the same.

67. In answer to Paragraph 173 of the First Amended Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 66 of this Answer.

68. The Defendants deny all allegations of Paragraphs 174 through 181 of the First Amended Complaint that the defendants violated the Colorado Sunshine Act, that said Act even applies as alleged by the Plaintiff, that the Defendants caused a violation of Plaintiff's due process rights under the Colorado Constitution, that the Plaintiff was injured by said alleged due process violation, or that they are liable to the Plaintiff.

69. Paragraph 182 of the First Amended Complaint appears to be simply the title of the Plaintiff's fourth cause of action, and requires no admission or denial. To the extent said paragraph contains any substantive allegations, the Defendant deny the same.

70. In answer to Paragraph 183 of the First Amended Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 69 of this Answer.

71. The Defendants deny all allegations of Paragraphs 184 through 191 of the First Amended Complaint that they violated Article II, Sections 6 and 7 of the City Charter, that the Plaintiff was injured as a result of said purported violation, or that they are liable to the Plaintiff. Said Article II, Sections 6 and 7 speak for themselves and Defendants generally deny the Plaintiff's interpretation and application of said City Charter provisions as alleged in these Paragraphs.

72. Paragraph 192 of the First Amended Complaint appears to be simply the title of the Plaintiff's fifth cause of action, and requires no admission or denial. To the extent said paragraph contains any substantive allegations, the Defendants deny the same.

73. In answer to Paragraph 193 of the First Amended Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 72 of this Answer.

74. The Defendants deny all allegations of Paragraphs 194 through 197 of the First Amended Complaint that they violated the Colorado Sunshine Act, the Colorado Constitution or her due process rights by delegating authority to the Electric Utility, that the Plaintiff was injured as a result of said purported violations, or that they are liable to the Plaintiff. The allegations in this Fifth Cause of Action appear to be repetitive of allegations made in previous causes of action, and are denied consistent with the other denials in this Answer.

75. The Defendants hereby deny each and every allegation of the First Amended Complaint not expressly admitted hereinabove.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. One or more of the Plaintiff's claims may be barred by the applicable statute of limitations and/or the doctrine of laches.

3. The Plaintiff may have failed to comply with certain notice requirements of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, ("CGIA") and the Defendants may have immunity from her due process claims under the CGIA, thus depriving this Court of subject matter jurisdiction to consider one or more of her claims.

4 One or more of the Plaintiffs' claims may be barred by the doctrine of waiver and/or estoppel.

5. Plaintiffs' allegations consist largely of legal conclusions and interpretations of the City Charter, City Code provisions, state statutes and other documents, all of which speak for themselves.

6. The Project was at all times properly authorized and implemented in accordance with the applicable provisions of the City Code and Charter.

7. The Colorado Sunshine Act of 1972 does not apply to the adoption and implementation of the Project by the Electric Utility as alleged by the Plaintiff. The Act, by its explicit terms, does not apply to administrative decisions of City staff, including employees of the City's Electric Utility.

8. Plaintiff may not be the real party in interest since the utility account to which the $11 monthly meter reading charge is applied is held in the name of Craig Farver.

9. The Plaintiff has failed to allege her claims against unknown defendants as required by C.R.C.P. 9(2), requiring dismissal and/or amendment of said claims.

10. The Plaintiff's Complaint violates C.R.C.P. 8, requiring a short and plain statement of the relief requested, and therefore must be dismissed and/or amended.

11. Defendants reserve the right to add or delete affirmative defenses based on information gathered in the investigation or discovery of this case.

WHEREFORE, all of the Defendants respectfully pray that the Court enter judgment in their favor and against the Plaintiff, and award the Defendants their reasonable attorney's fees, expert witness fees, costs and such further relief as the Court shall deem just and proper.

DATED this 13th day of September, 2016.

WICK & TRAUTWEIN, LLC

This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by Kimberly B. Schutt is on file at the offices of Wick & Trautwein, LLC

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

And

John R. Duval, #10185
FORT COLLINS CITY ATTORNEY'S OFFICE
P.O. Box 580
Fort Collins, CO 80522
(970) 221-6520

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** was filed via Integrated Colorado Courts E-Filing System (ICCES) and served this 13th day of September, 2016, on the following:

Sent by U.S. Mail to:

Virginia L. Farver
1214 Belleview Drive
Fort Collins, CO 80526
Pro se Plaintiff

/s/ Jody L. Minch

[The original certificate of electronic filing signed by Jody L. Minch is on file with the law offices of Wick & Trautwein, LLC.]