Elements of this notice and claim according to COLORADO REVISED STATUTES C.R.S. 24-10-109 (2015), TITLE 24. GOVERNMENT - STATE ADMINISTRATION, ARTICLE 10. GOVERNMENTAL IMMUNITY are:

DATE FILED: September 16, 2016
CASE NUMBER: 2016CV144

(2) The notice shall contain the following:

(a) The name and address of the claimant and the name and address of his attorney, if any;

(b) A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;

(c) The name and address of any public employee involved, if known;

(d) A concise statement of the nature and the extent of the injury claimed to have been suffered;

(e) A statement of the amount of monetary damages that is being requested.

Information required:

(2)(a) The claimant is Virginia Farver. The address of the claimant is 1214 Belleview Drive, Fort Collins, CO 80526. The claimant is not represented by an attorney.

(2)(b)

Colorado law C.R.S. 24-10-109 (2)(b) requires "A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;". Claimant will provide such a statement first. Claimant will also provide a more detailed and thorough statement of the factual basis of the claim, etc. so that the City can know the full factual basis of the claim and can evaluate it.

Claimant will also address the statute of limitations and claimant's compliance with it.

The concise statement of the factual basis of the claim is as follows.

The basic argument is this. The City of Fort Collins and Fort Collins Utilities spent approximately $31.4 million on the electric portion of the Advanced Meter Fort Collins project ("Project"), which among other things entailed the removal from every residence and business in the City of the original electric meters, which can be referred to as analog electric meters, and the installation in their place of "smart" electric meters or, in some cases, "digital analog" meters.

Analog electric meters are a safe, reliable type of electric meter that has been refined and improved by the electric utility industry over several decades. They were the industry standard worldwide from the beginning of the electric grid until the last ten years or so. In the last ten years or so many publicly and privately owned electric utilities have removed the analog meters from customers' homes and businesses and replaced them with so called "smart" electric meters, or simply smart meters.

<u>City Council never approved the Project or the actions that the Project entailed</u>

Unfortunately the City failed to follow open government processes to protect the substantive due process rights of City residents as required by Colorado law and the City Charter. This notice and claim will include details later on.

In a letter to claimant dated April 23, 2013 the City correctly stated, speaking of the Project, "This program and project is subject to the authority and jurisdiction of the Fort Collins City Council." A copy of that letter is attached to this notice and claim.

The City Council, which is the only entity or body with the legal authority to authorize the Project, never authorized the Project and never authorized the City or FCU by to remove the original meter or to install a smart electric meter or a digital analog meter on claimant's home, or businesses or the other residents' homes – actions undertaken as parts of the Project.

In particular the City Council never acted by ordinance, resolution or motion to approve or authorize the Advanced Meter Fort Collins project or its key components: the removal of all (or substantially all) customers' original meters and / or the installation or deployment of smart meters or digital analog meters in their place. This decision appears to have been made by City staff. However, City staff does not have the authority to approve or authorize the above.

Proof of the claim made in the preceding four paragraphs is found in the City's letter dated April 21, 2015 signed by Jeff Mihelich, Deputy City Manager and addressed to claimant, in the attachment to this notice and claim titled "Phone conference with City of FC April 13 2015.docx", and in the section of this document titled "<u>These are the key events that led to this notice and claim</u>" in paragraphs 1 through 6 on page 14-15 and paragraphs 13 through 23 on pages 16-18. More details follow in this notice and claim on pages 13-14.

The City and / or FCU never notified claimant or, to the best of claimant's knowledge and belief, any other resident or business in Fort Collins that the City Council had never acted by ordinance, resolution or motion as described in the preceding five paragraphs.

Because there was never such an ordinance, resolution or motion and because City staff lacks the authority to make such a decision (approving the Project), the Project and the actions that the City and / or FCU took in furtherance of the Project (including but not limited to the removal of the analog meters and the installation of smart electric meters or digital analog meters) were unauthorized, illegal, invalid and of no effect.

<u>The City approves a manual meter reading charge</u>

Five hundred and twenty five (525) Fort Collins residents, including claimant, objected to the smart meter and refused the installation of a smart meter on their homes. Claimant wrote a letter to the City dated April 12, 2013 describing in detail her objection and the factual and legal basis for it. Claimant sent that letter via certified mail. A copy of that letter and the certified mail receipt is attached to this notice and claim. Claimant also wrote to the City via certified mail on September 19, 2013 objecting to the smart meter program and exercising her right to not be forced to have a smart electric meter on her home. A copy of that letter and certified mail receipt are attached to this notice and claim.

Subsequently the City approved one or more ordinances to purportedly approve and authorize a special charge, called a "manual meter reading charge", to be charged monthly to those customers who exercised their right under City policy to ask the City and / or FCU to not install

a smart electric meter on their home. The City and / or FCU installed a non-transmitting meter known as a "digital analog meter" when they removed the analog meter from these residents' homes.

The City Council approved Ordinance 33, 2012 on May 1, 2012 and Ordinance 17, 2014 on February 4, 2014, both of which purportedly authorized the manual meter reading charge. The time of the approval of these Ordinances is unknown to claimant but most likely during the City Council meeting on each of the above dates. The place of the approval of these Ordinances is the meeting room of the City Council.

On March 7, 2014 the City sent claimant a letter addressed to "Dear Utilities Customer". The subject was "$11/Month Meter Reading Fee Starting April 2014." The letter was signed by Steve Catanach, Light & Power Manager. This letter said in part, "To cover the costs of manual meter reading, an $11 fee will be added to your monthly bill starting in April." A copy of that letter is attached to this notice and claim.

The City and FCU apparently intended the digital analog meters to be sort of an accommodation of the objections of claimant and other city residents and these residents' to the smart electric meters and their expressed wishes to keep their original electric meter.

Although these residents' who objected to the installation of a smart electric meter on their home did so for various reasons, for many of them the reason was to protect their family's health. These residents were aware of the hundreds of peer reviewed scientific studies from all around the world, including many published recently (see for example the BioInitiative Report 2012 at http://www.bioinitiative.org/), showing the biological effects and harm of the microwave and radio frequency radiation such as is transmitted thousands of times per day by smart electric meters. To these residents it was a health issue. They wanted to protect their health and their family's health from this radiation and were willing to pay a special charge each month to do so.

For many residents it was also a privacy issue. Smart electric meters have the ability to record the minute by minute and second by second uses of every light and appliance in every room of the house, giving government agencies and their contractors unprecedented knowledge of a resident's comings and goings and habits. This is arguably an unconstitutional search of a home in the absence of a search warrant - and there is never a search warrant with a smart electric meter.

<u>The manual meter reading charge, a direct result of the Project, was indirectly unauthorized and illegal</u>

As stated above the underlying policy, the Advanced Meter Fort Collins project was never authorized by the City Council as required by Colorado law and the City Charter.

The smart electric meter, the digital analog meter and the manual meter reading charge were each the direct result of the Advanced Meter Fort Collins project. Logically, since the Project itself was unauthorized and illegal all charges directly caused by the Project are also unauthorized and illegal, notwithstanding separate ordinances. The simple legal principle is that the City and FCU cannot have an authorized and legal charge or fee arising out of an unauthorized and illegal program, policy or project.

More broadly, the City cannot charge claimant or any other resident or business fees or charges for a program, policy or project that was not authorized by the City Council. In other words, if not for the Project there would never have been any need for the digital analog meter or any other kind of meter in lieu of the smart meter, nor any need for the manual meter reading charge. Claimant's electricity use would still be measured by the analog electric meter that was originally on claimant's home and the City or FCU would not be charging claimant a manual meter reading charge.

The City and FCU cannot directly or indirectly cause claimant or any other resident to have to pay charges or incur expenses without City Council approval. As a result all of claimant's expenses directly caused by the Project, the removal and replacement of electric meters were injuries that the City and FCU caused to claimant and subject to recovery through the CGIA.

<u>There is no way to retroactively authorize a program, policy or project</u>

The ordinances authorizing the special charges did not serve as either *de facto* or *de jure* authorizations for the underlying policy, the Project. There is no provision in Colorado law or the City Charter allowing the City Council to retroactively authorize a policy or project; in this case one that had already been implemented, money had been spent and meters removed and replaced, despite the fact that the policy or project was not authorized by the City Council at the time.

<u>Authorizing the appropriation is not equivalent to, or a substitute for, authorizing the program, policy or project</u>

Ordinance No. 043, 2010, approved on May 18, 2010, only approved the appropriation of money to pay for the project. That ordinance did not approve the project itself. Nor did any other ordinance, resolution or motion. The same can be said of Ordinance. No. 84, 2010, which purportedly authorized the funding of the advanced metering infrastructure project. To comply with Colorado law and the City Charter, the City Council had to approve and authorize the project itself, not just the appropriation for the project. The City Council never did so.

Briefly, the legal argument is that due process requires the City to deliberate and make policy decisions openly. Not after the fact or surreptitiously or stealthily. See the Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, and the City Charter, notably sections 6 and 7.

City residents had the right to be informed that the City Council was considering approving the Project, to be informed of the details of the Project, to read the proposed ordinance, motion or resolution, to read all the Project documents (because the documents would directly affect their homes and their electric bills), to research the peer reviewed scientific studies from all around the world describing the biological effects of wireless radiation including the microwave and radio frequency radiation which smart meters transmit through the air and through the walls of a house and through human bodies, sometimes thousands of times per day on average, to discuss with their families whether they wanted to be exposed to such radiation 24 hours a day and 7 days a week not only from the smart meter on their home but from the smart meters on nearby homes, to make an informed decision with the full knowledge of the proposed Project and its likely impact based on scientific research, to attend a properly noticed City Council meeting and listen to the presentations about the proposed Project, to make public comments and ask questions, and to meet with their elected City Council members to further discuss the Project, recommend

changes to it, and express their support for or opposition to it. By failing to prepare, present, discuss and vote on an ordinance, resolution or motion approving the Project the City Council deprived City residents of their due process rights to all of the above. In a word, their right to be informed of and participate in their City Council's policy making.

Typically and in this case a vote on appropriation for a certain project comes only after the City Council has been through the process described in the preceding paragraph. The question of appropriation is really, "Should the City pay for the already approved Project as described in this appropriation ordinance?" It begs the question if the Project has never been approved. How to pay for a project is a distinct and separate question from whether and how to do the project. The cart must not come before the horse. The cart is appropriation and the horse is the approval of the project. Without the horse there is no need for the cart. Colorado law supports the legal analysis and interpretation presented here, in the opinion of claimant.

Circumstances of the act, omission or event complained of

The omission complained of is the omission of any resolution, ordinance or motion, properly and duly prepared, approved by the City Council and publicized that would have authorized the Project and the removal of Fort Collins Utilities' residential and business customers' original electric meters and the replacement of those meters with smart electric meters or digital analog meters. Also, the omission of any notice from the City or FCU that the City Council had never acted by ordinance, resolution or motion to approve the Project and the removal and replacement of the electric meters.

Claimant complains of these two ordinances, Ordinance 33, 2012 on May 1, 2012 and Ordinance 17, 2014 on February 4, 2014, and any other ordinances which purportedly authorized a manual meter reading charge, and of every electric bill that the City or Fort Collins Utilities sent to claimant which included this manual meter reading charge, and of the other expenses claimant had to incur because of the Project and her attempts to exercise her rights to avoid having a smart meter on her home. Because non-payment of claimant's electric bill or part thereof could have caused the City or FCU to the shut off of claimant's electricity, these electric bills forced claimant to pay the manual meter reading charge just to keep her electricity turned on. In a letter from Steve Catanach, Utilities Light and Power Manager, to claimant dated April 23, 2013 the City made this threat explicit, saying: "As a part of the terms of receiving utility services, customers are required to allow the City to provide metering. It is the utilities' responsibility to select, maintain and operate them as needed. Permitting installation and maintenance of meters is a condition of continued electric and water service." A copy of that letter is attached to this notice and claim.

That is the end of the information required by Section 2(b). More details follow in this notice and claim.

(2)(c) Claimant does not know the public employee involved in removing the original electric meter from claimant's home and installing a smart electric meter, or involved in removing the smart electric meter and replacing it with the replacement meter at customer's request. Those employees would have been employees of the City, of Fort Collins Utilities and / or other parties such as a company called Corix or other contractors hired by the City or FCU to remove the original meters and replace them with smart electric meters or digital analog meters or to remove the smart electric meters upon customer request and replace them with replacement meters.

However, the public employees involved in making the decision to remove ALL of the city residents' original electric meters and replace them with smart electric meters includes many people. Those employees include, but are not limited to: the city manager(s) at all relevant times, the deputy city manager(s) at all relevant times, the city attorney(s) at all relevant times, the head(s) or leader(s) of Fort Collins Utilities at all relevant times including Mr. Dennis Sumner, the city accountant(s) and Chief Financial Officer(s) at all relevant times, and the leader(s) of the Advanced Meter Fort Collins project at all relevant times, regardless of their official title(s) which claimant is not aware of. The relevant times are the days when the City was deliberating on and considering the Project, whether this was in open City Council meetings or workshops or any other forum or manner.

The Members of the Fort Collins City Council including the Mayor, and the City Clerk, at all relevant times were involved, but not as they should have been. By law they should have been involved by deliberating and deciding on the Advanced Meter Fort Collins project through open government processes that protect the substantive due process rights of every person in the City as Colorado law and the City Charter require. Rather, the City Council members were well aware of this project, presumably were also well aware of the open government processes just mentioned, and despite all this these City Council members allowed the City and FCU to spend the money, remove the original meters and install the smart meters AS IF they had followed open government processes as required. As such they are culpable and responsible for the injury to claimant and to all other persons similarly situated; that is, other City residents who have asked the City to remove the smart electric meter from their home, agreed to pay the manual meter reading charge believing all along that such charge was properly approved and authorized and also that the Advanced Meter Fort Collins project was properly approved and authorized, who have been assessed or charged such charge and have paid it for at least one month.

(2)(d) The nature of the injury is financial. The City of Fort Collins and / or Fort Collins Utilities have charged claimant monthly fees called a "manual meter reading charge" described by the City in ordinances as "for those customers who request the option of mechanical electric meter and / or a mechanical water meter instead of the standard advanced metering equipment" (Ordinance No. 33, 2012) and as "charged to service addresses where metering equipment without remote communications capability is used, requiring an on-site visit to collect use data for water and / or electric service." (Ordinance 17, 2014). Claimant has disagreed with this manual meter reading charge but has paid it each month, as part of the regular monthly electric bill, because the alternative was to NOT pay it and the City or Fort Collins Utilities would have disconnected the electric power, leaving claimant without electricity in her home. This is an ongoing injury; that is, the City and Fort Collins Utilities have continued, continue and likely will continue indefinitely to charge claimant the manual meter reading charge.

Other parts of the injury and damage which the City and FCU have caused claimant include:

Legal fees for the attorney Thomas V. Hoeflinger's letter to the City about the smart meter program. The amount is five hundred dollars ($500.00).

Certified mail fees for several letters that claimant mailed to the City and / or FCU. The amount is the sum of the certified mail fees as documented by the attached receipts.

The cost of obtaining from the police department the transcript and recording of the department's questioning / interrogation of claimant's husband, Craig Farver. The amount is forty six dollars ($46.00).

Legal argument

The reason that this charge constitutes an injury and damages to claimant is that although the City is required to follow open government processes when making policy the City failed to do so with the Project.

The City of Fort Collins ("City"), like all Colorado cities, is required by the Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, to conduct its deliberations and policy making openly and transparently. The City Council is required by its Charter, Section 6, to "act by ordinance, resolution, or motion". Section 6 also requires that, "All legislative enactments and every act . . . making an appropriation . . . establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, ..."

Section 7 addresses "Section 7. Ordinances, publication and effective date." Section 7 requires that, "Ordinances shall be signed by the Mayor, attested by the City Clerk and published without further certification."

As stated above the City Council never acted by ordinance, resolution or motion to approve and authorize the Project.

The AMFC Project established a rule or regulation that each resident had to have the original analog meter removed from the resident's home and that the City or FCU would install a smart electric meter or, in some cases, a digital analog meter, whether the resident liked it or objected to it. There was a penalty. If claimant or other residents had attempted to block or physically delay the removal and replacement of the electric meter the Police Department could have and would have arrested the resident. In fact the City and / or FCU cut off a lock that claimant had installed to protect her original analog electric meter and prevent its removal and replacement. This was done at 8:30 in the morning and without claimant's consent or knowledge as to the day and time. Another possibility was that, if claimant had removed the digital analog meter that the City and / or FCU placed on claimant's home on March 6, 2014 the City and / or FCU would have cut off claimant's electricity. That is clearly a rule or regulation for the violation of which a penalty is imposed. Shutting of electricity to a home is a penalty.

Despite these clear requirements the City Council never followed them. As noted earlier the City Council is the only person or body with the authority to approve the Project. The City Manager or his staff cannot do so. Yet they are the only ones who apparently "authorized" (although illegally) the Project.

In attorney Thomas V. Hoeflinger's letter to the City dated November 27, 2013 Mr. Hoeflinger responded to the City's letter to Mrs. Shay, dated November 19, 2013, a copy of which the City also sent to claimant. That letter was addressed to, "Dear Utilities Customer" and the subject was "Notice of Termination of Utilities Service". A copy of that letter is attached to this notice and claim.

The City's letter explicitly threatened Mrs. Shay, claimant, and other recipients that, "If you choose not to contact Utilities to arrange for installation of upgraded metering equipment, electric and / or water service will be terminated at your premise after December 2, 2013."

Fort Collins is a VERY cold city in early December. Termination of electric service would have left Mrs. Shay, claimant, and other recipients of this threat very cold since a furnace, heat pump, or any other common residential heating system requires electricity.

As Mr. Hoeflinger stated in his letter, "You provide no basis for these actions. As well, you fail to cite the authority under which you are taking these actions." Mr. Hoefliner's letter demanded certain information from the City in order to resolve the situation prior to seeking a judicial remedy. Among other things the letter requested:

> 3. Any/all statutory basis upon which the City of Fort Collins is acting.
> 4. The authority upon which the City of Fort Collins relies when ordering the termination of utilities service to our client.

To the best of claimant's knowledge the City never responded to Mr. Hoeflinger's letter. In particular the City never provided, to Mrs. Shay or to any other resident, the answers to Mr. Hoeflinger's questions about the statutory basis upon which the City of Fort Collins was acting. More details on the legal argument follow later in this notice and claim.

(2)(e) The amount of monetary damages that is being requested is the sum of the following:

The manual meter reading charge subtotal:

Eleven dollars and no cents ($11.00) per month for each month that the City has charged, and claimant has paid, the manual meter reading charge starting in April, 2014 and continuing through the present until the date that this claim is finally paid.

The date of the first electric bill containing the manual meter reading charge was April, 2014.

Considering today's date in late September, 2015 the subtotal for these charges is eighteen months and counting, or $198 and counting.

Claimant's legal fees in objecting to the smart meter:

As stated earlier in the fall of 2013 claimant paid attorney Thomas V. Hoeflinger five hundred dollars ($500.00) to write a letter to the City and / or to FCU objecting to the smart meter and stating she did not want one placed on her house. A copy of that letter and claimant's check is attached to this notice and claim.

Claimant had already written to the City and / or FCU several times via certified mail. The City and FCU had ignored all of those letters; in other words had not acknowledged receiving them although they were sent via USPS certified mail and had not written back to claimant. This made claimant believe that the City and FCU were going to install the smart meter and remove claimant's analog meter despite her express wishes and over her written objection and without her consent. None of those letters would have been necessary, and this legal fee would not have been necessary, without the Project.

Certified mail fees for several letters that claimant mailed to the City and / or FCU. The amount is the sum of the certified mail fees as documented by the attached receipts.

April 12, 2013	$18.14
September 7, 2013	$6.20
September 19, 2013	$6.20
Subtotal for certified mail fees	$30.54

The cost of obtaining from the police department the transcript and recording of the department's questioning / interrogation of claimant's husband, Craig Farver. The amount is forty six dollars ($46.00). A copy of the receipt from the police department dated March 18, 2014 is attached to this notice and claim.

Severability: if the City finds that the City and / or FCU caused any of the above injuries and damages but did not cause others, claimant requests that the City pay claimant for those injuries and damages that the City and / or FCU caused.

More thorough explanation of the information required by Section 2(b)

This is for section 2(b). The Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, requires openness and transparency in a local government body or agency's deliberations and policy making. Following are some excerpts from this Act applicable to this notice and claim.

TITLE 24. GOVERNMENT - STATE ADMINISTRATION

ARTICLE 6. COLORADO SUNSHINE LAW, PART 4. OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015)

24-6-401. Declaration of policy

> "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret."

The intent of the Open Meetings Law is to afford public access to a broad range of meetings at which public business is considered. Benson v. McCormick, 195 Colo. 381, 578 P.2d 651 (1978); Van Alstyne v. Hous. Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999); Bd. of County Comm'rs v. Costilla County Conservancy Dist., 88 P.3d 1188 (Colo. 2004).

The public meetings laws are interpreted broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. Cole v. State, 673 P.2d 345 (Colo. 1983).

C.R.S. 24-6-402 (2015)

24-6-402. Meetings - open to public – definitions

Subsection 2(b) states:

> (b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

Subsection 2(c) states:

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

Section 2(d) requires:

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV).

(End of excerpt.)

Section 8 states unambiguously:

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

The City never approved a resolution, rule, regulation, ordinance or formal action that met the requirements of subsection (2) of this section. The plain language of this statute is very clear. Absent such a resolution, rule, regulation, ordinance or formal action of the City of Fort Collins City Council the Project and the actions undertaken as part of the project were and are unauthorized and illegal. These actions include the charging of the manual meter reading charge to claimant and other residents and businesses.

1214 Belleview Drive
Fort Collins, CO 80526

September 23, 2015

City of Fort Collins
Risk Management Division, the City Council, the City Attorney
P.O. Box 580
Fort Collins, Colorado 80522

Hand delivered and sent via U.S. Postal Service certified mail

Regarding a notice and claim of injuries and damages related to the Advanced Metering Fort Collins project per the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq*

To the City Council, the City Attorney, and the Risk Management Division,

This is my notice and claim of injuries and damages that the City of Fort Collins ("City") and Fort Collins Utilities ("FCU") have caused me through the electric portion of the Advanced Meter Fort Collins project ("Project") and my demand for financial compensation for my injuries and damages.

http://www.fcgov.com/utilities/sustainability-leadership/advanced-meter-fort-collins/

This notice and claim is in accordance with the Colorado Governmental Immunity Act (CGIA), C.R.S. 24-10-101 (2015), TITLE 24. GOVERNMENT - STATE, ADMINISTRATION, ARTICLE 10. GOVERNMENTAL IMMUNITY, 24-10-101 *et seq.*

Please acknowledge in writing your receipt of this letter and the attachments at your earliest convenience.

Insofar as permitted by Colorado's Government Immunity Act ("CGIA") and / or other applicable state laws, this claim is filed on behalf of claimant and all other persons similarly situated, broadly speaking. That is, other City residents and businesses from whose homes and places of business the City or FCU removed the original electric meter, which is known as an analog meter or other similar names, to whom the City or FCU gave a smart electric meter or "digital analog" meter, who were charged a special charge on the electric bill not charged to other residents called a "manual meter reading charge" or similar names for one or more months, and who paid such charge. Like claimant, these other City residents did not know, and unlike claimant probably do not know to this day, that the City Council never approved the Advanced Meter Fort Collins project, the removal of the original meters from homes and businesses, or the installation of the smart electric meters or digital analog meters. These residents assumed that all of the above had been properly approved by the City Council as required by Colorado law and the City's Charter. If the CGIA and / or other laws do not permit claimant to file a claim on behalf of others, then this claim is filed only on behalf of claimant.

The Charter of the City of Fort Collins requires openness, transparency and specific measures intended to keep the public aware of and give the public the opportunity to be involved in the deliberations and decisions of City business.

Article II, Sections 6 and 7 of the Charter state:

Section 6. Ordinances, resolutions, motions.
The Council shall act by ordinance, resolution, or motion.
The ayes and nays shall be recorded on the passage of all ordinances, resolutions, and motions. Every Councilmember present shall vote; if a member fails to vote when present, he or she shall be recorded as voting in the affirmative. All legislative enactments and every act creating, altering, or abolishing any agency or office, fixing compensation, making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose.
All ordinances, except the annual appropriation ordinance and any ordinance making a general codification of ordinances, shall be confined to one (1) subject which shall be clearly expressed in the title. All ordinances shall be formally introduced at a regular or special Council meeting in written or printed form by any member of the Council and considered on first reading and action taken thereon. No ordinance, except an emergency ordinance, shall be finally passed on the first reading or at the meeting at which it is first introduced. An emergency ordinance may be formally introduced at a special Council meeting and action taken thereon, including final passage at such special meeting. Reading of an ordinance shall consist only of reading the title thereof, provided that copies of the full ordinance proposed shall have been available in the office of the City Clerk at least forty eight (48) hours prior to the time such ordinance is introduced for each member of the City Council, and for inspection and copying by the general public, and provided further that any member of the City Council may request that an ordinance be read in full at any reading of the same, in which case such ordinance shall be read in full at such reading. Final passage of all ordinances except emergency ordinances shall be at a regular Council meeting. Emergency ordinances shall require for passage the affirmative vote of at least five (5) members of the Council and shall contain a specific statement of the nature of the emergency. No ordinance granting any franchise or special privilege which involves a benefit to any private person or entity shall ever be passed as an emergency ordinance.
The enacting clause of all ordinances passed by the Council shall be as follows: "Be it ordained by the Council of the City of Fort Collins."
(Ord. No. 3, 1961, 2-23-61, approved, election 4-4-61; Ord. No. 94, 1972, 1-4-73, approved, election 2-20-73; Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87)

Section 7. Ordinances, publication and effective date.

Every proposed ordinance, except an emergency ordinance, shall be published in full at least seven (7) days before its final passage on the city's official internet web site. In addition, each such ordinance shall be published in a newspaper of general circulation in the city by number and title only, together with a statement that the full text is available for public inspection and acquisition in the office of the City Clerk and on the city's internet web site. Both publications shall contain a notice of the date when said proposed ordinance will be presented for final passage. The City Clerk shall, within seven (7) days after final passage of any such ordinance, publish such ordinance in the same method as is required for the first publication. All ordinances, except emergency ordinances, shall take effect on the tenth day following their passage. An emergency ordinance shall take effect upon passage and shall be published as provided above within seven (7) days thereof.

The City never complied with the requirements of section 6 and 7 of the City Charter, either by acting by ordinance, resolution or motion, acting by ordinance in this case, introducing and considering the ordinance, passing the ordinance at a subsequent meeting, and making copies of the full ordinance proposed available to the general public at least forty eight (48) hours prior to the time at which the ordinance is introduced (all required by section 6) or publication of the ordinance (required by section 7).

Proof of the claim made in the preceding paragraph and proof that the City Council never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of the electric meters is found in the City's letter dated April 21, 2015 signed by Jeff Mihelich, Deputy City Manager and addressed to claimant, in the attachment to this notice and claim titled "Phone conference with City of FC April 13 2015.docx", in the section of this document titled "<u>These are the key events that led to this notice and claim</u>" in paragraphs 1 through 6 on page 14-15 and paragraphs 13 through 23 on pages 17-19, and immediately following this sentence.

Although it is sometimes hard to prove a negative (such as, "The City Council never did X.") in this case the facts prove it. Briefly, claimant made an open records act request earlier this year for the resolutions, ordinances or other formal records of decision approved or adopted by the City Council that authorized the removal and replacement of the electric meters from residents' homes and businesses and the charging of fees for those customers who chose to "opt out" of the AMFC program. After about six weeks of follow up correspondence with the City Clerk Wanda Nelson and her staff Christine Macrina, the City had provided information about water meters but had not provided the requested records. Claimant asked to have a phone conference with representatives of the City to discuss the records request and responsive records that the City had not provided. During that phone conference, held April 13, 2015, claimant and her friend Mark Graham explored these questions in depth with Deputy City Manager Jeff Mihelich and 5 other City employees. Mr. Mihelich and his staff made it absolutely clear that no such resolution or ordinance exists, stating so repeatedly in different words. Subsequently at claimant's request Mr. Mihelich wrote the April 21, 2015 letter to put in writing that fact and to describe the deliberative process the City had taken in approving the Project. The bottom line is that the City Council, as stated above, never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of claimant's and other residents' and businesses' electric meters.

Mr. Mihelich's letter quoted the first part of claimant's open records act request, which asked for the resolutions, ordinances or other records of decision authorizing the removal and replacement of the electric meters. Mr. Mihelich then wrote:

> "In the end, we both understood that the City of Fort Collins does not have the document you described in your request, and as discussed in our conference call."

Mr. Mihelich's letter then said,

> "Nevertheless, the City has endeavored to provide you a description of the events below that should help to describe the approval process for the AMFC project."

Mr. Mihelich's letter then described the steps in the approval process for the AMFC project. These are quoted in paragraphs 1 through 6 on page 14-15 of this notice and claim. Nowhere in Mr. Mihelich's description of that approval process for the AMFC project is any mention of a resolution, ordinance or motion approved by the Fort Collins City Council authorizing the Project or the removal or replacement of the electric meters. Any such resolution, ordinance or motion is conspicuously absent from Mr. Mihelich's letter. That is absolute proof, from the Deputy City Manager, that the City Council never so acted.

Discovery of the nature of the act, omission or event complained of

C.R.S. Section 24-10-109(1) identifies the statute of limitations for the Governmental Immunity Act. Claimant has one hundred eighty-two days after the date of the discovery of the injury, to file a written notice as provided in this section. Claimant complies with this time limit because, as described next, the date of her discovery of the injury was April 13, 2015. Subsection (1) says:

> (1) Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury. Compliance with the provisions of this section shall be a jurisdictional prerequisite to any action brought under the provisions of this article, and failure of compliance shall forever bar any such action.

These are the key events that led to this notice and claim

The first six paragraphs immediately following this sentence are directly quoted (with paragraph numbers added) from a letter from Mr. Jeff Mihelich, Deputy City Manager, dated April 21, 2015 and addressed to claimant. A copy of that letter is attached with this notice and claim.

#1) The pursuit of the AMFC project began in 2008, and was referenced in the 2008 Fort Collins Climate Action Plan as "SmartGrid, Advanced Metering Infrastructure, Pricing, Conservation" as one of the menu of project options to support Climate Action Plan goals.

#2) In 2009, the viability of an Advanced Metering Infrastructure (AMI) project was explored by Utilities staff and, as a result, a Light and Power budget offer was developed for City Council consideration as part of the 2010 - 2011 Budgeting for Outcomes (BFO) process.

#3) Concurrent with the BFO consideration process, the City submitted an application to the Department of Energy (DOE) as part of the American Recovery and Reinvestment Act for the Smart Grid Investment Grant (SGIG).

#4) The City of Fort Collins was notified by DOE that the Fort Collins SGIG proposal was selected for SGIG award negotiations on October 21 ,2009, just prior to the completion of the BFO process.

#5) Based on the notification from DOE, the AMFC budget offer was withdrawn to modify the budget request.

#6) Therefore, at the May 18, 2010 meeting of the Fort Collins City Council, Council approved Resolution 2010-030 authorizing the City Manager to enter into agreements for the SGIG award and Ordinance No. 43,2010 and Ordinance No. 001 authorizing the following; 1) $18,101,264 for SGIG funding support, 2) $16,000,000 Issuance and Sale of Tax Exempt Revenue Bonds, and 3) $258,499 for bond issuance costs.

#7) Claimant wrote to the City and / or FCU one or more times in 2011, 2012, and 2013, often via certified mail through the U.S. Postal Service, informing the City and FCU of:

a) claimant's objection to the installation of a smart electric meter or a digital analog meter on claimant's home and

b) claimant's wish to keep the analog meter that was on the home and had been on the home since the home was built.

The City never responded to claimant's certified letters. Copies of several of these letters are attached to this notice and claim.

#8) Claimant's husband Craig Farver got a call from Dennis Sumner (FTC Utility Head) in late November of 2013. This is when the City was sending letters to utility customers about shutting off customers' electrical service if claimant and other residents who objected to a smart meter did not comply. Dennis Sumner kept claimant's husband on the phone for over 20 minutes. Dennis Sumner had just called claimant at home before calling claimant's husband. Claimant had told Dennis, "NO smart meter, and this would be the end of communication." Then Dennis Sumner called claimant's husband Craig. They taped these conversations of course! Claimant's husband explained what happened to Rich and he just wanted to protect claimant. As the City is aware and was aware at the time, claimant's son Rich was a student at San Diego State University and spent a lot of time in Nasatir Hall on campus. Very close to Nasatir Hall on a hill is an enormous tower that carries multiple wireless communications and is a central station for San Diego Gas and Electric. SDSU students, faculty and staff were never warned about the hazards of the wireless radiation that this tower produced. Claimant's son Rich Farver, a student at SDSU, developed brain cancer and died from it on October 11, 2008. Claimant believes that the wireless radiation from that tower directly caused Rich Farver's brain cancer. Several other SDSU faculty, students and staff who worked in Nasatir Hall also died from cancer around that time, supporting the idea that the tower was causing the cancer.

#9) In the fall of 2013 claimant's friend Mrs. Ruth Ann Shay of Fort Collins hired an attorney, Thomas V. Hoeflinger of the law firm Jorgensen Brownell & Pepin PC, who wrote a letter to Mr.

Steve Catanach at the City dated November 27, 2013 objecting to the removal of the analog electric meter and the installation of a smart electric meter on claimant's home. Claimant and Mrs. Shay were similarly situated and felt that the letter expressed both of their interests as well as the interests of other Fort Collins residents similarly situated. The attorney charged $1,500 of which Mrs. Shay paid $1,000 and claimant paid $500.00 for writing that letter and his earlier related work. A copy of that letter and claimant's check to Mr. Hoeflinger are attached to this notice and claim.

#10) The City and / or FCU removed the original electric meter from claimant's home and installed in its place a digital analog electric meter on March 6, 2014 at 8:30 in the morning. Dennis Sumner, the head of FCU with another gal and claimant saw 1 police officer and the other police officer was on the side of the garage with the installers. They went immediately to Ruth Shay's house across town. Mrs. Shay got the business cards from the officers. When Mr. Sumner and the police officers showed up at claimant's door claimant looked at the woman police officer and said, "You, being on my property without a warrant is unlawful." Claimant knows that Mr. Sumner and the police officers stood in the streets of the other homes after that.

#11) On November 18, 2013 FCU head Dennis Sumner called claimant's husband at work regarding terminating the electric service at claimant's home. This was moments after Sumner had called claimant at home and claimant had told Sumner that she did not want any more communication with him about the smart meter.

Claimant's husband allegedly made a threat during that phone call. Mr. Sumner did not mention anything to Fort Collins police about this phone call or the alleged threat until February 27, 2014, more than three months later. On that day Mr. Sumner contacted Michael Trombley, a lieutenant in the police department to report the alleged threat. The City listed the City as the "victim" although there had not been any crime or even alleged crime. On March 3, 2014 Mr. Trombley called claimant's husband and asked to meet him at the main police building. Mr. Trombley did not read Mr. Farver his Miranda rights.

Mr. Trombley did this while claimant was gone. He could have asked to meet with claimant and her husband together. During that meeting claimant's husband was trying to protect claimant from all of this and was crying on the tapes.

The next day claimant got a copy of the interrogation recordings, which cost $46, and report. This entire incident with the police, which did not involve a crime, was directly caused by the AMFC project. Without the project none of this would have happened and claimant would not have had to spend $46 to get a copy of the interrogation recordings.

A copy of the "Digital Evidence Request" 14-2927 dated March 14, 2014 describing two CDs (compact disks) and a total due of $46.00 is attached to this notice and claim.

#12) In April, 2014 the City and / or FCU began to charge claimant a manual meter reading charge on the monthly electric bill in the amount of $11.00 (eleven dollars). They have continued to charge this charge each month since then. Because the City and / or FCU could turn off the electricity to claimant's home for failure to pay this charge claimant has paid it each month, although claimant has never agreed with it.

#13) Claimant wrote to the City with an Open Records Act request on February 10, 2015 which said in part:

"I request the following records as provided by Colorado Revised Statutes 24-72-200 through 206.

"Any and all Resolutions, ordinances or other formal records of decision approved or adopted by the City Council:

> that authorize the removal of analog electric meters from customers' homes and businesses and the replacement of those meters with smart meters.
>
> that authorize the charging of fees for those customers who request an analog electric meter, or in other words who choose to "opt out" of the smart meter project."

#14) The City Clerk, Wanda Nelson, responded on that same day and wrote, "We have received your record request and will begin processing it right away. My colleague Christine Macrina will facilitate this request."

#15) Claimant, Ms. Nelson and Ms. Christine Macrina, the colleague of Ms. Nelson, engaged in lengthy correspondence between February 24 and April 3, 2015. This correspondence was necessary because the City had failed to provide to claimant responsive records which claimant strongly believed must exist. Claimant wrote to the City more than once that the records the City had provided were not responsive to, or were not ALL the records responsive to, her request.

#16) On March 18, 2015 Ms. Nelson wrote to claimant via email. That message said:

> "We have clearly missed the ball in terms of responding to your request to your satisfaction. I have spoken with Utilities Executive Director Kevin Gertig and we will be getting together as soon as possible to determine what additional records, if any, respond to your request. If you are aware of any specific documents you are seeking, please send me a list.
>
> "Thank you once again for your patience. Please do not hesitate to call if you would like to discuss this further."

#17) On March 27, 2015 Ms. Macrina wrote to claimant via email. That message said in part:

> "It is not clear from your requests what record(s) you are seeking, or whether the record(s) you describe are under the control of this office."

#18) Due to the apparent confusion by the City and the City's failure to provide certain resolutions, etc. that claimant believed had to exist, claimant asked to have a phone conference with representatives of the City. The purpose of that phone conference was to discuss claimant's record request, the City's response so far, the records provided so far, any other responsive records that might exist, and the City's deliberative and policy making process that led to the approval of the Advanced Meter Fort Collins project. Claimant requested that a representative of the city with decision making authority as to providing certain records in response to a records request would be on that phone conference.

#19) On April 3, 2015 Ms. Nelson wrote to claimant stating that Mr. Jeff Mihelich's (Deputy City Manager) was willing to participate in a phone conference and stating three dates and times when he would be available.

#20) Claimant responded that day requesting April 13 for the phone conference. Ms. Nelson wrote to claimant that day saying in part, "Thanks for your quick reply! We will schedule the phone conference for Monday, April 13th at 2:00 p.m."

#21) On Monday, April 13, 2015 claimant, claimant's friend Mark Graham of California, Mr. Mihelich and 5 other City employees participated in that phone conference. It was a very thorough conversation in which claimant and Mr. Graham explored with Mr. Mihelich and City staff the question of the authorization of the AMFC project, or lack thereof, and the policy making process that the City had actually used. No stone was left unturned.

A separate document describing statements made by representatives of the City during this phone conference is attached to and incorporated by reference into this notice and claim as though that document were fully reproduced here. The title of that document is "Phone conference with City of FC April 13 2015.docx" or a similar title.

During the phone conference claimant learned that according to the Deputy City Manager Jeff Mihelich, whose statement was not contradicted by any of the five other employees of the City who were present on the phone conference, the City Council never approved a resolution authorizing the removal of the original meters and / or the installation of smart electric meters.

Claimant and Mr. Graham asked many questions intended to flush this information out. They asked questions from many different angles. They asked about the deliberative process by which the City made the decision. The separate document describing statements made by representatives of the City during this phone conference will contain greater detail but for the concise statement of the factual basis of the claim, suffice it to say that that deliberative process did not include a motion, resolution or ordinance approved by the City Council to approve the Project. There were ordinances authorizing the appropriation for the Project.

During the phone conference the City made the following statements:

> "During the work sessions we received enough direction from the City Council to move forward." Claimant does not remember who said this but if it was Mr. Mihelich, who did most of the talking on behalf of the City, remember that he also said during the call that he was not involved in City government back in 2010.
>
> Mr. Mihelich said, "Item 1 does not exist; therefore we have satisfied the request."
>
> Mr. Mihelich said, "A lot of decisions are made at the administrative level, so Council doesn't need to approve the AMI program." "They are not required by law to approve the program." By "they" he was referring to the Fort Collins City Council. By "the program" he was referring to the AMI program.
>
> Somebody from the City, either Mr. Sumner or Mr. Mihelich, said, "The document you are asking for does not exist."

Mr. Mihelich and other representatives of the City made other statements during the phone

conference to that effect. More details on this phone conference follow in a separate document attached to this notice and claim.

#22) Soon afterward claimant wrote to the City asking the City to write a letter to claimant with some, but not all, of the details which the City had presented during the phone conference, such as the absence of any resolution etc. approving the Advanced Meter Fort Collins project and the deliberative process by which the city decided to do that project.

#23) The City provided such a letter on city letterhead dated April 21, 2015. The letter was signed by Deputy City Manager Jeff Mihelich. A copy of that April 21, 2015 letter is attached to this notice and claim.

#24) It was on the day of the phone conference, April 13, 2015, when claimant learned these facts about the project, that claimant realized she had been injured by the City. The nature and extent of the injury is described elsewhere in this notice and claim. For now suffice it to say that the injury was financial in nature. April 13, 2015 was the date of claimant's discovery of her injury and damages. It was the date on which claimant discovered her injury and damages.

For the above stated reasons claimant respectfully asks the City of Fort Collins to grant and accept this claim and pay claimant compensation for injuries and damages as described herein.

Thank you very much.

Sincerely,

Virginia Farver

Virginia Farver

The UPS Store - #1565
1001A E HARMONY RD
Fort Collins, CO 80525
(970) 223-6144

09/23/15 02:38 PM

We are the one stop for all your
shipping, postal and business needs.

We offer all the services you need
to keep your business going.

)2 008237 (022)	TO $	6.90
First Class Packa NR		
)3 008232 (022)	TO $	12.50
Certified&Return Rec		
SubTotal	$	19.40
Total	$	19.40
Cash	$	20.00
Change	$	0.60-

:tems Designated NR are NOT eligible
for Returns, Refunds or Exchanges.

:ceipt ID 89371772115096888281 002 Items
3H: Krista Tran: 9438 Reg: 003

Thank you for visiting our store.
Please come back again soon.

Whatever your business and personal
needs, we are here to serve you.

; Postal Rates Are Subject to Surcharge

We're here to help.
)in our FREE email program to receive
great offers and resources.

www.theupsstore.com/signup

DER: *COMPLETE THIS SECTION*

omplete items 1, 2, and 3. Also complete
em 4 if Restricted Delivery is desired.
rint your name and address on the reverse
o that we can return the card to you.
ttach this card to the back of the mailpiece,
r on the front if space permits.

rticle Addressed to:

ity of Fort Collins
isk Management Division
ity Council, City Attorney
O Box 580
Collins, CO 80522

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jerry Wood ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) JERRY WOOD
C. Date of Delivery 9/28/15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

rticle Number
ransfer from service label) 7014 2120 0001 7844 4629

orm 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

City of Fort Collins

City Attorney
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522

970.221.6520
970.221.6327 - fax
fcgov.com

January 12, 2016

Ms. Virginia Farver
1214 Belleview Drive
Fort Collins, CO 80526

Re: Notice of Claim

Dear Ms. Farver:

This letter is in response to your September 23, 2015 notice of claim ("Notice") that the City of Fort Collins ("City") received on September 29, 2015. Your Notice is nineteen pages long and numerous documents are attached to it. You state in the Notice that you are presenting it to the City in accordance with the Colorado Governmental Immunity Act.

You claim in the Notice that you and other customers of the City's Electric Utility ("Electric Utility") have suffered monetary damages you allege were caused by the City's implementation of its "Advance Metering Fort Collins" project ("AMFC Project"). More specifically, you claim that these damages have occurred because you believe that the AMFC Project was implemented without the City Council approval required by "Colorado law and the City Charter." You ask for approximately $800 in monetary damages for yourself and an unstated amount for other Electric Utility customers.

As you know, under the AMFC Project the Electric Utility has replaced most of its electromechanical electric meters with a communicating digital electric meter (often referred to as a "smart meter") that can be read remotely rather than requiring that it be read at its location by a meter reader, as was the case for electromechanical meters. However, for those customers who have objected to the smart meter, as you have, the Electric Utility has instead installed a type of non-communicating digital meter that must still be read by a meter reader.

As you state in your Notice, the City Council has imposed an $11 per month charge on those customers whose meters must still be read by a meter reader. The monetary damages you claim include reimbursement for what you have personally paid for this charge and, it appears, reimbursement for the Electric Utility's other customers who have paid this charge. You argue this reimbursement is required because the AMFC Project was not properly approved by City Council and, therefore, Council's imposition of this charge was not legal.

To support your claims you cite in the Notice certain Colorado statutes and City Charter provisions. You argue that these laws show that the City Council has failed to properly approve the AMFC Project. Your argument, however, overlooks how all of the Electric Utility's operations, including the AMFC Project, are authorized in the City's Charter and Code.

In Section 5(b)(4) of Charter Article II, the City Council is authorized to establish a City administrative office to provide "electric utility services." The Council did this by the adoption of Code Section 2-504 through which it created the City's "Utility Services" and authorized the appointment of a "Director . . . directly responsible to the City Manager . . . for the functions and duties of Utility Services . . . to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric . . . services . . . ."

The Council has also adopted a comprehensive set of Code provisions in Article VI of Code Chapter 26 to further define, regulate and to set the fees, rates and charges for the City's provision of electric services through Utility Services. Included in Article VI is Section 26-396 which reads, in part: "No person shall take electrical energy from the distributing system except through a meter or other measuring device owned and installed by the City without the consent of the electric utility to take such electrical energy."

Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services subject, of course, to any needed appropriation of funds by the City Council. As you concede in your Notice, the Council adopted ordinances to appropriate the funds needed to implement and complete the AMFC Project.

Section 2 of Charter Article III further provides that the City Manager is responsible for administering Council's adopted budget, which necessarily includes the City Manager seeing that the budgeted funds are spent in the manner authorized by Council in its budget. This is exactly what was done in the City's implementation of the AMFC Project.

The City therefore denies the claims you have asserted in your Notice.

Sincerely,

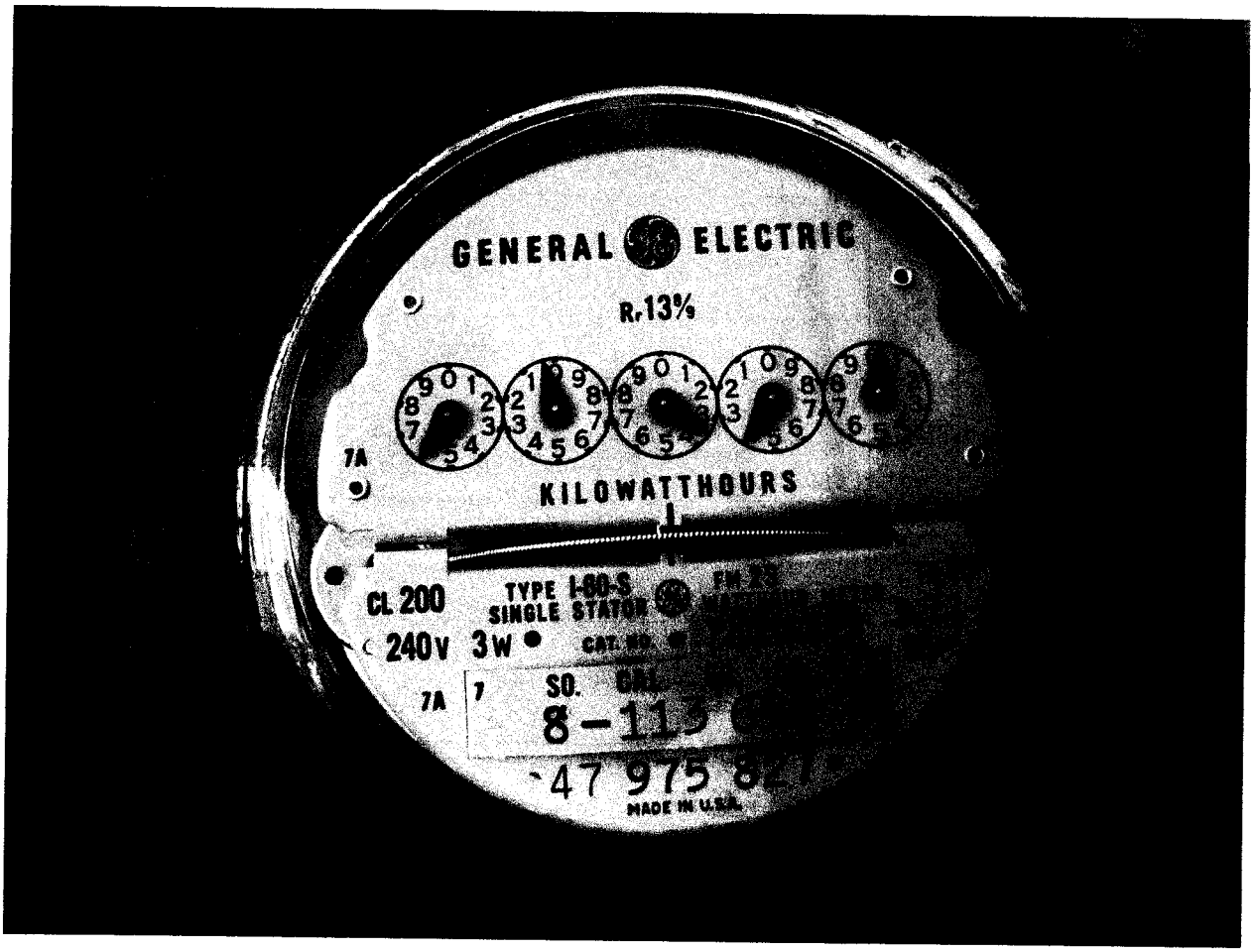
John R. Duval
Deputy City Attorney

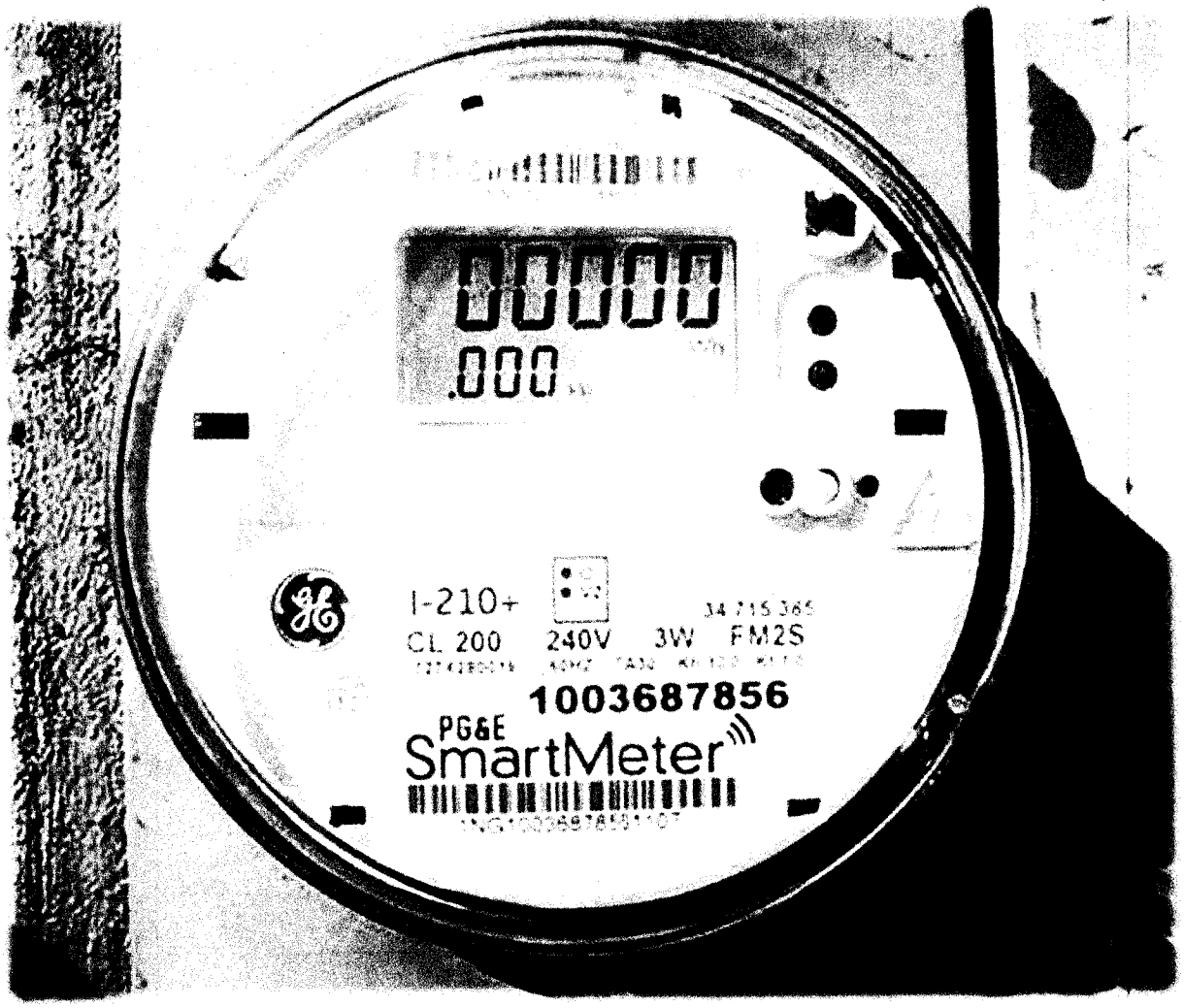
Cc: Risk Management

Safety, Security & Risk Management received a package hand delivered from Virginia Farver.

Renee Johnson

Analog meter




00000
.000
I-210+
CL 200
240V
3W
FM2S
1003687856
PG&E
SmartMeter