

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521</p> <hr/> <p>Plaintiff: VIRGINIA FARVER,</p> <p>v.</p> <p>Defendants: CITY OF FORT COLLINS, FORT COLLINS ELECTRIC UTILITY; and DOES 1-100.</p>	<p>DATE FILED: December 15, 2016 4:40 PM FILING ID: E9BD9C02EC609 CASE NUMBER: 2016CV144</p> <p>COURT USE ONLY</p>
<p>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</p> <p>John R. Duval, #10185 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 221-6520 Email: jduval@fcgov.com</p>	<p>Case Number: 2016 CV 144</p> <p>Courtroom: 5B</p>
<p align="center">AFFIDAVIT OF DARIN ATTEBERRY</p>	

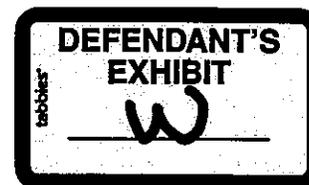
AFFIANT, being duly sworn upon oath, states as follows:

1. My name is Darin Atteberry. I am over the age of 18 and I have personal knowledge of the matters set forth in this Affidavit.

2. I have been the City Manager for the City of Fort Collins for the past twelve years. Pursant to Article III, Section 2 of the City Charter, the City Manager is responsible to the City Council for the proper administration of all affairs of the city and, to that end, shall have power and be required to:
 - (a) appoint and, when necessary for the good of the service, remove all heads of service areas and employees of the city except as otherwise provided by the Charter;

 - (b) prepare the budget annually and submit it to the Council and be responsible for its administration after adoption;

 - (c) participate in discussions of the Council in an advisory capacity;



(d) prepare and submit to the Council as of the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year, and make written or oral reports to the Council when required by it as to any particular matter relating to the affairs of the city within his or her supervision;

(e) keep the Council advised of the financial condition and the future needs of the city, and make recommendations to the Council;

(f) enforce the laws and ordinances of the city; and

(g) perform such other duties as may be prescribed by the Charter or required of the City Manager by the Council not inconsistent with the Charter.

3. I am aware of the above-captioned action filed against the City by Plaintiff Virginia Farver, as I was originally named as an individual defendant in this suit (I have since been dismissed). I understand that the action brings several claims to challenge the validity of the City's Advanced Meter Fort Collins Project ("the Project").

4. As the City Manager for the past twelve years, I am familiar with the Project, and I have been involved in the decision-making process related to its adoption and implementation within the City, as further described below.

5. In December 2008, the Council adopted the Fort Collins Climate Action Plan. The Plan was developed in specific response to Council's Resolution 2008-051, whereby the Council established new target goals of reducing the City's community-wide greenhouse gas emissions 20% below 2005 levels by 2010 and 80% below 2005 levels by 2050. As part of that Resolution, the Council expressly directed the City Manager to prepare for Council's consideration an updated plan for doing so, identifying interim milestones needed to put the City on a trajectory to meet the 2020 goal. The Council further directed the City Manager that the updated plan should include a list of strategies demonstrating how the interim milestones could be met and that the strategies should consider relevant technical, economic, political and social factors.

6. In January 2009, the City also updated its 2003 Electric Energy Policy, which was part of the City's continuing effort to reduce greenhouse gas emissions. The 2009 policy specifically stated that "Smart grid innovations are expected to have an increasing role in the electric system," setting as a goal the creation of a smart grid roadmap by the end of 2009. Many of the other goals and objectives of the updated 2009 Energy Policy were tied to the use of advanced meter technology to reduce carbon dioxide emissions to meet the goals previously set by the Council

7. As reflected in the Council's 2008 Climate Action Plan and its 2009 Energy Policy, one of the specific energy-related strategies for reducing greenhouse gas emissions was the use of advanced metering and smart grid technology. This is exactly the type of technology involved in the Project.

8. The day-to-day details for the development and implementation of the Project were carried out by the management and administrative staff of the City's Utility Services, including the staff of the City's Electric Utility, over the course of several years. These details included, by way of example, application for a federal grant to help fund the Project, research and selection of the particular metering system and components to be used, bidding and selection of a contractor to install the meters. Development of those details to implement the Project involved regular meetings of the management staff of the Electric Utility, including the Light & Power Operations Manager. Steve Catanach was the Light & Power Operations Manager during that relevant timeframe, and reported directly to the Director of the City's Utility Services.

9. At the same time, as City Manager, I held regular executive team meetings with various City department heads, including the Director of Utility Services. Brian Janonis was that Director for most of the relevant timeframe in this lawsuit, until he retired in 2014. At those regular meetings, Mr. Janonis would report on various aspects of the Project and other utility-related projects and issues, and he would obtain direction and input from me as the City Manager. This was consistent with the City Code, which provides that the Director of Utility Services is in charge of Utility Services but directly responsible to the City Manager.

10. Likewise, there were several instances throughout the development and implementation of the Project when issues related to the Project were brought to the Council for action, including approval of the issuance of revenue bonds to help finance portions of the Project not funded by the federal grant; authorizing the City Manager to enter into an agreement with the Department of Energy to receive the grant funds; and approval of a utility fee schedule that included a monthly meter reading fee for Utility Services customers who elected not to have a "smart" meter. The Council also made various appropriations of funding for operation of the Electric Utility, including its implementation of the Project, as part of the usual City budgeting and appropriation processes. There was also a specific Council work session in 2011 devoted to updating the Council on the status of the Project and this included a discussion of the options customers would be given for the type of new meter installed.

11. In short, the Project was developed and implemented just like any other project within the City, particularly one of its magnitude. That is, with the management and administrative staff of a particular City department responsible for day-to-day administration and management of the details of the project, but with regular reporting to and oversight from the City Manager, and further direction, action and appropriation by the Council when necessary under the City Charter and Code.

FURTHER, Affiant sayeth naught.

D. A.
Darin Atteberry

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Subscribed and sworn to before me this 13 day of December, 2016 by the said Darin Atteberry

AK
12-13-16
ALLISON LEIGH RECIO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144025233
MY COMMISSION EXPIRES JUNE 25, 2018

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Notary Public

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