

November 2, 2020

Chairman Anthony Smith
Pinal County Board of Supervisors
P.O. Box 827
Florence, AZ 85132

Chairman Anthony Smith:

The City of Maricopa (“City”) writes today to address public safety issues concerning the Maricopa Domestic Water Improvement District (“Maricopa Domestic”) and the Seven Ranches Water Improvement District (“Seven Ranches”). For the reasons set forth below and to protect the residents of these districts, the City respectfully requests the Pinal County Board of Supervisors, pursuant to A.R.S. §48-1016, revoke the authority of the Maricopa Domestic and the Seven Ranches Boards of Directors.

Maricopa Domestic

To fully understand and appreciate this request, a history of the relationship between the City and Maricopa Domestic is necessary. In July 1986, the Pinal County Board of Supervisors formed Maricopa Domestic to acquire the assets of the only private water company in Maricopa, which at that time served approximately 400 customers. In February 1988, Pinal County declared the area served by Maricopa Domestic a Colonia, which Federal law defines as an identifiable community that is located along the Mexico-United States border region that lacks in basic services such as potable water supply, adequate sewage systems and lack of decent, safe, and sanitary housing. 42 U.S.C. §1479(f)(8).

Upon the incorporation of the City in 2003, when the census population was approximately 1,040, Maricopa Domestic continued to serve the same area of the City. Maricopa Domestic currently operates and maintains its domestic water infrastructure and treatment system for about the same population as it did in 1986—estimated at 400 people out of a total City population of approximately 59,100. Maricopa Domestic, however, provides services to the area now known as the Heritage District, which is the geographical center of the City. Having Maricopa Domestic serve this area complicates fire service and economic development in the City.¹

After incorporation, pursuant to Resolution 05-40 and Resolution 06-02, the City residents approved and authorized the City to “engage in the utility business and to construct, purchase, acquire or lease any plant or property or portion of plant or property devoted to the business of or services rendered by a public entity.” Initially, after incorporation, most of the

¹ In November 2017, the merger of Maricopa Domestic and the New Saddleback Vista Domestic Water Improvement District was approved; renaming them collectively as the Maricopa Consolidated Water Improvement District.

growth within the City was occurring outside the boundaries of Maricopa Domestic. At that time, the City and Maricopa Domestic were able to work together to update Maricopa Domestic's system and provide water and fire protection services to the residents. For instance, in 2011, the City and Maricopa Domestic entered into an IGA where, recognizing the public safety and economic benefits, the parties agreed to use funds from the State Special Projects to construct a water tank to provide 115,000 gallons of net storage capacity to sustain four hours of fire flow. Because this tank would be installed where the Maricopa Domestic office was located and their office had to be relocated, the City also agreed to pay rent for Maricopa Domestic for a minimum of five (5) years, with an additional five (5) years pro-rated based on the increase in combined water sales realized by Maricopa Domestic during the initial five (5) years. The Maricopa Domestic's increase in combined water sales was less than \$2,000 and 80% of the then prevailing monthly gross rent, which meant the City was obligated to pay rent in full for the entire ten (10) year term of the IGA. And in 2012, the City and Maricopa Domestic entered into an IGA to use CDBG funds for improvements to the pressure augmentation of the water system on the southside of Maricopa Domestic, including work on two (2) fire hydrants, several water mains and valves. These projects were completed to benefit Maricopa Domestic and the City continues to pay rent even though Maricopa Domestic abruptly vacated the rented premises without advance notice to the City last year.

When the area within Maricopa Domestic began to develop, including the construction of the overpass on SR 347, the City became concerned about whether the services provided by Maricopa Domestic were adequate to protect the residents of the district and to support such development. The City has primary responsibility for the public health, safety, and welfare of all citizens, to include the effective and efficient use of public safety personnel, equipment and utility (water/fire flow) supply. During the City's review of services, the City confirmed that although Maricopa Domestic did have fire hydrants, the maintenance and operation of the hydrants were unknown. Therefore, the City and Maricopa Domestic entered into an IGA in 2017, the primary purpose of which was to establish procedures and obligations of the City and Maricopa Domestic for the inspection and repair of fire hydrants within their boundaries. According to this IGA, Maricopa Domestic was to inspect and test their forty-five (45) hydrants to confirm they were in accordance with National Fire Protection Association ("NFPA") standard 291 and provide a report to the City. See Attachment "A." Maricopa Domestic was also obligated to notify City of fire hydrant deficiencies, fire hydrants marked 'out of service' and when fire hydrant repairs were complete. Maricopa Domestic historically limited inspections to specific development projects and hydrants specified by Maricopa Domestic which provides the City little assurance that the entire system is adequate to provide the necessary services. Maricopa Domestic did not provide the City with a schedule of monthly inspections or notification when hydrants were deficient, which is not in compliance with the IGA.

On February 12, 2020, I presented to the Board of Maricopa Domestic my concerns about the public health, safety and welfare of the citizens within Maricopa Domestic and the ability to provide for new development. As City Manager, I offered a proposal for Maricopa Domestic to transition the operations of property within the City limits to the City who is willing to lock in

the rates of Maricopa Domestic for existing citizens while ensuring the system is adequate for domestic water and fire prevention. Maricopa Domestic responded by saying it had no interest or reasonable motivation to proceed with a City take-over but it was willing to discuss the City's concerns to provide input for future development and correct misinformation of Maricopa Domestic's system capability and current services.

Thereafter, on June 10, 2020, the City received a letter from Maricopa Domestic giving a 60-day notice that they were terminating the 2017 IGA regarding fire hydrants and proposing a new IGA for "Blow Off Equipment." This proposed IGA deleted all references to fire hydrants and fire standards. See Attachment "B." Surprisingly, Maricopa Domestic claimed it terminated the IGA because the 2017 IGA was never processed properly, that the IGA was inadequate and allowed the City to take advantage of Maricopa Domestic resources without responsibility of equipment damage during use or reporting of any usage to Maricopa Domestic. The termination of the IGA caused the City to have significant concerns regarding public safety within Maricopa Domestic's jurisdiction. Without annual hydrant inspections and flow testing, done to NFPA standards including, but not limited to, NFPA standards 291 and 25, and in compliance with the 2018 International Fire Code adopted by the City, the entire community is put at risk due to unconfirmed hydrant conditions and flow rates. This directly impacts public safety and the City Fire Department's ability to perform the most basic functions on a fire incident: access, pump, and flow water with enough pressure and capacity.

Beginning in July 2020, the City tried to negotiate a new IGA with Maricopa Domestic to address the City's concerns. Maricopa Domestic's draft IGA sought to include, *inter alia*, the following provisions:

- "District agrees, its sole cost of regular maintenance and repair its own System Blow-off equipment as soon as reasonably possible and as applicable. **The District has sole discretion to deem unsubstantiated, unnecessary, or too costly of repair or replacement of equipment deficiencies. District is under no obligation to take corrective action or make repairs identified by City, Fire Department or 3rd party contractor...**" (emphasis added)
- "City agrees, any testing by the City, Fire Department or 3rd party of System Blow-off equipment shall be their responsibility, at their cost and under District permission and supervision."
- The District provides that they will "inspect and flush the population of their System Blow-off equipment on an annual basis or as needed... and the Fire Department shall have the option to attend and observe. The Fire Department will observe and note if equipment caps and nuts can be easily [removed] and will provide the grease if needed for access and ease of use..."

Although the City was concerned with the change in terminology, the main issue for the City was the lack of reference to fire flow testing to determine Static Pressure, Residual Pressure or Flow GPM—Gallons Per Minute. This information is critical to understanding the ability of the system to meet the City's fire needs and provide for the public safety of the residents.

Despite these concerns, the City attempted to work with Maricopa Domestic and revised the proposed IGA related to “Blow Off Equipment” to meet City hydrant and flow testing objectives. Maricopa Domestic responded by resending the original proposed IGA with only minor edits and adding specifically that Maricopa Domestic would not be legally obligated to meet NFPA guidelines. The IGA negotiations stalled after Maricopa Domestic returned the 3rd draft of the IGA to the City without addressing or even commenting on the majority of the City’s concerns regarding Maricopa Domestic’s ability to provide water and fire protection services for its current customers and for future growth. The City’s concerns relate to fire protection and suppression, and the condition of the now approximate forty-eight (48) hydrants within Maricopa Domestic’s boundaries and their flow rates.

Without an IGA requiring testing and reporting or authorization to test the hydrants, the City has no way to know the following information and whether the hydrants meet the requisite NFPA standards, as adopted by the City:

- Condition and flushing process to clear debris which can damage apparatus pumps and impede the flow from hydrants;
- Maintenance schedules for hydrants;
- Out of service status of any hydrants;
- Flow testing results, validity of results and whether such results are repeatable;
- Capacity to meet the required volume and duration of Fire Flow for the structure and occupancy as governed by the City's adopted 2018 International Fire Code standards;
- Fire Flow Transparency; and
- Water refill source, the contingency plan in case of more than one fire within the area.

The City’s public safety goal is clear: the City wants and needs a standardized, transparent, hydrant inspection and flow testing process that meets the minimum NFPA standards. Such process must be credible and valid to ensure that our firefighters and community know their safety is a priority during a critical incident. The delays caused by nonworking or in-adequate hydrants is a significant public safety concern that can risk and cost lives and loss of property. To date, Maricopa Domestic has failed to provide transparency, which is essential to understanding the system capacity and providing public safety.

Presently, the City does not know the capacity and condition of Maricopa Domestic’s system to ensure capacity, flow and pressure rates in support of the City’s obligation to provide fire suppression. This causes significant public safety concerns. For instance, on March 26, 2019, there was a fire in Maricopa Domestic’s jurisdiction that had a delay in fire suppression due to two unmarked, out of service fire hydrants near the involved residence. Fire crews had to use Water Tenders from the City and Mutual aid for fire suppression. In addition, on or about July 9, 2019, Maricopa Domestic provided a letter to Thompson Thrift, a commercial development within their boundaries, notifying them that Maricopa Domestic will provide the necessary fire flow as a courtesy and assumes no liability for the installation of such facilities and informing them the City is not authorized to review and approve elements of the plans for

the system even though some of the system will be in City right of ways. Thereafter, when the Hydrant Flow Test for Thompson Thrift's project, which is projected to consist of approximately 85,000 s.f. of commercial property, Maricopa Domestic chose the hydrant to be tested and the result was a GPM flow rate of 4,300. Twenty minutes later, the developer's representative moved to an unspecified hydrant on their property and the result was a GPM flow rate of 1,960. Specialists in the field of hydrology and water systems have noted a flow rate of 4,300 magnitude is virtually impossible and there is a question regarding the difference in rates on the same property within minutes of each other.

In addition to the City's concerns regarding public safety and fire hydrants, the City is also concerned about property owners' ability to develop within Maricopa Domestic. Maricopa Domestic does not have, and it is the City's understanding they cannot obtain, an Assured Water Supply ("AWS") Certificate. This means that property within Maricopa Domestic is not able to be subdivided, but more importantly it raises concerns about the ability to continue to provide adequate water for an area within the City that is developing rapidly. Although Maricopa Domestic is not statutorily required to have an AWS, it is important to note that the AWS program was created as part of the 1980 Groundwater Management Act to ensure people purchasing or leasing subdivided land have a water supply of adequate quality and quantity. A certificate of AWS represents both a determination of hydrologic water availability and proof of financial capability.

The original intent for the creation of Maricopa Domestic in 1986 was well served. Today, however, the City of Maricopa is an urbanized environment with a professional fire department and an alternate water provider with the ability to meet public safety requirements as specified by the NFPA and who maintain an AWS. Maricopa Domestic has made it clear it does not want to be responsible for hydrant maintenance and repairs if it is "unsubstantiated, unnecessary or too costly" and that it is not statutorily required to provide fire flow. The City agrees there is no specific statutory requirement that Maricopa Domestic provide fire protection, however, the legal analysis of their obligation does not stop there. Since inception, Maricopa Domestic installed and maintained fire hydrants. And Maricopa Domestic entered into several IGA's, as referenced above, with the City to improve and maintain a fire system using public funds. Certainly, citizens who live in Maricopa Domestic and who see these hydrants believe they have adequate fire protection and probably report the same to their homeowner insurers.

Seven Ranches

As you are aware, within the City there is another water improvement District, the Seven Ranches Water Improvement District ("Seven Ranches"), which is generally located in a central part of the City south of Honeycutt Road, North of W. Santi Road between N. Porter Road and N. White and Parker Road. Although historically rural in nature, the Seven Ranches area is also quickly developing. Currently, *inter alia*, there is a charter school, a day care, a church, Circle K and several homes located within Seven Ranches and the area is bordered on at least three sides by developed master planned communities. Seven Ranches is separate from Maricopa Domestic but related because they share staff and other resources for efficiency purposes.

Seven Ranches includes approximately ten (10) fire hydrants within its boundaries, which they refer to as flushing valves. Historically these hydrants have been sufficient to support the rural development in the area so the City was not concerned about having agreements related to these hydrants. However, now that the area is developing and the City learns more about the system, the City is concerned about the ability to provide adequate service to the existing users and any future growth. For instance, it is the City's understanding that the well serving this area has been out of service for about four (4) years. To address the issue with the well, Maricopa Domestic extended a line to the Seven Ranches water tank as a temporary solution to the lack water supply but, to date, a permanent solution has not been provided. In addition, Seven Ranches was able to provide the domestic water to the schools in the area and the recently constructed Circle K, but these developments have to rely on hydrants supplied by Global Water across the street from Seven Ranches to provide fire suppression because the Seven Ranches system cannot provide the minimum flow requirements (1500 gpm for a 2-hour duration) at these locations. This option to rely on Global Water for fire suppression may not be available to other areas of Seven Ranches that are not located near such hydrants. Obviously, a water system within a central portion of the City that is reliant on another water district for water and a private provider for fire suppression services for its users is a significant safety concern.

The City has been in discussions with the Chairman of Seven Ranches regarding a transition that would provide (1) an improved water system that would ensure the public health and safety and sufficient fire flow; (2) open the potential for sanitary sewer to resolve failed septic systems which devalues property and quality of life; and (3) remove liability and risk concerns from Seven Ranches, residents and businesses therein and the City as the provider for fire services. This transition would be respectful of current customer rates and the City would not increase beyond traditional patterns (unless the property is sold or developed). By transitioning to the City, the homeowners in Seven Ranches would no longer have the tax burden associated with Seven Ranches. Although the Chairman has indicated he would support a transition to the City under the right circumstances, the only other member of the Seven Ranches Board has not been supportive of this transition.

Conclusion

The substantial changes in the development of the City since incorporation requires the City to continuously evaluate the services provided to residents and to ensure the public health and safety of all of its citizens. Presently, the City is unable to determine whether the Maricopa Domestic and Seven Ranches water systems provide adequate fire protection for its residents. Consequently, the City respectfully requests that the Pinal County Board of Supervisors, pursuant to A.R.S. §48-1016, revoke the authority of the Maricopa Domestic and the Seven Ranches Boards of Directors to protect the residents of the districts. During this revocation period, the City will hire an independent third party to fully evaluate and inspect the entire Maricopa Domestic and Seven Ranches water systems. Once these inspections are complete, the City would then be in a position to recommend to the Board of Supervisors the best way to proceed to ensure that adequate fire protection is provided throughout the districts. As I am sure

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you will agree, the public health and safety of the citizens within the Maricopa Domestic District and the Seven Ranches District is paramount. The City needs to be able to ensure sufficient fire flow and suppression services throughout the districts to protect its citizens.

The City appreciates the Pinal County Board of Supervisors reviewing this request concerning Maricopa Domestic and Seven Ranches. It is critical for the public health and safety of the residents of Maricopa Domestic and Seven Ranches that the Board of Supervisors revoke the authority of the Boards so the City can conduct this critical independent inspection of the Maricopa Domestic and Seven Ranches water systems.

Thank you.

Sincerely,



Ricky Horst
City Manager

cc: Supervisor Pete Rios, Vice-Chairman
Supervisor Mike Goodman
Supervisor Stephen Q. Miller
Supervisor Todd House
Louie Andersen, County Manager
Mayor Christian Price
Vice-Mayor Nancy Smith
Councilman Marvin Brown
Councilman Henry Wade
Councilwoman Julia Gusse
Councilman Vincent Manfredi
Councilman Rich Vitiello