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April 28, 2014

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***Re: CGPD's Demotion and Reduction in Pay of J. Kent Horn and Scott Sjerven***

Dear Mayor Jackson and Casa Grande City Council Members:

This law firm represents Lieutenants J. Kent Horn and Scott Sjerven,<sup>1</sup> who are active duty police officers for the Casa Grande Police Department ("CGPD"). At the outset, a brief review of the history leading to the City Council's decision to adopt Ordinance Number 2827 ("Ordinance") is in order. As you will recall, the Ordinance was passed by the City Council on

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<sup>1</sup> J. Kent Horn and Scott Sjerven now occupy the rank of Lieutenant, but until recently they occupied the rank of Commander.

August 5, 2013. It authorized the CGPD to expend \$250,000, from the City's contingency fund, to hire two new Captain positions. As demonstrated below, little public information was provided to the City Council during the meeting before passing the Ordinance. The Ordinance, however, had a significant negative impact on Lt. Horn and Lt. Sjerven by demoting them and reducing their pay. This letter seeks to determine whether this was the intent and policy of the City. Finally, this letter proposes a resolution to this matter, which benefits the City and Lt. Horn and Lt. Sjerven.

While I appreciate this letter is unique, I write it to redress a wrong, which hopefully was unintended by the City Council; to ensure our City treats its long-serving and dedicated public employees with fairness and equity; to safeguard our City's reputation among its employees as an institution that honors its own employees' Constitutional rights to due process; to make sure the City Council is provided all necessary information and a full opportunity to either confirm this was the intent and policy of the City Council when it passed this Ordinance, or to correct this unintended consequence of the Ordinance.

#### ***Law Enforcement History of Lt. Horn and Lt. Sjerven***

As many of you know, Lt. Horn is a 25-year law enforcement veteran having joined CGPD in April 1988. He competitively tested for and obtained assignments during his tenure with CGPD as a Special Enforcement Unit Detective, SWAT Operator, General Investigator, and Narcotics Officer in an undercover capacity. In 1996, he competitively tested for and achieved the rank of Sergeant and was eventually assigned as the Departmental Administrative Sergeant where he oversaw recruitment, hiring, policy development, and internal affairs investigations. In 2002, Lt. Horn competitively tested for promotion to the rank of Lieutenant. He desired to become a Lieutenant to be a leader and policy maker in CGPD by using the broad experience he had gained during his career. In 2006, Lt. Horn was one of two delegates from Arizona invited to attend an eleven (11) week training program offered by the FBI National Academy in Quantico, Virginia. He was the first CGPD officer to complete this FBI training. Thereafter, Lt. Horn completed assignments as Division Commander for all three CGPD divisions. Over the past 12 years, Lt. Horn has thus held and performed the position of Division Commander with competence, distinction, and honor. He accepted the position of Lieutenant knowing that doing so would cause him a significant annual salary reduction from what he had made as a Sergeant. In fact, in 2013, eight (8) of the eleven (11) CGPD Sergeants continued to earn more annually than Lt. Horn.

Lt. Sjerven has a similar history of dedicated and loyal service to CGPD. After working for the Arizona Department of Corrections (and achieving the rank of Sergeant), Lt. Sjerven worked as a Police Transport Officer for CGPD (through a temporary employment agency) and then joined CGPD full time in 1995. During his nearly 20-year tenure with CGPD, Lt. Sjerven was recruited and selected for the Special Enforcement Unit, and then promoted to Sergeant where he worked in the Patrol Division and the Office of Professional Standards. Thereafter, he

successfully tested for and was promoted to run one of CGPD's three Divisions, and thereby received the rank of Lieutenant. Lt. Sjerven presided over the Patrol Division and then the Special Operations Division. Additionally, Lt. Sjerven completed studies at Northwestern University's Police Staff and Command School in 2011, and is now enrolled in a Bachelors Degree program. He was the first officer from CGPD to attend the four (4) week *Leadership in Police Organizations* course held by the Arizona Peace Officer Standards and Training Board. After recommending this leadership course to Chief Robert Huddleston, Chief Huddleston made it standard for all supervisors to attend this leadership course.

In 2007, Lt. Horn (with Lt. Sjerven's support) asked Casa Grande City Manager Jim Thompson to reclassify the three Lieutenant positions as Commander positions based on their duties and job descriptions. This was done to recognize that they were performing Commander's duties for CGPD. Lt. Horn provided City Manager Thompson several job descriptions showing that Lieutenants function primarily as shift supervisors or "Watch Commanders," meaning they work in a position between that of Sergeant and that of Captain/Commander. As you may know, the terms "Captain" and "Commander" are synonymous terms in the law enforcement industry. City Manager Thompson approved the request and the three Lieutenant positions for CGPD were reclassified as Commander positions. No additional compensation was requested or provided for the newly reclassified positions.

### ***International City/County Management Association Report***

In 2009, the City Council commissioned International City/County Management Association ("ICMA") to conduct a study and create a report regarding ways CGPD could improve its efficiency, effectiveness and performance. The ICMA report contains many recommendations, including that CGPD eliminate the Special Operations Commander position and place that job under the command of the Patrol Division Commander. The ICMA report contains no further recommendations about changing the two remaining commander positions (Patrol Division Commander and Criminal Investigations Commander). The ICMA report, therefore, provided no basis for reorganizing the two remaining commander positions into captain positions and demoting Lt. Horn and Lt. Sjerven to lieutenants with reduced pay.

Nevertheless, CGPD provided the City Council a *Request for Council Action* dated August 5, 2013 with the cursory recommendation: "Staff recommends creating two new Police Captain positions and reclassify the positions of Police Commander to Lieutenant as part of a departmental reorganization." Further, CGPD provided the City Council a proposed one-page Ordinance authorizing a \$250,000 CGPD budget increase to cover the two new captain positions. At the August 5, 2013 City Council meeting, City Manager Thompson and Chief Cervantes fielded a few questions from the City Council after which the City Council passed the requested Ordinance. At no time did City Manager Thompson or Chief Cervantes appear to inform the City Council that two of CGPD's long-serving Commanders would receive a reduction in pay along with a demotion. This was not included as part of the Ordinance or set

forth in any City staff report. Moreover, the minutes from the August 1, 2013 Public Safety Informational Committee Briefing Meeting where the reorganization was discussed does not include any mention that these long term employees would receive a reduction in pay and a demotion. Finally, no notice was given to Lt. Horn or Lt. Sjerven that they would be demoted and lose pay. The following explanation at the August 5, 2013 City Council meeting from City Manager Thompson was the closest anyone came to explaining the consequences of the proposed Ordinance to the City Council:

If you recall previously the three positions that are moving back to lieutenant were lieutenants previously and we reclassified them to commanders and once again we're changing the organizational structure and reclassifying them again back down and then adding that additional layer [of captains] for span and control and some other issues that chief Cervantes has already addressed.<sup>2</sup>

City Manager Thompson thus made the "reclassification" of Lt. Horn and Lt. Sjerven (from Commanders to Lieutenants) sound like the exact reverse of the reclassification that occurred years before when they went from Lieutenants to Commanders without any impact on their pay. City Manager Thompson neglected to inform the City Council that this time around Lt. Horn and Lt. Sjerven would suffer a reduction in pay from pay level 75 to pay level 73. This resulted in a \$4,800 annual reduction in pay for Lt. Horn, which began in February 2014. Lt. Sjerven's reduction in pay level resulted in no annual raise (which would have been 2.5%) during the most recent performance evaluations in November 2013 (resulting in an approximate \$2,400 annual reduction in pay). Thus, Lt. Horn and Lt. Sjerven view this matter as a job demotion (rather than a job reclassification). Further, my clients believe their former job positions were immediately filled by Captain Todd Hanley and Captain J.R. Parrow.<sup>3</sup>

By enacting this Ordinance, my clients do not believe it was the City Council's intent to establish a policy, practice or custom where two long-standing public servants of Casa Grande – could be demoted and have their salaries reduced without receiving any due process whatsoever. None. Rather, my clients believe that the City Council would have expected these employees, at a minimum, to keep their pay at the same level.

### ***Affected Policies and Statutes***

CGPD's "reclassifications" of Lt. Horn and Lt. Sjerven were accomplished in violation of Casa Grande and CGPD policies, state statutes, and their Constitutional right to due process. Lt. Horn and Lt. Sjerven have a significant property interest in their continued employment with CGPD at the level they attained. Not only have they devoted decades of their professional

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<sup>2</sup> This excerpt can be found beginning at the 13:20 mark of the City Council video for this meeting.

<sup>3</sup> In bringing this matter to the City Council's attention, we cast no aspersions on Capt. Hanley or Capt. Parrow.

careers to CGPD, but they and their families are well established in the Casa Grande community; they volunteer in the community, and intend to continue in loyal service to CGPD until they reach retirement age. Their years of law enforcement service are impeccable. To protect such Casa Grande employees, Casa Grande enacted City Policy 1002, which states in pertinent part, "The Appeal Procedure is also designed to provide due process for all employees *who have a significant property interest* in their employment with the City of Casa Grande." (emphasis added). CGPD's actions resulting in their demotion in rank and reduction in pay have clearly impacted their property interest in employment with Casa Grande regardless if such actions are disguised as a reclassification.

Capt. Hanley and Capt. Parrow were not affiliated with or employees of CGPD before becoming CGPD Captains.<sup>4</sup> This action by CGPD thus violated Casa Grande Personnel Policy Section 701 which governs filling such Captain vacancies: "vacancies in the City service shall be filled *by promotion from within*, after consideration is given to all interested, qualified employees. . . . Upon promotion, the employee shall be moved to a step in the pay range assigned to the new position as approved by the Personnel Officer." (emphasis added). No reasonable or logical explanation exists why Lt. Horn and Lt. Sjerven could not have filled the new Captain positions, especially when they were already fulfilling the same job duties as Commanders. CGPD's decision to hire Capt. Hanley and Capt. Parrow was little more than discipline (demotion and reduction in pay) disguised as administrative restructuring.

"Demotion" is defined in Casa Grande Personnel Policy Section 703 as "when an employee is moved to a classification assigned to a lower pay range than that currently held by the employee." CGPD Policy 341.2.1(e) defines "Demotion" as follows: "The employee is reduced in rank and/or reclassified into another position in accordance with guidelines as provided by the Administrative Services Department." This is exactly what happened to Lt. Horn and Lt. Sjerven, regardless if it is characterized as a "reclassification." CGPD's decision to move them to a classification assigned to a lower pay range resulted in reduced pay, rank and job duties.

As you know, the demotion of a Casa Grande officer or employee is such a significant action that the City Manager cannot demote an employee without complying with Casa Grande's employee merit system, which was established pursuant to the Casa Grande City Charter. Article III(3) of the City Charter allows the City Manager to "lay-off, suspend, transfer, demote or remove any department head, officer or employee of the city, *subject to such*

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<sup>4</sup> Capt. Parrow was not even an AZ POST-certified peace officer at the time CGPD hired him even though the job requirements for the Captain position clearly stated the need for "Arizona Peace Officer Standards and Training (POST) Certification." Capt. Parrow now has his certification. Also, Capt. Hanley was a Phoenix Police Department detective before being hired by CGPD. Prior to his employment with CGPD we know of no law enforcement leadership rank or supervisory experience he previously held. However, both gentlemen knew Chief Cervantes before he became the CGPD Chief.

*merit system regulations* as the council may adopt.” (emphasis added). If the City Manager cannot circumvent Casa Grande’s employee merit system, CGPD certainly cannot.

These law enforcement merit system protections are so sacrosanct that the Arizona Legislature enacted them into statute as a protection for merit employees throughout the state. CGPD’s constructive demotion of Lt. Horn and Lt. Sjerven violated the state merit system statutes. According to A.R.S. §38-1101(P)(2), Lt. Horn and Lt. Sjerven’s demotion falls within the definition of “disciplinary action,” which is “the dismissal, *demotion* or suspension for more than eight hours of a law enforcement officer . . . and that is subject to a hearing or other procedure by a local merit board . . .” (emphasis added). It is undisputed that Lt. Horn and Lt. Sjerven are merit-protected law enforcement employees who enjoy the benefits of the “just cause” standard governing any disciplinary action taken against them. *See*, A.R.S. §38-1104(A) (stating, “A law enforcement officer shall not be subject to disciplinary action except for *just cause*.”). For CGPD to demote Lt. Horn and Lt. Sjerven, it must satisfy this “just cause” standard. It made no attempt to do so. Rather, it improperly circumvented this standard by cloaking their demotions as “restructuring.” Moreover, Lt. Horn and Lt. Sjerven did not receive any due process hearing before or after their demotion. To allow police departments to backdoor statutorily-enacted employment protections of merit employees eviscerates those statutory protections, rendering them meaningless.

As an additional protection for merit system law enforcement employees, A.R.S. §38-1104(E) allows merit employees to obtain *de novo* review from the Superior Court when they have been demoted without a merit system review hearing. CGPD’s actions in demoting Lt. Horn and Lt. Sjerven implicate this statute, and entitle them to a *de novo* review hearing before the Superior Court to determine whether their demotion was for just cause. This statute also allows for an award of attorney fees if they prevail.

Based on CGPD’s violations of the foregoing policies and statutes, Lt. Horn and Lt. Sjerven each filed a merit appeal and a grievance of their demotion. Dawn Jett denied their request to present their demotion to the Personnel Board, and City Manager Thompson denied their grievance. Lt. Horn and Lt. Sjerven also requested a meeting with City Manager Thompson in order to informally address and hopefully resolve this matter. Unfortunately, City Manager Thompson was not even willing to meet with these long-standing employees of the City to listen to their concerns.

### ***Proposed Resolution***

As you can see, Lt. Horn and Lt. Sjerven tried to resolve this matter through their chain of command. Unfortunately, they have been unsuccessful. They are left with little recourse other than to attempt to directly inform the City Council via this letter of a matter the City Council should have been made aware of on or prior to August 5, 2013. Lt. Horn and Lt. Sjerven do not believe it was the intent of the City Council by passing the Ordinance to create a

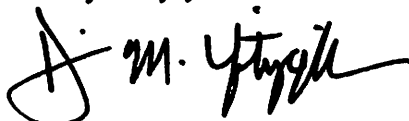
policy where two long-time employees were demoted and their pay reduced without any due process. None. Lt. Horn and Lt. Sjerven prefer not to take this matter to court. Because of their seniority and leadership positions in CGPD, pursuing a legal course of action in court could adversely impact the functioning and morale of the entire department, which Lt. Horn and Lt. Sjerven wish to avoid. Rather, they prefer to focus their time and energy on continued loyal service to CGPD. They simply want to clear their reputations of the stain of a back-door demotion,<sup>5</sup> and return to their previous pay levels with back-pay (even if they are to remain Lieutenants).

The City Council is the final policy maker for Casa Grande. If the City Council feels it was properly and fully informed of the details and consequences associated with the Ordinance it passed on August 5, 2013 that resulted in the demotion and loss of pay for Lt. Horn and Lt. Sjerven, we ask that the City Council do nothing further. We will take your silence in response to this letter as confirmation that it was the City Council's policy and practice when it passed this Ordinance to demote and to reduce pay of two long-term employees without providing them any due process. However, if the City Council did not intend to establish a policy and practice through the passage of this Ordinance where two long-term employees could be demoted and their pay reduced without due process, we request that the City Council direct the City Manager to reinstate the pay of Lt. Horn and Lt. Sjerven, and/or hold a hearing to listen to Lt. Horn and Lt. Sjerven in an effort to rectify this matter.

Casa Grande does not want or deserve the tarnished reputation that it mistreats and minimizes the dedicated and loyal service of long-standing public servants. Rather, the City of Casa Grande should be the beacon on the hill demonstrating to its employees and its citizens that the City respects and will comply with statutory and constitutional rights of its employees. Lt. Horn and Lt. Sjerven do not desire to sully or impugn the reputation of the City of Casa Grande, as an employer. They simply seek fairness and equity. Their proposed resolution is modest and reasonable. We urge you to confront and address this inequity immediately.

Thank you for your time and service to the City of Casa Grande.

Very truly yours,



Denis M. Fitzgibbons

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<sup>5</sup> Lt. Horn and Lt. Sjerven's concerns for their reputation are well founded. Local media have already disseminated information about them, identifying them by name and reporting their demotions.

April 28, 2014

Page 8

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