

AZLink

MEMORANDUM OF UNDERSTANDING

between

MARICOPA COUNTY

on behalf of

Maricopa County Sheriff's Office

and

CITY OF GLENDALE

on behalf of

Glendale Police Department

FOR SHARING LAW ENFORCMENT INFORMATION

C-50-17-DID-3-00

This Memorandum of Understanding ("MOU") is made and entered into this 01 day of July, 2016, by and between Maricopa County, on behalf of Chief Law Enforcement Officer, Joseph Arpaio, and the Maricopa County Sheriff's Office ("MCSO"), a law enforcement agency duly organized and existing under the laws of the State of Arizona, and the City of Glendale, on behalf of its Police Department ("GPD"), organized and existing under the laws of the State of Arizona.

NOW, THEREFORE, the parties do hereby agree as follows:

ARTICLE I. PURPOSE

The purpose of this MOU is to enhance the effectiveness of law enforcement by increasing information sharing related to crime and criminal activities. The objective of the collaborative relationship described in this MOU is to facilitate sharing of regional law enforcement information among federal, state, local, and tribal law enforcement partners. Through this relationship, the parties intend to capture the cumulative knowledge of regional law enforcement agencies at all levels in a systematic and ongoing manner to maximize the benefits of information gathering and analysis needed to respond to criminal threats, to support law enforcement activities, and to enhance public safety and enforce protection of the Nation's critical infrastructure in Arizona.

The MCSO has assisted in the design and implementation of a program known as AZLink. AZLink is a consortium of law enforcement agencies that have agreed to a method of sharing law enforcement and probation information that permits electronic access to confidential law enforcement information.

The MCSO represents the AZLink Arizona Region (known as the regional agency) and works with the AZLink Eastern Arizona Region to implement standard information sharing practices, policies, procedures, and security. The MCSO is also working with law enforcement agencies in northern, central and southern Arizona (known as "Client Agencies") to connect these agencies into the AZLink program.

The MCSO is part of the Governance Committee that includes client agencies as members for the purpose of developing regional programs, insuring compliance of standards, policies,

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procedures and security. The Committee oversees the AZLink regional law enforcement information sharing program across the state.

The AZLink Governance Committee also works with federal agencies and other states on developing information sharing programs and creating standard MOUs. Each AZLink Region, under the authority of the representative regional law enforcement officer and by action of their respective legislative or other governing body, has binding authority to execute MOUs. The AZLink Regions work with their client agencies to ensure compliance with federal and state MOUs.

Regional Law Enforcement Systems (known as RLES) have been developed and are being implemented throughout Arizona. These systems are centrally managed by the AZLink regions. Each region connects local client agencies to the RLES. Through the RLES, client agencies have access to information from other client agencies.

This agreement adds the GPD as a Contributing Agency in the AZLink Arizona Region RLES, to share law enforcement information administered by the MCSO and to have access to information from other client agencies participating in the AZLink program.

ARTICLE II. DEFINITIONS

- A. "Client agencies" are law enforcement agencies participating in AZLink who are read only. Federal and non-Arizona state agencies may also be considered client agencies.
- B. "Contributing agencies" are agencies participating in the AZLink data sharing effort that contribute data and have access to AZLink RLES.
- C. "Regional agency" in this MOU refers to the AZLink Arizona Region. The MCSO is the Administering Agency for the AZLink Arizona Region. Mesa Police Department for the Eastern Arizona Region;
- D. "RLES" means the regional law enforcement systems that will be used for sharing law enforcement information across regions, across states, and with federal agencies.
- E. "Owning Agency" in this MOU will be defined as the agency that controls the information generated by their law enforcement department.
- F. "Background screening" means a background investigation that is fingerprint-based including checks of both the state and national criminal history repositories.

ARTICLE III. EFFECTIVE DATE AND TERM

This MOU will become effective upon the day it is fully executed and shall continue in force until either agency provides sixty (60) days prior written notice to the other agency of its intent to terminate the other agency's access to its records through the methods provided in this MOU. Either party may cancel this MOU at any time for any reason upon sixty (60) days' notice to the other party.

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ARTICLE IV. CANCELLATION

Pursuant to A.R.S. § 38-511, the state, its political subdivisions, or any department or agency of either, may cancel this contract within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. Cancellation of the MOU shall be effective upon written notice as provided in A.R.S. § 38-511.

ARTICLE V. DATA ACCESS AND SECURITY REQUIREMENTS

- A. Access to other client agencies' law enforcement information will be provided utilizing the TCP/IP communications protocol over a network segment maintained by the Arizona Department of Public Safety or any other secure network configuration that is mutually acceptable to the client agencies and that meets state and federal security requirements. The law enforcement information shall be available on a 24 hours per day, 7 days per week basis, with downtime limited to those hours required for any necessary system maintenance activities. Agencies agree to inform each other in advance, whenever possible, of scheduled system downtimes.
- B. Data will be shared with member agencies that have entered into an MOU with a regional agency. No client or regional agency will share information gained through this system with an agency that is not a client agency, except by permission of the agency originating the information. Client and regional agencies shall ensure that only those authorized by law have access to any Criminal History Record information as defined in A.R.S. § 41-1750 and 28 C.F.R. 20.3 including in the law enforcement information from the system.
- C. Client and regional agencies agree to enforce and maintain security requirements and networks as specified in the Technical Requirements Section of the Federal Bureau of Investigation's Criminal Justice Information Systems Security Policy, and regional agency MOUs and Agreements with federal and state agencies. Exceptions to the above policy shall not be implemented by any client agency without the approval of the regional agency and the AZLink Governance Committee.
- D. Client and the regional agencies acknowledge that the law enforcement information hosted by the RLES shall be used for law enforcement purposes only, and that only law enforcement agency employees that have passed a background screening and any required certification, such as Terminal Operator Certification (TOC), will be allowed access to the systems.
- E. If at any time any client agency violates the requirements of this MOU in regards to sharing of information, the regional agency connecting that client agency may disconnect the client agency. Except in the case of a critical emergency, access shall not be terminated by a regional agency until the offending client agency has been provided with sixty (60) days written notice of the violation and the opportunity to correct the violation.

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- F. If at any time any client agency believes that another agency is allowing unauthorized access to or use of the client agency's data, the client agency may withdraw from the shared data system with a 30-day written notice
- G. All disputes concerning access shall be first communicated to an offending agency and then settled by consensus among the agencies of the region within 30 days' notice to the offending agency of the initial dispute. In the absence of consensus, the data sharing link of the offending agency shall be terminated with a 30-day written notice.

ARTICLE VI. INFORMATION OWNERSHIP, RELEASE, AND ACCURACY

- A. Client and regional agencies retain control of all information they provide through the system at all times. Any request for access to information hosted by the RLES that is not authorized under current MOUs will be referred to the agency originating the information being requested. Except as required by law, information shall not be made available to any unauthorized requestor without the approval of the originating agency.
- B. Agencies acknowledge that the law enforcement data provided by the RLES consists of information that may or may not be accurate. To the extent permitted by law, agencies agree to hold the originating agency blameless for any harm that may arise due to the inaccuracy of any information they have submitted.
- C. All participating agencies have the sole responsibility to ensure that information it makes available to the agencies via the RLES was not obtained and is not being maintained in violation of any federal, state, or local law applicable to the obtaining component. In addition, all participating agencies have the sole responsibility and accountability for ensuring compliance with all laws, regulations, policies, and procedures applicable to the posting of its information for access via the RLES.
- D. Each client agency has the duty, sole responsibility, and accountability to make reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of information that it contributes to an AZLink regional agency. Should a client agency receive a challenge to or reasonable question about the accuracy of client agency information, the client agency will notify the AZLink regional agency and the AZLink Governance Committee in writing as soon as is practicable.
- E. AZLink regional information may be accessed and used by agencies for official criminal law enforcement, probation, and national security purposes only. All agencies will protect information from disclosure to the greatest extent possible consistent with the Freedom of Information Act, the Privacy Act of 1974, any other applicable laws and applicable compulsory processes (such as a court order). All agencies will notify the AZLink regional agency immediately upon becoming aware of any lawsuit, proceeding, or information demand brought in state or federal court seeking access to agency information, in either verbatim or derivative form.
- F. Access is trackable and reportable through the information system. The regional agency will ensure that client agencies restrict access to information obtained under the terms of this MOU to only those authorized supervisors, law enforcement officers, probation and surveillance officers, intelligence research specialists, employees, agents, representatives, task force members, contractors/subcontractors, or consultants who require access to the

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information described in this MOU to perform their official duties. There shall be no access of unauthorized personnel to the information contained in or accessible through the RLES.

- G. To the extent that the RLES contains information covered by the Bank Secrecy Act (31 U.S.C. § 5311 et. seq.), each participating regional and client agency will sign a separate MOU acknowledging that they will not further disseminate such information to any party without prior written authorization from Immigration and Customs Enforcement (ICE). ICE will provide each agency a standard MOU containing this acknowledgment. The failure of any agency to sign the MOU will result in all Bank Secrecy Act information being removed from the RLES.
- H. All participating agencies acknowledge that information, including analytical products derived therefrom, may not be used as a basis for action or disseminated for any other purpose or in any other manner outside the agency that accessed the information, unless that agency first obtains the express permission given in writing from the owning agency. Specifically included within this prohibition is any inclusion of information in an official investigative or case file, or any use of information in the preparation of judicial processes such as affidavits, warrants, or subpoenas. Agency users of information may not print or electronically retain information without obtaining permission from the owning agency. When information is summarized or otherwise documented, the AZLink regional or client agency will document the owning agency.
- I. All participating agencies are responsible for ensuring that their supervisors, law enforcement officers, probation and surveillance officers, intelligence research specialists, employees, agents, representatives, task force members, contractors/subcontractors, or consultants with access to the information are properly advised of the rules governing the handling of data, including specialized handling necessary for data on citizens and lawful permanent residents of the United States and are fully apprised of the terms and conditions of this MOU.
- J. When alerted to any attempts to gain inappropriate access to data, client agencies shall report such events in a timely manner to the AZLink regional agency. Reporting such events should be done as soon as reasonably practicable, and in any case, not later than 24 hours after the client agency becomes aware of any breach of privacy or security.

ARTICLE VII. FINANCIAL CONSIDERATIONS

- A. Each regional and client agency is responsible for the cost of acquiring and maintaining the necessary hardware and licensed software to participate in the AZLink system. Nothing included in this MOU requires any agency to fund the activities of any other agency.
- B. Regional and client agencies may individually or collectively apply for grant funding. Any joint grant funding which may result from such applications will be considered to be outside of this MOU. Such monies shall in no way be controlled by or fall under the jurisdiction of this MOU.

ARTICLE VIII. INSURANCE

No insurance is required for any government agencies. Any contractor performing duties under this MOU must comply with the insurance requirements for contracts with Arizona State

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agencies. The insurance requirements are available from the Arizona Department of Risk Management.

ARTICLE IX. INDEMNIFICATION

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") to the extent allowed by law from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, the parties shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this MOU, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the parties' contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

ARTICLE X. E-VERIFICATION OF EMPLOYEES

The parties mutually warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:

- (1) They and their subcontractors, if any, warrant their compliance with A.R.S. § 41-4401 and all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A, and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer;
- (2) A breach of a warranty under subsection (1) above shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
- (3) The parties mutually retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty provided under subsection (1) above and that the contractor agrees to make all papers and employment records of said employees(s) available during normal working hours in order to facilitate such an inspection; and

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- (4) That nothing herein shall make any contractor or subcontractor an agent or employee of either of the contracting governmental entities.

ARTICLE XI. REQUIRED TERMS FOR ACCESS TO PROBATION RECORDS

Client and regional agencies must agree to the terms listed in the Arizona Code of Judicial Administration section 1-606.

ARTICLE XII. NON-DISCRIMINATION

Both parties shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Both parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

ARTICLE XIII. APPLICABLE LAW; LEGAL OBLIGATIONS

This MOU shall be construed in accordance with the laws of the State of Arizona. This MOU does not relieve either party of any obligation or responsibility imposed upon it by law.

ARTICLE XIV. ARBITRATION

Except for processes for handling of disputes that are addressed elsewhere in this MOU, the parties to this MOU agree to resolve other disputes arising out of or relating to this MOU through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes. The resolution may result in termination of the MOU.

ARTICLE XV. WAIVER AND MODIFICATION

None of the provisions of the MOU may be waived, changed or altered except in writing signed by both parties.

ARTICLE XVI. AVAILABILITY OF FUNDS

Every payment obligation of either party under this MOU is conditioned upon the availability of funds allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this MOU, this MOU may be terminated by either party or any other agency of the State of Arizona at the end of the period for which funds are available. No legal liability on the part of either party or any other agency of the State of Arizona for any payment may arise under this MOU until and only as long as funds are made available for performance of this MOU. If the necessary funds are not made available, then that party shall provide written notice to the other party and may cancel this MOU without further obligation. No liability shall accrue to either party or any other agency of the State of Arizona in the event this provision is exercised, and neither party nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including payments or damages for purchases or subcontracts entered into in anticipation of funding.

