MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOMELAND SECURITY AND THE AZLINK COLLABORATING LAW ENFORCEMENT AGENCIES REGARDING INFORMATION SHARING

PARTIES.

1. PARTIES. The Parties to this Memorandum of Understanding (MOU) are the Maricopa County Sheriff's Office, Phoenix Police Department, City of Mesa Police Department and Tucson Police Department, hereafter referred to collectively for purposes of this MOU only as the AZLink Collaborating Law Enforcement Agencies or the Agencies, and the U.S. Department of Homeland Security, hereafter referred to as DHS or the "Department".

2. DHS has delegated the Assistant Secretary for U.S. Immigration and Customs Enforcement ("ICE") as the executive lead for the Law Enforcement Information Sharing Service ("LEISS"), and ICE is thereby authorized to sign this MOU on behalf of DHS. ICE has designated the ICE Office of Investigations' Special Agent in Charge (SAC), Phoenix, or his or her designee, to serve as the DHS authorized representative for the AZLink Information Sharing Collaboration.

AUTHORITY.

3. DHS is authorized to enter into this MOU under the following provisions:

- Executive Order 12333, United States Intelligence Activities. This Executive Order provides for the use of all reasonable and lawful means to ensure that the United States will receive the best intelligence available.

- Memorandum of Understanding between the Intelligence Community, Federal Law Enforcement Agencies, and Department of Homeland Security Concerning Information Sharing, dated March 4, 2003. This Memorandum of Understanding provides a framework and guidance to govern information sharing, use, and handling between federal law enforcement agencies.

- Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, dated October 27, 2005. This Executive Order addresses access to terrorism-related information by agencies with counter-terrorism functions.

- Homeland Security Presidential Directive (HSPD) -11, Terrorist-Related Screening Procedures, dated August 27, 2004.

- 8 U.S.C. § 1105, Liaison with Internal Security Officers; Data Exchange. This section of law authorizes DHS to maintain direct and continuous liaison with internal security officers of the federal government for the purpose of obtaining and exchanging information for use in enforcing the provisions of the Immigration and Nationality Act (INA) in the interest of the internal security of the United States.

- Section 701 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, PL 107-56 (2001 HR 3162). This section of law authorizes the establishment and operation of information sharing systems to enhance the investigation and prosecution abilities of

participating law enforcement agencies.

- 8 U.S.C. § 1103(a)(4). This section of law authorizes DHS/ICE employees to perform and exercise powers, privileges, and duties relating to immigration enforcement imposed by Title 8.
- 8 U.S.C. § 1357(a). This section of law authorizes DHS/ICE employees to take specific actions in the investigation of violations of the immigration laws.
- 19 U.S.C. § 1589a. This section of law authorizes DHS/ICE employees to take specific actions to enforce the Customs laws and investigate violations thereof.

4. The AZLink Collaborating Law Enforcement Agencies that are certified and authorized by the State of Arizona are authorized to enter into this MOU under one or more of the following provisions of the Arizona Revised Statutes: Sections 9-499.01, 9-240, 9-276, 11-201, 11-441, 11-951 through 11-954, 13-3872, and Title 11, Chapter 7, Article 3. The Agencies will abide by the requirements of Arizona Revised Statute § 41-1750, controlling collection, storage, and dissemination of Arizona criminal history records and related criminal justice information.

PURPOSE/BUSINESS CASE.

5. The purpose of this MOU is to set forth terms by which DHS and the AZLink Collaborating Law Enforcement Agencies will share law enforcement information, and also to define policies and procedures governing the ownership and use of shared information.

6. The objective of the collaborative peer relationship described in this MOU is to facilitate sharing of regional law enforcement information among federal, state, local, and tribal law enforcement partners of the AZLink Information Sharing Collaboration. 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 for the Nation's critical infrastructure in Arizona.

7. This MOU will not affect any pre-existing, independent relationships or obligations between the Parties or between the Parties and any third parties.

DATA.

8. DHS will share both structured and unstructured data with the AZLink Collaborating Law Enforcement Agencies, but sensitive information, as defined by DHS, will be withheld. DHS will provide this structured and unstructured data in a format that can be easily loaded into the AZLink data warehouse, henceforth referred as the AZLink System, for sharing with the AZLink Collaborating Law Enforcement Agencies.

PRIVACY AND ACCOUNTABILITY.

9. The Agencies will provide DHS online access to logs in real (or replication) time, indicating the record access history (i.e., who accessed, time, and frequency). This shall include providing DHS access to search log information using Agency systems. DHS will disclose this information only to authorized individuals. The Agencies will provide access to those Agency employees who can demonstrate a law enforcement need to know the information contained in the logs. DHS shall provide the Agencies with appropriate training regarding the proper treatment of such information.

DHS RESPONSIBILITIES.

10. DHS will provide to the AZLink Collaborating Law Enforcement Agencies identifying information regarding all DHS users with access to the AZLink System, for the purpose of name checks and security auditing. The Agencies will treat as confidential all identifying information relating to DHS users, and will share such information only with appropriate security personnel of DHS or the AZLink Collaborating Law Enforcement Agencies.

11. With respect to the information obtained from the AZLink System pursuant to this MOU, DHS will exercise the degree of care appropriate for the protection of sensitive law enforcement information. DHS will restrict access to such information to supervisors, law enforcement officers, intelligence research specialists, employees, detailees, agents, representatives, task force members, contractors/subcontractors, or consultants with an official need for such information. DHS acknowledges that unauthorized disclosure of AZLink System information could reasonably be expected to interfere with enforcement proceedings.

12. When alerted to any attempts to gain inappropriate access to data, DHS shall report such events in writing and within three (3) working days, not to include holidays or weekends, to the AZLink Collaborating Law Enforcement Agency or Agencies. DHS shall notify the AZLink Collaborating Law Enforcement Agency or Agencies as soon as reasonably practicable, and in any case not later than 24 hours after DHS becomes aware of any breach of the privacy or security of information accessed through the AZLink System.

13. DHS will permit accredited Agency personnel with the AZLink Collaborating Law Enforcement Agencies querying capability to access and use DHS information provided via the AZLink System. Initially, U.S. Immigration and Customs Enforcement (ICE) will be the sole DHS contributing component, however, DHS may approve additional contributing components in the future, which will be bound by the terms of this MOU.

14. DHS will have access to participating Agency data through the AZLink System via a secure Internet connection. DHS is responsible for providing and maintaining its own Internet connectivity to the AZLink System.

15. DHS retains sole ownership of, sole responsibility for, and exclusive control over the content of its information that is accessed via the AZLink System, and may at any time update, correct, or delete that information.

16. DHS has the sole responsibility to ensure that information it makes available to the Agencies via the AZLink System was not obtained and is not being maintained in violation of any applicable federal, state, or local law applicable to DHS. In addition, DHS has sole responsibility and accountability for ensuring compliance with all laws, regulations, policies, and procedures applicable to the posting of DHS information for access via the AZLink System.

17. DHS has the duty, sole responsibility, and accountability to make reasonable efforts to ensure that its information is accurate, complete, timely, and relevant. Should an Agency receive a challenge to or reasonable question about the accuracy of DHS information, the Agency will notify DHS in writing as soon as practicable.

18. DHS acknowledges that AZLink System information may be accessed and used by DHS for official law enforcement and national security purposes only. AZLink System information cannot be accessed or used for any other purpose, including general licensing, employment, eligibility for federal or state benefits, and background investigations. The AZLink Collaborating Law Enforcement Agencies will share AZLink System information with DHS under an express promise of confidentiality. DHS will protect such 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). DHS will notify the AZLink Collaborating Law Enforcement Agency or Agencies immediately and in any case not later than 24 hours upon becoming aware of any lawsuit or preceding information demand brought in state or federal court seeking access to Agency information, in either verbatim or derivative form.

19. DHS acknowledges that AZLink System information, including any analytical products derived therefrom, may not be used as a basis for action or be disseminated outside DHS for any purpose or in any other manner, unless DHS first obtains the written permission of the Agency or Agencies that contributed the information in question. Specifically included within this prohibition is any inclusion of AZLink System information in an official case file, and any use of AZLink System information in the preparation of judicial processes such as affidavits, warrants, or subpoenas. DHS users of AZLink System information may not print or electronically retain AZLink System information without obtaining the appropriate Agency's written permission. When AZLink System information is summarized or otherwise documented, DHS users shall indicate that the information was obtained from the AZLink System.

20. Notwithstanding the requirement in the preceding paragraph that AZLink System information not be used as a basis for action or be disseminated without first obtaining the written permission of the appropriate Agency, in accordance with and to the extent permitted by applicable law, court process, or applicable guidelines, DHS may immediately disseminate AZLink System information without such permission if DHS determines that:

(a) There is an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and

(b) It is necessary to disseminate such information without delay to any appropriate recipient for the purpose of preventing or responding to such a threat, danger, or harm.

DHS shall immediately, and in any case not later than 24 hours, notify the AZLink Collaborating Law Enforcement Agency or Agencies of any dissemination made under this exception.

21. Any requests for DHS reports or information from anyone other than a Party to this MOU or an Agency will be directed to DHS.

AZLINK AGENCY RESPONSIBILITIES.

22. Before access to DHS information may be granted, the AZLink Collaborating Law Enforcement Agency or Agencies will certify to DHS that AZLink System Agency users have undergone a background check consistent with state or local department requirements, so long as, at a minimum, those requirements included a criminal history and national fingerprint check.

23 The AZLink Collaborating Law Enforcement Agency or Agencies will provide to DHS identifying information on all AZLink System users with access to DHS information for the purpose of name checks and security auditing. DHS will treat as confidential all identifying information relating to AZLink System users, and will share such information only with appropriate security personnel of DHS or the AZLink Collaborating Law Enforcement Agency or Agencies.

24. With respect to the information obtained from the AZLink System pursuant to this MOU, the Agencies will exercise the degree of care appropriate for the protection of sensitive law enforcement information. The Agencies will restrict access to such information to supervisors, law enforcement officers, intelligence research specialists, employees, agents, representatives, task force members, contractors/subcontractors, or consultants with an official need for such information. The Agencies acknowledge that unauthorized disclosure of AZLink System or DHS information could reasonably be expected to interfere with enforcement proceedings.

25. The AZLink Collaborating Law Enforcement Agency or Agencies will restrict access to information obtained under the terms of this MOU to only those authorized supervisors, law enforcement officers, intelligence research specialists, employees, agents, representatives, task force members, contractors/subcontractors, or consultants who require access to the information described in this MOU to perform their official duties. The AZLink Collaborating Law Enforcement Agency or Agencies shall provide no unauthorized access to the information contained in or accessible through the AZLink System.

26. The AZLink Collaborating Law Enforcement Agency or Agencies will properly advise all supervisors, law enforcement officers, intelligence research specialists, employees, agents, representatives, task force members, contractors/subcontractors, or consultants of the Agencies

with access to the information regarding the rules governing the handling of data including specialized handling necessary for data on citizens and lawful permanent residents of the United States.

27. The AZLink Collaborating Law Enforcement Agencies are responsible for the setup and maintenance of their own user accounts for the AZLink System.

28. The AZLink Collaborating Law Enforcement Agencies will have an audit capability that will log the date, time, subject, and originating account of all user queries of the AZLink System. The AZLink Collaborating Law Enforcement Agencies will maintain these audit logs for five years or for the life of the records accessed, whichever is longer. The AZLink Collaborating Law Enforcement Agencies will share all audit information with DHS upon request.

29. When alerted to any attempts to gain inappropriate access to data, AZLink Collaborating Law Enforcement Agencies shall report such events to DHS in writing and within three (3) working days, not to include holidays or weekends. The Agency shall notify DHS as soon as reasonably practicable, and in any case not later than 24 hours after the Agency becomes aware of any breach of the privacy or security of DHS information.

30. The AZLink Collaborating Law Enforcement Agencies will permit DHS users of the AZLink System to access and use information in the AZLink System in the same manner as member Agencies. The AZLink Collaborating Law Enforcement Agencies will arrange for appropriate training for DHS users.

31. Agencies will have access to DHS data through the AZLink System via a secure Internet connection. Agencies are responsible for providing and maintaining their own Internet connectivity to the AZLink System.

32. Each Agency retains sole ownership of, sole responsibility for, and exclusive control over the content of the information that it contributes to the AZLink System, and it may at any time update, correct, or delete the information that it contributes.

33. Each Agency has the sole responsibility for ensuring that information it contributes to the AZLink System was not obtained and is not maintained in violation of any federal, state, or local law applicable to that Agency. In addition, each Agency has the sole responsibility and accountability for ensuring compliance with all laws, regulations, policies, and procedures applicable to its entering and sharing of information through the AZLink System.

34. Each 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 the AZLink System. Should DHS receive a challenge to or reasonable question about the accuracy of Agency information, DHS will notify the Agency in writing as soon as practicable.

35. Any requests for reports or information in the AZLink System from anyone other than a Party to this MOU or an AZLink Collaborating Law Enforcement Agency or DHS component will be directed to the appropriate Agency.

36 The AZLink Collaborating Law Enforcement Agencies acknowledge that DHS information may be accessed by the Agencies for official criminal law enforcement and national security purposes only. DHS information cannot be accessed or used for any other purpose, including general licensing, employment, eligibility for federal or state benefits, or background investigations. DHS information may not be disclosed in response to a request made under any state or local access law. With the concurrence of DHS, DHS information will be disclosed only in accordance with federal law, including the Freedom of Information Act, the Privacy Act of 1974, the regulations at 6 C.F.R. § 5.41, et. seq., any other public access law, and applicable compulsory process (such as a federal court order). Agencies will notify DHS immediately and in any case not later than 24 hours upon becoming aware of a lawsuit or a preceding information demand brought in state court seeking access to DHS information, in either verbatim or derivative form.

37. To the extent that DHS information contains information covered by the Bank Secrecy Act, (31 U.S.C. § 5311 et. seq.) all Parties who sign this agreement acknowledge and agree that they will not further disseminate such information to any party without prior written authorization from DHS.

38. The AZLink Collaborating Law Enforcement Agencies acknowledge that DHS 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 written permission of DHS. Specifically included within this prohibition is any inclusion of DHS information in an official investigative or case file, or any use of DHS information in the preparation of judicial processes such as affidavits, warrants, or subpoenas. Agency users of DHS information may not print or electronically retain DHS information without obtaining DHS's written permission. When DHS information is summarized or otherwise documented, the AZLink System user shall indicate that the information was obtained from DHS.

39. Notwithstanding the requirement in the preceding paragraph that DHS information not be used as a basis for action or disseminated without first obtaining the written permission of DHS, in accordance with and to the extent permitted by applicable law, court process, or applicable guidelines, an Agency can immediately disseminate DHS information without such permission if the Agency determines that:

(a) There is an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and

(b) It is necessary to disseminate such information without delay to any appropriate recipient for the purpose of preventing or responding to such a threat, danger, or harm.

The Agency disseminating the DHS information shall immediately, and in any case not later than 24 hours, notify DHS of any dissemination made under this exception.

40. Upon DHS's written request, or if the MOU is terminated, the Agencies shall follow DHS's written instructions concerning the return, transfer, and/or destruction of all DHS information. Within 14 calendar days of receiving of DHS's written instructions, the Agencies shall furnish DHS with written confirmation that they have complied with DHS's written request.

POINTS OF CONTACT.

DHS Programmatic Point of Contact (POC)
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Maricopa County Sheriff's Office Programmatic Point of Contact (POC)
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Mesa Police Department Programmatic Point of Contact (POC)
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OTHER PROVISIONS.

41. Nothing in this MOU is intended to conflict with current law or regulation or the directives or other issuances of the Parties. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. The Parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

42. If an Agency withdraws from the AZLink System, the AZLink Collaborating Law Enforcement Agency will provide written notice to DHS at least 30 days prior to the Agency's effective date of withdrawal.

43. Each Party is responsible for purchasing and maintaining its own equipment and facilities in relation to this MOU. Unless otherwise provided herein or in an addendum, each Party shall bear its own costs in relation to this MOU. Expenditures will be subject to applicable budgetary processes and availability of funds pursuant to applicable laws and regulations, including the Anti-Deficiency Act, 31 U.S.C. § 1341. The Parties expressly acknowledge that this MOU in no way implies that any funds will be appropriated for such expenditures.

44. The assigning AZLink Collaborating Law Enforcement Agency remains solely responsible for the supervision, work schedules, performance appraisals, compensation,

overtime, vacations, retirement, expenses, disability, and all other employment-related issues incident to the assignment of its personnel to AZLink System functions.

45. Unless specifically addressed by the terms of this MOU, the Parties acknowledge responsibility for the negligent or wrongful acts or omissions of their respective supervisors, law enforcement officers, intelligence research specialists, employees, detailees, agents, representatives, task force members, contractors/subcontractors, or consultants, but only to the extent that they would be liable under the laws of the jurisdiction(s) to which they are subject.

46. All Parties are hereby on notice that this MOU is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511. The Parties agree that the State of Arizona Executive Order 99-4 is incorporated by reference and is applicable, unless exempted or superseded by other applicable law(s).

47. This MOU is between the Parties and is not intended to create or confer, and does not create or confer, on any person or entity any right or benefit, substantive or procedural, enforceable by law or otherwise.

48. Agencies will duly report to DHS in writing any instance in which the AZLink System or DHS information is used in an unauthorized manner. Any Agency that is determined by DHS to be in systemic or repeated violation of applicable laws and procedures governing access to and use of the AZLink System or DHS information may be denied access to the AZLink System.

49. DHS will duly report to the AZLink Collaborating Law Enforcement Agency or Agencies in writing any instance in which AZLink System information is used in an unauthorized manner. If DHS is found by the AZLink Collaborating Law Enforcement Agency or Agencies to be in systemic or repeated violation of applicable laws and procedures governing access to and use of AZLink System information, DHS may be denied access to the AZLink System.

50. Any supervisor, law enforcement officer, intelligence research specialist, employee, detailee, agent, representative, task force member, contractor/subcontractor, or consultant of any Party, who, by virtue of his or her employment or official position with any Party, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by law, agreement, rules, or regulation and who, knowing that the disclosure of the information is prohibited, willfully discloses the material in any matter, including oral communication, may be prosecuted and/or fined under any applicable state or federal law.

51. The Federal government has initiated an effort to consolidate and standardize the many markings used for the identification, safeguarding, and dissemination of Sensitive But Unclassified (SBU) information (e.g., For Official Use Only (FOUO), Law Enforcement Sensitive (LES), etc.), into a single, uniform and consistent framework applicable throughout the government. The proposed framework, when implemented, will eliminate the use of all previously used markings applied by Federal agencies (with limited exceptions) in favor of a

"Controlled Unclassified Information" (CUI) framework that will simplify and standardize the marking, safeguarding, and dissemination protocols for eligible information. Should the CUI Framework be implemented after the execution of this MOU and before its expiration, the CUI Framework, upon written notification from the Department to the AZLink Collaborating Law Enforcement Agencies or Agency, will become applicable to all information contained in or obtained from through LEISS. Concurrent with the written notification, the Department will issue a modification to this MOU citing the security standards for the CUI Framework. The written notification and modification will be appended to and become part of this MOU and, unless necessary to address other issues, the MOU need not be revised or reissued.

52. The Parties are to designate responsible officials to meet annually, or at the request of either Party, to discuss and review the implementation of this MOU. Failure of the Parties to conduct this review, however, will not result in the termination of the MOU. Disagreements over implementation of the MOU are to be resolved through consultation between the Parties.

EFFECTIVE DATE.

53. This MOU is effective upon the signature of the representatives of the Parties and will continue indefinitely, unless modified or terminated as provided by Paragraphs 54, 55, and 56.

MODIFICATION.

54. Except as otherwise provided, this MOU may be amended by the mutual written consent of the Parties at any time. It is understood that any request for modification will be in writing and that any amendment will enter into effect only when all Parties have concurred in writing.

TERMINATION.

55. This MOU may be terminated at any time upon the mutual written consent of the Parties. In the event that the Parties consent to terminate this MOU, the Parties will consult prior to the date of termination to ensure termination on the most economical and equitable terms.

56. Any Party may terminate this MOU upon 30 days' written notice to the other Parties. Such notice will be the subject of immediate consultation by the Parties to decide upon the appropriate course of action. In the event of such termination, the following will apply:

(a) The terminating Party will continue participation, financial or otherwise, up to the effective date of termination;

(b) Each Party will pay the costs it incurs as a result of the termination; and

(c) All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during a Party's participation in this MOU shall survive any termination.

In witness thereof, the Parties have executed this MOU by the signatures of the duly authorized officials from the Department of Homeland Security and from the AZLink Collaborating Law Enforcement Agency or Agencies.

Date 12/8/08

John P. Torres
Acting Assistant Secretary
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street S.W.
Washington, D.C. 20024

Date 12/16/08

Shelly L. Bunn
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Approved as to form

ACTING City Attorney

Date 12/18/08

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Date 12-16-08

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Date 12-23-08

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