

Memorandum of Understanding
Between
The State of Arizona Department of Emergency and Military Affairs-Arizona National Guard
And
The County of Cochise, Arizona

1. Recitals:

- a. Arizona National Guard Cyber Joint Task Force (hereinafter “AZNG CJTF”) is a subpart of the Arizona National Guard, an agency of the State of Arizona and operating pursuant to Title 26 of the Arizona Revised Statutes or Title 32 of the U.S. Code.
- b. The County of Cochise, Arizona (hereinafter “County”) being a municipality of the State of Arizona and operating pursuant to Title 11 of the Arizona Revised Statutes.
- c. AZNG CJTF desires to consult and build a partnership with the County and assist the County (subject to a proper request and authorization) pertaining to cyber operations, as outlined in this (“MOU”), which will also benefit the County’s cyber operations.
- d. County desires to consult with and build a partnership with AZNG CJTF and is seeking assistance from AZNG CJTF regarding skills, tactics, techniques, and procedures pertaining to cyber operations, as outlined in this Memorandum of Understanding (“MOU”), which also will benefit the AZNG CJTF’s cyber operations.
- e. AZNG CJTF conducts training in accordance with Department of Defense Cyber Strategy (2015) and at the direction of the Governor of the State of Arizona.

Based upon the mutual promises contained in this MOU, the Parties hereby agree to be bound as follows:

2. Purpose. The purpose of this MOU is to establish policies and procedures under which AZNG CJTF will consult with the County and/or assist the County (subject to a proper request and authorization) with regard to cybersecurity. In furtherance of this purpose, the Parties agree:
 - a. That AZNG CJTF consultation and/or assistance may include multi-agency, federal, state, and local cooperative agencies and law enforcement activities as mutually agreed to from time to time between the Parties or as mandated by State and Federal laws and regulations.
 - b. That the purpose of AZNG CJTF participation in these activities is consultation and/or assistance with the incidental benefit to the training of its personnel.
 - c. That any consultation provided by AZNG CJTF under this MOU other than in response to a request under the Arizona Mutual Aid Compact shall be provided to the County at no cost or reimbursement, unless otherwise agreed to in writing.
 - d. That any consultation provided or received by AZNG CJTF are in furtherance of Department of Defense Cyber Strategy (2015) and the directions of the Governor of the State of Arizona.

3. Scope of Consultation and/or Assistance. County and AZNG CJTF intend to consult, and AZNG CJTF intends to provide assistance to County (subject to a proper request and authorization), as outlined in Exhibit A. The Parties agree that:

a. Additional modifications and amendments to Exhibit A may be executed in the future. Any such changes will be made in accordance with Section 7 of this MOU.

b. This MOU shall not take effect until all authorized signatories have signed this MOU.

c. County shall not request, and the AZNG CJTF shall not provide, any services not in compliance with all state and federal laws regulating the access to, and utilization of, cyber information.

d. County shall not provide, and the AZNG CJTF shall not request, any services not in compliance with all state and federal laws regulating the access to, and utilization of, cyber information.

e. County hereby grants the AZNG CJTF explicit permission to access all aspects of all of its system including attempts to gain physical access or to conduct deceptive social engineering to obtain certain information if indicated in Exhibit A.

f. The Parties acknowledge that both Parties' records are subject to Arizona public records law. The Parties further agree:

i. Any data collected from the County's system that is not necessary to support the conclusions, findings or items in its final report shall be returned to the County or purged from AZNG CJTF.

ii. AZNG CJTF shall be allowed to maintain any reports, statistical data, outputs of AZNG CJTF procedures and software and other data collected.

iii. County acknowledges that the AZNG CJTF may notify the National Guard Bureau that AZNG CJTF provided consultation and/or assistance to County of Cochise, and may provide National Guard Bureau with information regarding the consultation and/or assistance provided by AZNG CJTF to County of Cochise.

g. County will provide AZNG CJTF with all system(s) access and all information necessary for the AZNG CJTF to provide assistance as set forth in this MOU. AZNG CJTF agrees to access County's systems solely for the purpose of providing assistance as set forth in this MOU.

h. County shall identify a Point of Contact ("POC"). The POC will coordinate with and support AZNG CJTF during such consultation and/or assistance.

4. AZNG CJTF Proprietary Intellectual Property Methods and Protocols. County understands and acknowledges that the AZNG CJTF may utilize technology, methods and protocols that AZNG CJTF considers sensitive and/or proprietary. County hereby agrees that it shall not maintain or copy any such technology, whether hardware, software or writings to include but not limited to manuals and checklists utilized by the AZNG CJTF, and shall ensure that no such technology shall remain on its systems without the express prior written consent of the AZNG CJTF signed by an authorized agent of AZNG CJTF.

5. Third Party Permissions and Authorizations. In the event that County uses equipment or software owned or operated by third parties, County represents and warrants that it either already has, or will obtain prior to any AZNG CJTF consultation and/or assistance, all licenses, authorizations and permissions from such third

party entities necessary for AZNG CJTF to consult and/or assist County as specified herein and that such consultation and/or assistance is not in conflict with the licenses, authorizations or permissions. Further, in the event that County is connected to any third-party systems, County represents and warrants that all necessary notices have been given and all necessary permissions have been obtained.

6. Term. This MOU shall commence on the date of the last signature herein below, and shall end ten (10) years from such date unless otherwise terminated as set forth in this MOU.

7. Modifications to this MOU. Any amendments or changes to this to this MOU must be in writing and executed by authorized representatives of both Parties.

8. Termination. Either Party may terminate this MOU by giving written notice to the other Party. Early termination will require a minimum of 48 hours-notice, personally delivered or by email. The 48-hour termination notice period will begin upon confirmed receipt of the notice by the non-terminating Party. County shall not cut off access to its system until acknowledgment of such termination has been given by the AZNG CJTF unless County reasonably believes immediate cut-off of access is necessary to maintain the integrity of County systems and ensure no interruption in County operations.

9. Disclaimer of Liability. In no event shall the Arizona National Guard, the AZNG CJTF, or its members, agents, servants, independent contractors or suppliers be liable to County or any third parties affected by the actions undertaken by AZNG CJTF pursuant to this MOU, for any damages of any kind whatsoever, including, but without limitation, damages for loss of profits, business interruption, loss of information, disclosure of confidential or private information, or other losses, including pecuniary loss, arising out of training conducted pursuant to this MOU, or for special, indirect, consequential, incidental, or putative damages however caused, and regardless of the theory of liability. Certain types of claims not arising out of the actions undertaken by AZNG CJTF pursuant to this MOU may be allowed to be made against the Arizona National Guard or the Federal Government (depending on the nature of the duty of the members of the Arizona National Guard) by third parties for common torts while the employees of AZNG CJTF are acting within the scope of their employment as allowed by State and Federal law, such as the Arizona Governmental Tort Claims Act (A.R.S. § 12-820, et seq.) the Federal Tort Claims Act (28 U.S.C. § 2671, et seq.), and the National Guard Claims Act (32 U.S.C. § 715, et seq.).

10. Severability. In the event that any provision or section herein is held invalid or unenforceable, the remaining provisions and sections shall remain in full force and effect.

11. No Indemnification. Neither Party shall indemnify or hold harmless the other Party.

12. Funding. Every obligation of the AZNG CJTF under this MOU is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the Legislature resulting in funds no longer being available for the continuance of this MOU, this MOU may be terminated by the AZNG CJTF or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to the AZNG CJTF or any other agency of the State of Arizona in the event this provision is exercised, and neither the AZNG CJTF 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.

13. Conflict of Interest. The requirements of A.R.S. § 38-511 apply to this MOU. Either Party may cancel this MOU, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this MOU on behalf of that Party is, at any time while this MOU or

any extension is in effect, an employee, agent or consultant of the other Party with respect to the subject matter of this MOU.

14. Governing Law. This MOU shall be construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws provisions.

15. Dispute Resolution. The Parties agree to resolve all 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.

16. Forum. The forum for any dispute arising out of this MOU shall be the Superior Court in Maricopa County, Arizona.

17. Entire Agreement. This MOU constitutes the entire understanding between the Parties and supersedes any other written or oral agreement between the Parties with respect to the subject matter of this MOU.

18. Rule of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this MOU.

19. Further Actions. Each Party hereby agrees to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this MOU.

20. Compliance with All Applicable Law. The Parties agree to comply with all federal, state or local laws, rules or regulations applicable to the subject matter of this MOU.

21. Independent Status. The Parties are independent contractors, and nothing contained in this MOU creates a relationship of partnership, joint venture, agency, or employment between the Parties or any of their employees, officers, agents, or contractors.

22. Execution. This MOU may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute a single instrument. A signature on a counterpart may be made by facsimile or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature. Further, this MOU may be retained in any electronic format, and all electronic copies thereof shall likewise be deemed to be an original and shall have the same force and effect as an original copy of this MOU.

23. No Third Party Beneficiaries. This MOU will inure exclusively to the benefit of and be binding upon the AZNG CJTF and County of Cochise as the only parties to this MOU, and to their respective successors, assigns, executors and legal representatives. Except as expressly provided in this MOU, nothing in this MOU confers on any person other than the Parties hereto or their respective successors and assigns, any rights, remedies, obligations, or liabilities.

24. Separate Responsibility. Except as expressly provided in this MOU, each Party agrees that, to the extent authorized by law, it will be responsible for its own acts or omissions and the results thereof and will not be responsible for the acts or omissions of the other Party and the results thereof. In the event that either Party becomes aware of any claim made by or expected from a claimant against a Party to this MOU, which claim relates to the subject matter of this MOU, that Party will immediately notify the other Party, and the Parties will share all information regarding such matter and cooperate with each other in addressing the matter.

This Memorandum of Understanding effective on _____ day of _____, 20__.

Arizona National Guard

Signature
Major General Kerry L. Muehlenbeck
The Adjutant General

The County of Cochise, Arizona

Signature
Ann English
Chairman

ATTEST:

APPROVED AS TO FORM:

Tim Mattix
Clerk of the Board

Christine J. Roberts
Chief Civil Deputy County Attorney