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Maricopa County Attorney

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MEMORANDUM

TO: Maricopa County Chiefs of Police
FROM: Mark ~~Paull~~, Chief Deputy
DATE: August 26, 2015
RE: Asset Recovery Memorandum of Understanding

Every year the Maricopa County Attorney's Office enters a Memorandum of Understanding (MOU) with every law enforcement agency conducting asset forfeiture operations in Maricopa County. Attached is the MOU which will be effective September 1, 2015 through August 31, 2016. The MOU will be forwarded to the Chiefs of Police and a courtesy copy will be provided to the Second in Command as well as your department's Legal Advisor. Please have the appropriate personnel review the MOU and retain a copy for your records.

If you have any questions or concerns, please do not hesitate to contact Law Enforcement Liaison Keith Manning at 480-215-6154.

enclosure

MARICOPA COUNTY ATTORNEY'S MEMORANDUM OF UNDERSTANDING

1. SCOPE AND TERM OF MEMORANDUM

1.1 This memorandum reflects the policies and procedures of the Office of the Maricopa County Attorney [hereafter "MCAO"] as it concerns administration of the anti-racketeering revolving fund, as set forth in A.R.S. § 13-2314.03, and related asset forfeiture services provided by MCAO to any requesting agencies [hereafter "Agency"].

1.2 The following policy and procedures are in effect between September 1, 2015, and August 31, 2016.

2. FORFEITURE SUBMITTAL THRESHOLDS

2.1 MCAO will not set any minimum forfeiture submittal thresholds.

2.2 Notwithstanding the language of paragraph 2.1, MCAO reserves the right to decline any Agency submittal, for any reason, and will provide notice of the declination along with the reasons for the declination to the Agency.

3. HANDLING OF PROPERTY PRE-FORFEITURE

3.1 It is the expectation of MCAO that, as soon as practicable after seizure for forfeiture, and as may be further dictated by the provisions of paragraph 3.3, Agency will ensure that any funds that have been seized for forfeiture are placed into the pre-forfeiture account maintained by MCAO pending further order of the court.

3.2 MCAO will take those steps necessary to allocate to the Agency's sub-account identified in Paragraph 7.1, as soon as practicable, any currency deposited into the MCAO pre-forfeiture account for which an order of forfeiture

has not yet been obtained and to do so in such a manner as to clearly identify the allocation as currency submitted for forfeiture but not yet subject to a final order of forfeiture.

3.3 It is the expectation of MCAO that, prior to the deposit into the account pursuant to paragraph 3.1, Agency will take those steps reasonably necessary to protect any evidentiary value the funds described in Paragraph 3.1 may have to any forfeiture or criminal proceeding.

3.4 It is the expectation of MCAO that, as to all personal property seized for forfeiture and over which the Agency has custody, the Agency will take those steps reasonably necessary to preserve the value of such property pending the property's disposition.

3.5 Unless otherwise required by extraordinary circumstance, all real property seized for forfeiture, will be made by "constructive seizure" pursuant to the provisions of A.R.S. § 13-4305(B).

4. FORFEITURE LITIGATION

4.1 MCAO will have the right to control all aspects of the forfeiture action, including but not limited to, the right to decline a submittal; to add or delete property from the submittal; to determine the theory upon which the forfeiture is based; and, to initiate, entertain, and negotiate to conclusion any settlement discussions at any time.

4.2 Notwithstanding the language in paragraph 4.1, MCAO will continue to recognize its partnership with Agency; to give serious consideration to all Agency

concerns; and to communicate to Agency all significant litigation and settlement decisions.

5. HANDLING OF FORFEITED PROPERTY

5.1 MCAO will take those steps necessary to transfer to the Agency's sub-account identified in Paragraph 7.1, as soon as practicable, any currency held in an account maintained by MCAO for which an order of forfeiture has been obtained.

5.2 As to all personal property seized for forfeiture and over which the Agency has custody and for which an order has been obtained, the Agency will take those steps reasonably necessary to comply with the terms of the order, including return of the property or disposition of the property.

5.3 Agency will take all steps reasonably necessary to ensure that any property for which an order of forfeiture has been obtained is liquidated in such a manner as to assure its highest value under the circumstances.

5.4 Agency may wish to place non-cash assets that have been forfeited into service by the Agency. *Agency must provide written notice to MCAO identifying the asset being placed into service. That written notice constitutes certification by the Agency that it has complied with the provisions regarding "property allocated for official use" as contained in A.R.S. § 13-4315(A)(1).*

6. REIMBURSEMENT OF COSTS AND VALUE OF CONTRIBUTION

6.1 As to any forfeiture actions prosecuted by MCAO at Agency's request, MCAO will be reimbursed for its costs and the value of its contribution, as

follows: 20% of the value of all forfeited property, including currency, in all cases; and,

6.2 As to any forfeiture actions not prosecuted by MCAO but for which MCAO was involved, in any way, in the collateral criminal prosecution, 10% of the value of all forfeited property, including currency.

6.3 Notwithstanding the language in paragraph 6.1, on a case-by-case analysis, and only with the consent of Agency, MCAO and Agency may agree to adjust that percentage in order to provide a more equitable reimbursement of costs to, and the value of the contribution by, MCAO.

6.4 EXTRAORDINARY COSTS

6.4.1 Designation.

6.4.1.1 MCAO may designate certain expenses incurred in forfeiture prosecutions as "Extraordinary Prosecution Costs"; or, "Extraordinary Property Management Costs"; or "Extraordinary Investigative Costs" [hereafter referred to collectively as "Extraordinary Costs"].

6.4.1.2 Such designation shall be made by MCAO to the Agency by providing written notice to the Agency's lead forfeiture detective that identifies the specific expense and the extraordinary expense designation by MCAO.

6.4.1.3 MCAO will assume that the Agency has no objection to the extraordinary expense designation if the Agency has not provided written objection within five days of the notice provided pursuant to paragraph 6.4.1.2 above.

6.4.2 Responsibility for Payment

6.4.2.1 MCAO will be responsible for timely payment of those expenses designated "Extraordinary Costs."

6.4.3 Reimbursement for Payment

6.4.3.1 Any expenses finally designated as "Extraordinary Costs" that have been paid by MCAO or the Agency shall be reimbursed out of any funds available as a result of the forfeiture action prior to the calculation for reimbursement of ordinary costs called for in paragraph 6.1.

6.4.3.2 Any expenses finally designated as "Extraordinary Costs" that have not been paid at the conclusion of the forfeiture action shall be paid out of any funds available as a result of the forfeiture action prior to the calculation for reimbursement of ordinary costs called for in paragraph 6.1.

7. COUNTY ANTI-RACKETEERING REVOLVING FUND

7.1 Sub Accounts:

7.1.1 Monies in the Maricopa County Attorney Forfeiture Account shall accrue interest and be held for the benefit of the agencies responsible for the seizure of forfeiture. Interest will be calculated using daily average weighted balances. Each agency will have a separate sub-account within the fund. Each sub-account will have a State and a Federal sub-ledger to insure those funds are kept separate. A monthly activity report will be sent to each sub-account holder.

7.2 Deposits into Revolving Account:

7.2.1 In the event that the Agency is unable to directly deposit funds into the pre-forfeiture account maintained by MCAO, funds should be paid by check,

payable to Maricopa County Attorney Forfeiture Account and sent to Maricopa County Attorney Investigations Division, 301 West Jefferson, Eighth Floor, Phoenix, Arizona, 85003.

7.2.2 Checks for State forfeitures should have a copy of the Court Order of Forfeiture attached, the agency report number (DR) that initiated the forfeitures, and, the case name and number (CR) of any corresponding criminal case on the order.

7.2.3 Checks for Federal forfeitures should have a copy of the DAG-71, the agency report number (DR), and, the criminal case name and number (CR) on the DAG-71.

7.3 Agency requests for funds from the Fund:

7.3.1 An agency requesting funds from its RICO sub-account shall fill out an "Agency Application for RICO Funds" form, and submit it to the RICO Funds Administrator, 301 West Jefferson, Eighth Floor, Phoenix, 85003. A copy of this form is provided in the Appendix. This form must contain the following information:

7.3.1.1 Requesting agency name;

7.3.1.2 Intended use of funds. Check the appropriate box or boxes which are A.C.J.C. expenditure categories for County Attorney reporting and disbursement purposes. Check whether the funds are to come from your State (S) or Federal (F) account and the amount requested. If requesting for more than one (1) category, list the amount for each in the appropriate space to the right;

7.3.1.3 The "Explanation" section. Briefly, but specifically, explain the authorized purpose for each expenditure category checked, this section must never be left blank (See, Distribution of Funds, Section V, for permissible uses). If more space is needed, please attach a separate sheet with a continuation of the information.

7.3.1.4 Payment information should include the total amount requested, the exact payee name that should be on the check, and whether to hold the check for an individual, or the address if it is to be mailed.

7.3.1.5 Signature of the authorized agency representative, certifying the request and the date; and,

7.3.1.6 Typed or printed name of the individual.

7.3.1.7 The original form must be immediately mailed to: RICO Funds Administrator, Maricopa County Attorney's Office, 301 W. Jefferson, Suite 800, Phoenix, Arizona, 85003.

7.4 Authorized Signers for Fund Request.

7.4.1 Each agency shall maintain a current "Authorized Signers" list on file with the Maricopa County Attorney's Office. A suggested example is attached. These signers shall be the only persons authorized to request funds from an agency RICO sub-account, and by doing so, certify that the funds shall be expended pursuant to A.R.S. Sections 13-2314.03(E) and 13-4315(C) only. They further certify that the requesting agency is maintaining appropriate documentation relating to the expenditures and that the funds will not be used to replace or

supplant existing resources. This list should be sent to the Chief Deputy and will be maintained by the RICO Funds Administrator.

7.4.2 The Maricopa County Attorney's Office will handle specific, single item applications from an agency. However, for recurring expenses or because of various internal agency policies, each agency should project their expenditures by category for one (1) quarter and request a single check.

7.4.3 Each agency is responsible for the maintenance of backup documentation on the internal disbursement of these funds for audit purpose.

7.5 REPORTING REQUIREMENTS

7.5.1. Each Agency is responsible for preparing a quarterly report of that Agency's RICO deposits and withdrawals. This report is to be submitted to MCAO RICO Fund Administrator before the 15th of the month following each quarter end. MCAO has the right to withhold disbursements if a report becomes greater than 45 days past due.

8. USE OF FUNDS

8.1 Unless an exemption pursuant to A.R.S. § 13-2314.03(F) or (G) is applicable, the County Attorney shall distribute the monies to the agency within 30 days of application.

8.2 The funds may be used for any one of the uses authorized by law and identified in A.R.S. § 13-2314.03(E) and A.R.S. § 13-4315(C), which provide generally as follows:

8.2.1 Pursuant to A.R.S. Section 13-2314.03(E), State forfeiture funds may be used for Gang prevention programs and for substance abuse prevention and

education programs. In addition, State forfeiture funds may be used for the investigation and prosecution of racketeering offenses as defined in A.R.S. Section 13-2301.

8.2.2 Pursuant to A.R.S. Section 13-4315(C), State forfeiture funds may also be used for expenses necessary to seize, detain, appraise, inventory, protect, maintain, preserve the availability of, advertise or sell property subject to forfeiture. In addition, 13-4315(C) allows forfeiture monies to be used for payment for information or assistance leading to civil or criminal proceedings under Title 13 and for compensation to injured persons as provided in A.R.S. 13-4311.

8.2.3 Forfeiture funds to be used for any purpose permitted by Federal law. Federal funds must be spent for the purposes stated on Federal form DAG-71 which was submitted when you applied for the Federal asset sharing program. The DAG-71 must accompany all Federal funds deposited into the anti-racketeering fund.

8.3. Supplanting Prohibited. RICO funds shall not be used to replace or to supplant the resources of a recipient agency. RICO funds are intended to directly benefit the recipient agency by adding to the resources already available. If RICO funds are used as a replacement or as a substitute for existing resources then they have been used to supplant.

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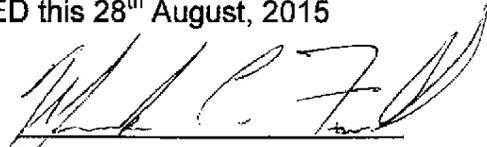
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9. ETHICAL CONSIDERATIONS

9.1 MCAO and AGENCY will be familiar with those principles contained within the *National Code of Professional Conduct for Asset Forfeiture* and the *District Attorneys Association Guidelines for Civil Asset Forfeiture*. A copy of these documents is attached and training on these principles is available from MCAO upon request.

DATED this 28th August, 2015

By:



Mark Faul
Chief Deputy County Attorney
Maricopa County Attorney's Office

ATTEST:

City Clerk

Approved as to form



City Attorney

Appendix C: National Code of Professional Conduct for Asset Forfeiture

1. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
 2. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.
 3. Whenever practicable (excluding border searches, exigent circumstances, etc.) and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.
 4. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.
 5. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.
 6. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.
 7. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations process of that entity.
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8. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
 9. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
 10. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.
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**Appendix D:
National District Attorneys Association
Guidelines for Civil Asset Forfeiture⁸⁴**

1. The removal of unlawfully obtained proceeds of criminal activity and the elimination of the instrumentalities used to commit crimes are the principal goals of asset forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation or prosecution of criminal offenses.
 2. Where multiple agencies in a geographic region have jurisdiction to pursue asset forfeiture, every effort should be made to cooperate to advance the public interest.
 3. Every government entity with the authority to seize property should ensure that its asset forfeiture program provides for: (a) Prompt prosecutorial review of the circumstances, and propriety of the seizure; (b) Timely notice of seizure to interest holders of seized property; and (c) Expedition resolution of ownership claims and a rapid release of property to those entitled to the return of the property.
 4. Absent exigent circumstances, a judicial order is advisable for all seizures of real property. When real property in residential use is sought to be forfeited, the least intrusive means that will preserve the property for forfeiture and protect the public should be employed. A notice of *lis pendens* or an order restraining alienation should suffice to preserve the government's interest in forfeiture pending final judicial determination of the forfeiture action.
 5. Every entity retaining forfeited property for official law enforcement use should ensure that the property is subject to controls consistent with those applicable to property acquired through the normal appropriations process.
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6. No seized property should be used without judicial authorization and/or supervision. A use order may be obtained from the court in appropriate circumstances. Otherwise the property should not be used unless the forfeiture action has been completed and title to the property has vested in the receiving agency. Forfeited property not used in an undercover capacity should be sold or added to the regular inventory of the agency. All property should be used and disposed of in a manner consistent with the use and disposition of similar property by that agency.
7. The disposition of forfeited property retained by the law enforcement agency should not be determined by any person who directly supervised or exercised discretion in its forfeiture.
8. Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
9. Every seizing agency should maintain seized property to preserve value for successful claimants as well as the taxpayers.
10. To the extent possible, civil forfeiture actions should be initiated as independent cases which are not controlled or influenced by the criminal prosecution. Prosecutors should avoid plea agreements in a criminal case which involve agreements to dismiss forfeiture proceedings. The converse is also true. Prosecutors should avoid settlements in a forfeiture case which involve concessions in a criminal proceeding.



11. Every prosecutor should establish procedures to ensure expeditious resolution of ownership claims if challenges to the asset forfeiture proceeding are made and timely return of the property to the known owner or interest holders if the forfeiture action is dismissed or is unsuccessful.
 12. Salaries and personal benefits of any person influencing or controlling the selection, investigation, or prosecution of forfeiture cases must be managed in such a way that employment or salary does not depend upon the level of seizures or forfeitures in which they participate.
 13. Agency employees and their families should be prohibited from purchasing forfeited property directly or indirectly from the agency, or any property forfeited by any other agency, if the employee participated in any aspect of the investigation or litigation involving that property.
 14. Agencies receiving forfeiture funds should make annual budget requests based on agency funding needs without regard for anticipated or projected asset forfeiture revenues.
 15. Prosecutors should pursue forfeiture actions to further the remedial goals set forth above. A prosecutor should not consider any personal or political advantages or disadvantages or gains or losses that the initiation of a forfeiture action may bring to the prosecutor's office in deciding whether to initiate or dismiss a forfeiture proceeding. Nor should a prosecutor improperly consider the race, gender, social, or economic status of any person in deciding whether to initiate or dismiss a forfeiture proceeding. This guideline should not be read to preclude the initiation of forfeiture proceedings, which contribute to the fulfillment of the official mission of the prosecutor's office.
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CITY OF GLENDALE, an Arizona
municipal corporation



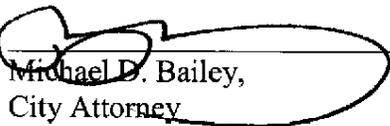
Richard A. Bowers,
Acting City Manager

ATTEST:



Pamela Hanna, (SEAL)
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey,
City Attorney