

**INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE
TOWN OF KEARNY FOR BUILDING PLAN REVIEW AND INSPECTION SERVICES
FOR THE TOWN OF KEARNY, ARIZONA**

This Agreement is made and entered into this 15th day of June 2022, between Pinal County, a political subdivision of the State of Arizona ("Pinal") and the Town of Kearny, a municipal corporation of the State of Arizona ("Kearny").

RECITALS

WHEREAS, Kearny desires to allow its code compliance program, with respect to construction projects within Pinal limits (hereinafter referred to as "Projects") to be performed by trained and certified County personnel, and Pinal, under its Building Code Ordinance, may provide such code compliance services to incorporated towns and cities pursuant to A.R.S. §§ 11-863, *et seq.*; and

WHEREAS, Pinal and Kearny are authorized, pursuant to A.R.S. § 11-952 to enter into intergovernmental agreements,

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, Pinal and Kearny agree as follows:

1. Plans and Specifications/Construction.

- A. For the incorporated area within Kearny, Pinal agrees that it shall review plans, issue applicable permits and inspect construction to verify the builder's conformance with all applicable County codes; the County shall only perform inspections related to County issued permits.
- B. To the extent permitted by law, Pinal agrees to perform requested construction inspections necessary to attain builder conformance with all applicable codes, plans and specifications. Certificates of Occupancy, where appropriate, shall be issued for Kearny by Pinal.
- C. Kearny shall determine if the requested construction falls within a FEMA Special Flood Hazard Area (Flood Zone A, AE, AO, or AH), and, if so, shall refer the applicant to the Pinal County Flood Control District for either a Floodplain Clearance or Floodplain Use Permit. Once a clearance or permit has been obtained from the Pinal County Flood Control District, a copy of that clearance or permit shall be submitted with the building permit application.

- 2. Prevailing Building Code.** Pinal County has adopted, with amendments, the 2018 International Building Codes and 2017 National Electric Codes. In the event of any conflict between Kearny's code and Pinal's code, Pinal's code shall be applied during the inspection and when providing services pursuant to this Agreement.

3. **Building Code Exceptions - Swimming Pools.** Swimming pools, their location and required enclosures, shall be inspected in compliance with the International Pools and Spa Code 2018 Edition and the 2018 International Residential Code as amended.
4. **Zoning Approval.** Prior to any building permit being issued by Pinal for the incorporated area within Kearny limits, Kearny shall provide a zoning clearance or a letter authorizing Pinal to process the building permit application.
5. **Records and Reports.** All inspection records and reports kept by or prepared by Pinal shall be made available to Kearny during normal business hours within a reasonable timeframe following a written public records request from Kearny.
6. **Compensation.** All permit and inspection fees will be paid directly to Pinal by the builders with no additional fees paid to Kearny. Fees shall be based upon the Pinal County Building Permit Fee Schedule. If, during the term of this Agreement or any amendment thereto, Pinal updates its Building Permit Fee Schedule, the updated fees will automatically apply to any services rendered under this Agreement after the fee update becomes effective.
7. **Enforcement and Appeals.** Kearny retains the sole responsibility for enforcement of the building codes beyond the scope of plan review and construction inspection, which obligation expressly includes the enforcement of stop work orders and the implementation of any abatement action called for under the standard codes. Enforcement and prosecution of violations of Kearny's building code ordinance shall be the responsibility of Kearny's Code Enforcement Officer or Kearny Attorney. If Pinal becomes aware of any violations that impede Pinal's ability to perform its inspection services under this Agreement, Pinal shall notify Kearny and Kearny shall take all requisite enforcement actions. Pinal may, at its discretion, postpone and/or discontinue any further inspection services until any such violations have been fully addressed.
8. **Indemnification.** To the fullest extent permitted by law, Kearny shall indemnify, defend, save and hold harmless Pinal, its agents, representatives, officers, directors, officials, and employees from any and all liability, demands, proceedings, suits, actions, claims, losses, costs, and damages of every kind and description arising or of, resulting from, or alleged to have resulted from the Pinal's performance of this Agreement. This duty to indemnify, defend, save and hold harmless shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, or employees' liability claims, damages, losses or expenses (including but not limited to attorneys' fees, court costs and/or arbitration costs and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death, or injury, loss, impairment or destruction of money or other property including the loss of use resulting there from, caused by or contributed to, in whole or in part, by any omission, fault, mistake, or negligent act, whether active or passive, of Pinal, its employees, agents, representatives, any tier of Pinal's subcontractors, their employees, agents or representatives or anyone directly or indirectly employed by Pinal or its subcontractors or anyone for whose acts Pinal or its subcontractors may be liable.

9. **Independent Contractor.** Pinal and Kearny acknowledge that Pinal is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that any persons or agents it may employ is not an employee of Kearny; and that neither this Agreement nor the administration thereof, shall operate to render or deem Pinal the agent or employee of Kearny.

10. **Miscellaneous Provisions.**

- A. **Amendments.** The parties understand and specifically agree that the terms of this Agreement may be amended from time to time only upon written mutual agreement by each party and that such amendments are to be integrated into this Agreement.
- B. **Applicable Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Arizona.
- C. **Assignability.** This Agreement is non-assignable in whole or in part by either party hereto without the written consent of both parties.
- D. **Beneficiaries.** This Agreement shall inure solely to the benefit of Kearny and Pinal, and shall create no rights in any other person or entity.
- E. **Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.
- F. **Integration.** This Agreement contains the entire agreement between the parties, and no statement, promise or, inducement made by either part to the agency of either party that is not contained in this Agreement shall be valid or binding.
- G. **Headings.** The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraph or of this Agreement, nor in any way affect this Agreement.
- H. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.
- I. **Termination of Agreement.** This Agreement shall automatically terminate without any further action by either Party effective June 23, 2025. In addition, this Agreement may be terminated by either party upon giving written notice to the other party of not less than thirty (60) days.
- J. **Notices.** All notices or demands required under this Agreement from either party to the other shall be in writing and shall be deemed to have been given when the notice is delivered in person or on the date deposited in the U.S. Mail addressed as follows:

County Manager

Pinal County
P. O. Box 827
Florence, AZ 85132

Town Clerk
Town of Kearny
POB 639
Kearny, AZ 85137

- K. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of Pinal and Kearny and is not to be construed against either party.
- L. **Recording.** This Agreement shall become effective upon the filing with the Office of the Pinal County Recorder.
- M. **Waiver.** Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any provisions shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.
- N. **Validity.** Should any challenge be brought to the validity of this Agreement or any parts thereof, Pinal and Kearny agree to share equally in the costs associated with defending such litigation, including court costs and attorney's fees.
- O. **Venue.** The parties agree that the venue of any disputes arising out of this Agreement shall be in the Pinal County Kearny Court.
- P. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format or by fax will be effective.

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written above.

Town of Kearny, a municipal
corporation of the State of Arizona

By: 
Town Mayor

Pinal County, a political subdivision of
the State of Arizona

By: _____
Chairman of the Board of Supervisors

Date: 6-15-22

Date: _____

Attest: Akenney 6/15/22

Attest: _____

Approved as to form:

Stephen R. Cooper
Kearny, Town Attorney

Approved as to form:

Deputy County Attorney