

INTERGOVERNMENTAL AGREEMENT FOR ELECTIONS SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR ELECTION SERVICES (the "Agreement") is entered into between the PINAL COUNTY BOARD OF SUPERVISORS, the PINAL COUNTY RECORDER, PINAL COUNTY ELECTIONS DEPARTMENT (collectively the "COUNTY") AND Town of Kearny, (the "Jurisdiction"). The County and the Jurisdiction may each be referred to individually as a "Party" or "party" and collectively as the "Parties" or "parties."

WHEREAS, pursuant to A.R.S. §§11-952, 15-302(A)(7) and (A)(8), 16-205(C), 16-225, or 16-408(D), the governing body of any election district authorized to conduct an election may enter into an agreement with a County Board of Supervisors, County Election Department and County Recorder for election services with the contracted cost of such election to be a charge against the election district; and

WHEREAS, the County and Jurisdiction have determined that the use of certain services of the Pinal County Elections Department and the Pinal County Recorder's Office is in the public interest; and

WHEREAS, the County is willing to provide election services to election districts wishing to conduct vote-by-mail elections, but, with the exception of state primary and general elections, will not provide election services to districts wishing to conduct district based in-person elections unless expressly required by state or federal statute; and

WHEREAS, the Jurisdiction wishes to enter into an agreement with the County for the provision of election services subject to the terms and conditions set forth herein,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Provision of Election Services.** The County hereby agrees to provide election services to the Jurisdiction for all consolidated election dates set forth by A.R.S. §16-204 during the effective term of the Agreement. This Agreement shall apply to all categories of elections including but not limited to, primary, general, special and recall elections. Services to be provided by the County, and those that remain the responsibility of the Jurisdiction, are set forth in Section 2 of this Agreement.
2. **Parties' Responsibilities.**
 - a. **The services provided by the Pinal County Election Department are:**
 1. Prepare ballot formats to be approved by the Jurisdiction.

2. Provide sample ballots with the District measure positions according to precincts within the boundaries of a District.
3. Provide sample ballots, if required, for public distribution and issue them through the District.
4. Provide ballots to be used in each precinct.
5. Conduct logic and accuracy testing required by state law and publishing all legal notices required therewith.
6. Provide nominating petitions and other necessary information to prospective candidates for board positions.
7. Accept candidates' nomination documents for filing.
8. Accept candidates' financial disclosure statements.
9. Accept all campaign statements and expenditure reports from candidates and/or candidates' campaign committees.
10. Prepare and issue certificates of election to candidates declared to be elected.
11. Tally official results of the election(s), utilizing paper ballots or electronic ballot counting equipment.
12. Cause the precinct election boards to utilize manual or electronic copies of precinct registers, prepared from the records of the County Recorder, for the purpose of identifying the elector qualified to vote in the current election.
13. Hire and train poll workers.
14. Administer hand count audit as required by A.R.S. § 16-602.
15. Administer post-election logic and accuracy testing.
16. The filing officer shall canvass the results of the election pursuant to Arizona Law.

b. The services provided by the County Recorder are:

1. Provide copies of precinct registers of qualified electors for precincts contained partially or wholly within the District limits. Said registers shall be prepared from the voter registration records of the County Recorder.

2. Early Voting

By checking this box, the Jurisdiction authorizes Pinal County to handle all early voting functions.

By checking this box, the Jurisdiction indicates that it will be handling all Early Voting functions. The Recorder will continue to provide the following:

- a. A list of qualified electors who are eligible to vote early. Such lists are to be used solely by the Jurisdiction for Early Voting, or such other election related purposes as may be authorized by law.
- b. A list of active early voters within the Jurisdiction that are to be automatically mailed an early ballot. Such lists will be generated from the voter registration records of the County Recorder.

3. Perform signature verification on ballot affidavits and provisional ballots.

c. Obligation of the Jurisdiction. The Jurisdiction agrees to:

1. Provide the County Elections Department with a certification of the measures to appear on the official ballot for the Special/Regular election.
2. Return the 210 day Notice of Election to the Elections Department indicating whether the current election will be in person, or vote by mail within 180 days of the election called by the Jurisdiction. If by mail, fees will be charged pursuant to the current Elections Department Fee Schedule. Failure to respond by the date that is 180 days before the election will have the effect of placing the Jurisdiction's election on the next consolidated election date pursuant to A.R.S. 16-204 & 16-226 .
3. Provide a certified list of contests, candidates and the order of appearance of the contests and/or candidates to the County Elections Department one hundred and five (105) days prior to the election.

4. Provide nomination papers and other necessary information to prospective candidates for board or council positions.
 5. Publish all legal notices in connection with jurisdictional election with the exception of the logic and accuracy test notification as described in Section 2(a)(5) of this Agreement.
 6. If the jurisdiction chooses to conduct their own early voting, provide the County Recorder, upon receipt and prior to processing early ballots, copies of the complete Applications of Early Ballots for signature comparison by the County Recorder or other officer in charge of elections as required by A.R.S. § 16-550(A). These copies can be provided by mail, hand delivery, or fax.
 7. Pay to County, on a reimbursable basis, all costs of personnel, election material, and supplies extended by county pursuant to this Agreement. The Jurisdiction will make said payment to the County within thirty (30) days after presentation by the County of demand for said payment.
 8. If the Jurisdiction chooses to conduct their own early voting, a list of all "inactive status" electors who voted in the election pursuant to A.R.S. §16-583 shall be provided to the Jurisdiction by the County Recorder.
 9. Agree to be the point of contact in investigating conditional provisional ballots.
3. **Limitation on Eligible Elections.** It is understood and agreed that the services to be provided pursuant to this Agreement shall be provided exclusively for vote-by-mail elections with the exception of state primary and general elections and elections expressly required by state or federal statute to be conducted in person. It shall be the responsibility of the Jurisdiction to establish the legal basis for a requirement that an election is required by state or federal statute to be conducted in person. The County may, in its sole discretion, decline to provide services for any election that it concludes is not required to be conducted in person. The County will not provide services for exclusively vote-by-mail elections during the state and primary general elections, or any special election called by the legislature, which requires in person voting.
4. **Cancellation of Certain Elections.** As provided in A.R.S. §16-410, if the number of candidates is less than or equal to the number to be elected, the Pinal County Board of Supervisors, may cancel the election no earlier than one hundred five (105) days before the election and appoint the person(s) who filed the nomination petition/paper to fill the position(s). The County shall place all such races on a Pinal County Board of Supervisors agenda for approval of cancellation unless written notice from the Jurisdiction is received by the County Officer in Charge of Elections on or before one hundred twenty (120) days before the election.

5. Compensation.

- a. **Fees.** The Jurisdiction shall compensate the County for election services provided pursuant to the Agreement in accordance with the fees set forth in the most current fiscal year Election/Voter Registration section of the Pinal County District Fee Schedule. Any additional services required by the Jurisdiction will result in additional charges. Additional services include, but are not limited to, the following: court preparation, court appearances, supplemental mailings, recounts, or any service which will cause the County to incur increased costs or expenses. In the event that additional services are requested, the Jurisdiction should refer to unit hourly pricing information set forth on the fee schedule. The County reserves the right to adjust election service fees annually or otherwise at any time during the effective term of this Agreement notice of which will be posted on the County's website. Revised fee schedules will supersede prior fee schedule and be incorporated in this Agreement at the time of revision.
 - b. **Late Fees.** Payment in full for all costs associated with the provision of services pursuant to this Agreement shall be made no later than thirty (30) days following the date of the election. In the event that the required payment is not made by the due date deadline specified herein, the County shall impose a late charge of 2% of the unpaid balance for each 30-day period or portion thereof following the specified deadline for which any portion of the required payment, including unpaid late charges, remains unpaid.
 - c. **Termination.** Failure to make payments as required by this Section shall be deemed a material breach of this Agreement and shall be grounds for termination of this Agreement pursuant to Section 8 of this Agreement.
6. **Conduct of Elections.** While the County will use its best efforts to provide election services pursuant to the Agreement in a capable and competent manner, it shall ultimately be the responsibility of the Jurisdiction to confirm that all legal requirements have been met and that all other activities related to a given election are carried out as required. Upon request, the County will provide to the Jurisdiction, in advance, all forms, schedules, documents, and other information pertaining to each election conducted pursuant to this Agreement for the Jurisdiction's review and approval. The Jurisdiction may provide to the County all informational materials or other election-related documents generated by the Jurisdiction for review by the County prior to the distribution of such materials or documents.
7. **Term of Agreement.** This Agreement shall become effective on the next day after the last party has signed the agreement and shall expire on December 31, 2026.

8. Termination.

- a. **Unilateral Termination.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other Party of intent to terminate and specify the termination date, provided, however, that this Agreement may not be unilaterally terminated by either party within one hundred and eighty (180) days of the date of the election for which the County would otherwise be providing services pursuant to this Agreement. Any termination of this Agreement shall not relieve the Jurisdiction of its responsibility for costs incurred prior to the effective date of the termination.
 - b. **Termination by Mutual Agreement.** This Agreement may be terminated at any time by mutual agreement of the parties.
 - c. **Termination for Breach.** In the event of a breach of any term or condition of this agreement, the Party claiming breach shall provide written notice to the other Party specifying the factual basis for the claim that a breach has occurred. If the breach is not remedied within fifteen (15) days after notice is mailed to the Breaching Party at the address provided herein, the Non-breaching Party may terminate this Agreement without further notice.
9. **Conflict of Interest.** This Agreement is subject to the cancellation provisions of A.R.S. §38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
10. **Non-appropriation of Funds.** The parties recognize that the County and Jurisdiction are governmental entities and this Agreement's validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of either or both parties' obligations under this Agreement, then the County or Jurisdiction, as appropriate, shall notify the other party in writing of any such non-allocation of funds at the earliest possible date, and this Agreement shall automatically expire without penalty to either party. If the County's or Jurisdiction's allocation of funds are reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement may be cancelled without further duty or obligation of either party.
11. **Non-Discrimination.** The Parties shall comply with the Office of the Arizona Governor Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, nation 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 (ADA).
12. **E-Verify; Governmental Procurement.** The parties hereby warrant that they will, at all times during the term of this Agreement, comply with all federal immigration laws

applicable to the employment of their respective employees and with the requirements of A.R.S. §23-214 and 41-4401 (together the “state and federal immigration laws”). A breach of the foregoing warranty shall be deemed a material breach of this Agreement and the party who breaches may be subject to penalties up to and including termination of the Agreement.

The Parties further agree to ensure that each subcontractor that performs any work under this Agreement, likewise complies with the state and federal immigration laws at all times during the term of this Agreement.

The Parties retain legal right to inspect the papers of any contractor or subcontractor in order to verify such party’s compliance with the state and federal immigration laws.

13. **Indemnification.** To the fullest extent permitted by law, each Party (as “indemnitor”) agrees to indemnify, defend and hold harmless the other Party, its departments, officers, officials, agents and employees (collectively “Indemnitee”) without limitation from and against any and all claims, damages, losses, liabilities, fees, fines, costs, or expenses (including, but not limited to attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen from or resulted from this Agreement. Indemnitor’s duty to defend, indemnify and hold harmless Indemnitee shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines or expenses, that are attributable to bodily injury, personal injury, sickness, disease, death, or damage to, or destruction of tangible or intangible property including the loss of therefrom caused in whole or in part by any act, error, mistake or omission of Indemnitor, its departments, officers, officials, employees, agents, vendors, subcontractors or anyone for whose acts Indemnitor may be liable. Indemnitor agrees to waive all rights of subrogation against Indemnitee. The obligations under this Paragraph shall survive the termination of this Agreement.
14. **Property Disposition.** The parties do not anticipate the joint acquisition of property attributable to the exercise of each party’s duties and obligations pursuant to this Agreement. Any property acquired during the term of this Agreement shall be returned to the purchasing party no more than thirty (30) calendar days from the effective date of termination of this Agreement.
15. **Governing Law.** This Agreement and any and all exhibits, attachments, amendments and addendums shall be construed under the laws of the State of Arizona and by applicable federal statute. Any changes in governing laws, rules and regulations that do not materially affect this Agreement will apply during the term of this Agreement and will not require an amendment.
16. **Material Change in Law, Rule or Regulation.** In the event of adoption of legislation, regulations, or instruction or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this Agreement or the relationship

among parties hereto, either party may propose amendments to this Agreement to bring this Agreement into conformity with such laws. If the parties are unable to reach agreement on the renegotiation of this Agreement within thirty (30) days of the initiation of negotiations, then either party may terminate this Agreement upon written notice to the other party.

17. **Compliance with Law.** The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including environmental laws. Non-compliance with any election law shall be deemed a material breach of this Agreement and the party who breaches may be subject to penalties up to and including termination of this Agreement.
18. **Severability.** In the event that any portion of this Agreement or application thereof to the County, District, person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement, which can be given effect, without the invalid provision or application and to the end of the provision declared severable.
19. **Waiver.** A party's failure or neglect to enforce any term, covenant, condition, right or duty in this Agreement does not constitute a waiver of any term, covenant, condition, right or duty nor is deemed to be a waiver of that party's rights or remedies under this Agreement. A waiver or extension is only effective if it is in writing and signed by the party granting it. NO single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right or duty in this Agreement shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right or duty.
20. **Alternate Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement may be resolved through the use of arbitration.
21. **Waiver of Jury Trial.** The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.
22. **Notices.** All notices required by this Agreement, such as notice of termination, shall be sent by U.S. certified mail, return receipt requested, or delivered by hand to the party at the address indicated or such other address requested by notice to the other party. A notice shall be considered given when received. All communications regarding services provided pursuant to this Agreement shall be directed to the following:

COUNTY: Kelly Pile Elections Operations Manager 168 S. Main Street Coolidge, AZ 85128 (520)866-7550 kelly.pile@pinal.gov	JURISDICTION: Contact: <u>Amanda Kenney</u> Title: <u>Town Clerk</u> Mailing Address: <u>PO BOX 639</u> <u>Kearny, AZ</u> Phone: <u>520-363-5547</u> E-Mail: <u>townclerk@kearnyaz.gov</u>
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23. **Implied Contract Terms.** Each provision of law and any terms required by law to be in this Agreement are part of this Agreement as if fully set forth herein.
24. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other Party to its employees.
25. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against the County or the Jurisdiction. This Agreement is not intended to benefit any third party.
26. **Assignment.** No party to this Agreement may assign any of its rights or responsibilities under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other parties. No party may delegate any performance under this Agreement, except with the prior written consent of the other parties. Any purported assignment of rights or delegation of performance in violation of this paragraph is void.
27. **Parol Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this Agreement.
28. **Waiver.** A party's failure or neglect to enforce any term, covenant, condition, right or duty in this Agreement does not constitute a waiver of any term, covenant, condition, right or duty, nor is it deemed to be a waiver of that party's rights or remedies under this

Agreement. A waiver or extension is only effective if it is in writing and signed by the party granting it. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right, or duty in this Agreement shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right or duty.

29. **Execution of Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto. Each of the Parties may sign any number of copies of this Agreement. Each signed copy shall be deemed an original, but all of them together shall represent one and the same agreement.
30. **Entire Agreement.** This Agreement contains the entire, integrated agreement of the parties and there are no oral agreements, understandings or representations relied upon by the parties. This Agreement supersedes all prior negotiations, representations or agreements, whether written or oral. Any modifications or amendments to this Agreement must be in writing and signed by all parties.
31. **Legal Agreement.** This Agreement is a binding legal document, and each Party warrants that it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this Agreement, each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement and understands the meaning of all terms contained herein and agrees to their application and enforceability.
32. **Binding Effect.** This agreement shall not be legally binding upon either party until signed by the Pinal County Recorder, Pinal County Chair of the Board of Supervisors, and the Jurisdiction.

APPROVALS

COUNTY:

Pinal County Chairman of the Board of Supervisors

Date



Pinal County Recorder

5-6-24

Date

ATTEST:

Clerk of the Board of Supervisors


Date

APPROVED AS TO FORM:

Deputy County Attorney

Date

JURISDICTION:



Signature

1.22.24

Date

Curtis Stacy, Mayor

Printed Name and Title

ATTEST:

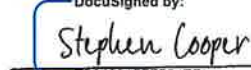


Clerk

01/22/24

Date

APPROVED AS TO FORM:

DocuSigned by:


E8846315FF794E7
Attorney

1/23/2024

Date