INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE AK-CHIN INDIAN COMMUNITY FOR BUILDING PLAN REVIEW AND INSPECTION SERVICES

This Intergovernmental Agreement ("**Agreement**") is entered into on the date of execution provided on the signature page of the Agreement by and between PINAL COUNTY, a political subdivision of the State of Arizona, ("**COUNTY**") and the AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe ("**COMMUNITY**"). The COUNTY and the COMMUNITY are sometimes referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, COMMUNITY has adopted the same substantive specifications and standards as prescribed by the uniform model codes as COUNTY for building, mechanical, plumbing and electrical codes; and

WHEREAS, COMMUNITY desires that plan reviews and inspections of construction projects within COMMUNITY's geographical boundaries ("**Projects**") be performed by trained and certified COUNTY personnel and/or independent contractors utilized by COUNTY for these services, as set forth in this Agreement; and

WHEREAS, COUNTY may provide these code compliance services ("**Services**") to COMMUNITY pursuant to A.R.S. §§ 11-951, *et seq.*; and

WHEREAS, COUNTY and COMMUNITY are authorized, pursuant to A.R.S. § 11-952 to enter into intergovernmental agreements for the purposes contemplated herein; and

WHEREAS, the Parties previously entered into an agreement for provision by COUNTY of the same or substantially similar services as those set forth herein, which agreement expired on March 18, 2024 ("**Previous Agreement**"); and

WHEREAS, the Parties desire that COUNTY continue to provide the services set forth in the Previous Agreement beyond the expiration date thereof, as modified by and pursuant to the terms of this Agreement.

AGREEMENT

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

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions governing COUNTY's provision of plan review and inspection services to COMMUNITY, by which

COMMUNITY intends to enforce compliance with Title 10 of the Ak-Chin Law and Order Code ("**Ak-Chin Code**") and other codes, plans, specifications and standards, etc., as applicable, as otherwise set forth in **Sections 3** and **5** of this Agreement ("**Community Codes**").

2. **The Services**. To the extent permitted by law, upon request by COMMUNITY, COUNTY agrees:

   A. To perform requested construction inspections of Projects pursuant to the applicable Community Codes; and/or

   B. To review plans and inspect Projects to verify the responsible party's ("**builder**" hereinafter) conformance with all applicable Community Codes.

   COUNTY shall indicate a builder's conformance by providing a "Recommendation for Issuance of a Certificate of Occupancy." Certificates of Occupancy shall be issued by COMMUNITY after review of COUNTY'S inspection report and/or consultation with COUNTY. COUNTY shall not be responsible or liable in any way for any Certificate of Occupancy issued or permission to occupy granted by COMMUNITY. COUNTY will notify COMMUNITY Capital Projects Director, as provided in **Section 9** below, when a Project is not compliant with applicable Community Codes. COUNTY's plan review, inspection, issuance of Recommendations for Issuance of a Certificate of Occupancy, and/or notification of non-compliant Project comprise the Services provided under this Agreement

3. **Prevailing Design and Construction Codes**. To ensure uniformity and consistency of building plan review and inspection services during inspections and when providing services pursuant to this Agreement, COUNTY shall utilize the 2018 International Code Council ("ICC") Codes and the 2017 National Electric ("NEC") Codes as adopted by the County. A list of current adopted codes is available at https://www.pinal.gov/189/Building-Safety. COMMUNITY represents and warrants that it has adopted the same substantive specifications and standards as prescribed by the ICC and NEC Codes utilized by COUNTY for building, mechanical, plumbing and electrical codes.

4. **Factory-Built Buildings (FBB) Installation.** Factory-Built Building installations shall be inspected by COUNTY for conformance with manufacturer's and/or engineer's installation specifications. As applicable, COUNTY's inspection of any manufactured home, factory built building, and/or mobile home installation(s) is governed by the Inspection Services Agreement between Arizona Department of Housing and Pinal County to Enforce Installation Standards, which is hereby incorporated into this Agreement and attached hereto as **Exhibit A**, and as may be updated and revised at the sole discretion of COUNTY and ADOH.

5. **Other Codes.** At COUNTY's sole discretion, COUNTY may use the following specifications and standards for guidance during its inspections:

   i. Swimming Pools, their location and required enclosures, shall be inspected in compliance with the specifications and standards as prescribed by the International

Swimming Pool and Spa Code 2018 Edition, Third Print Feb. 2020;

ii. Residential Code, International Residential Code, 2018 Ed., Third Print Sept. 2019;

iii. Energy Conservation Code, International Energy Conservation Code, 2018, Fourth Print March 2020;

iv. Property Maintenance Code, International Property Maintenance Code, 2018, Second Print April 2018;

v. Fire Alarm and Signaling Code, National Fire Alarm and Signaling Code, 2016 Ed.;

vi. Pool and Spa Code, International Swimming Pool and Spa Code, 2018 Ed. Third Print Feb. 2020;

vii. Commercial Code, International Building Code, 2018 Ed., Fourth Print January 2020; and

viii. Accessibility, ICC A117.1-2017, 2018 Ed.

6. **Zoning Approval**. Prior to COUNTY commencing its obligations required under this Agreement, COMMUNITY's Capital Project Manager shall first issue a memorandum certifying that the project has been approved to proceed by the Community's Planning Department, the Planning and Zoning Commission, and the Community Council in conformance with the Community's Zoning and Design standard guidelines..

7. **Records and Reports**. All inspection records and reports kept by or prepared by COUNTY shall be made available to COMMUNITY during normal business hours upon the reasonable request of COMMUNITY.

8. **Compensation, Financing and Budgeting**. COMMUNITY will be the named applicant for all permits and applications submitted to COUNTY for the Projects located within COMMUNITY's geographical boundaries, and all permit and inspection fees will be paid directly to COUNTY in accordance with COUNTY's most recent fee schedule, as amended from time to time, and as further reflected below. As applicable, the costs associated with COUNTY's inspection services is subject to the terms, conditions, and limitations set forth in: COUNTY's On-Call Building Safety Residential & Commercial Plan Review Services with Brown & Associates Certified Inspection Services, Inc.; COUNTY's On-Call Building Safety Residential & Commercial Plan Review Services with Bureau Veritas North America, Inc.; COUNTY's On-Call Building Safety Residential & Commercial Plan Review Services with Willdan Engineering; and COUNTY's cooperative agreement, through the City of Tucson, for On Call Plan Review Services with SAFEBuilt, LLC, which are hereby incorporated into this Agreement and attached hereto as **Exhibits B-1—B-4**, and as these agreements may be updated and revised at the sole discretion of the parties named in those agreements

It is understood by the Parties that COUNTY may not have the capacity or necessary qualifications to perform some or all of the services requested by COMMUNITY pursuant to this Agreement. Accordingly, the Parties agree that COUNTY may subcontract with outside contractors for these purposes, or as otherwise may be determined to be necessary by

COUNTY, in its sole discretion. In the event COUNTY utilizes the services of subcontractors for some or all of the services to be performed by COUNTY under this Agreement, COUNTY may utilize its existing "On-Call Contracts" for these services after providing COMMUNITY advance notice of the estimated costs. Thereafter, COUNTY will invoice COMMUNITY for COUNTY's actual costs per the terms of the On-Call Contracts plus a fifteen percent (15%) administrative fee. For purposes of A.R.S. § 11-952(B)(3), each Party is responsible for financing its own costs and expenses associated with its obligations under this Agreement and for establishing and maintaining its own budget for the undertaking contemplated hereby.

9. Enforcement and Appeals.

A. If COUNTY determines that a Project is not compliant with applicable Community Codes:

i. COUNTY shall notify the COMMUNITY's Capital Projects Director and submit to the COMMUNITY'S Capital Projects Director a proposed citation, order, or other administrative action (collectively, "Action") for the Project, and an Action may include a Stop Work Order.

ii. The COMMUNITY'S Capital Projects Director shall approve or object to the proposed Action within three (3) business days after receipt of the proposed Action.

a. If the COMMUNITY'S Capital Projects Director approves the proposed Action, the Capital Project Manager shall issue the citation, order, or other administrative action.

b. If the COMMUNITY'S Capital Projects Director objects to an Action, the Capital Project Manager shall refer the matter to the COMMUNITY'S COUNCIL for a final decision.

If the COMMUNITY'S COUNCIL decides to proceed with a non-compliant project: 1) COMMUNITY shall send written notice of the decision to proceed to COUNTY within 3 business days, pursuant to **Section 14.J**; 2) COMMUNITY agrees to defend, hold harmless and indemnify COUNTY from and against any and all Claims arising from the non-compliant project, pursuant to **Section 10**; and 3) COUNTY may, in COUNTY'S sole discretion terminate COUNTY's provision of services pursuant this Agreement with respect to the non-compliant project upon 10 days' written notice of intent to terminate being provided to COMMUNITY pursuant to **Section 14.J**.

B. With the exception of COUNTY's performance of the Services set forth in this Section and **Section 2** of this Agreement, COMMUNITY retains the responsibility for enforcement of Community Codes. Enforcement and prosecution of violations of the Community Codes, shall be the sole responsibility of COMMUNITY.

10. Indemnification.

A. To the fullest extent provided by law, each Party hereto (as "Indemnifying Party") shall defend, hold harmless and indemnify the other Party from and against all claims, damages,

liabilities, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of the Indemnifying Party's obligations hereunder, provided that any such obligation will arise against an Indemnifying Party only when any such claim, damage, liability, loss, or expense **(i)** is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom; and **(ii)** is caused in whole or in part by any negligent act or omission of the Indemnifying Party obligated by this paragraph, any subcontractor of an Indemnifying Party obligated by this paragraph, or anyone directly or indirectly employed by any one of them. The recovery of any Party shall be reduced pro rata according to that Party's relative culpability and the principles of comparative negligence. Any obligation arising under this paragraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Party or person described in this paragraph. Indemnification provided herein shall survive termination of this Agreement for the duration of time in which a cause of action may be brought against either Party in the event such cause of action relates to services provided under this Agreement.

B. Notwithstanding the foregoing, to the greatest extent allowed by law, COMMUNITY shall be solely responsible and liable for any and all claims, demands, or judgments (including all costs, expenses, and attorneys' fees) resulting in any claims, losses, liability, costs, or expenses (including, but not limited to, bodily injury to any person or employee or damage to any property and reasonable attorneys' fees) (hereinafter collectively referred to as "Claims") arising out of the performance of the Services. COMMUNITY (as "indemnitor") agrees to indemnify, defend, and hold harmless COUNTY and all County staff, officers, employees, and volunteers (as "indemnitees") from and against any and all Claims. This subsection shall survive the termination of this Agreement.

11. Relationship of Parties/Independent Contractor. The Parties acknowledge that COUNTY is an independent contractor, and that it alone retains control of the manner of conducting its activities in furtherance of this Agreement. Further, 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. Except as provided in **Section 10.B**, neither Party shall be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

12. Arbitration; COMMUNITY'S Limited Waiver of Sovereign Immunity.

A. Any dispute between the Parties hereto regarding the interpretation, performance, breach, or enforcement of this Agreement shall be submitted to and resolved by arbitration by the American Arbitration Association applying the Construction Industry Arbitration Rules. To the extent permitted by law, each Party agrees to bear its own costs for arbitration.

B. Notwithstanding any other provision of this Agreement to the contrary, and subject to the limitations set forth in this paragraph, COMMUNITY expressly waives its immunity from suit only as to binding arbitration proceedings as described herein, and to actions to enforce such arbitration decisions brought in the Superior Court of the State of Arizona, and any other court having appellate jurisdiction over that court. This waiver is specifically limited to the following actions and judicial remedies:

i. Damages. The enforcement of an award of money damages by arbitration; provided the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of COMMUNITY except (**a**) liquid assets of COMMUNITY to the extent of the amount remaining to be paid under this Agreement for services rendered to COMMUNITY, and (**b**) the proceeds of applicable insurance policies of COMMUNITY. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of COMMUNITY other than the limited assets of COMMUNITY specified in this paragraph. COUNTY and COMMUNITY shall each maintain insurance in the amounts and coverage types provided in **Section 13** of this Agreement. Any award against COUNTY or COMMUNITY shall NOT exceed the limits in **Section 13** of this Agreement.

ii. Action to Compel Arbitration. An action to compel arbitration or enforce arbitration awards or orders pursuant to this paragraph.

13. Insurance. Each Party acknowledges and affirms that it has appropriate and adequate insurance coverage for its official operations, duties, and activities, and that it will maintain such coverage, at its own expense, for the duration of this Agreement.

Upon execution of this Agreement, COMMUNITY shall furnish COUNTY with a certificate of insurance on a standard insurance industry Association for Cooperative Operations Research and Development ("ACORD") form. The ACORD form must be issued by an insurance company legally authorized to transact business in the State of Arizona, with policies and forms in conformance with this Agreement, and possessing a current A.M. Best, Inc. rating of A-7 or better, provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

The policy(ies) shall name COUNTY as an additional insured with respect to liability arising out of activities performed by, or on behalf of COMMUNITY, including COUNTY's general supervision of COUNTY's employees and COUNTY's automobiles owned, leased, hired, or borrowed by COUNTY.

MINIMUM SCOPE AND LIMITS OF INSURANCE: COMMUNITY shall provide coverage with limits of liability not less than those stated below:

A. General Liability-Occurrence Form. COMMUNITY must maintain "occurrence" form General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for

independent contractors, personal injury, and property damage. If any Excess Liability insurance is utilized to fulfill the requirements of this paragraph, the Excess Liability insurance must be "follow form" coverage of an equal or broader scope of coverage than the underlying insurance.

B. Automobile Liability-Any Auto Owned, Hired and Non-Owned Vehicles. COMMUNITY must maintain Automobile Liability insurance with a limit of $1,000,000 each accident on each Party's owned, hired, and non-owned vehicles assigned to or used in the performance of COUNTY's work or services under this Agreement. If any Excess Liability or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" coverage of an equal or broader scope of coverage than the underlying insurance.

C. Professional Liability (Errors and Omissions Liability). COMMUNITY must maintain Professional Liability insurance with a limit of $1,000,000 for each claim, with a $2,000,000 annual aggregate. In the event that the Professional Liability insurance requirement by this Agreement is written on a claims-made basis, COMMUNITY warrants that any retroactive date under the policy shall precede the effective date of this Agreement, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time the work under this Agreement is completed.

D. COMMUNITY must maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of each Party's employees engaged in the performance of work or services under this Agreement and must also maintain Employer's Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

E. Any self-insured retentions and deductibles must be declared.

14. <u>Miscellaneous Provisions</u>.

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. The Agreement is to be construed according to the laws of the State of Arizona and both Parties submit to the jurisdiction of the Superior Court of the State of Arizona only for the limited purposes expressly authorized in **Section 12** of this Agreement.

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 COMMUNITY and COUNTY 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 party 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/section 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. Expiration, Renewal, and Termination of Agreement. Any termination of this Agreement shall not relieve the Parties of their responsibility for any payment obligation incurred prior to the effective date of the termination.

i. Expiration and Renewal. Unless terminated earlier, this Agreement shall expire five (5) years after its date of execution (found on the signature page of this Agreement). Either Party may request renewal of this Agreement by sending a written request to renew to the other Party as provided in **Section 14.J** of this Agreement.

ii. Mutual Termination. The Parties, by mutual written agreement, may terminate or cancel this Agreement at any time for any reason.

iii. Termination for Convenience/Without Cause. Either Party may terminate or cancel this Agreement at any time for any reason, with or without just cause, with thirty (30) days written notice to the other Party specifying the termination date.

iv. Non-appropriation of Funds. The Parties recognize and acknowledge that both Parties 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 Party's obligations under this Agreement, then the Party to whom public funds are not appropriated shall notify the other Party in writing of any such non-allocation of funds at the earliest possible date, and this Agreement shall automatically terminate without penalty to the Party to whom public funds are not appropriated. If either Party's allocation of funds is reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement may be terminated without further duty or obligation.

In the event that either Party fails to appropriate the funds necessary to continue operating under this Agreement, the non-appropriating Party shall promptly send written notice of the non-appropriation and resulting termination of this Agreement to the other Party pursuant to Section 14.J of this Agreement.

J. Notices. Unless specified otherwise herein (*e.g.*, Non-compliant Project Notices issued pursuant to **Section 9**), all notices, requests, demands, consents, approvals and other communications which may be or are required to be served or given hereunder ("**Notices**") shall be in writing and shall be deemed to have been given when the Notice is delivered personally or deposited in a U.S. mail box, in a postage prepaid envelope addressed to the

other party to the address provided herein. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a Notice stating the change and changed address.

IF TO THE COMMUNITY:	**IF TO THE COUNTY:**
Chairman	County Manager
Ak-Chin Community Council	Pinal County
42507 W. Peters & Nall Road	P.O. Box 827
Maricopa, AZ 85138	Florence, AZ 85232

K. Preparation of Agreement. This Agreement has been prepared by the combined efforts of the COUNTY and the COMMUNITY and is not to be construed against either party.

L. Recording. This Agreement shall be recorded 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 provision(s) 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. 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.

O. Property Disposition Clause. 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.

P. Other Duties Imposed by Law. Nothing in this Agreement shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.

R. Compliance with Laws and Regulations. The Parties shall comply with all respectively applicable federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to any designated within this Agreement.

S. Implied Contract Terms. Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein.

T. Workers' Compensation. To the extent applicable, each Party will comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of applicable Workers' Compensation benefits for its employees

U. **Uncontrollable Events**. No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.

V. **Public Records**. The Parties understand and agree that COUNTY is subject to Arizona's public records laws and any record in the custody of an Arizona government entity that has a substantial nexus to government activity is considered a public record and is presumed to be subject to disclosure. Accordingly, the Parties further understand and agree that records transmitted to COUNTY by COMMUNITY may be subject to disclosure by COUNTY to the public pursuant to a public records request.

W. **Governing Law**. To the maximum extent possible, terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of Arizona.

X. **Authority to Execute.** The individuals executing this Agreement on behalf of the Parties hereto represent that they have authority to execute this Agreement on behalf of such parties, and represent that upon execution, this Agreement shall be binding and no further action is or shall be necessary to make the Agreement enforceable in its entirety.

[Remainder of page intentionally left blank. Signatures on following page]

IN WITNESS WHEREOF, the parties hereby agree to the terms set forth above and have executed this Agreement the day and year first written above.

AK-CHIN INDIAN COMMUNITY, a federally recognized Indian tribe,

By_____
Chairman
Ak-Chin Indian Community

ATTEST:

By_____
Council Executive Secretary

PINAL COUNTY, a political subdivision of the State of Arizona,

By_____
Chair
Pinal County Board of Supervisors

ATTEST:

By_____
Clerk of the Board of Supervisors

DETERMINATION OF COUNSEL

This Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Deputy Pinal County Attorney who has determined that it is in proper form and is within the powers and authority of the County.

By:_____
Signature

_____
Print Name