MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN THE PINAL COUNTY BOARD OF SUPERVISORS AND THE PINAL COUNTY RECORDER FOR ELECTION SERVICES

This Memorandum of Understanding and Agreement for Election Services (hereinafter referred to as this "MOU") is hereby entered into by and between the Pinal County Board of Supervisors (hereinafter referred to as the "BOARD") and the Pinal County Recorder (hereinafter referred to as the "RECORDER"). The BOARD and the RECORDER may each be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the BOARD and the RECORDER are statutorily charged with various election responsibilities and the provision of certain election services; and,

WHEREAS, the BOARD or other officer in charge of elections is charged by A.R.S. Title 16, Ch. 1-4 and A.R.S. § 11-251(3) with certain responsibilities, including, but not limited to, the designation of polling places and conducting elections and canvassing elections within Pinal County in accordance with state and federal requirements governing national, state, and local elections; and,

WHEREAS, the RECORDER or other officer in charge of an election is charged by A.R.S. Title 16, Ch. 1-4 with certain responsibilities, including, but not limited to, voter registration, absentee ballots, mail-in ballots, and signature verification; and,

WHEREAS, the RECORDER as a separately elected official and the Pinal County Elections Department as a department under the authority and control of the BOARD, believe that a more integrated approach to their individual, yet related, election functions would create efficiencies, better accountability, and strengthen the integrity of the election process in Pinal County; and,

WHEREAS, the BOARD and the RECORDER acknowledge that neither Party may abdicate its statutory responsibilities to the other.

AGREEMENT

NOW THEREFORE, it is agreed by and between the BOARD and the RECORDER as follows:

1.0 TERM. The term of this MOU shall commence upon the filing of a fully executed original in the official records of the RECORDER and shall continue until February 29, 2024, unless renewed or terminated pursuant to the provisions of this MOU.

2.0 REVIEW AND RENEWALS OF THIS MOU. The Parties agree to review this MOU at the BOARD's first regularly scheduled meeting in February 2024, and then the Parties will review this MOU annually at the BOARD's first regularly scheduled meeting in February for as long as the Parties are operating under this MOU. The BOARD shall take action to renew, revise, or terminate this MOU at least yearly at its first regularly scheduled meeting in February when this MOU is being considered for renewal, revision, or termination.

3.0 TERMINATION.

3.01 TERMINATION FOR CONVENIENCE. Either Party may terminate this MOU by providing a minimum of 90 days' written notice to the other Party specifying the termination date. A notice of termination can be rescinded by the terminating party at any time before the expiration of the 90 days' notice period, but must be in writing signed by the Party that invoked the termination.

3.02 MUTUAL TERMINATION. The Parties may terminate or cancel this MOU at any time by written mutual agreement of the Parties.

4.0 DELEGATION OF ADMINISTRATIVE RESPONSIBILITIES. The responsibility for the operation and administration of national, state, and local elections, including A.R.S. Title 48 special taxing districts elections, are hereby delegated from the BOARD to the RECORDER. The RECORDER shall have the authority to manage the personnel and budget, in accordance with all Pinal County policies, related to elections administered by Pinal County. Pinal County employees designated by the RECORDER to conduct elections and administer special district elections on behalf of the BOARD shall report to and be under the supervision of the RECORDER.

4.01 For the purposes of filing nomination papers, the RECORDER is designated to be the election officer who shall receive nomination papers and petitions of candidates for public office pursuant to A.R.S. Title 16, Chapter 3.

4.02 The RECORDER shall prepare and provide the Clerk of the Board Certificates of Nomination and Certificates of Elections, for the Clerk of the Board to execute. The RECORDER shall issue the signed Certificates of Nomination and Certificates of Election.

4.03 The BOARD shall meet and publicly canvass election results as prepared by the RECORDER.

4.04 The RECORDER shall appoint all necessary election boards, comply with Logic and Accuracy testing, implement training plans or classes to ensure election staff and any temporary workers understand all security and election processes and equipment, and develop procedural manuals and contingency and support plans for elections.

4.05 The RECORDER shall prepare a list of polling places for designation and approval by the BOARD and be responsible for all other election functions, including A.R.S. Title 19 duties charged to the BOARD.

5.0 REPORTING AND APPROVALS.

5.01 The RECORDER shall advise and update the BOARD and/or County Manager, at a minimum of once a month, on the status of election operations, public engagement, and Secretary of State policy or practices that impact election processes or responsibilities. The RECORDER shall inform and report any day to day operational, budgetary, staffing, equipment, and public outreach concerns directly to the County Manager for initial handling and resolution before elevating such concerns to the BOARD if unresolved to the satisfaction of the RECORDER.

5.02 All written communications or reports to the BOARD, other than attorney client protected communications, shall also be transmitted at the same time, with the same content or attachments, to the head of the political parties in Pinal County and also posted on the county or election department website to ensure no actual or perceived insider informational advantage is selectively provided to any individual or group.

6.0 **ELECTIONS DIRECTOR**. The RECORDER shall determine the appropriate experience level and necessary qualifications for the position of Elections Director and work cooperatively with Pinal County Human Resources to ensure proper posting, pay grade, and recruitment process timely occurs. A candidate interview process shall include two members of the BOARD, and the RECORDER prior to selection. The RECORDER shall present the selected candidate to the BOARD at an open meeting for ratification prior to hiring. The RECORDER shall have the day to day supervisory authority over the Elections Director to include discipline and removal in accordance with county policies.

7.0 **DESIGNATED SUPERVISOR.** The RECORDER shall work with the Chairperson of the BOARD or Chairperson's designee for all election related matters. Nothing in this MOU is intended to obviate the responsibility of the RECORDER and the Elections Director to directly communicate with one another concerning election matters.

8.0 **FINANCING.** Current budgetary structure and funding sources of the RECORDER and the Pinal County Elections Department shall remain unchanged, but the RECORDER shall assume the responsibility of developing and monitoring both budgets for the duration of this MOU and shall work with the County Manager to present any needed budget adjustments to the BOARD.

9.0 **CONTRACTING AUTHORITY.** The BOARD delegates to the RECORDER authority to provide election services to other political subdivisions subject to the BOARD's approval. Any procurement of services, goods, or equipment shall comply with the Pinal County Procurement Code.

10.0 **FACILITIES.** The RECORDER shall work with the County Manager on any facility needs, concerns, or modifications necessary to perform any election related functions.

11.0 **LEGISLATION.** The BOARD and the RECORDER recognize that elections are governed by law, and that "good law and procedures" are important to smooth election administration. Accordingly, the BOARD and the RECORDER, whether jointly or independently, are free to propose, advocate, or oppose any legislation at the state or federal level. Where possible, each will coordinate their efforts when it is practical to do so.

12.0 **POLITICAL PARTY INTERACTIONS.** The BOARD and the RECORDER will each be responsible for communication with the political parties for those election-related matters subject to their authority. *See, e.g.,* A.R.S. § 16-168(D) (requiring the RECORDER to deliver precinct lists to the chairs of each county political committee and state political parties); A.R.S. § 16-531(A) (allowing the county political committee chairs to submit lists of party members to be election board workers, which the Elections Director appoints). The BOARD and the RECORDER will each try to coordinate with the other on political party interactions to the greatest extent possible and will each be respectful of the other's interactions related to their separate areas of authority. Neither the BOARD nor the

RECORDER will negotiate or contract with the political parties regarding the other's responsibilities. Nothing in this Paragraph is intended to infringe upon either the BOARD's or the RECORDER's First Amendment free speech and association rights.

13.0 LEGAL REPRESENTATION. The Parties are jointly represented by the Pinal County Attorney (hereafter referred to as the "County Attorney") and his deputy county attorneys (hereinafter referred to as "PCAO"). If any part of this MOU conflicts with any provision of the Arizona Rules of Professional Conduct (Ariz. Sup. Ct. Rules, Rule 42), the Arizona Rules of Professional Conduct shall control.

14.0 CONFIDENTIALITY. With this MOU, the Parties do not waive the duty of confidentiality inherent in the attorney-client relationship. Where a duty of confidentiality exists, the County Attorney and PCAO shall preserve the confidentiality, as it always does, unless expressly authorized by the Party holding the privilege to share the subject confidences. Where no duty of confidentiality exists, including, without limitation, when the Parties' interests are aligned in litigation, the Parties shall have no expectation of attorney-client confidentiality concerning discussions that may be had between the County Attorney or PCAO and each of the Parties.

15.0 LITIGATION AND APPELLATE SERVICES. Each of the Parties shall be represented by the County Attorney and PCAO for all election-related litigation and appeals unless the County Attorney determines that outside counsel is appropriate because of a conflict or some other reason. When the Parties are both litigants in a proceeding, PCAO shall make joint filings for the Parties (rather than a separate filing for each of the Parties) at PCAO's sole discretion based on its judgment concerning how best to represent the interests of the Parties. PCAO's decision concerning whether to make joint filings shall not be grounds for either of the Parties to assert a conflict.

16.0 OUTSIDE COUNSEL. Each of the Parties retains the right to request that the County Attorney select and appoint outside counsel to represent its interests if the party believes the County Attorney has a conflict of interest preventing the representation of their interests. Such a request shall be made in writing to the County Attorney who shall then appoint outside counsel from the County's pre-approved list of qualified outside counsel.

17.0 INFORMATION SYSTEMS SECURITY. The BOARD and the RECORDER will jointly provide information systems security services. The Parties will cooperate and coordinate with respect to these security services, consistent with all State and Federal laws and regulations governing election security, including, but not limited to, threat monitoring, video recording, and cyber-attack prevention. Both the BOARD and the RECORDER will work with the Pinal County Sheriff's Office and other law enforcement agencies as warranted under this MOU.

18.0 CHAIN OF CUSTODY. Both the BOARD and the RECORDER are responsible for ensuring the safeguarding and integrity of elections procedures and processes for those areas under their respective authority. This includes establishing efficient and secure chain of custody practices over ballots and other voting information.

19.0 MATTERS NOT COVERED BY THIS MOU.

19.01 This MOU is not intended to be a comprehensive list of every duty, responsibility, and administrative activity necessary to the administration of elections. Rather, this MOU highlights specific areas of responsibility that the Parties have determined fall within the purview of one or the other of them as well as administrative functions that are not addressed specifically by Arizona law.

19.02 Nothing in this MOU is intended to grant policy-making or budgetary approval authority to the RECORDER for election matters within the statutory responsibility of the BOARD or the Clerk of the Board.

20.0 SEVERABILITY/UNENFORCEABLE PROVISIONS. In the event that any of the provisions of this MOU are held to be unenforceable or invalid, including illegality or conflict with applicable law or regulation, such particular provision shall be excluded to the extent of such unenforceability or invalidity, and the validity and enforceability of the remaining provisions shall not be effected and effect shall be given to the intent manifested by the provisions held enforceable and valid. To the extent permitted and possible, any unenforceable or invalid provision shall be deemed replaced by a provision that is enforceable and valid and that comes closest to expressing the intention of such unenforceable or invalid provision.

21.0 CHANGE IN LAW OR REGULATION. In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this MOU or the relationship among the Parties, either Party may propose amendments to this MOU to bring this MOU into conformity with such laws, regulations, instructions, or enforcement action. If the RECORDER or the BOARD are unable to reach agreement on the renegotiation of this MOU within thirty (30) days of the initiation of negotiations, then either Party may terminate this MOU in accordance with the termination provisions in this MOU.

22.0 SUPERSEDES PRIOR AGREEMENTS. This MOU shall supersede and replace all prior agreements, resolutions, negotiations, representations, or understandings of the Parties, whether written or oral.

23.0 AMENDMENT. Any modifications or amendments to this MOU must be in writing and signed by the Parties.

APPROVALS

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized officials and have affixed their signatures to this MOU on the date written below.

The BOARD: The Pinal County Board of Supervisors

Jeff Serdy, Chairman
Pinal County Board of Supervisors

Date: 9/6/23

ATTEST:

Natasha Kennedy, Clerk of the Board
Pinal County Board of Supervisors

The RECORDER: The Pinal County Recorder

Dana Lewis, Recorder

Date: Sept. 6, 2023