

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN PINAL COUNTY AND TOWN OF KEARNY  
FOR SHARING OF THE REGIONAL MASS NOTIFICATION SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT dated October 17, 2016 (“**Agreement**”), is made by and between PINAL COUNTY, a political subdivision of the State of Arizona (“**Pinal County**”) and Town of Kearny, a political subdivision of the State of Arizona (“**Jurisdiction**”). Pinal County and Town of Kearny are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

WHEREAS, Pinal County applied for and received a grant from the Arizona Department of Homeland Security for a regional mass notification system (hereinafter “the System”) which will be utilized individually by Pinal, Gila, Graham and Greenlee Counties; and

WHEREAS, Pinal County recognizes the need for local jurisdictional control of public and employee mass notifications during emergency and non-emergency incidents along with the need to make countywide and/or specific location notifications of unincorporated areas in order to be the most effective in attempts to save lives and inform people; and

WHEREAS, the jurisdictions within Pinal County operate as their own Public Safety Answering Point (PSAP) for 9-1-1 calls from their constituents and the communications center for their respective public safety agencies; and

WHEREAS, the Parties have reached an agreement on the sharing of the selected mass notification system and an understanding on the responsibilities of each Party in implementing this Agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the provisions of Arizona Revised Statutes (“**A.R.S.**”) § 11-952.

**AGREEMENT**

NOW, THEREFORE, the Parties hereto, in consideration of the stipulations, covenants and agreements hereinafter set forth, hereby agree as follows:

**ARTICLE 1. LICENSE AND SUPPORT**

A. Under this Agreement Pinal County agrees to:

Organizational Administrator rights, ability to import files and/or templates into the system for jurisdictional use, and confidential and sovereign ability for the jurisdiction to set up their portion of the system as they see fit without interference from Pinal County.

- Provide a governance document that has been agreed upon by the four participating counties listed wherein.
- Act as the Administrative Agent for the Participating Parties that have entered into the agreement with the selected third-party vendor, keep records as required by such agreement and/or by funding guidelines, and other activities necessary to administer the System on behalf of the Participating Parties.

B. Under this Agreement Town of Kearny agrees to:

- Determine the structure of its portion of the System and set up accordingly.
- Provide assurance suitable to the County that it will not sub-lease or allow user access to any portion of the System to any group, individual or agency that is not under governmental control of that jurisdiction.
- Participate in the development of the governance document for the System.
- Abide by the governance document provided by Pinal County as well as any revisions and/or updates.

## **ARTICLE 2. INFORMATION OWNERSHIP, RELEASE AND ACCURACY**

A. Town of Kearny understands and agrees that the System, related data, documentation and all other information and materials provided by Pinal under this Agreement are confidential.

B. Town of Kearny may not, (i) transfer all or any portion of the System to a different, competing system or permit use by third parties, (ii) make copies of the system data and/or reports other than for back-up, training, testing or other internal support reasons.

C. Pinal specifically disclaims any warranty concerning the usage and functionality of the System as it pertains to the Town of Kearny.

D. Each Party is responsible for the entry and maintenance of their data, in accordance to how they set up their portion of the System. Parties will not have access to the data nor use of the system of the other Parties to this agreement, with the exception that as the Account Administrator for the vendor of the System, Pinal County will have access throughout the entire System. Pinal County will only allow up to three (3) county employees to be trusted with Account Administrator rights.

## **ARTICLE 3. FINANCIAL CONSIDERATIONS**

A. Pinal County shall purchase and financially maintain the licensure for the System. However, all Participating Parties are responsible for the cost of acquiring and maintaining the necessary hardware and licensed software required to operate the System and to participate in this Agreement (such as computers, laptops, tablets, cell phones, internet access, and cellular data service). Nothing included in this Agreement requires either Party to fund the activities of the other Party.

B. This Agreement shall be subject to available funding, and nothing in this Agreement shall bind either party to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.

C. The employees of each party to this Agreement will not for any purpose be considered employees or agents of the other party. Each party assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, direction and control. Pinal County and Town of Kearny will be responsible for paying the full cost of employee salaries and benefits for their respective staffs in regards to any work performed under this Agreement.

D. At the request of Town of Kearny, Pinal County agrees to provide the appropriate level of skilled staff members, if available, to assist Town of Kearny with the implementation of the System program for Town of Kearny, which could include training, direct support and technical assistance. Nothing in this agreement prohibits any Party from entering into contract with the System's vendor for additional training, direct support and/or technical assistance.

E. Pinal County agrees not to assess Town of Kearny for any overhead costs for operating and maintaining the System infrastructure or housing of any equipment including, without limitation, rental fees for space, electrical and utility costs, supplies and janitorial costs.

**ARTICLE 4. INDEMNIFICATION**

To the extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of actions taken in performance of this Agreement to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

**ARTICLE 5. TERMINATION**

A. This Agreement may be terminated by either Party upon thirty days written notice to the other Party.

B. Upon termination or cancelation of this Agreement, Pinal County agrees to transfer all data developed by the Town of Kearny staff to the person designated by the Town of Kearny to be the administrator of said data.

**ARTICLE 6. TERM**

The term of this Agreement shall be two years unless either Party gives written notice of termination to the other Party as set forth in Article 6 above. Either Party to this Agreement may request a renewal of this Agreement, for one additional term of two years by the submission of written notice by each Party within sixty (60) days of the expiration of this Agreement.

**ARTICLE 7. MISCELLANEOUS PROVISIONS**

A. NOTICES: All notices to the other Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to Town of Kearny: Cathy Woolery  
Town Clerk  
PO Box 639  
Kearny, AZ 85137

If to Pinal County: Tara Harmon  
Public Works Administrative Secretary  
P.O. Box 727  
Florence, Arizona 85132

B. **WAIVER OF TERMS AND CONDITIONS:** The failure of Town of Kearny or Pinal County to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

C. **GOVERNING LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

D. **NONASSIGNMENT:** This Agreement has been entered into based upon the personal reputation, expertise and qualifications of the Parties. Neither Party shall assign its interest in this Agreement, either in whole or in part. Neither Party shall assign any monies due or to become due to it hereunder without the prior written consent of the other Party.

E. **ENTIRE AGREEMENT:** This Agreement and the governance document for the System represent the entire agreement between the Parties and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties.

F. **SEVERABILITY:** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

G. **CONFLICTS OF INTEREST:** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

H. **COMPLIANCE WITH CIVIL RIGHTS:** The Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

I. **ARBITRATION:** To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the Parties agree to resolve any dispute arising out of this Agreement by arbitration.

J. **WORKER'S COMPENSATION:** Each Party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

K. **COMPLIANCE WITH LAWS:** The Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement and any disputes hereunder.

L. **NO JOINT VENTURE:** It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

M. **NO THIRD PARTY BENEFICIARIES:** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

**EXHIBIT "A"**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

**"Pinal County"**

**"Town of Kearny"**

PINAL COUNTY, a political subdivision of the State of Arizona

Town of Kearny, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Chairman of the Board of Supervisors

By: *David F. Riff*  
Mayor

Dated: \_\_\_\_\_

Dated: 10/17/16

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

*Cathy Woolery*  
Clerk

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF PINAL COUNTY:

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF (JURISDICTION):

\_\_\_\_\_  
Deputy County Attorney

*Stephen R. Cooper*  
Attorney