

## **Agreement between Cochise County and the Office of the Secretary of State for Reimbursement for Systematic Alien Verification for Entitlements ("SAVE") Program Usage**

This Agreement ("Agreement") is entered into by and between Cochise County, a body politic and corporate of the State of Arizona ("County"), on behalf of the Cochise County Recorder ("County Recorder"), and the Office of the Secretary of State ("Secretary") (collectively, the "Parties").

### **Recitals**

- A.** The County and the Secretary may contract for services and enter into agreements with one another pursuant to A.R.S. § 11-201(A)(3).
- B.** The Systematic Alien Verification for Entitlements ("SAVE") Program allows authorized federal, state, and local government agencies to confirm the immigration status of noncitizen and certain citizen applicants requesting benefits or entitlements.
- C.** The Parties desire for the County Recorders to have access to the SAVE Program for the purpose of verifying the citizenship and immigration status information of non-citizen and naturalized or derived U.S. citizen registrants when they register to vote.

NOW, THEREFORE, the County and the Secretary, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

### **Agreement**

- 1. Purpose.** To facilitate Arizona County Recorders' access to the SAVE Program, the Secretary has entered into a Memorandum of Agreement with the Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services (the "DHS MOA"), which establishes the terms and conditions governing the Secretary's and the County Recorders' participation in the SAVE Program. The MOA with DHS-USCIS is attached as Exhibit 1 and incorporated in full. Under the DHS MOA, the Secretary will administer access to SAVE by Arizona County Recorders, but the Secretary does not have authority to submit verification requests directly. While DHS will bill the larger counties (Maricopa and Pima) directly for their SAVE usage, DHS will bill the Secretary for the collective SAVE usage by the State's 13 smaller counties, including Cochise County, who are expected to have a lower query volume. This Agreement establishes the terms and conditions under which the County will reimburse the Secretary for the costs associated with the County's SAVE usage on a periodic basis.
- 2. Reimbursement Formula and Process.**
  - a. DHS Billing**
    - i.** Under the DHS MOA, the Secretary will be billed only if at least one of the 13 counties

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uses SAVE in a particular calendar month. If no county uses SAVE in a particular month, there will be no fees for that month.

- ii. An initial verification search costs \$0.50 per search, but the fee may increase to \$1.50 per search if the particular search query requires an additional or third-level electronic review for SAVE to confirm citizenship status.
- iii. If one or more of the 13 counties use SAVE in a particular month, a minimum \$25.00 fee will be charged to the Secretary. For example, if two counties each incur \$5.00 in search fees, the Secretary will be billed the full \$25.00 minimum monthly fee. If the counties collectively incur \$30.00 in search fees, the Secretary will be billed \$30.00 for the actual usage because it exceeds the minimum monthly fee.
- iv. The Secretary will pay the monthly fees to DHS in a timely manner and will seek reimbursement from the appropriate counties based on the formula described in Section 2(b) below.

### **b. County Reimbursement to the Secretary**

- i. If the County uses SAVE in a particular month, the County must reimburse the Secretary for its portion of the total fees billed to the Secretary that month.
- ii. If the total actual usage fees for all counties that used SAVE in a particular month **exceeds** the \$25.00 minimum monthly fee, each county must reimburse the Secretary the amount of that county's actual usage fees for the month.

For example, if County A incurs \$20.00 in search fees and County B incurs \$10.00 in search fees, the Secretary will be billed \$30.00 by DHS. County A must reimburse the Secretary \$20.00 and County B must reimburse the Secretary \$10.00.

- iii. If the total actual usage fees for all counties that used SAVE in a particular month **is less than** the \$25.00 minimum monthly fee, each county that used SAVE that month must reimburse the Secretary for the actual usage fees incurred for the county's queries plus the county's share of any remaining portion of the minimum monthly fee (calculated by dividing any remaining monthly fee amount that exceeds all counties' actual usage fees for the month by the number of counties that used SAVE in that particular month).

For example, if County A incurs \$5.00 in search fees and County B incurs \$10.00 in search fees in a particular month, the Secretary will be billed the minimum monthly fee of \$25.00 even though actual usage fees incurred by County A and B was only \$15.00. County A must reimburse the Secretary \$10.00 (\$5.00 for County A's actual usage fees plus \$5.00 for County A's equal share of the remaining minimum monthly fee). County B must reimburse the Secretary \$15.00 (\$10.00 for County B's actual usage fees plus

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\$5.00 for County B's equal share of the remaining minimum monthly fee).

- iv. The Secretary will invoice the County for its portion of the SAVE fees each month (if the County used SAVE that month). The County must promptly pay the amount due following receipt of the Secretary's invoice to the County.
3. **Term.** This Agreement will be effective on the date it is fully executed by both parties and will continue until terminated as provided herein. This Agreement may be modified at any time by mutual written consent of the parties.
4. **Insurance.** All parties to this agreement are government entities. Neither entity is required to procure special insurance coverage for their obligations under this Agreement.
5. **Compliance with Laws.** The parties will comply with all federal, state and local laws, rules, regulations, standards, and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes. Any action relating to this Agreement will be brought in a court in Maricopa County.
6. **Non-Discrimination.** The parties will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties under this Agreement. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Agreement by reference.
7. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213), all applicable federal regulations under the Act, including 28 C.F.R. Parts 35 and 36, and any equivalent State accessibility requirements.
8. **Severability.** If any provision of this Agreement, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application.
9. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
10. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, and in accordance with A.R.S. § 35-154, this Agreement may be terminated if for any reason the XXX County Board of Supervisors or the Secretary does not receive sufficient appropriated monies for the purpose of maintaining this Agreement. In the event of such termination, the parties will have no further obligations under this Agreement other than for payment for services rendered prior to cancellation. No liability shall accrue to the Secretary or any other agency of the State of Arizona in the event this provision is exercised, and neither the Secretary nor any other agency of the

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State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

- 11. No Indemnification.** Notwithstanding any provision of the Agreement to the contrary, the Secretary is not authorized to indemnify the County.
- 12. Legal Authority.** If a court, at the request of a third person, should declare that either party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
- 13. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement will be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will 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.
- 14. 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.
- 15. Notice.** Any notice required or permitted to be given under this Agreement must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party):

County:  
Honorable David Stevens  
Cochise County Recorder  
1415 Melody Lane, Bldg. B  
Bisbee, AZ 85603  
Phone: (520) 432-8358  
Fax: (520) 432-8638

Secretary:  
Honorable Katie Hobbs  
Secretary of State  
1700 West Washington Street  
Floor 7  
Phoenix AZ 85007-2808  
Phone: (602) 542-4285

*With copies to:*  
Brian McIntyre  
County Attorney

- 16. Entire Agreement.** This document, any exhibits attached to it, constitute the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this Agreement. This Agreement may not be modified, amended, altered, or extended except through a written amendment signed by the parties.

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- 17. Records Retention.** Pursuant to A.R.S. §§ 35-214 and 35-215, the parties shall retain all records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit at reasonable times. Upon request, the parties shall produce the original of any or all such records at the offices of the party.
- 18. Compliance with A.R.S. § 41-4401, Immigration Laws and E-Verify.** The parties warrant compliance with all Federal immigration laws and regulations relating to employees, and further warrant with compliance with E-Verify requirements pursuant to A.R.S. § 23-214(A). A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, which may subject the breaching party to penalties up to and including termination of the Agreement.
- 19. Choice of Law.** This Agreement shall be construed in accordance the laws of the State of Arizona.
- 20. Dispute Resolution.** The parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.
- 21. Termination.** This Agreement may be terminated by either party with 30 days written notice.

**THIS AGREEMENT MAY BE SIGNED IN COUNTERPARTS**

IN WITNESS WHEREOF, the parties execute this Agreement:

COCHISE COUNTY BOARD OF SUPERVISORS

OFFICE OF THE SECRETARY OF STATE

\_\_\_\_\_  
Peggy Judd, Chair

\_\_\_\_\_  
Katie Hobbs, Secretary of State

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Arlethe G. Rios,  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Date

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APPROVED AS TO CONTENT:

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David Stevens, Cochise County Recorder

The foregoing Agreement between the Office of the Secretary of State, Cochise County and the Cochise County Recorder has been reviewed by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement represented by the undersigned.

Cochise County and Cochise County Recorder

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Britt Hanson, Deputy County Attorney