

1 **AMERICA FIRST LEGAL FOUNDATION**

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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JUSTIN HEAP, in his official capacity as
12 Maricopa County Recorder;

13 Plaintiff,

14 v.

15 THOMAS GALVIN, in his official capac-
16 ity as a member of the Maricopa County
17 Board of Supervisors; MARK STEWART,
18 in his official capacity as a member of the
19 Maricopa County Board of Supervisors;
20 KATE BROPHY MCGEE, in her official
21 capacity as a member of the Maricopa
22 County Board of Supervisors; DEBBIE
23 LESKO, in her official capacity as a mem-
24 ber of the Maricopa County Board of Su-
25 pervisors; STEVE GALLARDO, in his of-
26 ficial capacity as a member of the Maricopa
27 County Board of Supervisors;

28 Defendants.

Case No.

**PLAINTIFF'S VERIFIED COM-
PLAINT FOR SPECIAL ACTION**

1 The Plaintiff hereby alleges and states as follows:

2 INTRODUCTION

3 1. This is a case of vital importance to the people of Maricopa County.

4 2. The Maricopa Board of Supervisors (“BOS”) is engaged in an unlawful attempt
5 to seize near-total control over the administration of elections and to compel the County
6 Recorder to accept the usurpation of his statutory authority.

7 3. The BOS refuses to provide the necessary funds for the Recorder to conduct
8 essential duties of his office unless he cedes much of his statutory authority to the BOS and
9 permits the BOS to retain control over the systems and personnel required for the Recorder’s
10 Office to fulfill the Recorder’s statutory functions.

11 4. However, Arizona’s statutes are clear: the Legislature has delegated *to the Re-*
12 *recorder*, and not to the Board of Supervisors, numerous responsibilities for election administra-
13 tion, and the Board of Supervisors has a mandatory duty to fund the Recorder’s conduct of
14 his duties.

15 5. Immediate judicial intervention is necessary. It takes many months to prepare
16 for each election, and the clock is ticking. Just this year, there are elections scheduled for July
17 15, September 23, and November 4.

18 6. Until this dispute is resolved, elections in Maricopa County will be conducted
19 in violation of the law.

20 7. The longer the County’s elections are unlawfully administered, the greater the
21 risk of a catastrophic failure, voter disenfranchisement, and litigation over election mishaps.

22 PARTIES

23 8. Plaintiff Justin Heap is the Maricopa County Recorder, a constitutionally cre-
24 ated public office. Ariz. Const. art. XII, § 3. He is suing in his official capacity. Under the
25 Arizona Revised Statutes, the County Recorder is responsible for overseeing and directing
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1 numerous components of election administration within the county, including voter registra-
2 tion, voter list maintenance, chain of custody, and early voting.¹

3 9. Defendant Thomas Galvin is a member of the Maricopa County Board of Su-
4 pervisors and is also the Chairman of the Board. Defendant Kate Brophy McGee is a member
5 of the Maricopa County Board of Supervisors and is also the Vice-Chair of the Board. De-
6 fendants Steve Gallardo, Debbie Lesko, and Mark Stewart are members of the Maricopa
7 County Board of Supervisors. All five members of the Board are sued in their official capaci-
8 ties. The Board of Supervisors is charged by law with overseeing and conducting certain ele-
9 ments of elections within the county's jurisdictional boundaries, including overseeing the op-
10 erations of polling locations on election day, and tallying and certifying election results by
11 canvassing the election.²

12 JURISDICTION

13 10. The events and omissions giving rise to this action occurred in Maricopa
14 County.

15 11. This Court has jurisdiction over this action and the authority to grant relief un-
16 der Article VI, sections 14 and 18 of the Arizona Constitution and under A.R.S. §§ 12-122, -
17 123(B), -1801, -1803, -1831, -1832, -2021, Ariz. R. Civ. P. 65, and RPSA 2(c), 4, 5, and 10.

18 12. Venue lies in Maricopa County pursuant to RPSA 6(a) and A.R.S. § 12-401
19 because the Defendants hold office in Maricopa County and because Maricopa County is
20 where the defendants decided, and should have decided, the matters that are the subject of
21 this special action.

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26 ¹ See, e.g., A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169,
and -542 to -544.

² See, e.g., A.R.S. §§ 11-251(3), 16-447, -511, -531, -551, -642, and -645.

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GENERAL ALLEGATIONS

I. Arizona's statutory scheme for allocating responsibility for election administration divides duties between County Boards of Supervisors and Recorders

13. Arizona's election statutes confer exclusive authority for specific duties to administer elections solely on the county recorders³ or solely on county boards of supervisors.⁴

14. However, in more than a hundred places, Arizona's election statutes delegate presumptive authority to either the county recorder or the board of supervisors but allow for a particular county's board of supervisors and recorder to re-allocate those responsibilities to an "other officer in charge of elections." The statutes accomplish this result by naming the party presumptively delegated with that authority and then allowing that authority to alternatively be exercised by an "other officer in charge of elections" or an "other authority in charge of elections."

15. This interpretation has been universally accepted by the Legislature and election professionals, administrators, and officers in the State.

16. Upon information and belief, no Arizona court has ever needed to weigh in on the meaning of this aspect of Arizona's statutory scheme for elections because it is so obvious and uncontroversial

17. Accordingly, in 111 places, Arizona's election statutes allocate authority to "the county recorder or other officer in charge of elections,"⁵ and in 16 places, it designates

³ See, e.g., A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544.

⁴ See, e.g., A.R.S. §§ 11-251(3), 16-447, -511, -531, -551, -642, and -645.

⁵ A.R.S. § 16-121.01 (fourteen delegations of authority to county recorder); A.R.S. § 16-204 (two delegations of authority to county recorder); A.R.S. § 16-205 (one delegation of authority to county recorder); A.R.S. § 16-222 (one delegation of authority to county recorder); A.R.S. § 16-246 (six delegations of authority to county recorder); A.R.S. § 16-351 (one delegation of authority to county recorder); A.R.S. § 16-411 (eight delegations of authority to county recorder); A.R.S. § 16-542 (thirteen delegations of authority to county recorder); A.R.S. § 16-543

1 the “county board of supervisors or other officer in charge of elections” or “the board of
2 supervisors or other authority in charge of elections.”⁶

3 18. This overwhelming disparity demonstrates that the Legislature intended pri-
4 mary election authority and responsibility to be held by the Recorder generally, and that the
5 Recorder is specifically responsible for all matters related to early voting and vote-by-mail.

6 **II. Historical practice for election administration in Maricopa County**

7 19. Because Maricopa County is one of the largest voting jurisdictions in the United
8 States, for decades the Maricopa County Board of Supervisors (“BOS”) and the Maricopa
9 County Recorder (the “Recorder”) have executed agreements to facilitate collaboration be-
10 tween themselves and to formalize the division of labor, resource allocation, and budget re-
11 sponsibilities. Initially, this was done through a document called “The Charter,” which desig-
12 nated all election authority power to the Recorder. Later, this was accomplished through Elec-
13 tion Operations Agreements or Shared Services Agreements (“SSAs”).

14 20. For election responsibilities delegated by statute either to the “other officer in
15 charge of elections” or the “other authority in charge of elections,” these agreements would
16 sometimes reallocate responsibility from the party presumptively entrusted with it to the other
17 party instead.

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20 (seven delegations of authority to county recorder); A.R.S. § 16-543.02 (two delegations of
21 authority to county recorder); A.R.S. § 16-544 (twelve delegations of authority to county re-
22 corder); A.R.S. § 16-547 (five delegations of authority to county recorder); A.R.S. § 16-548
23 (two delegations of authority to county recorder); A.R.S. § 16-549 (nine delegations of author-
24 ity to county recorder); A.R.S. § 16-550 (thirteen delegations of authority to county recorder);
25 A.R.S. § 16-550.01 (one delegation of authority to county recorder); A.R.S. § 16-551 (four
delegations of authority to county recorder); A.R.S. § 16-558.01 (two delegations of authority
to county recorder); A.R.S. § 16-558.02 (two delegations of authority to county recorder);
A.R.S. § 16-579.01 (two delegations of authority to county recorder); A.R.S. § 16-579.02 (one
delegation of authority to county recorder); A.R.S. § 16-584 (one delegation of authority to
county recorder); A.R.S. § 16-602 (one delegation of authority to county recorder); A.R.S. §
16-621 (one delegation of authority to county recorder).

26 ⁶ A.R.S. § 16-405 (one delegation of authority to board of supervisors); A.R.S. § 16-406 (one
delegation of authority to board of supervisors); A.R.S. § 16-447 (five delegations of authority
to board of supervisors); A.R.S. § 16-452 (one delegation of authority to board of supervisors);
A.R.S. § 16-513.01 (one delegation of authority to board of supervisors); A.R.S. § 16-532 (five
delegations of authority to board of supervisors); A.R.S. § 16-566 (one delegation of authority
to board of supervisors); A.R.S. § 16-621 (one delegation of authority to board of supervisors).

1 21. These agreements ensured that tasks like ballot processing, voter verification,
2 and IT support were efficiently divided while complying with state law. These agreements
3 were typically administrative tools and were renewed or adjusted periodically to reflect opera-
4 tional needs or changes in leadership.

5 22. During the tenure of County Recorder Helen Purcell from 1989 to 2017, the
6 allocation of election authority between the BOS and the Recorder was relatively uncontro-
7 versial, focusing on operational efficiency. However, as election administration faced increased
8 scrutiny after long voter lines in 2016 caused significant public backlash, and then after mis-
9 haps or problems during the elections in 2018, 2020, and 2022 caused significant erosion of
10 public trust in the integrity of the County's elections, the agreements began to reflect ever-
11 growing tensions over control and transparency.

12 **III. The current dispute**

13 23. On July 30, 2024, the then-Recorder Stephen Richer lost his hopes for re-elec-
14 tion when he lost the Republican primary. After that date, he was a lame duck Recorder.

15 24. Richer lost his primary to Plaintiff Justin Heap, who was a member of the Ari-
16 zona House of Representatives at the time.

17 25. In October 2024, the prior BOS signed a new SSA (the "2024 SSA") with Re-
18 corder Richer, even though he was a lame duck and would only be occupying the office for a
19 scant few months more. Moreover, a majority of members of the BOS at the time—three out
20 of five—were also lame ducks and were not returning next session. Thus, four of the six peo-
21 ple involved in negotiating or approving the 2024 SSA were not returning and had no future
22 stake in their offices.

23 26. Upon information and belief, the BOS executed the 2024 SSA in an attempt to
24 shackle Richer's successor. Attached as Exhibit A is a copy of the 2024 SSA.

25 27. This 2024 SSA was a significant departure from prior SSAs and significantly
26 constrained the Recorder's authority over elections and the Recorder's ability to manage his
own office independent of the Board's control. This included statutory functions entrusted

1 solely to the Recorder, such as the recordation of public documents, which had no place in an
2 election SSA.

3 28. For example, the October 2024 SSA transferred key election functions, includ-
4 ing early ballot processing, establishment of early voting locations, and management of ballot
5 drop boxes, from the Recorder's Office to the BOS.

6 29. The 2024 SSA removed the Recorder's entire IT Department (33 Full-Time
7 Employees) from the Recorder's Office and transferred them to the BOS's County IT De-
8 partment. This IT removal was not restricted just to IT personnel. It also included the removal
9 of all physical IT equipment and hardware, such as databases, servers, information systems,
10 and custom-built software necessary for the Recorder to carry out his varied statutory func-
11 tions.

12 30. Additionally, it shifted \$5 million of budget to the BOS, reducing the Recorder's
13 resources.

14 31. On November 5, 2024, Plaintiff Justin Heap was elected by the people of Mar-
15 icopa County to serve as Recorder by a decisive margin of 4.3 percent, giving him a clear
16 mandate to enact the reforms he promised during his campaign, which were entirely consistent
17 with the statutory duties conferred on him by Arizona's statutes.

18 32. The 2024 SSA became effective on December 10, 2024, just twenty days before
19 the start of the new Recorder's term.

20 33. The timing of the 2024 SSA's effective date appears to have been an effort to
21 undermine voters' desire for improvements in the way early voting was administered, which
22 they expressed by electing a new recorder.

23 34. Upon taking office in January 2025, Recorder Heap immediately terminated the
24 2024 SSA for two reasons:

25 35. *First*, it was unenforceable because a prior elected official cannot bind his suc-
26 cessor.

1 36. *Second*, the 2024 SSA violated Recorder Heap's statutory duties under Arizona's
2 election statutes.

3 37. For example, the 2024 SSA stripped the Recorder's office of critical functions,
4 such as control over early ballot processing and IT resources, which are essential for transpar-
5 ent elections.

6 38. The BOS did not dispute that Recorder Heap had the authority to cancel the
7 2024 SSA.

8 39. For his first three months in office, from January to March 2025, Recorder
9 Heap attempted to negotiate in good faith with the BOS to replace the 2024 SSA with one
10 that respects the statutory division of labor established in Arizona's statutes and that funds the
11 Recorder's necessary expenses incurred in the conduct of his office.

12 40. Recorder Heap initiated dialogue through letters and meeting requests. His re-
13 quests were entirely reasonable: all he wanted was a new SSA that restored his office's budget
14 and authority to those of his immediate predecessors.

15 41. However, the BOS has failed to reciprocate Recorder Heap's efforts to negoti-
16 ate in good faith.

17 42. The Board, led by Chairman Thomas Galvin, responded slowly, stonewalling
18 him and spreading misinformation to the public.

19 43. Even worse, the BOS refused to return to the Recorder's Office the election-
20 related IT staff who had been removed under the 2024 SSA. The BOS also refused to allow
21 the Recorder's Office to hire necessary staff and refused to approve salaries for staff, even
22 when the Recorder's Office had the necessary money in its budget to hire them.

23 44. The loss of his IT staff means that Recorder Heap cannot perform all the voter
24 list maintenance activities that are necessary to keep voter rolls clean, in conformity with stat-
25 utory requirements. For example, the lack of IT staff has meant that the Recorder's Office
26 cannot perform batch comparisons with federal databases and cannot upgrade the registration
database to pull and sort data to find mistakes in voter registrations.

1 45. Furthermore, because the Recorder's Office is now entirely reliant on County
2 IT staff, the only way to accomplish needed IT tasks is to submit support request tickets.

3 46. Many tickets have not been completed in a timely manner, and the Recorder
4 has little to no recourse if the County staff refuses to fulfill a request or if the BOS instructs
5 them to ignore a request.

6 47. The problem of County staff failing to fulfill IT requests is significant. As of
7 June 11, 2025, 73 tickets were outstanding. The following list breaks down how long these
8 tickets have been outstanding:

9 42 tickets are 6 weeks old or older

10 0 tickets are 5 weeks old

11 10 tickets are 4 weeks old

12 1 ticket is 3 weeks old

13 19 tickets are 2 weeks old

14 1 tickets is 1 week old

15 48. Since Recorder Heap took office, the Recorder's Office has submitted 158 sup-
16 port tickets to the County IT department, and only 85 have been closed. This means that, as
17 of June 11, the County IT department has failed to fulfill 46% of the Recorder's Office's IT
18 requests.

19 49. The County IT department's failure to prioritize support tickets from the Re-
20 corder's Office appears to be intentional. During a call with staff from the Recorder's Office
21 on March 6, 2025, the BOS's Director of Elections, Scott Jarrett, made statements that indi-
22 cated that IT support requests from the BOS's Elections Department were being given priority
23 over requests from the Recorder's Office.

24 50. Additionally, all of the Recorder's confidential communications and documents
25 are now accessible to County IT staff and, thus, to the BOS, which raises serious privacy
26 concerns.

1 51. The BOS also continued to restrict the Recorder's Office's access to County
2 facilities related to election functions and refused to allow the Recorder's Office to have access
3 to county-owned equipment and supplies necessary for the administration of early voting.

4 52. Upon information and belief, the timing of the BOS's actions makes it appear
5 the BOS took these actions as a punitive measure against the Recorder and in an attempt to
6 force him to relinquish most or all of his duties to the BOS.

7 53. Further confirmation that this was the reason for the BOS's actions is that the
8 BOS provides funds for every other elected County official in Maricopa County to have his
9 or her own independent IT staff subject to that official's direct supervision and control. The
10 Recorder is the only elected official in the County who has been singled out for this maltreat-
11 ment of not having his own dedicated IT staff.

12 54. In April 2025, the BOS voted unanimously in a special meeting to propose a
13 new draft SSA that maintained significant Board control over election functions and that failed
14 to restore to Recorder Heap the IT staff and budget necessary for the conduct of the duties
15 of his office.

16 55. On May 15, 2025, Recorder Heap countered with a final proposed SSA to the
17 BOS.

18 56. Recorder Heap's proposed SSA, which was drafted with the assistance of for-
19 mer Arizona Supreme Court Justice Andrew Gould, allocated responsibilities between the
20 BOS and Recorder strictly in line with the presumptive allocations in statute and ensured that
21 Recorder Heap would have the necessary resources to conduct the duties of his office. At-
22 tached as Exhibit B is the transmittal letter and proposed SSA.

23 57. Recorder Heap asked the BOS to respond to his proposed SSA by May 23,
24 2025.

25 58. The BOS held a regularly scheduled meeting on May 21, 2025, at which time it
26 could have considered Recorder Heap's proposed SSA, but did not add it to the agenda for a
vote.

1 59. On May 23, through a letter from counsel, the BOS rejected Recorder Heap's
2 proposed SSA.

3 60. At an informal BOS meeting on May 19, 2025, where the BOS took a unani-
4 mous vote on the adoption of the fiscal year 2026 tentative budget which excluded many of
5 the stated statutory responsibilities of the Recorder's Office, Assistant County Manager Zach
6 Schira confirmed to the BOS that, in the absence of an SSA, "if we're going to our statutory
7 corners, then [the Recorder] would be responsible for just early in-person [voting] and [the
8 BOS] would be responsible for emergency and election day [voting]" and that early voting
9 administered by the Recorder and election-day voting administered by the BOS would likely
10 require separate personnel, warehouse, and equipment used by each party.⁷ After Supervisor
11 Mark Stewart asked if the costs had to be duplicative if the Recorder took back early voting
12 per the statutes, Schira stated "in theory" both departments could use the same equipment if
13 they coordinated.⁸

14 61. On June 5, 2025, Recorder Heap sent a letter through counsel to the BOS of-
15 fering to enter into mediation with the BOS to seek a mutually satisfactory resolution of their
16 dispute.

17 62. The BOS, however, ignored Recorder Heap's letter.

18 63. The BOS had informal and executive sessions on June 9 at which it could have
19 discussed and accepted the offer of mediation. The agendas for those meetings confirm that
20 the BOS failed to discuss Recorder Heap's offer.

21 64. The BOS had a formal meeting on June 11. The agenda for that meeting con-
22 firms that the BOS failed to discuss Recorder Heap's offer.

23 65. Recorder Heap has not received any response from the BOS.

24 66. Accordingly, his final recourse is to file this special action to ensure that he is
25 able to perform the duties of his office.

⁷ Maricopa County Board of Supervisors, *May 19, 2025, Informal Meeting* at 1:03:00-1:06:28, <https://tinyurl.com/3dnxcbxn>.

⁸ *Id.*

1 **IV. The consequences of the BOS's failure to pay the necessary expenses for the**
2 **conduct of the Recorder's office**

3 67. Arizona law does not require the BOS and Recorder to execute a shared services
4 agreement.

5 68. However, Arizona law *does* establish that “necessary expenses incurred in the
6 conduct of their offices” of county officers are “[c]ounty charges” for which the BOS is re-
7 sponsible to pay. A.R.S. § 11-601(2).

8 69. The BOS refuses to provide the Recorder with the IT staff the Recorder's Of-
9 fice needs for Recorder Heap to carry out his statutorily required and authorized election du-
10 ties. Recorder Heap continues to be the only elected county official without his own dedicated
11 IT staff.

12 70. The BOS refuses to provide access to the necessary County facilities that the
13 Recorder's Office needs for Recorder Heap to carry out his statutorily required and authorized
14 election duties.

15 71. The BOS refuses to provide access to the necessary equipment that the Re-
16 corder's Office needs for Recorder Heap to carry out his statutorily required and authorized
17 election duties.

18 72. The BOS has also taken control of information systems that were developed by
19 the Recorder's Office under prior administrations and which deal entirely, or almost entirely,
20 with the statutory functions of the Recorder.

21 73. For example, under Arizona law, the County Recorder has exclusive authority
22 over voter registration and the maintenance of the voter rolls and the Active Early Voting List.
23 To carry out these duties, the Recorder's Office relies on internally developed software sys-
24 tems—ERO and VRAS—created through decades of investment by prior Recorders. How-
25 ever, the BOS transferred control of these systems, including the IT personnel who developed
26 and maintained them, as well as the servers and equipment hosting the data, to itself. Depriving

1 the Recorder of access to and control over these systems prevents the lawful execution of his
2 exclusive statutory responsibilities.

3 74. If the BOS does not relinquish control of ERO and VRAS to the Recorder, the
4 Recorder will be obligated to create equivalent systems under his control so that he may fulfill
5 his statutory duties regarding voter registration and maintenance of the voter rolls and the
6 Active Early Voting List.

7 75. Arizona law also assigns the Recorder exclusive authority to record and preserve
8 public documents, including maintaining records for approximately 1.8 million parcels in Mar-
9 icopa County. The Recorder's responsibilities in this regard are extensive and require signifi-
10 cant IT systems. The Recorder's office records approximately one million documents per year.
11 The Recorder's Office also maintains a searchable public database of over 50 million recorded
12 land documents going back over 150 years and comprising more than 185 million individual
13 images.

14 76. To manage this function, the Recorder's Office developed a custom software
15 system, RDIS, for cataloging and digitizing property records filed in person or through remote
16 kiosks. Despite this function having no connection to elections, the BOS transferred control
17 of the RDIS team and the servers containing both the software and the full database of digit-
18 ized documents to the BOS.

19 77. Approximately over the last month, the BOS returned most of the Recorder's
20 RDIS IT personnel to the Recorder's Office. However, even though the Recorder's Office
21 now has the needed personnel to manage RDIS, it still does not have the physical servers that
22 house the RDIS system and databases.

23 78. In other words, the BOS has taken control of all of the digitized recorded prop-
24 erty documents for the entire county, even though only the Recorder has the authority under
25 statute to record and store such documents.

26 79. The Recorder's Office, therefore, cannot administer any of the Recorder's stat-
utory responsibilities that are managed through RDIS unless the BOS grants access to the

1 servers. For example, the Recorder's Office IT staff do not have the ability to independently
2 make upgrades to the RDIS system. Rather, they must first get approval from the BOS's IT
3 department.

4 80. The BOS's continued control of RDIS impairs the Recorder's ability to fulfill
5 his non-delegable statutory duty to maintain public records.

6 81. The BOS has taken full control over the physical servers that house both the
7 voter registration systems and the official voter rolls. The BOS also transferred to its own IT
8 department the database administrators responsible for maintaining these servers.

9 82. As a result, the Recorder is entirely dependent on the Board's IT staff to per-
10 form one of his core statutory functions—maintaining voter registration records and—effec-
11 tively stripping the Recorder of the operational capacity required by law.

12 83. Additionally, the BOS has taken control of the Recorder's Geographic Infor-
13 mation System (GIS).

14 84. The Recorder is the only authorized custodian for a variety of important rec-
15 ords, including “all records, maps and papers deposited in the recorder's office.” A.R.S. § 11-
16 461(A). That custodianship requires that the Recorder keep accurate official records of street
17 center lines, address points, and city boundaries. The Recorder's GIS is where these records
18 are stored. It is unlawful for the BOS to maintain its control of the Recorder's GIS because
19 only the Recorder's Office is charged with the custodianship of the records it contains. If the
20 BOS does not relinquish control of the Recorder's GIS back to the Recorder, then the Re-
21 corder will be obligated to create a new GIS under his control so that he may fulfill his statu-
22 tory duty to maintain custody of the relevant records.

23 85. The BOS has also taken control of the BeBallotReady website, which is acces-
24 sible through the URLs BeBallotReady.com and BeBallotReady.Vote.

25 86. BeBallotReady was created and popularized by the Recorder's Office under
26 prior Recorders to serve as an official, centralized source of election information for voters in
Maricopa County. More than a simple website, it integrates all of the Recorders' early voting

1 and election functions into one central user-friendly interface. It allows users to view and up-
2 date their voter registration, request a mail-in ballot, explore the entire ballot, find information
3 about upcoming elections, sign up for voter registration and early ballot alerts, and find their
4 polling place for early and election voting, and more, all in one place.

5 87. Virtually all of the functionalities provided by BeBallotReady relate to respon-
6 sibilities statutorily entrusted to the Recorder, such as voter registration, mail-in ballot re-
7 quests, early voting locations, tracking of the status of early ballot and signature verification,
8 and sending electronic notices about voters' early ballot status.

9 88. If the BOS does not relinquish control of BeBallotReady to the Recorder, the
10 Recorder will be obligated to create an equivalent site under his control so that he may fulfill
11 his statutory duties regarding voter registration, early voting, and signature verification.

12 89. If the BOS does not give back the employees, facilities, and equipment that it
13 took from Recorder Heap, then it is required to fund all necessary expenses for the conduct
14 of his office. Therefore, if the BOS refuses to give back all the resources that it took from
15 Recorder Heap, it has a mandatory duty to pay all necessary expenses for Recorder Heap to
16 independently hire the required IT staff; secure the necessary office and warehouse space;
17 develop replacement databases, software, and websites; and procure all of the necessary equip-
18 ment for him to conduct the duties of his office.

19 90. The BOS refuses to do so and is therefore violating Arizona law and preventing
20 Recorder Heap from carrying out the duties of his office.

21 91. Accordingly, Recorder Heap is a "person aggrieved by the action or inaction
22 of" the BOS and has standing to sue. RPSA 5(a)(1).

23 92. The preparation for an election starts many months in advance. The BOS's fail-
24 ure to fund the necessary expenses of Recorder Heap threatens his ability to carry out the
25 functions of his office, including maintaining voter rolls, administering early voting, and con-
26 ducting signature verification of early ballots.

1 93. Elections in Maricopa County will continue to be conducted unlawfully until
2 this dispute is resolved. The longer this situation persists, the higher the risk of a significant
3 failure.

4 94. The potential for voter disenfranchisement is a critical concern if the Court does
5 not act. The BOS's actions, such as withholding IT staff and resources essential for election
6 administration, directly impact the Recorder's capacity to manage voter registration and early
7 voting processes effectively. This could lead to significant delays and errors in voter registra-
8 tion and early voting, ultimately disenfranchising voters who rely on these systems to partici-
9 pate in elections.

10 95. The Recorder's Office is responsible for overseeing and directing numerous
11 components of election administration, and the BOS's interference with these functions jeop-
12 ardizes the ability of voters to exercise their fundamental right to vote.

13 96. Moreover, the public's trust in the electoral process is at stake. The BOS's ac-
14 tions have already eroded public confidence in the integrity of Maricopa County's elections. If
15 the court does not grant relief, the continued unlawful administration of elections will exacer-
16 bate public skepticism and diminish trust in the electoral system. The perception of fairness
17 and transparency in elections is crucial for maintaining public confidence, and the BOS's over-
18 reach threatens to undermine these principles.

COUNT I

20 **Failure to pay necessary expenses incurred in the conduct of the Recorder's office**
21 **A.R.S. §§ 11-601; 12-122, -123(B), -1801, -1803, -1831, -1832, -2021; Ariz. R. Civ. P. 65;**
22 **RPSA 2(c), 4, 5, and 10; and Arizona Revised Statutes Title 16.**

23 97. The Plaintiff incorporates by reference the preceding allegations as if fully set
24 forth herein.

25 98. Recorder Heap occupies a county office established under the Constitution of
26 the State. He is charged with numerous responsibilities to administer elections.

 99. Recorder Heap's actions to carry out those responsibilities constitute conduct
of his office.

1 100. Therefore, the cost to fund Recorder Heap's actions to carry out those respon-
2 sibilities constitutes "necessary expenses incurred in the conduct of [his] office[]." A.R.S. § 11-
3 601(2).

4 101. The BOS has a mandatory duty under Arizona law to pay for all these expenses.

5 102. However, the BOS is shirking its mandatory statutory duties and refuses to pay
6 for Recorder Heap's necessary expenses as evidenced by its vote and discussion on May 19th
7 for the 2026 fiscal year tentative budget which did not fund all the necessary expenses for the
8 conduct of Recorder Heap's office.

9 103. The BOS has therefore "failed to perform a duty required by law for which they
10 have no discretion." RPSA 4(a).

11 104. A writ of mandamus is available, "on the verified complaint of the party bene-
12 ficially interested, to compel, when there is not a plain, adequate and speedy remedy at law,
13 performance of an act which the law specially imposes as a duty resulting from an office, trust
14 or station, or to compel the admission of a party to the use and enjoyment of a right or office
15 to which he is entitled and from which he is unlawfully precluded by such inferior tribunal,
16 corporation, board or person." A.R.S. § 12-2021.

17 105. As Maricopa County Recorder, the Plaintiff has the right to administer early
18 voting responsibilities delegated to him by statute and is beneficially interested in exercising
19 such responsibilities.

20 106. By refusing to comply with their obligation to provide funding adequate to allow
21 Recorder Heap to discharge his other lawful duties unless he agrees to forfeit a significant
22 portion of this right, the BOS has unlawfully precluded Recorder Heap from the use and
23 enjoyment of the rights of the office to which he is entitled.

24 107. A writ of mandamus therefore properly lies pursuant to A.R.S. § 12-2021 and
25 RPSA 4(a).

26 108. The BOS has no jurisdiction over early voting responsibilities assigned by stat-
ute only to the Recorder or, absent the Recorder's consent, assigned by statute to the "recorder

1 or other officer in charge of elections.” By refusing to provide funding adequate to allow the
2 Recorder to discharge his other lawful duties unless the Recorder involuntarily cedes his juris-
3 diction and legal authority to the BOS, the BOS has also “proceeded” and “threaten[s] to
4 proceed, without, or in excess of, jurisdiction or legal authority.” RPSA 4(b).

5 109. To the extent that this Court finds that the BOS has any discretion in the matter,
6 it would also have “failed to exercise discretion that they have a duty to exercise.” RPSA 4(a).
7 It is an untenable reason for the exercise of its budgetary authority for the BOS to employ
8 such authority in service to the objective of clawing power and prerogatives away from the
9 officeholder who rightfully possesses them by law and whom voters elected to exercise those
10 powers and prerogatives. *See Quigley v. City Court of Tucson*, 132 Ariz. 35, 37 (App. 1982) (an
11 abuse of discretion occurs when discretion is “exercised on untenable grounds, or for unten-
12 able reasons.”).

13 110. The BOS’s actions as described above also constitute “decision[s] that [were]
14 arbitrary and capricious or an abuse of discretion” and also constitute “a legal error.” RPSA
15 4(c).

16 111. The BOS’s continued intransigence makes it impossible to properly conduct
17 elections in Maricopa County.

18 112. As the elected official with principal authority and responsibility for administer-
19 ing elections in Maricopa County, Recorder Heap is therefore harmed by the BOS’s unlawful
20 conduct because its conduct makes it impossible for Recorder Heap to execute the duties of
21 his office.

22 113. Absent judicial intervention, Recorder Heap will continue to suffer harm, and
23 it will be impossible to properly conduct elections in Maricopa County.

24 114. There is no equally plain, speedy, and adequate remedy at law.

25 115. Time is of the essence. The consequences of delay are severe and multifaceted.
26 The BOS’s refusal to fund the necessary expenses for the Recorder’s Office, including IT staff,
access to facilities, and control over critical election systems, directly impairs the Recorder’s

1 ability to maintain voter rolls, administer early voting, and conduct signature verification of
2 early ballots. This not only jeopardizes the integrity and legality of the upcoming elections but
3 also increases the risk of a catastrophic failure in the election process, which could lead to
4 significant public distrust and potential legal challenges.

5 116. Furthermore, the BOS's actions have created an untenable situation where the
6 Recorder is unable to fulfill his statutory responsibilities, thereby undermining the democratic
7 process in Maricopa County. The longer this dispute remains unresolved, the greater the risk
8 of disenfranchisement and the erosion of public confidence in the electoral system. It is crucial
9 for the court to act swiftly to restore the Recorder's authority and ensure that elections in
10 Maricopa County are conducted lawfully and transparently, in accordance with Arizona's stat-
11 utory framework.

12 13 14 **COUNT II**

Declaration of election responsibilities of the Recorder

A.R.S. §§ 12-1831, -1832 and Arizona Revised Statutes Title 16.

15
16 117. The Plaintiff incorporates by reference the preceding allegations as if fully set
17 forth herein.

18 118. A "basic principle of statutory interpretation instructs that specific statutes con-
19 trol over general statutes." *Mery Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment*
20 *Sys.*, 181 Ariz. 95, 100, (App. 1994) (cleaned up).

21 119. Arizona courts "honor the plain language of a statute" while "also attempt[ing]
22 to reconcile potentially conflicting statutory provisions, if possible" and "also avoid[ing] con-
23 structions that render one portion of a statute a nullity. And, as mentioned earlier, [Arizona
24 courts] give preference to specific statutory provisions over general ones." *State v. Jackson*, 210
25 Ariz. 466, 471-72 ¶ 26 (App. 2005) (cleaned up).

26 120. Applying these rules of statutory construction makes clear that in the more than
one hundred places where Arizona's election statutes delegate responsibility for specific

1 election functions either to the Recorder or the Board of Supervisors and then also to the
2 “other officer in charge of elections” or an “other authority in charge of elections,” the au-
3 thority has been presumptively delegated to the specifically named party.

4 121. Arizona courts have the authority to “declare rights, status, and other legal re-
5 lations whether or not further relief is or could be claimed,” A.R.S. 12-1831.

6 122. Additionally, for a person “whose rights, status or other legal relations are af-
7 fected by a statute,” that person is entitled to have “determined any question of construction
8 or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal
9 relations thereunder.” A.R.S. 12-1832.

10 123. Recorder Heap’s rights, status, and legal relations are affected by the delegations
11 of election administration responsibility in Title 16 of the Arizona Revised Statutes. He is
12 therefore entitled to a declaration of his rights, status, and legal relations under those statutes.

13 124. A declaration from this Court that Recorder Heap has the authority and respon-
14 sibilities presumptively delegated to him by law absent his consent, and that the board’s budg-
15 etary authority cannot be used as a cudgel to deprive him of these authorities is essential to
16 ensuring the proper and lawful administration of elections in Maricopa County and that such
17 functions are properly funded by the BOS.

18 **PRAYER FOR RELIEF**

19 Based on the preceding, the Plaintiff respectfully requests relief in the following forms:

20 A. The following special action, declaratory, and injunctive relief under A.R.S. §§ 12-122, -
21 123(B), -1801, -1803, -1831, -1832, -2021; Ariz. R. Civ. P. 65; RPSA 2(c), 4, 5, and 10:

- 22 1. A declaratory judgment that the BOS is required to fund all necessary expenses of
23 the Recorder as set forth in the following statutes: A.R.S. §§ 16-103, -112, -120, -
24 121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544 and A.R.S.
25 § 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -
26 548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.

2. An order requiring the BOS to fund all necessary expenses of the Recorder as set forth in the following statutes: A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544 and A.R.S. § 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.
 3. An order prohibiting the BOS from refusing to fund all necessary expenses of the Recorder as set forth in the following statutes: A.R.S. §§ 16-103, -112, -120, -121.01, -128, -132, -134, -138, -151, -161 through -169, and -542 to -544 and A.R.S. § 16-121.01, -204, -205, -222, -246, -351, -411, -542, -543, -543.02, -544, -547, -548, -549, -550, -550.01, -551, -558.01, -558.02, -579.01, -579.02, -584, -602, -621.
 4. An order vacating the unlawful actions of the BOS as described above.
 5. All other special action and injunctive remedies available to ensure that the BOS funds the Recorder's conduct of his office.
- B. A declaration under A.R.S. §§ 12-1831 and -1832 or other applicable law that:
1. Whenever statutes in Title 16 of the Arizona Revised Statutes delegate authority or responsibility to a recorder or an "other officer in charge of elections," the statute is delegating that authority or responsibility to a county's recorder unless the county's recorder agrees that an "other officer in charge of elections" may be designated to carry it out; and
 2. Whenever statutes in Title 16 of the Arizona Revised Statutes delegate authority or responsibility to a board of supervisors or an "other officer in charge of elections" or an "other authority in charge of elections," the statute is delegating that authority or responsibility to a county's board of supervisors unless the board of supervisors agrees that an "other officer in charge of elections" may be designated to carry it out.
- C. An award of reasonable attorneys' fees and costs under A.R.S. §§ 12-341, -348, -2030, RPSA 7(i), the private attorney general doctrine, and other applicable law.

1 D. For such other relief as the Court deems just and proper

2 RESPECTFULLY SUBMITTED this 12th of June, 2024.

3
4 **America First Legal Foundation**

5 By: _____

6 James K. Rogers (No. 027287)

7 *Senior Counsel*

8 America First Legal Foundation

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10 Washington, D.C. 20003

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12 James.Rogers@aflegal.org

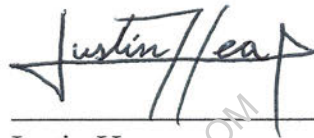
13 *Attorney for Plaintiff*

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VERIFICATION

I, Justin Heap, declare that I have read the foregoing complaint, I know the contents thereof, and that it is true and correct to the best of my knowledge. To the extent I am relying on documents as to matters of fact of which I do not have personal knowledge, I have a reasonable belief that those documents are genuine and accurate. To the extent the complaint makes allegations based on information and belief, I believe those allegations to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 11, 2025.

A handwritten signature in black ink that reads "Justin Heap". The signature is written in a cursive style with a large, stylized "J" and "H".

Justin Heap
Maricopa County Recorder

Exhibit A

MARICOPA COUNTY ELECTIONS SHARED SERVICES AGREEMENT

The MARICOPA COUNTY BOARD OF SUPERVISORS (the "Board") and the MARICOPA COUNTY RECORDER (the "Recorder") enter into this Shared Services Agreement (the "Agreement") to outline the mutual understanding of the Board and the Recorder (together, the "Parties") for the management of election-related activities in Maricopa County.

1. Intent of the Agreement

The Parties have a shared interest in fulfilling their responsibilities and ensuring that elections are administered efficiently and effectively. Therefore, certain services will continue to be shared or delegated in this interest. The purpose of this Agreement is to coordinate election-related activities in Maricopa County for sound economic reasons, efficiency, and public convenience.

2. General Provisions

2.1. Supersedes Prior Agreements

The Agreement shall supersede and replace all prior agreements and understandings between the Parties, whether oral or written, including without limitation the 2021 Elections Operations Agreement executed by the Parties on August 16, 2021 (C-06-22-742-X-00) and the Shared Services Agreement executed by the parties on May 10, 2023 (C-06-23-690-X-00).

2.2. Successors and Assigns

The Agreement will be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. The Parties will continue to be bound by all terms of the Agreement without regard to the individuals holding the respective offices of the Parties. The Agreement is intended to be solely for the benefit of the Parties, their successors, and assigns. The Parties represent that they freely and voluntarily enter into the Agreement without any degree of duress or compulsion.

2.3. Effective Date

The agreement will be effective December 10, 2024.

2.4. Amendment

The Agreement may not be amended except by a written amendment signed by each of the Parties.

2.5. Choice of Law

The Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, including Title 16 of the Arizona Revised Statutes and the operative Elections Procedures Manual ("EPM") published pursuant to A.R.S. § 16-452.

2.6. Severability

If any term of the Agreement is to any extent invalid, for any reason, including illegality or conflict with applicable law or regulation, or is otherwise unenforceable, such particular term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term

that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

2.7. Reporting Relationships

No "Dual Reports". Employees of the Recorder will report to the Recorder or the Recorder's designee. Employees of the Board (i.e., the County) will report to the County Manager or the Board's designee. No employee of the Recorder or the County will have a "dual report" status such that they report to both the Recorder and the County Manager or the Board's designee.

2.8. Term and Termination

The Agreement shall become effective upon the Effective Date named above in section 2.3. Any Party seeking to terminate the Agreement shall do so by providing written notice to all other Parties a minimum of 90 days prior to the end of a General Election year (i.e., an even-numbered year in which a General Election is held). The termination date will be effective, and the Agreement terminated, at 11:59 p.m. on December 31 of the even-numbered year in which the General Election is held following the notice of termination being provided. Thus, a termination notice that is made during an odd-numbered year will not become effective until December 31 of the following year, after the next General Election held during the following, even-numbered year. A notice of termination can be rescinded by the terminating Party at any time before the expiration of the 90 days' notice but must be rescinded in a writing signed by the Party that invoked this Termination Clause. Any such revocation of termination must be accepted in writing by the other Party.

3. Election Administration Generally

The Parties hereby agree to work together to administer elections as required by Arizona law for the benefit of Maricopa County's citizens, as detailed in this Agreement. In addition to their individual responsibilities as delineated herein, the Parties agree as follows.

3.1. The Establishment of the Elections Department

The Board of Supervisors has established the Elections Department, overseen by the County's Director of Elections and staffed with a team of election-administration professionals, to oversee and perform many of the election-related duties that are assigned by law to the Board of Supervisors or the officer in charge of elections. The Department will report to the Board through the County Manager's administration. The Board via the County Manager will continue to employ a Director of Elections to oversee those areas of election administration for which the Board is responsible.

3.2. Communications

The Recorder and the Board will each utilize their own communications departments to publicize their messages related to elections and election administration. The Board and the Recorder are each free to speak about election administration but will defer to other's communications strategies and efforts when it involves a statutory, EPM, or Agreement-assigned responsibility. Each will be respectful of the other's positions as partners in the administration of elections and will coordinate their messages where it is advantageous and practical for them to do so. The Recorder will be responsible for responding as the Recorder sees fit to all e-mailed or messaged constituent inquiries relating to the Recorder's particular responsibilities, as will the

Board for its responsibilities. The PIO@risc.maricopa.gov media inbox will be retained and used by the Recorder and the Media@risc.maricopa.gov media inbox will be retained and used by the Board's Elections Department.

3.3. Discontinuation of Shared Administrative Functions

Prior agreements between the Parties contemplated shared administrative functions between the two departments in the form of Public Records Request and Constituent Services/Voter Information. This Agreement expressly declines to use any shared administrative arrangements. Both departments will be responsible for their own administrative functions, notwithstanding section 4.10 The voter information email inbox will be retained by the Board of Supervisor's Election's Department.

3.4. Human Resources

Except as set forth in section 4.2 concerning temporary employees, *infra*, and except as regulated by other law or regulation regarding the appointment of Chief Deputies by the Board for the County's elected officers, the Parties will each be responsible for the human resources for their own employees, including decisions related to the discipline, training, coaching, development, hiring, and firing of their employees. Unless requested and agreed upon, the Recorder will not exercise human resources responsibilities for the Board's employees, and the Board will not exercise such responsibilities for the Recorder's employees, except as set forth in section 4.2.

3.5. Budget and Finance

Unless requested and agreed upon, the Parties will each be responsible for the procurement, budget, and finance-related activities the Agreement assigns to each Party.

3.6. Facilities

The principal election-administration facility for Maricopa County is the Maricopa County Tabulation and Election Center (MCTEC). The Recorder's employees work in MCTEC, and the 301 Administrative Building. The Board's election-related employees also work in MCTEC, the 301 Chambers Building and the Elections office located at 222 East Javelina in Mesa, Arizona. Elections information technology shall be allocated space (office, cubical, hotel, operational prep, storage) in each location as necessary. All listed facilities are County-owned buildings.

3.7. Tours

Both Parties may give tours of MCTEC common areas (e.g., lobby, hallways, conference rooms, training areas) and will attempt to coordinate with the other Party such tours to the extent possible. Both Parties will give as much advance notice as possible to the other Party. Neither Party will be precluded from giving tours because the other does not wish to participate. Tours of the ballot tabulation center, warehouse, and vote center command center require prior authorization from the Board's designee. Tours of the signature verification and curing rooms require prior authorization of the Recorder's designee.

3.8. Ballot Tabulation Center and Other Areas of MCTEC With "Live" Ballots

No candidate in any election will have access to the Ballot Tabulation Center or any other area of MCTEC where ballots are present and programming of the tabulation system and equipment for that election is in progress or has been completed. See *Arizona EPM (2023)*.

3.9. Legislation

The Parties recognize that elections are governed by law, and that “good” law is important to election administration. Accordingly, the Recorder and the Board, whether jointly or independently, are free to propose, advocate, or oppose any legislation at the state or federal level. They will coordinate these efforts where it is advantageous and practical to do so.

3.10. Political Party Interactions

The Recorder and the Board will each be responsible for communicating 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); § 531(A) (allowing the county political committee chairs to submit lists of party members to be election board workers, which the Board’s Elections Director appoints). They will each try to coordinate with the other Party-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 will negotiate or contract with the political parties regarding the other’s responsibilities. Nothing in this Paragraph is intended to infringe upon either Party’s First Amendment free speech or association rights.

3.11. Legal Representation

The Parties are jointly represented by the Maricopa County Attorney (hereafter, the County Attorney and deputy county attorneys collectively will be referred to as “MCAO”). If any part of this paragraph, including its sub-paragraphs, 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.

3.12. Confidentiality

With this Agreement, the Parties do not waive the duty of confidentiality inherent in the attorney-client relationship. Where a duty of confidentiality exists, MCAO shall preserve inviolate the confidentiality of both the Board and the Recorder vis-à-vis each other unless expressly authorized by the Party holding the privilege to share the subject confidences with the other party, as it always does. 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 vis-à-vis the other Party concerning discussions that may be had between MCAO and each of the Parties.

3.13. Litigation and Appellate Services

Both Parties shall be represented by MCAO 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 both Parties are a litigant in a proceeding, MCAO shall make joint filings for the Parties (rather than a separate filing for each of the Parties) at MCAO's sole discretion based on its judgment concerning how best to represent the interests of the Parties. MCAO's decision concerning whether to make joint filings shall not be grounds for either of the Parties to assert a conflict.

3.14. Outside Counsel

Each of the Parties retains the right to request that the County Attorney appoint outside counsel to represent its interests. Whether to appoint such outside counsel is within the sole purview of the County Attorney.

3.15. Chain of Custody

Both the Board and the Recorder are responsible for ensuring the safeguarding and integrity of elections procedures for those areas under their authority. This includes establishing efficient and secure chain of custody practices over ballots and other voting information.

3.16. Matters Not Covered by the Agreement

The Agreement is not intended to be a comprehensive list of every duty, responsibility, and administrative activity necessary to the administration of elections. Rather, the Agreement 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. For any duty or responsibility for election administration about which the Agreement is silent:

- A. Where that duty, responsibility, or administrative activity is delegated by statute or the EPM to one of the Parties, that Party shall be responsible for that duty or responsibility.
- B. Where that duty, responsibility, or administrative activity is delegated by statute or the EPM to one of the Parties or "the officer in charge of elections" (or similar language), the named Party shall be responsible for that duty or responsibility.
- C. Where the statutes and the EPM Agreement is silent with respect to who is responsible for that duty, responsibility, or administrative activity, the Recorder and the Board shall, with advice from MCAO, determine who is best suited to carry out that duty, responsibility, or administrative activity, and that Party shall be responsible for it as agreed to by the Parties.

4. Board of Supervisors' Responsibilities

The Board's responsibilities with respect to elections are broad, ranging from the requirement to call and notice elections to tallying election results and canvassing elections. Consistent with the duties and responsibilities conferred by the Arizona Revised Statutes and EPM, the Board is responsible to:

- A. Call, notice, and (where applicable) cancel elections.
- B. Determine polling locations for election day and emergency voting and provide supplies to the polling locations.
- C. Appoint and train poll workers and other election board members.
- D. Tally and certify election results by canvassing the election.

Pursuant to this Agreement, the Board is responsible for the following additional activities necessary to elections. To accomplish these responsibilities and fulfill its statutory duties, the Board will appoint and employ an Elections Director and will exercise its authority, and fulfill its responsibilities, through that Director or the Director's designee/s.

4.1. Campaign Finance and Candidate Services

Arizona law requires that candidates for superior court judge or for county, district, and precinct offices for which the electors of a county or a subdivision of a county are entitled to vote must file their nomination papers with "the county elections officer." A.R.S. § 16-311(F). Arizona law further provides that those required by law to file certain campaign finance statements and reports must make their filings to "the county officer in charge of elections," who is "the filing officer" for county, school district, and special taxing district elections, including retention elections for superior court judges. A.R.S. § 16-928(A)(2). Pursuant to this Agreement, the Board is the filing officer and

county elections officer in charge of elections for all such nomination papers and campaign finance reports, and so shall be responsible to oversee Maricopa County's campaign finance and candidate services as required by Arizona law. The Board will provide a customer portal website and means for candidates and campaigns to manage any required information and activities.

4.2. Temporary Election Workers

Many temporary employees are recruited and hired for each election. Some of these workers, such as poll workers, report to the Board's Elections Director or the Elections Director's designee. *See, e.g.,* A.R.S. § 16-531(A). Others, such as signature verification employees, report to the Recorder or the Recorder's designee. *See, e.g.,* A.R.S. § 16-550(A). Arizona law is silent, however, concerning who is responsible to recruit, hire, and pay temporary election workers necessary to Maricopa County's elections. Pursuant to the Agreement, the Board will have all such Human Resources-related responsibilities for all temporary election workers, whether they report to the Board or to the Recorder. This will include recruiting, hiring, and paying those temporary election workers. The Board will work with the Recorder in good faith to accommodate all reasonable requests made by the Recorder of the Board regarding temporary election workers who will report to the Recorder.

4.3. Ballot Preparation

Arizona law charges the Board to "prepare and provide ballots" for elections, A.R.S. § 16-503, and to prepare sample ballots for general elections, § 16-510. The law charges "the officer in charge of elections," however, to prepare a proof of a sample ballot for presidential preference and primary elections. §§ 16-245(C); -461(A). For elections utilizing optical scanning systems, meanwhile, the law requires two sample ballots to

be provided to each polling location but does not specify who shall prepare them. § 16-468(6). Pursuant to this Agreement, the Board shall be responsible to design and prepare all ballots, including all sample ballots. This includes the responsibility to procure the necessary software to build the ballot, and to create and edit the various ballot styles.

4.4. Early Ballot Processing

Arizona law provides that the Board or officer in charge of elections shall appoint early ballot processing board to process early ballots. § 16-551. *Arizona EPM (2023) at 85 (Chapter 2.4.8)*. Pursuant to this agreement and unlike previous agreements between the Parties, the Board is responsible for carrying out all early ballot processing as prescribed by statute and the EPM.

4.5. Drop Boxes

Arizona law allows for the County to establish drop boxes into which voters may securely deposit their early ballots voted. *Arizona EPM (2023) at 72*. All drop boxes and their locations must be approved by the Board. *Id.* The Board "or officer in charge of elections" must post a list of drop off and drop box locations on the Elections website. *Id.* at 61. The Recorder "or officer in charge of elections" must also "develop and implement secure ballot retrieval and chain of custody procedures." *Id.* The Recorder "or officer in charge of elections" is also responsible to inspect the containers that transport ballots from drop boxes to the Maricopa County Tabulation and Elections Center, sign the retrieval form indicating the date and time of receipt, and note any signs of tampering; open the containers and count and note the number of ballots; and attach the completed retrieval form to the outside of each container. *Id.* at 62. Pursuant to this Agreement, the Board is the "officer in charge of elections" for all

matters related to drop boxes and so shall be responsible to fulfill each of these responsibilities up until the transfer of custody of the early ballots to the Recorder for the Recorder's execution of the Recorder's responsibilities relating to early ballots.

4.6. In-person Early Voting

Arizona law requires that every election must provide for early voting, A.R.S. § 16-541(A), which includes in-person early voting, *id.*; *Arizona EPM (2023) at 75*. Generally, it is the Board that is responsible to establish polling locations for in-person voting, § 16-411, except that the Recorder may (but is not required to) establish early voting locations for in-person voting at the Recorder's Office or elsewhere in the county as the Recorder deems necessary, § 16-542(A). Pursuant to this Agreement, the Board will be responsible to establish and administer all voting locations and replacement ballot sites for all in-person early voting, just as it is responsible to establish and administer such locations for election day and emergency voting.

4.7. Tabulation of Provisional Ballots

Arizona law specifies that those who appear at polling locations but are not listed on the precinct register may vote on a provisional ballot. A.R.S. §§ 16-579(A)(2); 16-584(B) – (F). The law further provides that the Recorder shall determine whether those who cast provisional ballots are registered voters and eligible to vote in the given election; if they are not, their provisional ballot affidavit envelopes must remain unopened. § 16-584(E). The Recorder shall then notify the Board's Elections Director of that determination for each provisional ballot. Following the Recorder's announcement of a determination, the Board is responsible to decide which provisional ballots should be tabulated and to count those ballots, *id.*, because all tabulation of ballots is under the direction of the Board, § 16-621(A). The Board is also responsible for providing a

method for notifying those casting provisional ballots whether their ballots were verified and counted. § 16-584(F).

4.8. Hand-Count Audits

Arizona law requires "the officer in charge of the election" to conduct a hand-count audit of "each countywide primary, special, general and presidential preference election." A.R.S. § 16-602(B). Pursuant to this Agreement, the Board is "the officer in charge of the election" for the hand-count audit and so shall be responsible to conduct the hand-count audit. The Recorder shall assist the Board as the Board and Recorder determine necessary.

4.9. Jurisdictional and Other Contracted Elections

Maricopa County has long provided election services to municipal and other government entities at their direction. The administration of jurisdictional elections will be consistent with the provisions of the Agreement, regardless of whether the jurisdiction chooses to conduct an "all mail" election. The Board, or its designee, will be responsible for maintaining the relationships with jurisdictions, including, but not limited to, contracting, communication and coordination of election services.

4.10. Information Technology Services

The Board shall provide and maintain all IT-related services for the Recorder's election and business-related responsibilities. The Board will provide these services through the Elections specific support division, Elections Information Technology Division (E-ITD), within Maricopa County Enterprise Technology & Innovation (ETI), which reports up through the County Manager. The Board will consider all reasonable requests made by the Recorder for the design, maintenance, configuration and administration

of any IT-related service necessary for the Recorder to effectively perform its elections or business-related responsibilities as designated. The process for making and fulfilling these requests will be set forth in an Elections IT Service Level Agreement (SLA). The Board will host and maintain all core information technology systems for the Recorder including but not limited to:

- Elections & Recorder Operations (ERO) System.
- Recorder Document Information System (RDIS).
- Kiosk and Remote Recording Processing Services.
- Web Functionality & Services.
- Financial Processing Services.
- Database Services.
- Batch Automation Services.
- Data Storage & Integrity Services.
- Cyber Security Services.
- Notification Services (Email / SMS / ETC).
- Reporting Services.
- Geographic Information Services (GIS).
- Training Services.

This agreement will provide all information technology requirements and services for the Recorders to fulfill the responsibilities and duties as outlined in the ARS and EPM.

5. Recorder's Responsibilities.

The Recorder's duties are broad with respect to voter registration, early voting, and other aspects of election administration. Consistent with the duties and responsibilities conferred by the Arizona Revised Statutes and the EPM, the Recorder is responsible for many aspects of election administration, including:

- A. Maintaining voter registration records.
- B. Planning and administering early vote requirements & activities.
- C. Creating, certifying, and distributing precinct registers.
- D. Receipt of early ballot requests via the web (online request page and BeBallotReady.Vote), intranet (STAR), and ERO system.
- E. Early ballot affidavit signature verification and curing.
- F. Operational compliance with the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").
- G. Updating websites through the Board maintained Content Management Systems (CMS).

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**MARICOPA COUNTY
BOARD OF SUPERVISORS**

Jack Sellers, Chairman
Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board

**MARICOPA COUNTY
CLERK OF THE BOARD**

Juanita Garza, Clerk of the Board

Date: _____

Approved as to form:

Joseph E. La Rue

Joseph E. La Rue, Maricopa County Attorney's Office

Date: 10/18/2024

**MARICOPA COUNTY
RECORDER**

Stephen Richer,
Maricopa County Recorder

Date: _____

Stephen Richer

Oct. 18, 2024

Exhibit B



Washington, D.C.
Virginia
Florida
Arizona
New York
holtzmanvogel.com

May 15, 2025

VIA EMAIL ONLY

Emily Craiger
The Burgess Law Group
3131 E. Camelback Road, Suite 224
Phoenix, Arizona 85016
emily@theburgesslawgroup.com

RE: Shared Services Agreement

Dear Ms. Craiger:

Attached please find the Recorder's proposed Shared Services Agreement ("SSA"). I have spent a significant amount of time with Mr. Heap going over this agreement, and we have a few substantive changes to the Board's April 24, 2025 proposed SSA. Unfortunately, I do not have a redline version for you to review. The primary reason for this is that, apart from some limited substantive changes discussed below, I spent a significant amount of time cleaning up some unnecessary language in the draft dated April 24, 2025. As a result, I do not think a redline draft would be very helpful.

The primary focus of the changes is to return the parties to their statutorily imposed duties. Hopefully, this will reduce friction between the parties and avoid confusion over their responsibilities. . With that understanding, and in place of a redlined document, I will highlight the substantive changes in his proposed draft and the reasons for those changes.

Section 2.2 Successors and Assigns: I removed the language stating that, "The Parties will continue to be bound by all terms of the Agreement without regard to the individuals holding the respective offices of the Parties." As you know, like the members of the Board, the Recorder is a constitutional officer under Art. 12, § 3 of the Arizona Constitution, and has several duties prescribed by law that he must fulfill. Ariz. Const. Art. 12, § 4. Therefore, the SSA cannot bind or limit Recorders subsequently elected to succeed Mr. Heap from performing their constitutional and statutory duties. *Cf. Fletcher v. Peck*, 10 U.S. 87, 135 (1810); *Higgins v. Hubbs*, 31 Ariz. 252, 264 (1926).

Section 2.5 Severability: I removed the language stating that, "and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable



term.” This is a very unusual provision—one I have never seen—and it is most likely unenforceable under Arizona law. If a term is severed, then all other terms remain enforceable; there is no authority in Arizona for inserting replacement terms in a contract.

Section 2.7 Term and Termination: I changed the 90-day notice provision to a 30-day notice. Under the former 90-day provision, notice would be provided on October 3, or approximately 30 days before a General Election. Mr. Heap believes, and I agree, that terminating the SSA a few weeks before a General Election could destabilize the public confidence in the election. Rather, if a party wants to terminate the SSA, it would be more appropriate to provide notice after the election (and, hopefully after the results are certified). This encourages the Board and Recorder to work through the election, while at the same time providing sufficient notice to terminate the SSA.

Section 3.3 Human Resources: I removed the language stating that, the “Recorder’s office employees, like employees of all other County Elected Offices, are subject to certain County policies.” I did not see this language in any of the prior agreements.

Section 3.5 Shared Facilities: The purpose of the revision is simply to clarify that the Board and the Recorder have shared access to the subject buildings to perform their election-related duties, thereby avoiding unnecessary “turf battles” over who can go where in the buildings. Mr. Heap understands that the County owns the buildings, and that both the Board and Recorder employees will need private spaces in these buildings to perform their jobs. Additionally, given the nature of the work performed at MCTEC (*see, e.g.,* Section 3.7 re: Live Ballots), secured areas with limited access are necessary. But spelling out specific zones or areas of access in each building (especially MCTEC) for Recorder and Board employees is unnecessary and will inevitably lead to conflict.

Section 3.10 Legal Representation: I have shortened and condensed this section. It was very confusing, and as revised, it now sets forth the necessary basic principle that the parties may be subject to joint representation subject to the Rules of Professional Conduct. I have also added a new “**Mediation**” **Section in 3.10.B**. The purpose of this provision is to allow for non-binding mediation before either party files a lawsuit.

Section 3.11 Quarterly Public Meeting for Election Planning: I revised this section to obviate the necessity of calling a special meeting. As revised, the Board can place the Election Planning Discussion as an agenda item on a regularly scheduled meeting.

Section 3.12 Coordination with the Board of Supervisors: This revised section has two primary purposes. First, it affirms the principle that the Board, in its discretion, has the authority to designate a primary contact with the Recorder on election-related matters. However, it is also the prerogative of the Recorder, as a constitutional officer, to speak with a Board member, who is also a constitutional officer, about election matters. I am not aware of any authority that prohibits such discussions, and in fact, I think encouraging these discussions serves the public.



Section 3.13 Chain of Custody: This provision affirms that both the Board and the Recorder have a duty to ensure a safe and secure chain of custody over ballots and voting information. However, the provision also sets forth the Recorder's specific duty to maintain a proper chain of custody over early ballots and voter registration information. *See, e.g.*, A.R.S. §16-168(I) ("The county recorder and the secretary of state shall protect access to voter registration information in an auditable format and method specified in the secretary of state's electronic voting system instructions and procedures manual that is adopted pursuant to § 16-452."); A.R.S. §16-550(B) ("The recorder or other officer in charge of elections shall thereafter safely keep the mail ballot affidavits and early ballots in the recorder's or other officer's office and may deliver them for tallying pursuant to § 16-551.").

Section 3.16 Information Technology Services: The revised provision affirms the parties' commitment to creating separate IT infrastructure, including separate IT personnel, for the Recorder and the Board. However, the provision also recognizes that in the interim, the Recorder must have the IT services and personnel to perform his statutorily prescribed election-related duties. The revised SSA references the general categories of IT personnel required by the Recorder. Attached as Exhibit A to this letter is a list of the 23 positions that are necessary to perform these duties.

I am not sure what led the Board to removing the Recorder's entire IT department. If it was under the auspices of efficiency, please advise if the IT departments of any other constitutional, elected officials were also recently transferred to the Board. Candidly, I think that the Board acted in excess of its authority in making this transfer, and it is no substitute to provide the Recorder "access" to these services that are now under the daily control of the Board. Such actions have been taken before by County Boards, and have always been struck down as ultra vires.

That is particularly the case here, where IT functions are essential to the Recorder performing his statutorily prescribed duties as a constitutional officer. *See, e.g.*, A.R.S. §16-173 ("In each county in which an electronic data processing system or program is used for voter registration, the county recorder shall prepare a detailed and complete explanation of such data processing system or program and any subsequent revision. The county recorder shall retain one copy of this explanation and shall file one copy with the secretary of state."); A.R.S. §16-165(H) ("To the extent practicable, each month the county recorder shall compare the county's voter registration database to the social security administration database."); A.R.S. §16-165(J) ("To the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations pursuant to this section."); A.R.S. §16-166(E) (stating that the Recorder "may use the change of address information supplied by the postal service through its licensees and the information provided by an electronic voter registration information center to



identify registrants whose addresses may have changed..."); A.R.S. §16-168(C) ("For the purposes of transmitting voter registration information as prescribed by this subsection, electronic media shall be the principal media...").

Section 3.17 Website Housing and Maintenance: The revisions here focus on the Recorder having primary authority over the Be Ballot Ready website, which is necessary for him to perform his statutory duties regarding voter registration and managing early voting requests. (*See e.g.*, A.R.S. §§ 16-103, -112, -120, -120.01, -128, -132, -134, -138, -151, and 16-161 through 16-168).

Section 5.3 Tabulation of Ballots, Including Provisional Ballots: The revision in this section focuses on the requirement that the Board must tabulate only early ballot packets or provisional ballots that are determined valid by the Recorder.

Section 6.3 Drop Boxes: The revisions set forth the Recorder's statutorily prescribed duty to manage and secure drop boxes as the officer in charge of elections for early voting and mail-in early ballots. *See, e.g.*, A.R.S. § 16-542; A.R.S. § 16-544, A.R.S. § 16-547, A.R.S. § 16-548, A.R.S. § 16-550, and A.R.S. § 16-550.02; *see also* EPM Ch. 2, § I (I)(9); A.R.S. § 16-550(B) (stating the Recorder shall "safely keep the mail ballot affidavits and early ballots in the recorder's or other officer's office and may deliver them for tallying"); *cf.* A.R.S. § 16-168(I) (stating the "county recorder and the secretary of state shall protect access to voter registration information.").

Section 6.4 In-Person Early Voting: This provision simply states what is already the law: only the Recorder has authority to establish early voting locations for in-person voting at the Recorder's Office or elsewhere in the county as the Recorder deems necessary. A.R.S. § 16-542(A). And as the "officer in charge of early balloting," *id.* at (G), he is likewise responsible for managing and directing those locations.

I am aware there is a board meeting next Thursday, May 22, 2025. With that in mind, please provide a response to our proposed SSA by Friday, May 23, 2025.

If you have any questions, please feel free to call.

Sincerely,

Andrew W. Gould

AWG:lfc
Enclosure

MARICOPA COUNTY ELECTIONS SHARED SERVICES AGREEMENT

The MARICOPA COUNTY BOARD OF SUPERVISORS (the “Board”) and the MARICOPA COUNTY RECORDER (the “Recorder”) enter into this Shared Services Agreement (“Agreement”) to set forth the shared and delegated responsibilities of the Board and the Recorder (together, the “Parties”) for the management of election-related activities in Maricopa County.

1. **Intent of the Agreement.**

The Parties are charged by the Arizona Revised Statutes with the responsibility of performing certain statutorily imposed election-related duties. The Parties will continue to coordinate, share, and delegate election services to fulfil these duties to serve the public and ensure that elections are administered efficiently and effectively.

2. **General Provisions.**

- 2.1. **Supersedes Prior Agreements.** The Agreement supersedes and replaces all prior agreements and understandings between the Parties, whether oral or written, including, without limitation, all prior Shared Services Agreements.
- 2.2. **Successors and Assigns.** To the extent permitted by the Arizona Constitution and Arizona law, the Agreement will be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. The Agreement is intended solely for the benefit of the Parties, their successors, and assigns. The Parties represent that they freely and voluntarily enter into the Agreement without any degree of duress or compulsion.
- 2.3. **Amendment.** The Agreement may not be amended except by a written amendment signed by each of the Parties.
- 2.4. **Choice of Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 2.5. **Severability.** If any term of the Agreement is invalid, for any reason, including illegality or conflict with applicable law or regulation, or is otherwise unenforceable, such term shall be excluded to the extent of such invalidity or unenforceability, and all other terms in the Agreement shall remain in full force and effect.
- 2.6. **Non-Waiver.** The failure of either Party to enforce strict compliance with a provision of this Agreement shall not be construed as a waiver of that provision. No waiver of any provision of this Agreement shall be effective

unless made in writing and signed by the waiving Party, and any such waiver shall be limited to the scope set forth therein.

- 2.7. Term and Termination.** The Agreement shall become effective upon the signature of the Parties apart from Section 6.4 (In-Person Early Voting), which shall become effective on December 1, 2025. The Agreement will continue until terminated by one or both Parties. Any Party seeking to terminate the Agreement shall do so by providing written notice to the other Party a minimum of 30 days prior to the end of a General Election year. The termination date will be effective, and the Agreement terminated, at 11:59 p.m. on December 31 of the General Election calendar year in which the 30 days' notice is complete. The terminating Party may rescind a notice of termination at any time before the expiration of the 30 days' notice. To be effective, revocation of termination must be in writing and signed by the Party seeking to revoke termination.

3. Election Administration Generally

The Parties agree to work together to administer elections as required by Arizona law for the benefit of Maricopa County's citizens. In addition to their individual responsibilities set forth in this Agreement, the Parties agree as follows:

- 3.1. Nomenclature.** Given the unique nature of the shared responsibility for the election administration under this Agreement, the Recorder and members of the Board, as elected officials, will clearly define their respective election operations, departments, events, and communications as related to either Party. If this Agreement does not speak to an issue, responsibility shall reside with the Party specifically named by statute (e.g. when a statute makes reference to the "Board or other officer in charge of elections" and this Agreement is silent, then the Board has responsibility).
- 3.2. Communications Department.** The Recorder and the Board will utilize their respective communications departments to publicize their messages related to elections and election administration. The Recorder and the Board will be responsible for responding to all emailed or messaged constituent inquiries relating to their respective responsibilities.
- 3.3. Human Resources.** Except as related to the Board's appointment of Chief Deputies for the County's elected officers, the Parties will each be responsible for the human resources for their own employees, including decisions related to the discipline, training, coaching, development, hiring, and firing of their employees. Unless requested and agreed upon, the Recorder will not exercise human resources responsibilities for the Board's employees, and the Board will not exercise such responsibilities for the Recorder's employees.

- 3.4. Budget and Finance.** Unless requested and agreed upon, the Parties will each be responsible for their own procurement, budget, and finance-related activities under the Agreement. Subject to the Board's overall budget authority under A.R.S. § 11-201(A)(6), each Party shall decide what constitutes a necessary expense incurred in the conduct of their offices, per A.R.S. 11-601.
- 3.5. Shared Facilities.** Currently, the principal election-administration facility for Maricopa County is the Maricopa County Tabulation and Election Center ("MCTEC"). Both the Recorder and the Board's employees work in MCTEC, as well as the building located at 420 S. Third Avenue and the 301 Administrative Building. The Recorder and Board shall share full access to the facilities located at MCTEC, 420 S. Third Avenue, and the 301 Administrative Building. Any facility or part thereof where the task is delegated to the Recorder by law or this Agreement shall be under the control of the Recorder. Neither Party may restrict the other Party's full access to these buildings. The Parties acknowledge that the facilities housing election administration may change or expand, and the terms of this Agreement apply to any changed or expanded facility.
- 3.6. Tours.** Both Parties may give tours of MCTEC and will attempt to coordinate such tours with the other Party to the extent possible. Both Parties will give as much advance notice as possible to the other Party. Neither Party will be precluded from giving tours because the other does not wish to participate.
- 3.7. Ballot Tabulation Center and Other Areas of MCTEC With "Live" Ballots.** No candidate will have access to any area of MCTEC where "live" ballots for that election are present. No current candidate will have access to any area housing the tabulation system or equipment during the following time periods: (1) while the tabulation system or equipment is being programmed to tabulate ballots for that specific election; or (2) after the Arizona Secretary of State has certified the tabulation system or equipment to tabulate ballots for that specific election. This subsection does not apply to precinct committee members appointed by a political party or candidate to election boards or as observers.
- 3.8. Legislation.** The Parties recognize that elections are governed by law, and that "good" law is important to election administration. Accordingly, the Recorder and the Board, whether jointly or independently, are free to propose, advocate, or oppose any legislation at the state or federal level, and will coordinate these efforts where it is practical to do so.
- 3.9. Political Party Interactions.** The Recorder and the Board will each be responsible for communicating 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).

3.10. Legal Representation. The Parties may be jointly represented in the future by the Maricopa County Attorney's Office ("MCAO"). As counsel for the Parties, MCAO is subject to all ethical responsibilities imposed by the Arizona Rules of Professional Conduct (Ariz. R. Sup. Ct. Rule 42), and the Parties do not waive MCAO's duty of confidentiality owed to both Parties by entering this Agreement. The Parties also do not waive any conflicts as to the MCAO's representation of either Party when the Parties' interests are directly adverse or when there is a significant risk that the MCAO's representation of one Party will be materially limited by the MCAO's responsibilities to the other Party. In such cases of a conflict of interest, the Parties agree that they will both use outside counsel.

3.10.A. Mediation. Notwithstanding joint representation of the Parties by MCAO, the Parties agree they may attempt to resolve any disputes arising under this Agreement via non-binding mediation within fourteen (14) days. This does not preclude the use of other dispute resolution mechanisms.

3.11. Quarterly Public Meeting for Election Planning. The Board of Supervisors shall, on a quarterly basis, convene a Public Meeting or place on its agenda for a regularly scheduled meeting, a discussion item with the Recorder and the County Elections Department regarding election plans, procedures, and coordination efforts. Additional County staff may attend as needed, and discussions shall comply with Arizona Public Meeting Laws and include a Call to the Public period for public comment.

3.12. Coordination with the Board of Supervisors. The Board, in its discretion, may designate one or more Supervisors to communicate with the Recorder regarding election-related matters. However, such designation shall not preclude the Recorder, as an elected official, from communicating with any Supervisor on the Board regarding election-related matters. Additionally, despite such designation by the Board, the Recorder and the Elections Director shall be responsible for keeping all Supervisors on the Board informed about election operations.

3.13. Chain of Custody. Both the Board and the Recorder are responsible for ensuring the safeguarding and integrity of elections procedures for those areas under their statutory authority. This includes establishing efficient and secure chain of custody practices over ballots and other voting information. The Recorder shall establish and approve chain of custody protocols for early

ballots and voter registration data (A.R.S. §§ 16-542, 16-168). The Recorder may audit these protocols monthly to ensure security and voter confidence. Joint protocols shall be documented in the Joint Election Plan (Section 3.15). The Recorder or other officer in charge of elections shall maintain records that document the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation. A.R.S. §§ 16-621(E).

3.14. Matters Not Covered by the Agreement. The Agreement is not intended to be a comprehensive list of every duty, responsibility, and administrative activity necessary to the administration of elections. Rather, the Agreement highlights specific areas of responsibility that the Recorder and Board have determined fall within their statutory authority, as well as administrative functions that are not addressed specifically under Arizona law. For any duty or responsibility for election administration about which the Agreement is silent:

3.14.A. Where that duty, responsibility, or administrative activity is imposed by statute on one of the Parties, that Party shall be responsible for that duty or responsibility. *See* subsection 3.1.

3.14.B. Where that duty, responsibility, or administrative activity is delegated to one of the Parties under the terms of this Agreement, that Party shall be responsible for that duty or responsibility.

3.15 Joint Election Plan, Review and Public Meeting. For every Federal, State or Countywide election or special election, the Elections Director and the Recorder shall cooperate in the preparation of a comprehensive Election Plan addressing all responsibilities and functions assigned to the Board and the Recorder. At least one preliminary meeting to discuss the process of drafting the Election Plan must occur no later than one hundred and twenty (120) days prior to any election under this section. The County Elections Director and Recorder shall submit the final drafts of their respective portions of the draft Election Plan to the other no later than ninety (90) days prior to each election under this section. The purpose of this submission is to provide an opportunity to review, comment on, and suggest revisions. The Elections Director and the Recorder shall give due consideration to all feedback received and may revise the Election Plan accordingly. No later than seventy-five (75) days prior to each election under this section, the Recorder and Elections Director shall jointly submit the finalized Election Plan to the Board and the Clerk of the Board. Following submission, and no later than sixty (60) days prior to the election, the Board shall convene at least one public meeting, which includes a Call to the Public period for public comment, for the purpose of reviewing the Election Plan. The Elections Director, Recorder, and staff shall participate

in the meeting to present the Election Plan and respond to questions. The Board shall have final approval over the Elections Director's portion of the Joint Election Plan, and the Recorder shall retain final approval over his portion of the Joint Election Plan.

3.16 Information Technology Services. The Board and Recorder agree that a comprehensive third-party analysis of the IT infrastructure related to the Elections and Recorder (ERO) systems is necessary to create separate personnel, database, and technology systems for the Recorder and the Board, along with a data-sharing process. The Recorder may appoint an IT liaison to the Elections Information Technology Division (EITD) for oversight until the third-party analysis is completed. The Parties agree to work jointly with the vendor, solicited and retained consistent with the County's Procurement Code, to conduct this analysis. The Parties agree that each will have a designated IT staff member to interface with the vendor during this process.

Until the third-party analysis is complete and separation of the IT infrastructure is completed, the Recorder shall host and maintain all IT systems and IT personnel supporting the Recorder's statutory and administrative duties, including but not limited to: Elections & Recorder Operations (ERO) System; Recorder Document Information System (RDIS); Geographic Information Services (GIS); and Website Training and Development Services. Likewise, the Board shall host and maintain all core information technology systems and IT personnel that support its statutory and administrative duties. Further, until separation, the Recorder and the Board shall provide reasonable and necessary access to each other's IT Systems for the purpose of data sharing to ensure that elections are administered efficiently and effectively. The Recorder shall have the same authority to reject the recommendations of the 3rd party analysis, either in whole or in part, as the Board.

The Parties agree that upon the completion of the third-party IT analysis and successful implementation of the agreed-upon separation of the IT systems and applications set forth in this paragraph, each party will maintain its own IT system, applications and personnel. The Recorder shall retain the voter registration database, document recordation system, and geographic information system.

3.17 Website Hosting and Maintenance. The Recorder and the Board will each host and maintain their own webpages for their respective offices to provide clear, distinct access to their election-related responsibilities. The Recorder shall have authority over the Be Ballot Ready website, which serves as a voter-facing application for accessing and maintaining voter registration, viewing

voter history, signing up for voter alerts, and managing early voting requests (*See e.g.*, A.R.S. §§ 16-103, -112, -120, -120.01, -128, -132, -134, -138, -151, and 16-161 through 16-168). The Recorder shall oversee all Be Ballot Ready website content, functionality, and data management related to these statutory duties, ensuring compliance with A.R.S. Title 16. The Board shall contribute content and functionality related to its statutory duties, coordinating with the Recorder through the Joint Election Plan process (Section 3.15) to maintain a unified, user-friendly interface that enhances voter convenience. The Recorder shall implement security protocols for voter registration data on Be Ballot Ready, consistent with A.R.S. § 16-168. The Recorder and the Board will work jointly on the Be Ballot Ready website that will incorporate information and data concerning both the Recorder's and the Board's election-related responsibilities.

4. **Public Records Requests.** The Recorder and the Board will each maintain and be responsible for their own Public Records Team. When public records requests are made for records that are within the custody and control of both Parties, each Party's respective Public Records Team will produce the responsive records in their custody. Although neither Party will be responsible for public records requests made to the other, their offices, or their staff, both Parties are responsible to send to the other Party, within one (1) business day of receipt, any public records request that concerns the other Party.
5. **Board Responsibilities.** Consistent with the duties and responsibilities conferred by Arizona Revised Statutes, the Board is responsible for:
 - A. Calling, noticing, and (where applicable) cancelling elections.
 - B. Determining polling locations for election day and emergency voting and providing supplies to the polling locations.
 - C. Appointing and training election day and emergency voting poll workers and other election board members, except as otherwise provided in this Agreement.
 - D. Tallying and certifying election results by canvassing the election.

Pursuant to this Agreement, the Board is responsible for the additional activities necessary to elections as set forth in Sections 5.1 through 5.5. To accomplish these responsibilities and fulfill its statutory duties, the Board has established the Elections Department, overseen by the County's Director of Elections. The Elections Department will report to the Board through the County Manager's administration. The Board via the County Manager will continue to employ a Director of Elections to oversee those areas of election administration for which the Board is responsible.

5.1 Campaign Finance and Candidate Services. Pursuant to this subparagraph, the Board is the designated filing officer for nomination papers and campaign finance reports and is responsible for Maricopa County's campaign finance and candidate services as required by Arizona law. A.R.S. § 16-311(F) and A.R.S. § 16-928(A)(2).

5.2 Design of the Ballot. The Board shall be responsible for designing all ballots, including all sample ballots. This includes the responsibility to procure the necessary software to build the ballot and to create and edit the various ballot styles. A.R.S. § 16-503; A.R.S. § 16-510.

5.3 Tabulation of Ballots, Including Provisional Ballots. Arizona law specifies that those who appear at polling locations but are not listed on the precinct register may vote a provisional ballot. A.R.S. §§ 16-579(A)(2); 16-584(B) (F). The law further provides that the Recorder shall determine whether those who cast provisional ballots are registered voters and eligible to vote in the given election; if they are not, their provisional ballot affidavit envelopes must remain unopened. § 16-584(E). Following the Recorder's notification to the Election Director of a determination, the Board shall process and tabulate only those provisional ballots deemed eligible by the Recorder. The Board is also responsible for providing a method for notifying those casting provisional ballots whether their ballots were verified and counted. § 16-584(F).

5.4 Hand-Count Audits. Arizona law requires "the officer in charge of the election" to conduct a hand-count audit of "each countywide primary, special, general and presidential preference election." A.R.S. § 16-602(B). Pursuant to this subparagraph, the Board is "the officer in charge of the election" only for the hand-count audit and is responsible for conducting the hand-count audit. The Recorder shall assist the Board as the Board and Recorder determine necessary.

5.5 Procuring Tabulation Equipment. Arizona law allows the use of vote tabulation equipment in Arizona elections, A.R.S. § 16-445(A), and authorizes the Board to procure tabulation equipment to count ballots, § 16-451. Consistent with those requirements and pursuant to this Agreement, the Board is responsible for selecting the vendor for Maricopa County's tabulation equipment; contracting for, managing, servicing, and maintaining the equipment; and communicating with the vendor concerning the equipment.

6 Recorder's Responsibilities. Consistent with the duties and responsibilities conferred by the Arizona Revised Statutes, and pursuant to this Agreement, the Recorder is responsible for the following election administration functions:

6.1 Voter Registration. Under Arizona law, (*See e.g.*, A.R.S. §§ 16-103, -112, -120, -120.01, -128, -132, -134, -138, -151, and 16-161 through 16-168) the

Recorder is responsible for voter registration, including maintaining voter rolls, the Active Early Voting List (AEVL), inactive voter lists, and precinct registers (A.R.S. § 16-169). The Recorder shall have sole authority over these duties and shall:

- A. Develop and maintain secure voter registration databases to ensure data integrity, accessibility, and compliance with A.R.S. § 16-168.
- B. Administer the Deputy Registrar Program to facilitate voter registration.
- C. Maintain the Voter Dashboard for public access to registration status, history, and updates.
- D. Issue 90-day notices for inactive voters and process address changes or cancellations.
- E. Manage constituent services through the VoterInfo Inbox for registration inquiries. The Recorder shall establish procedures for voter roll updates, verification, and public reporting, including security protocols to protect voter data. The Recorder shall train and manage all staff involved in voter registration.
- F. Work with various federal departments, including the Department of Homeland Security, to ensure only legal citizens are registered to vote.
- G. Notify voters of any change to their registration status.

6.2 Mail Voting. Consistent with A.R.S. §§ 16-541 to 16-558.02, the Recorder is responsible for mail voting, including managing early ballot requests, processing mail ballots, and ensuring compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). A.R.S. § 16-543. The Recorder shall have sole authority over these duties and shall:

- A. Process early ballot requests received via the Be Ballot Ready website, intranet (STAR), and Elections & Recorder Operations (ERO) system.
- B. Administer the Special Elections Board for mail ballot processing and verification.
- C. Direct all mail processing operations, including ballot printing, mailing, receipt, and sorting.
- D. Manage ballot tracking systems to provide voters with real-time status updates.
- E. Maintain the VoterInfo.com Inbox for mail voting inquiries and constituent support. The Recorder shall establish procedures for mail ballot processing, including vendor contract management (e.g., Runbeck Election Services for ballot printing and processing), security protocols, and chain-of-custody measures.

6.3 Drop Boxes. The Recorder shall have authority over drop box management as the officer in charge of elections for early voting and mail-in early ballots. *See, e.g.,* A.R.S. § 16-542; A.R.S. § 16-544, A.R.S. § 16-547, A.R.S. § 16-

548, A.R.S. § 16–550, and A.R.S. § 16–550.02. The Recorder shall establish drop box locations, develop secure ballot retrieval and chain-of-custody procedures, ensure security for voters, approve all operational procedures, and be responsible for training workers to handle drop box ballots. *See* A.R.S. § 16–550(B)(stating the Recorder shall “safely keep the mail ballot affidavits and early ballots in the recorder’s or other officer’s office and may deliver them for tallying.”); *cf.* A.R.S. § 16–168(I) (stating the “county recorder and the secretary of state shall protect access to voter registration information.”). The Recorder shall post a list of drop off and drop box locations on their website and shall inspect containers that transport ballots from drop boxes to MCTEC, sign the retrieval form indicating the date and time of receipt, note any signs of tampering, open the containers and count and note the number of ballots, and attach the completed retrieval form to the outside of each container.

- 6.4 In-Person Early Voting.** Only the Recorder has authority to establish early voting locations for in-person voting at the Recorder’s Office or elsewhere in the county as the Recorder deems necessary. A.R.S. § 16-542(A). The recorder is also the “officer in charge of early balloting.” *id.* at (G). Accordingly, the Recorder shall manage and direct all In-Person Early Voting functions (e.g., determining early voting locations, appointing and training early voting workers, providing supplies to polling locations, operating SiteBook functions, etc.).
- 6.5 Signature Verification.** Consistent with A.R.S. § 16-550, the Recorder is responsible for signature verification for early ballots, including reviewing signatures on mail and drop-off ballot affidavit envelopes and curing discrepancies. The Recorder shall have sole authority over these duties and shall:
- A. Verify signatures against voter registration records to ensure accuracy and compliance with statutory standards.
 - B. Implement curing processes to contact voters and resolve signature discrepancies.
 - C. Develop and maintain secure systems for affidavit envelope handling and data access as necessary in the judgment of the Recorder.
 - D. Train and manage all staff involved in signature verification.
- 6.6 Security Video Feeds & Retention.** For any statewide, county or legislative election, the Recorder shall provide for a live video recording of the custody of all ballots while the ballots are present in a tabulation room in the counting center. The live video recording shall include date and time indicators and shall be linked to the Secretary of State’s website. The Recorder shall record video coverage of the ballots at the counting center and shall retain those recordings as a public record for at least as long as the challenge period for the general election. A.R.S.

§ 16-621(D).

6.7 STAR Call Center. Maricopa County has a call center known as the STAR (Supervisor, Treasurer, Assessor, Recorder) Call Center which is designed to provide answers and information to all incoming telephone questions related to Recording, Elections, Treasurer, and Assessor services. The Recorder is responsible for STAR Call Center services related to elections, including providing answers to questions concerning the Board's election-related activities.

7 Shared Responsibilities.

7.1 Procuring In-Person Voting Equipment. For equipment and contracts necessary for the administration of in-person voting, both Parties shall collaborate through the Joint Election Plan to develop equipment specifications, procurement contracts, and maintenance plans, with the Recorder approving equipment impacting early voting and on-site tabulation of early ballots.

7.2 Temporary Election Workers. The Board will be responsible for recruiting, hiring, and paying temporary workers for the Board's assigned functions, and the Recorder will be responsible for hiring, training, and paying temporary workers for the Recorder's assigned functions.

7.3 Pre-Tabulation Ballot Processing: Arizona law provides that the Board or officer in charge of elections shall appoint an early ballot processing board to process early ballots, A.R.S. § 16-551. The Board's Election Director is responsible for transferring Early Ballot Packets and Provisional ballots from Voting Centers or drop boxes to the ballot tabulation center during Emergency Voting and on Election Day. The Recorder is responsible for ensuring the transfer of Early Ballot Packets from the Post Office to the tabulation center. The Recorder is solely responsible for determining whether the Early Ballot Envelope packet or Provisional packet is valid and should be counted through signature verification or provisional ballot research. The Board is responsible for opening the envelopes, hiring of early election boards to separate the ballots from the envelopes, and preparing paperwork to transfer the processed ballots to the Ballot Tabulation Center.

7.4 Jurisdictional and Other Contracted Elections. Maricopa County provides election services to municipal and other government entities at their direction. The administration of jurisdictional elections will be consistent with the provisions of the Agreement, regardless of whether the jurisdiction chooses to conduct an "all mail" election. The Board, or its designee, will be responsible for contracting, communication and coordination of election services. Prior to entering into any contract, the Board shall first obtain the consent of the

Recorder if the contract or statute would obligate the Recorder to perform services under the contract or by operation of law. The Board shall likewise first obtain the consent of the Recorder before entering into any contract with a Special Election District if the contract would obligate the Recorder to perform services under the contract or by operation of law. A.R.S. § 16-408 (D).

MARICOPA COUNTY ELECTIONS SHARED SERVICES AGREEMENT

**MARICOPA COUNTY
BOARD OF SUPERVISORS**

Thomas Galvin, Chairman
Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board

MARICOPA COUNTY CLERK OF THE BOARD

Juanita Garza, Clerk of the Board

Date: _____

**MARICOPA COUNTY
RECORDER**

Justin Heap,
Maricopa County Recorder

Date: _____