

# INTERGOVERNMENTAL AGREEMENT FOR ELECTION SERVICES

**THIS INTERGOVERNMENTAL AGREEMENT FOR ELECTION SERVICES** (this “Agreement”) is entered into by and between the YAVAPAI COUNTY BOARD OF SUPERVISORS and the YAVAPAI COUNTY RECORDER (collectively the “COUNTY”) and \_\_\_\_\_, (the “JURISDICTION”).

The COUNTY and the JURISDICTION may each be referred to individually as a “Party” or “party” and collectively as the “Parties or “parties.”

**WHEREAS**, pursuant to A.R.S. §§11-952, 15-302(A)(7) and (A)(8), 16-205(C), 16-225, or 16-408(D), the governing body of any election district authorized to conduct an election may enter into an agreement with a County Board of Supervisors and County Recorder for election services with the contracted cost of such election to be a charge against the election district; and

**WHEREAS**, the COUNTY is willing to provide election services to election districts wishing to conduct vote-by-mail elections, but, with the exception of state primary and general elections, will not provide election services to districts wishing to conduct vote center elections unless a vote center election is expressly required by state or federal statute; and

**WHEREAS**, the JURISDICTION wishes to enter into an agreement with the COUNTY for the provision of elections services subject to the terms and conditions set forth herein,

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Provision of Election Services.** The COUNTY hereby agrees to provide election services to the JURISDICTION for all consolidated election dates set forth by A.R.S. §16-204 during the effective term of this Agreement. This Agreement shall apply to all categories of elections including, but not limited to, primary, general, and special elections. Services to be provided by the COUNTY, and those that remain the responsibility of the JURISDICTION, are set forth in the Elections Task Schedule attached to this Agreement as Exhibit 1.
2. **Limitation on Eligible Elections.** It is understood and agreed that the services to be provided pursuant to this Agreement shall be provided exclusively for vote-by-mail elections with the exception of state primary and general elections and elections expressly required by state or federal statute to be conducted at vote centers. It shall be the responsibility of the JURISDICTION to establish the legal basis for a requirement that an election is required by state or federal statute to be conducted at vote centers. The COUNTY may, in its sole discretion, decline to provide services for any election that it concludes is not required to be conducted at vote centers. The COUNTY will not provide services for exclusively vote-by-mail elections during the state primary and general elections, or any special election called by the legislature, which requires vote centers.
3. **Cancellation of certain elections.** As provided in A.R.S. §16-410, if the number of candidates is less than or equal to the number to be elected, the Yavapai County Board of Supervisors may cancel the election for the position and appoint the person(s) who filed the nominating petition/paper to fill the position(s). The COUNTY shall place all such races on a Yavapai County Board of Supervisors agenda for approval of cancellation unless written notice is received by the County Officer in Charge of Elections on or before 90 days before the election.

#### 4. Compensation.

- a. Fees.** The JURISDICTION shall compensate the COUNTY for election services provided pursuant to this Agreement in accordance with the fees set forth in the most current fiscal year Election/Voter Registration section of the Yavapai County Special Districts Fee Schedule (the “fee schedule”) posted online at [www.yavapai.us/sd/](http://www.yavapai.us/sd/). The fee schedule is for base services only. Any additional services required by the JURISDICTION will result in additional charges. Additional services include, but are not limited to, the following: court preparation, court appearances, supplemental mailings, recounts, or any service which will cause the COUNTY to incur increased costs or expenses. In the event that additional services are requested, the JURISDICTION should refer to unit and hourly pricing information as set forth on the fee schedule. The COUNTY reserves the right to adjust election service fees annually or otherwise at any time during the effective term of this Agreement notice of which will be posted on the COUNTY’s website. Revised fee schedules will supersede prior fee schedules and be incorporated into this Agreement at the time of revision.
- b. Late Fees.** Payment in full for all costs associated with the provision of services pursuant to this Agreement shall be made no later than 30 days following the date of the election. In the event that the required payment is not made by the due date deadline specified herein, the COUNTY shall impose a late charge of 2% of the unpaid balance for each 30-day period or portion thereof following the specified deadline for which any portion of the required payment, including unpaid late charges, remains unpaid.
- c. Termination.** Failure to make payments as required by this Section shall be deemed a material breach of this Agreement and shall be grounds for termination of this Agreement pursuant to Section 8 of this Agreement.

**5. Discounts.** The COUNTY has established a discounted fee rate for JURISDICTIONS that provide assistance, meeting sites free of charge or rent, or other services for COUNTY-administered elections.

- The JURISDICTION has elected to decline to receive discounted rates.
- The JURISDICTION has elected to receive these discounted rates subject to the terms and conditions set forth herein and will provide the service indicated below.

- a. Services the JURISDICTION Will Provide.** The JURISDICTION and the COUNTY agree that the following two checked services will be provided by the JURISDICTION as consideration for the COUNTY’s provision of election services at the discounted rates as set forth in the Special Districts Fee Schedule posted online at [www.yavapai.us/sd/](http://www.yavapai.us/sd/).

**JURISDICTION**  
will provide  
(check 2)

**Services**

- The JURISDICTION agrees to serve as a ballot drop-off site for any election that the COUNTY requests. In order to provide this service, it must be mutually agreed that the JURISDICTION currently has or could potentially have an outside ballot drop box on its property as supplied by the COUNTY. By checking this box, the JURISDICTION agrees to all duties as outlined in Exhibit 2.
- The JURISDICTION agrees to provide one vote center or training site at no charge for any statewide or countywide election cycle. Vote centers and training sites are subject to review by the COUNTY.
- The JURISDICTION agrees to provide a second vote center or training site at no charge for any statewide or countywide election cycle. Vote centers and training sites are subject to review by the COUNTY.
- The JURISDICTION agrees to provide three poll workers for the Primary Election and three poll workers for the General election. A poll worker must be a registered voter in Yavapai County and be able to perform any of the following duties: voter check-in, ballot distribution, voter assistance, equipment setup, and/or poll worker supervision. Such workers will be trusted employees of the JURISDICTION who are eligible to serve as poll workers. Poll workers will receive from the COUNTY the normal compensation for the position worked.
- The JURISDICTION agrees to provide one Election Day Technician (EDT) for the Primary Election and one EDT for the General Election. An EDT must be a registered voter in Yavapai County and be able to provide information technology support to poll workers. Such workers will be trusted employees of the JURISDICTION who are eligible to serve as EDTs. EDTs will receive from the COUNTY the normal compensation for the position worked.

- b. Advance Notice.** The COUNTY hereby agrees to provide the JURISDICTION with at least 30 days notice of any election where the services agreed to above are required.
- c. Discounted Fee Rates; Adjustment of Fees.** The COUNTY hereby agrees to provide election services to the JURISDICTION at the discounted fee rate for all consolidated election dates during the effective term of this Agreement. This Agreement shall apply to all categories of elections including, but not limited to primaries, generals, and special elections. The COUNTY reserves the right to adjust election service fees and discounts annually or otherwise at any time during the effective term of this Agreement notice of which will be posted on the COUNTY's website. Revised schedules will supersede prior schedules and be incorporated into the Election Services Agreement in effect at the time of revision. Failure by the JURISDICTION to provide the agreed-upon services selected under this Agreement shall result in the discounted fee rate being null and void.

- 6. Conduct of Elections.** While the COUNTY will use its best efforts to provide election services pursuant to this Agreement in a capable and competent manner, it shall ultimately be the responsibility of the JURISDICTION to confirm that all legal requirements have been met and that all other activities related to a given election are carried out as required. Upon request, the COUNTY will provide to the JURISDICTION, in advance, all forms, schedules, documents, and other information pertaining to each election conducted pursuant to this Agreement for the JURISDICTION's review and approval. The JURISDICTION may provide to the COUNTY all informational materials or other election-related documents generated by the JURISDICTION for review by the COUNTY prior to the distribution of such materials or documents.
- 7. Term of Agreement.** The initial term of this Agreement shall expire on December 31, 2019. Thereafter, this Agreement shall be automatically renewed for successive one-year terms and shall continue in full force and effect until terminated as provided herein.
- 8. Termination**

  - a. Unilateral Termination.** This Agreement may be terminated by either Party upon 30 days written notice to the other Party of intent to terminate and specifying the termination date, provided, however, that this Agreement may not be unilaterally terminated by either party within 90 days of the date of an election for which the COUNTY would otherwise be providing services pursuant to this Agreement. Any termination of this Agreement shall not relieve the JURISDICTION of its responsibility for costs incurred prior to the effective date of the termination.
  - b. Termination by Mutual Agreement.** This Agreement may be terminated at any time by mutual agreement of the Parties.
  - c. Termination for Breach.** In the event of a breach of any term or condition of this agreement, the Party claiming breach shall provide written notice to the other Party specifying the factual basis for the claim that a breach has occurred. If the breach is not remedied within fifteen (15) days after notice is mailed to the Breaching Party at the address provided herein, the Non-breaching Party may terminate this Agreement without further notice.
- 9. Conflict of Interest.** This Agreement is subject to the cancellation provisions of A.R.S. §38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
- 10. Non-appropriation of Funds.** The parties recognize and acknowledge that the COUNTY and the JURISDICTION are governmental entities and this Agreement's validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of either or both parties' obligations under this Agreement, then the COUNTY or the JURISDICTION, as appropriate, shall notify the other party in writing of any such non-allocation of funds at the earliest possible date, and this Agreement shall automatically expire without penalty to either party. If the COUNTY's or the JURISDICTION's allocation of funds are reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement may be cancelled without further duty or obligation.

**11. Non-Discrimination.** The Parties shall comply with the Office of the Arizona Governor Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin, or disability.

**12. E-Verify; Government Procurement.** The Parties hereby warrant that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the “state and federal immigration laws”). A breach of the foregoing warranty shall be deemed a material breach of this Agreement and the party who breaches may be subject to penalties up to and including termination of this Agreement.

The Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws at all times during the term of this Agreement.

The Parties retain the legal right to inspect the papers of any contractor or subcontractor in order to verify such party’s compliance with the state and federal immigration laws.

**13. Workers’ Compensation.** For purposes of workers’ compensation, an employee of a party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this specific intergovernmental agreement, is deemed to be an employee of both the party who is his primary employer and the party under whose jurisdiction or control or within whose jurisdictional boundaries he is then working, as provided in A.R.S. §23-1022(D). The primary employer party of such employee shall be solely liable for payment of workers’ compensation benefits for the purposes of this section. Each party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the public notice required.

**14. Indemnification.** To the fullest extent permitted by law, each Party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other Party, its departments, officers, officials, agents, and employees (collectively “Indemnitee”) without limitation from and against any and all claims, damages, losses, liabilities, fees, fines, costs, or expenses (including, but not limited to, attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen from or resulted from this Agreement. Indemnitor’s duty to defend, indemnify, and hold harmless Indemnitee shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines, or expenses, that are attributable to bodily injury, personal injury, sickness, disease, death, or damage to, or destruction of tangible or intangible property including the loss of use therefrom caused in whole or in part by any act, error, mistake or omission of Indemnitor, its departments, officers, officials, employees, agents, vendors, subcontractors or anyone for whose acts Indemnitor may be liable. Indemnitor agrees to waive all rights of subrogation against Indemnitee. The obligations under this Paragraph shall survive the termination of this Agreement.

**15. Property Disposition Clause.** The parties do not anticipate the joint acquisition of property attributable to the exercise of each party’s duties and obligations pursuant to this Agreement. Any property acquired during the term of this Agreement shall be returned to the purchasing party no more than thirty (30) calendar days from the effective date of termination of this Agreement.

**16. Insurance.** The parties shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.

**17. Governing Law.** This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Arizona. Any changes in governing laws, rules, and regulations that do not materially affect this Agreement will apply during the term of this Agreement and will not require an amendment.

**18. Material Change in Law or Regulation.** In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this Agreement or the relationship among the parties hereto, either party may propose amendments to this Agreement to bring this Agreement into conformity with such laws. If the parties are unable to reach agreement on the renegotiation of this Agreement within thirty (30) days of the initiation of negotiations, then either party may terminate this Agreement upon written notice to the other party.

**19. Compliance with Law.** The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including environmental laws.

**20. Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement may be resolved through the use of arbitration.

**21. Waiver of Jury Trial.** The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.

**22. Notices/Contact Information.** Communications regarding services provided pursuant to this Agreement shall be directed to the following:

**COUNTY:**

Lynn Constabile

Yavapai County Elections Director

1015 Fair Street, Room 228

Prescott, AZ 86305

Phone: (928) 771-3250

E-mail: [web.elections@yavapai.us](mailto:web.elections@yavapai.us)

**JURISDICTION:**

Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

All notices under this Agreement must be in writing and sent to the appropriate person. Notices will be deemed properly given if sent by personal delivery or certified U.S. mail, postage prepaid, return receipt requested. The COUNTY and the JURISDICTION shall each have right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other Party. Notice is effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

- 23. Implied Contract Terms.** Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein.
- 24. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other Party to its employees.
- 25. Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the COUNTY or the JURISDICTION. This Agreement is not intended to benefit any third party.
- 26. Assignment.** No party to this Agreement may assign any of its rights or responsibilities under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other parties. No party may delegate any performance under this Agreement, except with the prior written consent of the other parties. Any purported assignment of rights or delegation of performance in violation of this paragraph is void.
- 27. Severability/Unenforceable Provisions.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected and effect shall be given to the intent manifested by the provisions held enforceable and valid. If any of the provisions of this Agreement are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.
- 28. Parol Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this Agreement.
- 29. Waiver.** A party's failure or neglect to enforce any term, covenant, condition, right, or duty in this Agreement does not constitute a waiver of any term, covenant condition, right, or duty, nor is it deemed to be a waiver of that party's rights or remedies under this Agreement. A waiver or extension is only effective if it is in writing and signed by the party granting it. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right, or duty in this Agreement shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right, or duty.

- 30. Headings and Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the parties and for organizational purposes only and shall not be considered in interpreting the meaning of any provision in this Agreement or considered a part of this Agreement. Whenever required by the context, each number shall include the plural, each gender shall include all genders, and unless the context otherwise requires, the word "person" shall include corporation, firm or association. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.
- 31. Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto. Each of the Parties may sign any number of copies of this Agreement. Each signed copy shall be deemed to be an original, but all of them together shall represent one and the same agreement.
- 32. Entire Agreement.** This Agreement contains the entire, integrated agreement of the parties and there are no oral agreements, understandings, or representations relied upon by the parties. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this Agreement must be in writing and signed by all parties.
- 33. Legal Agreement.** This Agreement is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this Agreement, each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement and understands the meaning of all terms contained herein and agrees to their application and enforceability.
- 34. Binding Effect.** This Agreement shall not be legally binding upon either party until signed by the Yavapai County Recorder, the Yavapai County Board of Supervisors, and the JURISDICTION.

**APPROVALS**

**COUNTY:**

\_\_\_\_\_  
Leslie Hoffman, Yavapai County Recorder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rowle P. Simmons, Chairman  
Yavapai County Board of Supervisors

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Kim Kapin, Clerk of the Board  
Yavapai County Board of Supervisors

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted to the COUNTY.

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

\_\_\_\_\_  
Date

**JURISDICTION:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted to the JURISDICTION.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**Exhibit 1**

**INTERGOVERNMENTAL AGREEMENT FOR ELECTION SERVICES  
ELECTIONS TASK SCHEDULE**

Responsibilities for the conduct of elections pursuant to the Yavapai County Election Services Agreement are allocated as follows:

TASK	TO BE PERFORMED BY:	
	County	Jurisdiction*
If applicable, obtain pre-clearance of election changes from Department of Justice (Copy of submission to be forwarded to the COUNTY)		<b>X</b>
As required, publish/send Call of Election and/or Notice of Election		<b>X</b>
As required, publish Legal Advertising, Notices, Publicity Pamphlets, etc.		<b>X</b>
Approve final ballot proof (Required JURISDICTION signoff)		<b>X</b>
Attend and certify official Logic and Accuracy (L&A) Test		<b>X</b>
If applicable, submit agenda item to County Board of Supervisors for election cancellation	<b>X</b>	
Order ballots (Invoices will be sent directly to jurisdiction for all elections except biennial Primary and General Elections)	<b>X</b>	
If applicable, obtain vote centers, and hire and train poll workers	<b>X</b>	
Publish Logic & Accuracy Test notice	<b>X</b>	
Perform Logic & Accuracy Test	<b>X</b>	
Mail Vote-by-Mail Ballots and Early Ballots	<b>X</b>	
Process ballots which includes testing, tabulation, and audit	<b>X</b>	
Perform signature verification on ballot affidavits and provisional ballots	<b>X</b>	
Administer Hand Count Audit, post-election L&A testing and all other audits	<b>X</b>	

*\* For a countywide election, the JURISDICTION is only responsible for its portion.*

PERFORMANCE OF TASKS AS OUTLINED ABOVE MAY HAVE SIGNIFICANT IMPACTS ON THE CONDUCT OF AN ELECTION AND MAY HAVE SIGNIFICANT LEGAL CONSEQUENCES AS WELL. PARTICIPATING JURISDICTIONS ARE ADVISED TO:

1. CAREFULLY REVIEW THE ALLOCATION OF TASKS AND TO DIRECT ANY QUESTIONS TO THE COUNTY CONTACT.
2. MAINTAIN CLOSE CONTACT WITH THE YAVAPAI COUNTY ELECTIONS DEPARTMENT PRIOR TO, DURING, AND AFTER ELECTIONS.
3. REFER ANY QUESTIONS REGARDING ELECTION-RELATED LEGAL ISSUES TO THE JURISDICTION’S LEGAL COUNSEL.

**Exhibit 2****INTERGOVERNMENTAL AGREEMENT FOR ELECTION SERVICES  
BALLOT DROP BOXES**

JURISDICTIONS who are provided with COUNTY ballot drop boxes hereby agree to the following additional responsibilities:

1. The COUNTY will issue ballot drop box keys to the JURISDICTION. Ballot drop box keys only open the portion of the ballot drop box to allow voters to place ballots in the ballot drop box and do not allow the JURISDICTION access to or the ability to review or retrieve ballots. Ballot drop box keys remain COUNTY property and must not be duplicated. The JURISDICTION agrees to keep ballot drop box keys in a secure location and allow only authorized staff or COUNTY-designated employees access to the ballot drop box keys.
2. The JURISDICTION shall “open” all COUNTY ballot drop boxes on the first day of early voting as instructed by the COUNTY, depending on the specific election.
3. The JURISDICTION shall maintain all COUNTY ballot drop boxes and periodically check them throughout the early voting period and on election night at 7 p.m.
4. The JURISDICTION shall promptly notify the COUNTY if a ballot drop box is at risk of becoming full and a ballot pickup needs to be scheduled.
5. The JURISDICTION shall “close” and secure all COUNTY ballot drop boxes from accepting any more ballots promptly at 7:00 p.m. on election night.
6. The JURISDICTION may be instructed to call the COUNTY on election night, depending on the specific election.
7. The JURISDICTION shall promptly report to the COUNTY any misuse, damage, and/or graffiti to the COUNTY ballot drop box.
8. The JURISDICTION shall provide written, advance notice to the COUNTY of any additional uses of the COUNTY ballot drop boxes.