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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

v.

ANGELA DENISE BIRDWELL (001) (Counts 1, 2, 3, 5, 7-17, 21-23)

GARY ALLER (002) (Counts 1, 2, 4)

STEVEN NIELSEN (003) (Counts 1, 2, 6)

KAY HARTWELL HUNNICUTT (004) (Counts 18-20)

Defendants.

Case No:

88 SGJ 267

INDICTMENT

CHARGING VIOLATIONS OF:

COUNT 1: CONSPIRACY, a class 2 felony in violation of A.R.S. §13-1003

COUNT 2: FRAUDULENT SCHEMES AND ARTIFICES, a class 2 felony in violation of A.R.S. §13-2310

COUNT 3: PROCUREMENT FRAUD, a class 4 felony in violation of A.R.S. §41-2616

COUNTS 4, 5 - 8: FRAUDULENT SCHEMES AND PRACTICES, a class 5 felony in violation of A.R.S. §13-2311

COUNTS 9 & 10: VIOLATION OF DUTIES OF A CUSTODIAN OF PUBLIC MONIES, a class 4 felony in violation of A.R.S. §35-301

COUNTS 11-17: CONFLICT OF INTEREST, a class 5 felony in violation of A.R.S. §38-503

COUNTS 18-23: FALSE RETURN, a class 5 felony in violation of A.R.S. §42-1127

The Arizona State Grand Jury accuses ANGELA DENISE BIRDWELL (001), GARY ALLER(002), STEVEN NIELSEN (003) and KAY HARTWELL HUNNICUTT (004), charging on this 13th day of July, 2021 that in or from Maricopa County, Arizona:

COUNT 1

CONSPIRACY

On or between May 1, 2012 and December 1, 2012, ANGELA DENISE BIRDWELL (001), GARY ALLER (002), STEVEN NIELSEN (003), and Brian Robichaux (deceased) with intent to promote or aid the commission of an offense, agreed with one or more persons that at least one of them or another person will engage in conduct constituting an offense included but not limited to Procurement Fraud, in violation of A.R.S. §41-2616(B) a class 4 felony, Fraudulent Schemes and Artifices, A.R.S. §13-2310 a class 2 felony, and Fraudulent Schemes and Practices, A.R.S. § 13-2311 a class 5 felony, and one of the parties committed an overt act in furtherance of an offense, included but not limited to Procurement Fraud, in violation of A.R.S. §41-2616(B) a class 4 felony, Fraudulent Schemes and Artifices, A.R.S. §13-2310 a class 2 felon, and Fraudulent Schemes and Practices, A.R.S. § 13-2311 a class 5 felony, in violation of A.R.S. §§ 13-1003, 13-301, 13-302, 13-303, 13-304, 13-305, 13-306, 13-701, 13-702, 13-801 and 13-811.

FRAUDULENT SCHEMES AND ARTIFICES

On or between May 1, 2012 and December 1, 2012, ANGELA DENISE BIRDWELL (001), GARY ALLER (002), STEVEN NIELSEN (003), and Brian Robichaux (deceased), to scheme or artifice to defraud, knowingly obtained a benefit by means of false or fraudulent pretenses, representations, promises or material omissions, in violation of A.R.S. §§ 13-2310(A), 13-2301, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801, and 13-811.

To Wit: ANGELA DENISE BIRDWELL (001), GARY ALLER(002), STEVEN NIELSEN (003), and Brian Robichaux (deceased) violated the procurement process by allowing the principle of a bidder, Educational Facilities Development Services, to participate in the procurement process and by providing an advantage to one bidder, Educational Facilities Development Services, which assisted that bidder and prejudiced other bidders.

COUNT 3

PROCUREMENT FRAUD

On or between May 1, 2012 and December 1, 2012, ANGELA DENISE BIRDWELL (001) intentionally or knowingly contracted for or purchased any material, services, construction or construction services pursuant to a scheme or artifice to avoid the requirements of this chapter, the Arizona Procurement Code, rules adopted pursuant to this chapter, the Arizona Procurement Code, rules adopted by the state board of education pursuant to § 15-213 or rules adopted by the state board of regents, the state lottery commission or the judicial branch pursuant to § 41-2501, in violation of A.R.S. §§ 41-2616, , 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-801, and 13-811.

To Wit: **ANGELA DENISE BIRDWELL (001)**, violated the procurement process by allowing the principle of a bidder, Educational Facilities Development Services, to provide input on the request for proposals 013-203 and by providing an advantage to one bidder, Educational

Facilities Development Services, which assisted that bidder and prejudiced other bidders in submitting bids.

COUNT 4

FRAUDULENT SCHEMES AND PRACTICES

On or about July 6, 2012, GARY ALLER (002) in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-2301, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **GARY ALLER (002)** signed an Offer and Acceptance for Request for Proposal No. 013-203 stating that "The submission of the offer did not involve collusion or other anti-competitive practices" knowing that the selection process violated School District Procurement Rules in the Arizona Administrative Code and knowing that Education Facilities Development Services received information which assisted Education Facilities Development Services and prejudiced other bidders in submitting bids.

COUNT 5

FRAUDULENT SCHEMES AND PRACTICES

On or about July 10, 2012, **ANGELA DENISE BIRDWELL (001)** in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious

or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-2301, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001)** signed an Evaluation Committee Member Statement.

COUNT 6

FRAUDULENT SCHEMES AND PRACTICES

On or about September 16, 2012, STEVEN NIELSEN (003), in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-2301, 13-701, 13-702, 13-801, and 13-811.

TO WIT: STEVEN NIELSEN (003), entered a Project Development agreement which stated that Educational Facilities Development Services was selected as "pursuant to Request for Proposal No. 013-203, in accordance with School District Procurement Rules in the Arizona Administrative Code (A.A.C.) promulgated by the State Board of Education pursuant to A.R.S. 15-213" knowing that the selection process violated School District Procurement Rules in the Arizona Administrative Code.

COUNT 7

FRAUDULENT SCHEMES AND PRACTICES

On or about December 1, 2012, ANGELA DENISE BIRDWELL (001), in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive,

knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-2301, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL** (001) entered a Facilities Use Agreement for Elona which stated that Education Facilities Development Services was selected as "the Developer, pursuant to Request for Proposal No. 013-203, and in accordance with the School District Procurement Rules in the Arizona Administrative Code promulgated by the Arizona Board of Education pursuant to Arizona Revised Statutes § 15-213" knowing that the selection process violated School District Procurement Rules in the Arizona Administrative Code.

COUNT 8

FRAUDULENT SCHEMES AND PRACTICES

On or about December 1, 2012, ANGELA DENISE BIRDWELL (001), in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-2301, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001)** authorized a Facilities Use Agreement for Sossaman which stated that Education Facilities Development Services was selected as "the Developer, pursuant to Request for Proposal No. 013-203, and in accordance with the School District Procurement Rules in the Arizona Administrative Code promulgated by the Arizona Board of Education pursuant to Arizona Revised Statutes § 15-213" knowing that the selection process violated School District Procurement Rules in the Arizona Administrative Code.

VIOLATION OF DUTIES OF A CUSTODIAN OF PUBLIC MONIES

On or about December 12, 2012, ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of Higley Unified School District, a public officer or other person charged with the receipt, safekeeping, transfer or disbursement of public money who, without authority of law, appropriates it, or any portion thereof, to her own use, or the use of another in violation of A.R.S. §§ 35-301(1), 35-302, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001)** approved the misuse of \$3,000,000 of Higley Unified School District Funds Adjacent Ways Funds for a purpose other than for improvements necessary to assure the safe ingress to and egress from public school property directly adjacent to the public way for buses and fire equipment as provided for in A.R.S. §15-995.

COUNT 10

VIOLATION OF DUTIES OF A CUSTODIAN OF PUBLIC MONIES

On or between November 12, 2013 and September 30, 2014, **ANGELA DENISE BIRDWELL (001)**, while employed as the Superintendent of Higley Unified School District, a public officer or other person charged with the receipt, safekeeping, transfer or disbursement of public money who, without authority of law, appropriates it, or any portion thereof, to her own use, or the use of another in violation of A.R.S. §§ 35-301(1), 35-302, 13-701, 13-702, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001)** authorized or caused the misuse of \$3,000,000 of Higley Unified School District Funds Adjacent Ways Funds for a purpose other than for improvements necessary to assure the safe ingress to and egress from public school property directly adjacent to the public way for buses and fire equipment as provided for in A.R.S. §15-995.

CONFLICT OF INTEREST

On or about September 11, 2014, ANGELA DENISE BIRDWELL (001), a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of the Higley Unified School District, accepted Check #1007 for \$1,000 from Brian Robichaux, President of Hunt & Caraway, a Higley Unified School District vendor.

COUNT 12

CONFLICT OF INTEREST

On or about September 15, 2015, ANGELA DENISE BIRDWELL (001), a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of the Higley Unified School District, accepted Check #512058 from CORE Construction for \$2,500.00, a Higley Unified School District vendor.

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CONFLICT OF INTEREST

On or about October 7, 2014, **ANGELA DENISE BIRDWELL (001)**, a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001)**, while employed as the Superintendent of the Higley Unified School District, had a substantial interest in a \$15,000 check from Hunt & Caraway, a Higley Unified School District vendor, written to KAY HARTWELL HUNNICUTT and deposited into a bank account held jointly by **ANGELA DENISE BIRDWELL (001)** and KAY HARTWELL HUNNICUTT (004).

COUNT 14

CONFLICT OF INTEREST

On about April 10, 2015, **ANGELA DENISE BIRDWELL (001)**, a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of the Higley Unified School District, had a substantial interest in a \$5,000 check from Hunt & Caraway, a Higley Unified School District vendor, written to KAY

HARTWELL HUNNICUTT (004) and deposited into a bank account held jointly by **ANGELA DENISE BIRDWELL (001)** and KAY HARTWELL HUNNICUTT (004).

COUNT 15

CONFLICT OF INTEREST

On or about May 21, 2015, **ANGELA DENISE BIRDWELL** (001), a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of the Higley Unified School District, had a substantial interest in a \$5,000 check from Hunt & Caraway, a Higley Unified School District vendor, written to KAY HARTWELL HUNNICUTT (004) and deposited into a bank account held jointly by ANGELA DENISE BIRDWELL (001) and KAY HARTWELL HUNNICUTT (004).

COUNT 16

CONFLICT OF INTEREST

On or about June 9, 2015, **ANGELA DENISE BIRDWELL (001)**, a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: ANGELA DENISE BIRDWELL (001), while employed as the Superintendent of the Higley Unified School District, had a substantial interest in a \$5,000 check from Hunt & Caraway, a Higley Unified School District vendor, written to KAY HARTWELL HUNNICUTT (004) and deposited into a bank account held jointly by ANGELA DENISE BIRDWELL (001) and KAY HARTWELL HUNNICUTT (004).

COUNT 17

CONFLICT OF INTEREST

On or about April 6, 2016, **ANGELA DENISE BIRDWELL (001)**, a public officer or employee who had, or whose relative had, a substantial interest in any decision of a public agency intentionally or knowingly failed to make known such interest in the official records of such public agency and failed to refrain from participating in any manner as an officer or employee in such decision in violation of ARS §§ 38-503, 38-502, 38-510, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, 13-703, 13-801, and 13-811.

TO WIT: **ANGELA DENISE BIRDWELL (001),** while employed as the Superintendent of the Higley Unified School District, had a substantial interest in a \$15,000 check from Hunt & Caraway, a Higley Unified School District vendor, written to KAY HARTWELL HUNNICUTT (004) and deposited into a bank account held jointly by **ANGELA DENISE BIRDWELL (001)** and KAY HARTWELL HUNNICUTT (004).

COUNT 18

FALSE RETURN

On or about October 14, 2014, **KAY HARTWELL HUNNICUTT (004)**, knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or

required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2013 Arizona Individual Income Tax Return.

COUNT 19

FALSE RETURN

On or about October 12, 2015, KAY HARTWELL HUNNICUTT (004), knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2014 Arizona Individual Income Tax Return.

COUNT 20

FALSE RETURN

On or about December 12, 2017, KAY HARTWELL HUNNICUTT (004), knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2015 Arizona Individual Income Tax Return.

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FALSE RETURN

On or about October 12, 2015, ANGELA DENISE BIRDWELL (001), knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2014 Arizona Individual Income Tax Return.

COUNT 22

FALSE RETURN

On or about October 27, 2016, ANGELA DENISE BIRDWELL (001), knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2015 Arizona Individual Income Tax Return.

COUNT 23

FALSE RETURN

On or about August 7, 2017, ANGELA DENISE BIRDWELL (001), knowingly prepared, presented or aided, procured or advised in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or

required to present the return, affidavit, claim or document, in violation of A.R.S. §42-1127(B)(2), 42-1101.01, 13-701, 13-702, 13-703, 13-801 and 13-811.

TO WIT: 2016 Arizona Individual Income Tax Return.

Pursuant to A.R.S. § 21-425, the Grand Jurors find that the offenses described above were committed in Maricopa County, Arizona.

(A "True Bill")

MARK BRNOVICH ATTORNEY GENERAL STATE OF ARIZONA

Dated: 07/13/2021

Mary Harriss

Assistant Attorney General

#9624514

Foreperson of the Grand Jury