

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made and entered into September 1, 2020 ("Effective Date"), by and between [CITY OF LINDSAY], (hereinafter referred to as "Licensor") and the COUNTY OF TULARE, a political subdivision of the State of California, through its REGISTRAR OF VOTERS (hereinafter referred to as "County"), without regard to number and gender. County and Licensor may sometimes hereinafter be referred to individually as "Party" or jointly as "Parties."

1. **LICENSE AREA.** Licensor grants to County, and its agents and contractors, the right to access and use a portion of that/those certain property(ies), described on Exhibit A (hereinafter referred to as the "License Area(s)"), which exhibit is attached hereto and by reference made a part hereof, together with nonexclusive, in common use of driveways for vehicle ingress and egress, pedestrian walkways, other facilities, and common areas appurtenant to the License Area. Licensor represents and warrants that the License Area is free and clear of easements, including utility easements that would impede the County's use of the License Area, as set forth below. The Parties agree that the License Area may be modified by County pursuant to the terms herein. If, for example, the License Area includes multiple properties, the County may reduce the number of properties within the License Areas, pursuant to Clauses 6 and 21, below.

2. **COUNTY AND PUBLIC USE.**
 - a. County's use of the License Area shall be limited to installing, operating, and maintaining an Official Ballot Drop Box on the License Area. County shall not use the License Area or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance to be created or maintained therein.
 - b. The Parties further acknowledge and agree that the County's use of the License Area is for the operation of an Official Ballot Drop Box consistent with the California Voter's Choice Act. Licensor grants to voters, and other County invitees, the right of access to the License Area, described in Clause 2 (License Area), above, for purposes consistent with the conduct of, and participation in, an election. Licensor acknowledges that the Official Ballot Drop Box shall be open 24 hours a day for the 30 days prior to an election ("Election Period"). County shall endeavor to notify Licensor with an election schedule no later than 30 days before the Election Period pursuant to Clause 30 (NOTICES).
 - c. Consistent with the uses outlined in this Clause 3, Licensor shall notify the County within 24 hours of any change to the License Area or surrounding property that would make the Official Ballot Drop Box inaccessible during the Election Period and frustrate the intent of this License.

3. **PARKING.** Licensor, throughout the Term, as set forth below, shall provide County, and its invitees, with the nonexclusive use of parking spaces. The location and any rules or instructions for use of these parking spaces shall be determined by the Licensor and provided to the County no later than the commencement of the first Election Period after the Effective Date.

In addition to said parking spaces, Licensor shall also provide parking for disabled persons ("ADA Spaces") in accordance with the Americans with Disabilities Act, the California Uniform Building Code and the applicable codes and/or ordinances relating to parking for disabled persons as established by the local jurisdiction in which the License Area is located where the provisions of such local codes and/or ordinances exceed or supersede the State requirements.

4. **TERM.** This license shall commence on the Effective Date written above and shall continue in effect for five (5) years ("Term") or as otherwise terminated in accordance with Clause 6 (TERMINATION) of this License.
5. **TERMINATION.** This License shall be revocable by either Party at any time; however, as a courtesy, the terminating Party will attempt to give ninety (90) days written notice to the other Party prior to the termination date. In the event the County modifies the License Area pursuant to Section 21 (Amendments) – for example, by removing property or properties from the License Area – said modification shall not terminate the License for the remaining property or properties that comprise the License Area.
6. **LICENSE FEE.** In consideration for the valuable public services provided to the citizens of the County of Tulare performed by County consistent with Clause 3 (USE) above and pursuant to this License, the license fee shall be waived for County's use of the Licensed Area.
7. **UTILITIES, MAINTENANCE, AND JANITORIAL SERVICES.** Licensor shall be responsible for all janitorial, maintenance and repairs outside of the License Area, (including but not limited to: fire alarm, fire extinguisher, HVAC system, elevator maintenance, landscaping, pest control, and trash) unless such maintenance and repairs arise out of County's negligence or intentional acts not in accordance with the uses permitted herein, per Clause 3 (USE), above and not including normal wear and tear.
8. **ALTERATIONS.** County may make improvements and changes, at the County's expense, in and to the License Area, including, but not limited to changes described in Exhibit C, attached hereto, and those deemed necessary or appropriate by the

County in its discretion, subject to advance written permission from Licensor. It is agreed that any such improvements attached to or placed upon the License Area by County shall be considered as personal property of County, who shall have the right, but not the obligation, to remove same. County agrees that the License Area shall be left in as good condition as when received, reasonable wear and tear excepted.

9. OWNERSHIP OF IMPROVEMENTS.

- a. All improvements, constructed or placed within the License Area by County ("County Improvements") must, upon completion, be free and clear of all liens, claims, or liability for labor or material. The County Improvements shall remain property of County and shall be removed by County at the termination of this License, without damage to the License Area.
- b. The County Improvements to be installed on the License Area shall include the Official Ballot Drop Box as specified in the included Exhibit B. The County shall be responsible for all costs incurred in the installation of the County Improvements. The County's agents shall coordinate the installation of the County Improvements with the Licensor.

10. OPERATIONAL REQUIREMENTS OF COUNTY. County shall, to the satisfaction of Licensor, keep and maintain the License Area and all improvements of any kind in good condition and in substantial repair, normal wear and tear excepted. It shall be County's responsibility to take all steps necessary or appropriate to maintain such standard of condition and repair. Licensor shall endeavor to notify the County when Licensor observes that maintenance is necessary.

County expressly agrees to maintain the License Area in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Licensor and in compliance with all applicable laws.

In the event the Licensor determines, in its reasonable discretion, that an employee, contractor, or invitee of County is failing to adhere to proper standards of public conduct, is in violation of any Licensor policy and/or is in any way disrupting the activities of the Licensor's employees, agents, and/or invitees, the Licensor reserves the right to remove said individual, and/or require County to remove said individual from the License Area. If warranted, County shall endeavor to prohibit said individual's future access to the License Area, subject to applicable law.

11. VIDEO SECURITY SURVEILLANCE SYSTEM. If feasible, the County shall have access to any video security surveillance footage recorded and stored by Licensor in order for the County to meet its statutory and regulatory requirements under the California Voter's Choice Act.

12. INDEMNIFICATION.

- a. Licensor hereby agrees to indemnify, hold harmless, and defend County, its officers, agents, and employees, with counsel approved by County, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the ownership, maintenance, or use of the License Area by Licensor, except for liability arising out of the sole negligence of County, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. In the event County is named as co-defendant, Licensor shall notify County of such fact and shall represent County, with counsel approved by County, in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event Licensor shall pay to County its litigation costs, expenses and attorneys' fees.
- b. County hereby agrees to indemnify, hold harmless, and defend Licensor, its officers, agents, and employees, against any and all claims, loss, demands, damages, cost, expenses or liability arising out of the use of the License Area by County, except for liability arising out of the negligence of Licensor, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. In the event Licensor is named as co-defendant, County shall notify Licensor of such fact and shall represent Licensor, with counsel approved by Licensor, in such legal action unless Licensor undertakes to represent itself as co-defendant in such legal action, in which event County shall pay to Licensor its litigation costs, expenses and attorneys' fees.
- c. In the event judgment is entered against County and Licensor because of the concurrent active negligence of County and Licensor, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.
- d. The provisions of this Section shall survive the termination or expiration of this License.

13. ASSIGNMENT AND SUBAGREEMENTS. Any assignment of this License or sublicenses under this License require the prior written approval of Licensor, which approval will not be unreasonable withheld, conditioned or delayed.

14. EMPLOYMENT. No County employee shall be considered as an employee of the Licensor under the jurisdiction of Licensor, nor shall such County employees have any Licensor pension, civil service, or other status while an employee of County.

County shall have no authority to contract on behalf of Licensor. It is expressly understood and agreed by both Parties hereto that County, while engaged in carrying out and complying with any terms of this License, is not acting as an agent, officer, or employee of Licensor.

15. **SIGNS.** Licensor agrees to allow County to install and maintain any sign or display upon or in front of the License Area and/or property. Such signage shall comply with all applicable laws and zoning and site plan requirements and be consistent with Licensor signage on the property upon which the License Area is located.

16. **ELECTIONEERING.** No electioneering, is permitted within 100 feet of the Official Ballot Drop Box during the Election Period. Licensor agrees that County and its staff may take steps they deem reasonably necessary to stop or prevent such electioneering. Licensor, its officers, agents, and employees will refrain from erecting or permitting any sign, display, or other demonstration that may have the effect of influencing or intimidating voters during the Election Period. County may take the steps they deem reasonably necessary to obscure or remove any such sign, display, or other demonstration. For purposes of this section, "**electioneering**" means the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot within 100 feet of the Official Ballot Drop Box. Such electioneering information includes but is not limited to,
 - i. Display of a candidate's name, likeness, or logo;
 - ii. DA display of a ballot measure's number, title, subject, or logo;
 - iii. Buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information;
 - iv. Dissemination of audible electioneering information; and/or
 - v. Loitering near or disseminating visible or audible electioneering information.

17. **AUTHORITY.** The persons executing the License below on behalf of County or Licensor warrant that they have the power and authority to bind County or Licensor to this License.

18. **HEADINGS.** The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

19. **AMENDMENTS.** This License is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this License shall be in writing and shall be properly executed by both Parties; however, County may modify the License Area, in its discretion, upon written notification from the Chief Real Estate Officer informing Licensor of the modification and the date the modification will become effective. Based on such written notice the Parties agree to thereafter amend this License to reflect the revised License Area if so desired by either Party.

20. **SEVERABILITY.** If any term, covenant, condition, or provision of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
21. **NO WAIVER.** The failure of Licensor or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Licensor or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained.
22. **GOVERNING LAW.** This License has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this License, the sole and exclusive venue shall be a court of competent jurisdiction located in Tulare County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

The Parties expressly understand and agree that this License constitutes a license for use of the License Area. This License is not intended by the Parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. County acknowledges that a license is a valid form of agreement and shall not contest the validity of the form of this License in any action or proceeding brought by County against the Licensor, or by the Licensor against County. Should either Party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other Party's failure or refusal to perform or fulfill any of the covenants or conditions of this License on its part to be performed or fulfilled, the Parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings.

23. **ATTORNEYS' FEES.** In the event of a dispute between Licensor and County concerning claims arising out of this License, or in any action or proceeding brought to enforce or interpret any provision of this License or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.
24. **TIME OF THE ESSENCE.** Time is of the essence of this License. Failure to comply with any time requirements of this License shall constitute a material breach of this License.
25. **CONDITION OF LICENSE AREA UPON TERMINATION.** Except as otherwise agreed to herein, upon termination of this License, County shall redeliver possession

of said License Area to Licensor in substantially the same condition that existed immediately prior to County's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war excepted.

- 26. RELATIONSHIP OF PARTIES.** The relationship of the parties hereto is that of Licensor and County, and it is expressly understood and agreed that Licensor does not in any way or for any purpose become a partner of or a joint venture with County in the conduct of County's business or otherwise.
- 27. NOTICES.** All written notices pursuant to this License shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed delivered upon personal delivery, delivery by facsimile machine, electronic mail, or seventy-two (72) hours after deposit in the United States Mail.

To: COUNTY

County of Tulare
Registrar of Voters
5951 S. Mooney Blvd
Visalia, CA 93277
Attention: Suzette Machado
SMachado@co.tulare.ca.us
(559) 624-7301

To: LICENSOR

City of Lindsay
251 E Honolulu St
Lindsay, CA 93247
Attention: Mayra Espinoza-Martinez
mespinoza@lindsay.ca.us
(559) 562-7102 Ext. 8011

- 28. ATTACHMENTS TO LICENSE.** The License includes the following, which are attached hereto and made a part hereof: Exhibit A – License Area Description and Map and Exhibit B—Official ballot Drop Box Specifications.

The remainder of this page intentionally left blank.

EXHIBIT A:
City Services Department
140 N. Mirage Ave, Lindsay, CA 93247



EXHIBIT B



Outside Dimensions: (inches)	12' x 12' x 38' high
Anti-tamper chute dimensions: (inches)	6.5' x 5'
Capacity:	250+ Ballots
Material Type:	Brushed Stainless Steel
Part ID:	3107

Installed box at the Auditor's office rose garden in Visalia.

