

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

20-925

SAP Number

## REGISTRAR OF VOTERS

<b>Department Contract Representative</b>	<u>Bob Page</u>
<b>Telephone Number</b>	<u>909-387-2100</u>
<b>Contractor</b>	<u>Lewis Management Corporation</u>
<b>Contractor Representative</b>	<u></u>
<b>Telephone Number</b>	<u></u>
<b>Contract Term</b>	<u>October 1, 2020 – December 31, 2020</u>
<b>Original Contract Amount</b>	<u>\$0</u>
<b>Amendment Amount</b>	<u></u>
<b>Total Contract Amount</b>	<u>\$0</u>
<b>Cost Center</b>	<u></u>

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, the County of San Bernardino (County) desires to place a secure ballot drop box on Sierra Lakes Marketplace, LLC, (Contractor's) property located at 16475 - 16879 Sierra Lakes Parkway, Fontana, California 92336 for the purpose of allowing city and county voters to deposit official ballots, 24/7, for all elections in San Bernardino County; and

**WHEREAS**, the County finds Contractor qualified to provide a location for a secure ballot drop box on its property; and

**WHEREAS**, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

**NOW, THEREFORE**, the County and Contractor mutually agree to the following terms and conditions:

#### A. CONTRACTOR RESPONSIBILITIES

**A.1** To allow access to the box by voters during any scheduled Countywide consolidated election and during any other election in which voters within the Contractor's jurisdiction are eligible to vote.

**A.2** To maintain the area adjacent to the box by keeping the area in good condition and conduct regular inspections at least once a day during business hours during voting periods and routine maintenance of the area to ensure the public has access to the box.

**A.3** To report any damage, tampering or defacement of the box to the County.

**A.4** To monitor the status of the box during an election and report any issues to the County.

**A.5** To remove and secure mail ballots from the box on an emergency basis only upon direction by County.

**A.6** Contractor is receiving the ballot box from County and Contractor is not responsible or liable in any way what-so-ever for the adequacy of the box for its intended purpose or for acts of third parties that may damage to the box, tamper with or spoil of its contents, or any other criminal act of a third party related to the box or its contents.

**B. GENERAL CONTRACT REQUIREMENTS**

**B.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**B.2 Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

**B.3 Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

**B.4 Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**B.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**B.6 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**B.7 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**B.8 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**B.9 County Representative**

The Registrar of Voters or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**B.10 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to the box caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**B.11 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- B.11.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- B.11.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- B.11.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**B.12 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**B.13 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies

relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**B.14 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**B.15 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**B.16 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**B.17 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**B.18 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**B.20 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

**B.21 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**B.22 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**B.23 Termination for Convenience**

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a sixty (60) day written notice of termination. Such termination may include all or part of the services described herein. If Contractor desires to terminate the Contract, they shall give the County ample notice and access to remove the drop box. County shall have sixty (60) days from the date Contractor terminates the contract to remove the drop box and restore the property to its original condition. Should County fail to remove the drop box within sixty (60) days, Contractor may remove the box and charge the cost to County. County shall have sixty (60) days from the mailing of the cost notice to reimburse Contractor for the cost of removing the drop box. If Contractor removes the drop box due to County's failure to remove the box, Contractor shall not be responsible for any damages to the drop box notwithstanding any other provision in this Contract.

**B.24 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**B.25 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

**C. TERM OF CONTRACT**

This Contract is effective as of October 1, 2020 and expires December 31, 2020, but may be terminated earlier in accordance with provisions of this Contract.

**D. COUNTY RESPONSIBILITIES**

**D.1** To provide, install and remove the ballot box at County expense in an area that County has determined is in compliance with the ADA (and all other applicable laws and regulations governing places of public accommodation) and approved by Contractor; and restore Contractor's property to its original condition.

**D.2** To timely notify the Contractor of any elections to be conducted where the box will need to be available.

**D.3** To service the box by removing the ballots as required by County and State requirements during an election period.

**D.4** To maintain, repair or replace the box as needed.

**D.5** To respond to any reported problems or incidents related to the box within 48-hours of Contractor notifying County of the problem or incident.

**D.6** To unlock the box at the start of regular Contractor business hours twenty-nine (29) days before the day of an election to allow voters to return their voted mail ballots by depositing the ballots into the box.

**D.7** To securely lock the box promptly at 8:00 p.m. on the day of an election to prevent late ballots from being deposited.

## **E. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **E.1 Indemnification**

- a. Contractor agrees to indemnify, defend (with counsel approved by County) and hold harmless the County and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from the Contractor's negligent acts or omissions which arise from the Contractor's performance of its obligations under this Contract.

County agrees to indemnify, defend (with counsel approved by Contractor), and hold harmless the Contractor and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability resulting from the County's negligent acts or omissions which arise from the County's performance of its obligations under this Contract.

In the event the County and/or the Contractor is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Contract, the County and/or Contractor shall indemnify the other to the extent of its comparative fault. Furthermore, if the County or Contractor attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the County and Contractor agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

- b. This section 4 survives the termination or expiration of this Contract.

### **E.2 Self-Insurance**

If both County and Contractor are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement, then that shall suffice for coverage and meet the insurance requirements for this Contract.

### **E.3 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

### **E.4 Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

### **E.5 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

### **E.6 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

**E.7 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request. If Contractor is self-insured or a member of a JPIA, evidence of such coverage shall be furnished to County within fifteen (15) days of the commencement of this contract.

**E.8 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII". Self-insurance or membership in a JPIA shall suffice for coverage.

**E.9 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**E.10 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

**E.11 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

- E.12** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- E.12.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- E.12.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

- E.12.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- E.12.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

## **F. CORRECTION OF PERFORMANCE DEFICIENCIES**



- F.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- F.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Contractor thereafter two (2) calendar days within which to cure the breach; and/or
  - b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
  - c. Withhold funds pending duration of the breach; and/or
  - d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
  - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

**G. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino  
Registrar of Voters  
777 E. Rialto Ave.  
San Bernardino, CA 92415

Sierra Lakes Marketplace, LLC  
Attention: General Counsel  
c/o Lewis Management Corp.  
1156 N. Mountain Avenue  
Upland, CA 91786-3633  
P.O. Box 670 670  
Upland, CA 91785-0670

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

**H. EXECUTION IN COUNTERPARTS AND ELECTRONIC SIGNATURES**

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of the Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

**I. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**IN WITNESS WHEREOF**, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

**COUNTY OF SAN BERNARDINO**

▶   
\_\_\_\_\_  
Gary McBride, Chief Executive Officer  
Dated : 10/5/20

**SIERRA LAKES MARKETPLACE, LLC,**  
a Delaware limited liability company

By: **LEWIS MANAGEMENT CORP.,**  
a Delaware limited liability company

By   
\_\_\_\_\_  
DocuSigned by:  
9C2EEB2E983F4E1...

Name David L. Linden

Title Its Authorized Agent

Dated: October 6, 2020 | 8:39 AM PDT

Address 16475 - 16879 Sierra Lakes  
Parkway, Fontana, CA 92336

**FOR COUNTY USE ONLY**

Approved as to Legal Form

  
\_\_\_\_\_  
Jelena Grider, Deputy County Counsel

Date 10/2/20

Reviewed for Contract Compliance

▶ \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

▶ \_\_\_\_\_  
Bob Page, Registrar of Voters

Date \_\_\_\_\_