

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Registrar of Voters

SUBMITTAL DATE:
September 13, 2011


SUBJECT: Loan of Results Cartridges to the City and County of San Francisco

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the agreement to loan 800 Edge results cartridges containing 512MB compact flash cards to the City and County of San Francisco, and;
- 2) Authorize the Chairman of the Board to execute four (4) originals of the *Agreement for Loan of Results Cartridges* between County of Riverside and the City and County of San Francisco.

BACKGROUND: The City and County of San Francisco has determined that their current inventory of 256MB results cartridges will not accommodate their electronic ballots for the upcoming election cycle. Results cartridges, also known as PCMA cartridges, are obsolete technology and no longer readily available. The industry has moved to USB drives.

(Continue on Pg. 2)


Kari Verjil, Registrar of Voters

**FINANCIAL
DATA**

Current F.Y. Total Cost: \$ N/A
Current F.Y. Net County Cost: \$ N/A
Annual Net County Cost: \$ N/A

In Current Year Budget: No
Budget Adjustment: No
For Fiscal Year: 2011/2012

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY:


Stephanie Persi

County Executive Office Signature

Policy ☒ Policy ☒
Consent ☐ Consent ☐

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 3.86 5/4/10

District: ALL

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.74

Registrar of Voters

Loan of Results Cartridges to the City and County of San Francisco

September 13, 2011

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BACKGROUND: (continued)

Riverside County has an inventory of 3,700 512MB Edge results cartridges. The Riverside Registrar of Voters will only require 1,000 cartridges to conduct its upcoming elections. San Francisco has submitted a formal request letter to the Registrar of Voters (attached) requesting the County to loan San Francisco 800 Edge results cartridges with compact flash cards for use in its November 8, 2011 Consolidated as well as the June 5, 2012 Primary, and November 6, 2012 General Elections.

The San Francisco Department of Elections will assume all financial and custodial responsibility for the results cartridges, including compliance with all of the California Secretary of State's security mandates for transport, use, and storage.

Board Policy H-3 prohibits the loan of election equipment without Board approval.

The Registrar of Voters is consulting with the Secretary of State to determine procedures to sell the surplus cartridges at a later date.

DEPARTMENT OF ELECTIONS
City and County of San Francisco
www.sfelections.org



John Arntz
Director

August 2, 2011

Kari Verjil
Registrar of Voters
County of Riverside
2724 Gateway Drive
Riverside, California 92507

Dear Ms. Verjil:

I am writing to request the loan of 800 results cartridges for use during San Francisco's upcoming general election in November as well as for the June 2012 and November 2012 elections. These cartridges are the compact flash cards used specifically with the Dominion Voting System's "Edge" touch screen voting equipment.

The San Francisco Department of Elections will assume all financial and custodial responsibility for the results cartridges, including compliance with all of the California Secretary of State's security mandates for transport, use, and storage.

I very much appreciate your consideration of this request and I will promptly answer any questions you might have on this matter or provide any additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "John Arntz", written over a large, stylized circular flourish.

John Arntz, Director

AGREEMENT FOR LOAN OF RESULTS CARTRIDGES

THIS AGREEMENT is made and entered into this ____ day of September 2011, by and between the City and County Of San Francisco ("San Francisco") and the County of Riverside ("Riverside").

RECITALS

WHEREAS, county registrars of voters throughout the State are required to use voting systems certified by the Secretary of State to allow voters with disabilities to vote independently and confidentially as provided by the Help America Vote Act of 2002 ("HAVA"); and

WHEREAS, Riverside and San Francisco use Sequoia Edge II voting units that have been certified by the Secretary of State; and

WHEREAS, Riverside possesses 3,700 512MB results cartridges and does not anticipate needing to use all of its results cartridges for the November 2011 election and 2012 elections; and

WHEREAS, Riverside anticipates that it will have approximately 2,700 spare results cartridges in its inventory for the November 8, 2011 consolidated election and 2012 elections; and

WHEREAS, San Francisco has requested that Riverside loan San Francisco 800 results cartridges for San Francisco's use in its November 8, 2011 consolidated, June 5, 2012 primary, and November 6, 2012 general elections; and

WHEREAS, Riverside is willing to loan 800 results cartridges to San Francisco under the terms and conditions hereinafter set forth; and

WHEREAS, Elections Code section 19004 authorizes voting equipment to be loaned or rented with the consent of the board of supervisors, if payment for the expenses incident to the use of the equipment is made.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained herein, the parties hereto agree to the following:

1. **Recitals.** The recitals set forth above are hereby incorporated by reference.

2. **Loan of Results Cartridges.**

(a) Riverside will loan San Francisco 800 results cartridges ("cartridges") for San Francisco's use in its November 8, 2011 consolidated, June 5, 2012 primary,

and November 6, 2012 general elections, for such period of time as may be mutually agreed to by the parties' respective registrar of voters.

(b) San Francisco will be responsible for picking up the cartridges from Riverside's warehouse facility in person, located in Riverside, CA. San Francisco will be responsible for returning the cartridges to the same warehouse facility in person. San Francisco will also be responsible for any transportation services necessary to pick up the cartridges from Riverside's warehouse facility, delivering them to San Francisco and then returning the cartridges to Riverside.

(c) The Term of this Agreement shall begin upon execution of this Agreement by all Parties, and shall end upon San Francisco's return of all equipment to Riverside.

3. Preventive Maintenance. San Francisco will be responsible for all costs incurred by Riverside in performing preventive maintenance upon all cartridges following the return of the cartridges to Riverside. Riverside will invoice San Francisco for any preventive maintenance costs and San Francisco will pay any invoice within thirty (30) days of receipt.

4. Replacement and Repair Costs. San Francisco will reimburse Riverside for all costs incurred by Riverside in replacing or repairing any cartridges loaned to San Francisco pursuant to this Agreement that are damaged while in San Francisco's possession, including the delivery of the cartridges to San Francisco and the return of the cartridges to Riverside. Riverside will have the option at its sole discretion to repair or replace any damaged cartridges. Riverside will invoice San Francisco for any repair or replacement costs and San Francisco will pay any invoice within thirty (30) days of receipt.

5. Incidental Costs. San Francisco will reimburse Riverside for all other expenses incurred by Riverside in providing services incidental to the loaning of the cartridges pursuant to this Agreement. These incidental costs include, but are not limited to, warehouse staff time spent retrieving and inventorying cartridges. Riverside will invoice San Francisco for all incidental costs and San Francisco will pay any invoice within thirty (30) days of receipt.

6. Programming and Ballot Preparation. Riverside will have no responsibility under this Agreement for any of San Francisco's programming or ballot preparation needs associated with San Francisco's use of the cartridges. San Francisco will be responsible for contracting for or providing for any such services.

7. Indemnification.

San Francisco shall indemnify and hold harmless Riverside, its Agencies, districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any act of San

San Francisco, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of San Francisco, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. San Francisco shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards, Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged liability.

With respect to any action or claim subject to indemnification herein by San Francisco, San Francisco shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Riverside; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes San Francisco's indemnification to Riverside as set forth herein.

The San Francisco's obligation hereunder shall be satisfied when the San Francisco has provided to Riverside the appropriate form of dismissal relieving Riverside from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe the San Francisco's obligations to indemnify and hold harmless Riverside herein from third party claims.

8. Insurance

Without limiting or diminishing San Francisco's obligation to indemnify or hold Riverside harmless, San Francisco shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this Agreement.

Workers' Compensation:

If San Francisco has employees as defined by the State of California, the San Francisco shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. **Policy shall be endorsed to waive subrogation in favor of Riverside;** and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, cross liability coverage, covering claims which may arise from or out of San Francisco's performance of its obligations hereunder. **Policy shall name, in the following manner, "the County of Riverside, its Agencies, Districts, and Special Districts, their respective directors, officers, Board of Supervisors, elected or appointed officials, employees, agents or representatives as Additional Insureds."** Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

Vehicle Liability:

If San Francisco's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, San Francisco shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. **Policy shall name, in the following manner, "the County of Riverside, its Agencies, Districts, Special Districts, their respective directors, officers, Board of Supervisors, elected or appointed officials, employees, agents, or representatives as Additional Insureds."**

General Insurance Provisions – All lines:

1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII(A:8) unless such requirements are waived, in writing, by the County of Riverside Risk Manager. If the County of Riverside's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
2. San Francisco's insurance carrier(s) must declare self-insured retentions. If such self insured retentions exceed \$500,000 per occurrence retentions shall have the prior written consent of Riverside's Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention's unacceptable to Riverside, and at the election of Riverside's Risk Manager, San Francisco's carriers shall either; 1) reduce or eliminate such self-insured retentions as respects this Agreement with Riverside, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
3. San Francisco shall cause insurance carrier(s) to furnish Riverside with either 1) a properly executed original Certificate(s) of Insurance and original copies of Endorsements effecting coverage as required herein; and

2) if requested to do so orally or in writing by Riverside Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. ***SAN FRANCISCO shall not commence operations until RIVERSIDE has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***

4. It is understood and agreed to by the parties hereto that SAN FRANCISCO'S insurance shall be construed as primary insurance, and Riverside's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
5. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof, exceeds five (5) years RIVERSIDE reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in Riverside's Risk Manager's reasonable judgment, the amount or type of insurance carried by SAN FRANCISCO has become inadequate.
6. San Francisco shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
7. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to Riverside.

San Francisco agrees to notify Riverside of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

9. Termination. Either Party may terminate this Agreement with or without cause upon written notice served upon the other Party stating the extent and effective date of termination. Termination hereunder will be effective upon ninety (90) days written notification stating the extent and effective date of termination when deposited in the U.S. Mail, postage paid, and addressed in accordance with the "Notices" section herein.

10. Notices. Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, addressed as follows:

TO RIVERSIDE:

Kari Verjil, Registrar of Voters
2724 Gateway Drive
Riverside, CA 92501

TO SAN FRANCISCO:

John Arntz, Director of Elections
1 Dr. Carlton B. Goodlett Pl., #48
San Francisco, CA 94102

Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases. Such communications shall be deemed received upon delivery, if personally delivered, or upon deposit in the United States Mail if sent by mail. Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

11. Entire Understanding. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

12. Amendment and Waiver. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon any party unless agreed in writing by each party and their respective Riverside counsels.

13. Authority. The individuals executing this Agreement each represent and warrant that they have the legal power, right, and actual authority to bind the referenced Parties to the terms and conditions herein this Agreement.

14. **Survival.** Provisions 7 and 8 of this Agreement shall survive termination or expiration of this Agreement.

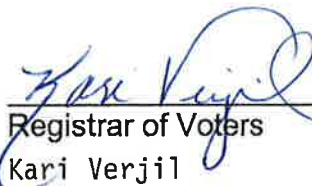
15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document.

16. **Interpretation.** This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

COUNTY OF RIVERSIDE

By: _____
Bob Buster
Chairperson, Board of Supervisors

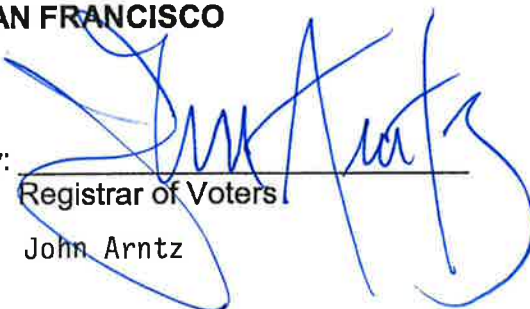
COUNTY OF RIVERSIDE

By:  _____
Registrar of Voters
Kari Verjil

ATTEST:
Clerk of the Board

By: _____
Deputy

**CITY AND COUNTY OF
SAN FRANCISCO**

By:  _____
Registrar of Voters
John Arntz

FORM APPROVED COUNTY COUNSEL
BY:  _____
LARISA R-MCKENNA DATE 8/29/11