1 [Settlement of Lawsuit]

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3 **Ordinance authorizing settlement of the class-action lawsuit filed by the City and**

4 **County of San Francisco against Microsoft Corporation for $1,000,000; the lawsuit was**

5 **filed on August 27, 2004 in San Francisco Superior Court; entitled <u>City and County of</u>**

6 **<u>San Francisco, et al., v. Microsoft Corporation, et al.</u>; Microsoft removed the action to**

7 **federal court and then transferred the action to the United States District Court for the**

8 **District of Maryland.**

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings:

11 (1) The City and County of San Francisco and five other class representatives brought

12 a class action lawsuit against Microsoft Corp. ("Microsoft") in August 2004, entitled <u>City and</u>

13 <u>County of San Francisco, et al. v. Microsoft Corp.</u>, United States District Court, District of

14 Maryland, MDL Docket No. 1332, Civil No. JFM-04-3705 ("the action"), on behalf of the class

15 of all governmental entities, agencies and political subdivisions of the State of California,

16 alleging violations of the Cartwright Act, Cal. Bus. & Prof. Code § 16720ff, and unfair and

17 unlawful business practices, Cal. Bus. & Prof. Code § 17200ff;

18 (2) The action, originally filed in San Francisco Superior Court, was removed to the

19 United States District Court for the Northern District of California, and subsequently

20 transferred to the United States District Court for the District of Maryland;

21 (3) In August, 2005, after several private mediation sessions, counsel for Microsoft and

22 for the plaintiff class reached a tentative settlement ("the settlement"), subject to approval by

23 the governing bodies of the plaintiff class representatives and subject to Court approval;

24 (4) The settlement includes the following essential terms:

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1   (a) Microsoft will pay $70 million in settlement benefits, which will be distributed

2   to class members on a pro rata basis based on an equitable distribution method approved by

3   the Court;

4   (b) Each class member may redeem its settlement benefits for cash after it

5   purchases eligible computer hardware or software;

6   (c) Eligible hardware includes desktop, laptop or tablet computers (using any

7   operating system platform) alone or together with any of the following devices or components

8   ("peripheral devices"): printer, scanner, monitor, keyboard, pointing device (*e.g.*, mouse,

9   trackball, etc.). Eligible software includes any non-custom software (created or sold by any

10   vendor of software products for use on any operating system platform chosen by the Class

11   member) that is designed for use on eligible hardware;

12   (d) Settlement benefits will be redeemable over a five (5) year period. After five

13   (5) years, any unredeemed benefits will be redistributed equitably by a process to be

14   approved by the Court. There will be no reversion of unredeemed benefits to Microsoft;

15   (e) Class members shall be given an opportunity to opt out of the settlement.

16   The total amount of the settlement benefits shall be reduced proportionally by the number of

17   class members that opt out of the settlement class. In the event that 10% or more of the class

18   should opt out, Microsoft shall have the right, in its sole discretion, to terminate the settlement.

19   These determinations shall be made based upon the amount of settlement benefits to which

20   the opt-outs would be entitled, not simply the numerical ratio between opt-outs and the total

21   number of class members;

22   (f) Attachment A hereto describes the Class members' release of claims against

23   Microsoft;

24   (g) Costs of claims administration and notice will be paid by Microsoft on top of

25   the settlement benefits;

1   (h) The Class' legal fees and costs will be paid by Microsoft on top of the

2   settlement benefits described above. If agreement on the appropriate amount of legal fees

3   can be reached, a joint submission will be made to the Court. If the parties do not agree,

4   each party will make its own submission for determination by the Court;

5   (i) The settlement is contingent upon approval by the governing boards of the

6   named class representatives;

7   (j) The settlement is subject to Court approval;

8   (k) The settlement is subject to the parties agreeing upon detailed settlement

9   terms in a full written agreement; and

10   (l) The existence and terms of the settlement are not to be disclosed to anyone

11   other than the named class representatives and their governing boards until the parties issue

12   a joint press release;

13   Section 2. The Board of Supervisors authorizes the San Francisco City Attorney's

14   Office to settle the class action lawsuit against Microsoft Corp. according to the terms set forth

15   herein.

16   Section 3. The Board of Supervisors of the City and County of San Francisco hereby

17   authorizes the Controller of the City and County of San Francisco to accept all the payments

18   made to the City and County of San Francisco pursuant to the terms of the settlement.

19   APPROVED AS TO FORM AND
     RECOMMENDED:
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21   DENNIS J. HERRERA
     City Attorney

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23   _____

     JOANNE HOEPER
24   Chief Trial Deputy

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