

1 [Settlement of Lawsuit and Appropriating a Portion of the Proceeds ]

2  
3 **Ordinance authorizing settlement of the lawsuit filed by the City and County of San**  
4 **Francisco, against Election Systems and Software, Inc., on November 20, 2007 in San**  
5 **Francisco Superior Court, Case No. CGC 07-469371, entitled City and County of San**  
6 **Francisco, et al. v. Election Systems & Software, Inc., and appropriating \$1,130,000.00**  
7 **of the proceeds to the Department of Elections.**

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

9 Section 1. Findings:

10 (1) On behalf of the City and County of San Francisco, Director of the Department of  
11 Elections John Arntz and the People of the State of California, on November 20, 2007, San  
12 Francisco City Attorney Dennis Herrera brought a lawsuit against Election Systems &  
13 Software, Inc. ("ES&S"), entitled City and County of San Francisco, et al. v. Election Systems  
14 & Software, Inc., Case No. CGC 07-469371 ("the action"), alleging breach of contract, fraud,  
15 negligent misrepresentation and statutory violations.

16 (2) Pursuant to the settlement, the City will return to ES&S 563 AutoMARK Voter Assist  
17 Terminals ("AutoMARKs"), which the City had purchased from ES&S in 2006, on or before  
18 February 15, 2008. ES&S will pay \$3,500,000 to the City within five business days after  
19 receipt of the AutoMARKs, less \$421,034.75 for previously unpaid invoices under the  
20 Contract. A copy of the settlement agreement is contained in Board File No. 080123.

21 (3) The City's settlement agreement with ES&S will require the City to modify its  
22 contract with Sequoia Voting Systems, Inc. ("Sequoia") by paying Sequoia \$1,130,000 in lieu  
23 of transferring the AutoMARKs to Sequoia. Accordingly, \$1,130,000 of the settlement  
24 proceeds shall be appropriated to the Department of Elections to fund the additional costs  
25 associated with amending the contract with Sequoia.

1           Section 2. The Board of Supervisors authorizes the San Francisco City Attorney's  
2 Office to settle the action against ES&S according to the terms set forth herein.

3           Section 3. The Board of Supervisors hereby appropriates \$1,130,000 of the settlement  
4 proceeds to the Department of Elections for payment to Sequoia Voting Systems, Inc.

5  
6  
7  
8  
9

APPROVED AS TO FORM AND  
RECOMMENDED:

FUNDS AVAILABLE:

DENNIS J. HERRERA  
City Attorney

10 \_\_\_\_\_  
11 Therese Stewart  
Chief Deputy City Attorney

\_\_\_\_\_ Edward Harrington  
Controller

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25