

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 APPROVED AS TO FORM AND
RECOMMENDED:

FUNDS AVAILABLE:

7 DENNIS J. HERRERA
8 City Attorney

9 

10 Therese Stewart
11 Chief Deputy City Attorney



12 Edward Harrington
13 Controller



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 080123

Date Passed:

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

February 5, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

February 12, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Alioto-Pier, Chu, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi,
Peskin, Sandoval
Noes: 2 - Ammiano, Daly

File No. 080123

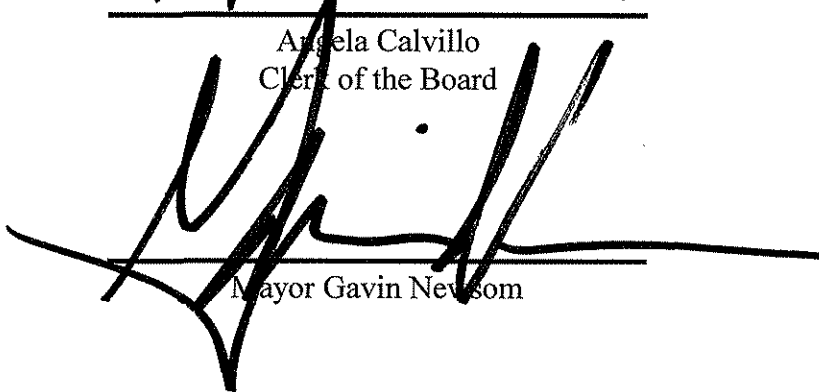
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on February 12,
2008 by the Board of Supervisors of the City
and County of San Francisco.



Angela Calvillo
Clerk of the Board

2.13.08

Date Approved



Mayor Gavin Newsom