State of California

SECRETARY OF STATE

CONDITIONAL APPROVAL OF USE OF *ELECTION SYSTEM AND SOFTWARE, INC.* OPTICAL SCAN VOTING SYSTEM

I, BRUCE McPHERSON, Secretary of State of the State of California, do hereby certify that:

1. *Election System and Software, Inc.* of Omaha, Nebraska ("Vendor"), has requested approval for use in California elections of its voting system comprised of AutoMARK Voter Assist Terminal version 1.0, AutoMARK Information Management System version 1.0, Model 100 Precinct Scanner version 5.0.0.0, Model 550 Central Scanner version 2.1.1.0, Model 650 Central Scanner version 1.2.0.0 and UNITY Election Management System version 2.4.3, submitted on or about February 1, 2005.

2. The voting system described above has been federally qualified as evidenced by the federal Independent Testing Authority reports and the assigned NASED Number # N-1-16-22-12-001, dated June 1, 2005.

3. The request for approval of the voting system as described in Paragraph 1, was considered at a duly noticed public hearing held June 16, 2005, at Sacramento, California.

4. The Voting Systems Panel has recommended that the request for approval be granted, with certain conditions.

5. Election System and Software, Inc.'s AutoMARK Voter Assist Terminal version 1.0, AutoMARK Information Management System version 1.0, Model 100 Precinct Scanner version 5.0.0.0, Model 550 Central Scanner version 2.1.1.0, Model 650 Central Scanner version 1.2.0.0 and UNITY Election Management System version 2.4.3 optical scan voting systems, are hereby approved for use subject to the following terms and conditions:

a. No additional software developed by the Vendor other than that specifically listed in this certificate shall be installed on a computer running Unity version 2.4.3

b. No substitution or modification of the voting systems shall be made with respect to any component of the voting systems, including the Procedures, until the Secretary of State has been notified in writing and has determined that the proposed change or modification does not impair the accuracy and efficiency of the voting systems sufficient to require a re-examination and approval;

c. The Secretary of State reserves the right, with reasonable notice to Vendor and to the counties using any of the voting systems, to modify the Procedures used with any of the voting systems and to impose additional requirements with respect to the use of any of the systems if the Secretary of State determines that such modifications or additions are necessary to enhance the accuracy, reliability or security of any of the voting systems. Such modifications or additions shall be deemed to be incorporated herein as if set forth in full;

d. Any county using any voting system shall, prior to such use, file with the California Secretary of State a copy of its Election Observer Panel plan;

e. The vendor agrees in writing to provide, and shall provide, to the Secretary of State, or to the Secretary of State's designee, within 30 (thirty) days of the Secretary of State's demand for such, a working version of the voting system, including all hardware, firmware and software of the voting system, as well as the source code for any software or firmware contained in the voting system, including any commercial off the shelf software or firmware that is available and disclosable by the vendor, provided that the Secretary of State first commits to the vendor in writing to maintain the confidentiality of the contents of such voting system or source code so as to protect the proprietary interests of the vendor in such voting system or source code. The terms of the commitment to maintain confidentiality shall be determined solely by the Secretary of State, after consultation with the vendor. The voting system shall not be installed in any California jurisdiction until the vendor has signed such an agreement. Any reasonable costs associated with the review of the source code for any

software or firmware contained in the voting system shall be born by the vendor;

f. A final version of use procedures must be submitted to and approved by the Secretary of State prior to sale or use of the system in California. These procedures must include requirements for use of a privacy screen and a privacy sleeve with the AutoMARK.

g. The vendor is required to provide all users of this system with test ballots and appropriate procedures to check and assess calibration of the Model 550 and Model 650 central tabulation scanners prior to each election.

h. Pursuant to this (application, agreement, contract) and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002 and those requirements incorporated by reference in the Help America Vote Act of 2002. Further, voting systems shall also comply with all state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of California Elections Code and the Help America Vote Act of 2002 or other applicable state or federal law when appropriate.

i. Voting system manufacturers or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002 and those requirements incorporated by reference in the Help America Vote Act of 2002. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement of any voting system or its component parts found to be necessary for certification or otherwise not in compliance.

j. Any voting system purchased with funds allocated by the Secretary of State's office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the

Help America Vote Act of 2002 and those requirements incorporated by reference in the Help America Vote Act of 2002.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California, this 3RD day of August, 2005.

BRUCE McPHERSON
Secretary of State