

AGREEMENT BETWEEN THE COUNTIES OF ORANGE, LOS ANGELES, RIVERSIDE AND SANDIEGO FOR THE SHARED OWNERSHIP AND ONGOING MAINTENANCE OF THE STATEWIDE ELECTRONIC COURIER UNIVERSAL RECORDING ENVIRONMENT ELECTRONIC RECORDING DELIVERY SYSTEM

This Multi-County Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the Counties of Orange, Los Angeles, Riverside and San Diego (hereinafter collectively referred to as "OWNERS") for Shared Ownership and Ongoing Maintenance of the Statewide Electronic Courier Universal Recording Environment Electronic Recording Delivery System (hereinafter "SECURE" and "ERDS").

RECITALS

WHEREAS, the OWNERS entered into a Multi-County Agreement dated, August 19, 2008, for shared ownership and ongoing maintenance for SECURE ("the 2008 Multi-County Agreement"); and

WHEREAS, the 2008 Multi-County Agreement designated Orange County as the "LEAD COUNTY" in developing and supporting this multi-county system, and is responsible for negotiating and executing any contract relating to the support and maintenance of SECURE; and

WHEREAS, the SECURE system allows for the integration of a California State certified ERDS and of a Government to Government (hereinafter, "G2G") Portal within the security framework of the system; and

WHEREAS, the OWNERS designated the LEAD COUNTY to administer the G2G Memorandum of Understandings; and

WHEREAS, the OWNERS desire to establish a new five-year multi-county agreement; and

NOW, THEREFORE, the OWNERS mutually agree as follows:

I. PURPOSE

The purpose of this Agreement is to establish the terms and conditions necessary to allow the OWNERS to continue to share in the ownership, cost and maintenance of SECURE.

II. DEFINITIONS

- A. "OWNERS" means the Counties of Orange, Los Angeles, Riverside, and San Diego.
- B. "LEAD COUNTY" means the County of Orange as the designated lead in developing and supporting the multi-county system and responsible for handling the administrative functions, negotiating and executing any contract relating to the support and maintenance of SECURE.
- C. "PARTNERS" means non-owner counties that have contracted to use SECURE.
- D. "GOVERNMENT AGENCY" means the departments within the counties of OWNERS or other government entity that submits package(s) of documents electronically to an OWNER or PARTNER using the SECURE Government to Government Portal for the purpose of electronic recording.

- E. **“SUBMITTERS”** means title companies or other entities in the State of California that are authorized to submit documents through SECURE.
- F. **“SECURE”** means the Statewide Electronic Courier Universal Recording Environment used by multiple participating counties to electronically receive and return documents for recording.
- G. **“SECURE G2G Portal”** means the SECURE Government to Government Portal.
- H. **“Government to Government”** means the act of a county recorder recording a document for a government entity through the SECURE G2G Portal.

III. TERMS AND CONDITIONS

- A. **Term of Contract:** The term of this Agreement shall be for five years, commencing on August 19, 2018 and ending on August 18, 2023, unless earlier terminated by the terms of this Agreement.
- B. **Cost:** This is a fixed rate agreement for all related services. LEAD COUNTY agrees to accept the specified compensation set forth in Attachment B, Compensation and Payment, as full remuneration for providing all equipment, performing all services, furnishing all staffing and materials necessary, and performing all its duties and obligations hereunder.

In the event that LEAD COUNTY anticipates the cost for services in excess of the authorized amounts, the OWNERS shall be notified immediately in writing. LEAD COUNTY shall not be required to expend for services in excess of the authorized amounts stated in Attachment B unless the OWNERS otherwise agree through an executed amendment.

C. Administration:

1. OWNERS agree to assign Orange County as the LEAD COUNTY. The powers, duties and responsibilities of the LEAD COUNTY (the “Scope of Services”) are set forth in Attachment A.
2. This Agreement shall be administered by each of the OWNERS through their appointed representative as follows: the Orange County Clerk-Recorder for the County of Orange, the Los Angeles County Registrar-Recorder/County Clerk for the County of Los Angeles, the Riverside County Assessor-County Clerk-Recorder for the County of Riverside, and the San Diego County Assessor/Recorder/County Clerk for the County of San Diego.
3. OWNERS shall each have an equal vote in any decision, including but not limited to enhancements, modifications and maintenance to the system. The appointed representative of each OWNER or his/her designee shall exercise each OWNER’s vote under this Agreement.
4. Each OWNER shall have an equal share of all rights, title and ownership interest(s), including but not limited to copyright in the SECURE system.
5. The original and any copies of the SECURE software (including the source code), in whole or in part, are and will remain the property of the OWNERS, and this will be reflected in any contract with third party vendors.
6. Unless otherwise agreed upon by the OWNERS, all software and related work provided by any vendor shall be the sole property of the OWNERS. Any vendor hired to modify, enhance and maintain the software shall have no ownership interest in any software or related work.

IV. GENERAL TERMS AND CONDITIONS

- A. Governing Law and Venue:** This Agreement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Agreement, the OWNERS hereto agree to and do hereby submit to the jurisdiction of such court in which the action is initiated. If the action is initiated by the County of Orange, then the exclusive venue of the court of competent jurisdiction would be Orange County. If the County of Los Angeles initiates an action, then the exclusive venue of the court of competent jurisdiction would be Los Angeles County. If the County of Riverside initiates an action, then the exclusive venue of the court of competent jurisdiction would be Riverside County. If the County of San Diego initiates an action, then the exclusive venue of the court of competent jurisdiction would be San Diego County. The OWNERS hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the OWNERS specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Agreement contains the entire agreement between the OWNERS with respect to the matters herein and replaces and supersedes the 2008 Multi-County Agreement. There are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on OWNERS unless authorized in writing. Electronic acceptance of any additional terms, conditions or supplemental agreements by any OWNERS' employee or agent, including but not limited to installers of software, shall not be valid or binding unless accepted in writing by OWNERS' Deputy Purchasing Agent or designee.
- C. Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the OWNERS; no oral understanding or agreement not incorporated herein shall be binding on any of the OWNERS; and no exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by all OWNERS in writing.
- D. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the OWNERS. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned by OWNERS without the express written consent of all OWNERS. Any attempt by OWNERS to assign the performance or any portion thereof of this Agreement without the express written consent of all OWNERS shall be invalid and shall constitute a breach of this Agreement.
- E. Termination:** In addition to any other remedies or rights it may have by law, each party has the right to withdraw and terminate their participation in this Agreement without penalty after 90 days' written notice. Exercise by LEAD COUNTY of its right to terminate the Agreement shall relieve LEAD COUNTY of all further obligations as outlined in Attachment A. A withdrawing OWNER shall remain liable for and shall pay its proportional share of any indebtedness incurred before withdrawing. The withdrawing OWNER shall not be entitled to a credit or refund for any sums paid under this Agreement. An OWNER that withdraws from the Agreement shall not be entitled to the rights, title and ownership interest, including, but not limited to, copyright in the SECURE system, or to the original SECURE software (including the source code), and any copies of the same—all which will remain the property of the remaining OWNERS. An individual OWNER's withdrawal shall not otherwise affect the validity of this Agreement.

- F. Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- G. Changes:** OWNERS acknowledge and agree that LEAD COUNTY is not obligated nor authorized to perform services outside of the Scope of Services. LEAD COUNTY shall make no changes in the Scope of Services without the affirmative written consent of all OWNERS, including the LEAD COUNTY. If LEAD COUNTY believes that a change in the Scope of Services is appropriate, it may propose the changes through a written amendment to OWNERS. The proposed amendment shall detail the change(s) in Scope of Services and compensation, as applicable. LEAD COUNTY shall provide sufficient time for the review and analysis of the proposed amendment by non-proposing Owners. LEAD COUNTY shall be provided sufficient time for review, processing, and acceptance of amendments. OWNERS may reject LEAD COUNTY's proposed amendment, propose a revision to the amendment, or approve such amendment as requested by the LEAD COUNTY. Owners acknowledge and agree that any rejection of a proposed amendment relieves the LEAD COUNTY of any obligation to perform outside of the existing Scope of Services to this the Agreement and in no event, will the LEAD COUNTY perform services that OWNERS have not approved.
- H. Force Majeure:** LEAD COUNTY shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delays due to a disruption of SECURE electronic recording services caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control.
- I. Confidentiality:** OWNERS agree to maintain the confidentiality of all OWNER and OWNER related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by OWNERS and OWNERS' staff, agents and employees. OWNERS may disclose confidential records and information if required to do so as a matter of law, regulation, subpoena or court order.
- J. Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- K. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, each party shall bear their own attorney's fees, costs and expenses.
- L. Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the OWNERS and this Agreement.

M. Indemnification:

The OWNERS agree that, pursuant to Government Code 895.4, each OWNER ("Indemnitor") shall fully indemnify and hold harmless the other OWNERS and their officers, board members, employees and agents, special districts (individually and collectively hereafter referred to as "Indemnitees") from any claim, expense or cost (including attorney's fees), damage or liability imposed for injury, occurring by reason of the negligent acts, omissions, or willful misconduct of the Indemnitor or its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party relating to this Agreement. This indemnification includes any claim that the SECURE system that is in existence at the time of the execution of this Agreement, in whole or in any part, infringes the intellectual property rights of any third party, including without limitation copyrights, patents, or trademarks.

- N. Audits/Inspections:** OWNERS agree to permit each OWNERS' Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the LEAD COUNTY) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of OWNERS for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. The OWNERS shall provide reasonable notice of such an audit or inspection.

OWNERS agree to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. OWNERS agree to allow interviews of any employees or others who might reasonably have information related to such records. Further, LEAD COUNTY agrees to include a similar right to the OWNERS to audit records and interview staff of any subcontractor related to performance of this Agreement.

- O. Contingency of Funds:** OWNERS acknowledge that funding or portions of funding for this Agreement may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to OWNERS; and inclusion of sufficient funding for the services hereunder in the budget approved by OWNERS' Board of Supervisors for each fiscal year covered by this Agreement. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, OWNERS may terminate or modify this Agreement without penalty.
- P. Expenditure Limit:** The LEAD COUNTY shall notify the OWNERS in writing when the expenditures against the Agreement reach 75 percent of the dollar limit on the Agreement. The LEAD COUNTY will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Agreement unless an amendment to cover those costs has been executed as provided in Section IV. C. to this Agreement.
- Q. Exclusion of Liability:** Except in relation to the indemnities expressly provided hereunder, the OWNERS, will not be liable to each other for any indirect, incidental, special or consequential claims of any kind whatsoever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation, and whether direct or indirect) loss of production, loss of profits or of contracts, loss of business, loss of management or operation time and loss of goodwill or anticipated savings, even if the party has been notified of the possibility thereof or could have foreseen such claims.

V. NOTICES

Any and all notices, requests demand and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the OWNERS' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be sent by postage prepaid first-class mail to the respective OWNERS as provided in this paragraph.

The County of Orange: Attn: Dana Ohanesian
Director of Administration
12 Civic Center Plaza, Room 101
Santa Ana, CA 92701
Phone: 714-834-2104
E-Mail: Dana.Ohanesian@rec.ocgov.com

The County of Los Angeles: Attn: Monique Blakely
Assistant Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 503
Norwalk, CA 90650
Phone: 562-462-2073
E-Mail: MBlakely@rrcc.lacounty.com

The County of Riverside: Attn: Michele Martinez-Barrera
Chief Deputy Assessor-County Clerk-Recorder
2724 Gateway Drive
Riverside, CA 92507
Phone: 951-486-7451
E-Mail: Martineb@asrelkrec.com

The County of San Diego: Attn: Val Wood
Chief Deputy Recorder/Clerk
1600 Pacific Highway, Room 260
San Diego, CA 92101
Phone: 619-557-4035
E-Mail: Val.Wood@sdcounty.ca.gov

Signature Page


IN WITNESS WHEREOF, the OWNERS hereto have executed this Agreement between the Counties of Orange, Los Angeles, Riverside and San Diego for Shared Ownership and Ongoing Maintenance of an Electronic Recording Delivery System to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed.

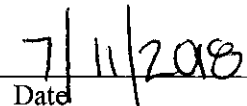
COUNTY OF ORANGE:

By _____
Hugh Nguyen
Clerk-Recorder

Date

**APPROVED AS TO FORM:
County Counsel
County of Orange, California**

By  _____
Deputy

 _____
Date

Approved by the County of Orange Board of Supervisors on: _____
Date

Signature Page

IN WITNESS WHEREOF, the OWNERS hereto have executed this Agreement between the Counties of Orange, Los Angeles, Riverside and San Diego for Shared Ownership and Ongoing Maintenance of an Electronic Recording Delivery System to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed.

COUNTY OF LOS ANGELES:

By _____ Date _____
Dean Logan
Registrar-Recorder/County Clerk

APPROVED AS TO FORM:
County Counsel
County of Los Angeles, California

By _____ Date _____
Deputy

Approved by the County of Los Angeles Board of Supervisors on: _____
Date

Signature Page

IN WITNESS WHEREOF, the OWNERS hereto have executed this Agreement between the Counties of Orange, Los Angeles, Riverside and San Diego for Shared Ownership and Ongoing Maintenance of an Electronic Recording Delivery System to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed.

COUNTY OF RIVERSIDE:

By _____ Date _____
Peter Aldana
Assessor-County Clerk-Recorder

**APPROVED AS TO FORM:
County Counsel
County of Riverside, California**

By _____ Date _____
Deputy

Approved by the County of Riverside Board of Supervisors on: _____
Date

Signature Page

IN WITNESS WHEREOF, the OWNERS hereto have executed this Agreement between the Counties of Orange, Los Angeles, Riverside and San Diego for Shared Ownership and Ongoing Maintenance of an Electronic Recording Delivery System to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed.

COUNTY OF SAN DIEGO:

By _____ Date _____
Ernest Dronenburg
Assessor/Recorder/County Clerk

**APPROVED AS TO FORM:
County Counsel
County of San Diego, California**

By _____ Date _____
Deputy

Approved by the County of San Diego Board of Supervisors on: _____
Date

**ATTACHMENT A
SCOPE OF SERVICES**

I. Responsibilities of LEAD COUNTY:

The LEAD COUNTY shall perform the following functions:

1. Ensure SECURE's compliance with current California ERDS regulations and applicable Federal and State laws;
2. Ensure SECURE will support vendor specific connections to county back end users;
3. Provide Electronic Recording Application Program Interface (API) documentation to PARTNERS;
4. Implement, train, host, support and manage ongoing system operations and support activities for SECURE;
5. Work with approved SUBMITTERS to install SECURE client software and provide training;
6. Manage all SECURE user accounts for approval, denial, and or suspension;
7. Coordinate with potential partner counties to join SECURE;
8. Serve as a liaison with the California Department of Justice ERDS Program and the OWNERS and PARTNERS to ensure that all applicable ERDS standards are being met by SECURE;
9. Manage server hosting facility and maintain SECURE network;
10. Coordinate installation, testing and final acceptance of approved SECURE system upgrades, modifications and enhancements;
11. Coordinate activities related to SECURE system certification for approved PARTNERS;
12. Distribute and maintain SECURE system policies and procedures;
13. Administer the SECURE G2G Program: including administration of the SECURE G2G Portal and coordination and administration of all memorandum of understandings with the PARTNERS and GOVERNMENT AGENCIES for use of the electronic recording under the SECURE G2G Portal;
14. Employ third party vendors and employees for administration of SECURE program requirements;
15. Enter into contracts for technical support and maintenance of SECURE network and system;
16. Perform all other acts reasonable and necessary to carry out the purpose of this Agreement within the costs contemplated under Attachment B of this Agreement.
17. Manage and maintain SECURE website and OWNERS portal including posting operating and financial information;
18. Coordinate SECURE technical meetings between SECURE support staff and Los Angeles County development staff;

19. Coordinate meetings to review submitter and agent compliance to ERDs Regulations;
20. Coordinate disciplinary reviews and notify submitter of any proposed disciplinary action.

**ATTACHMENT B
COMPENSATION AND PAYMENT**

A. Not-To-Exceed Compensation:

LEAD COUNTY, shall annually collect fees from OWNERS, and record in a separate fund designated for SECURE. OWNERS shall pay to LEAD COUNTY for performance of this Agreement the not-to-exceed amount of **\$10,000,000** for LEAD COUNTY's approved work in accordance with the Scope of Services and as calculated under Section B, below. LEAD COUNTY shall only be entitled to payment for work as directed by OWNERS and completed by LEAD COUNTY within its Scope of Services as set forth in Attachment A. In no event shall LEAD COUNTY be entitled to compensation and reimbursement that would result in the total payment by the OWNERS under this Agreement exceeding **\$10,000,000** unless an amendment to this Agreement is approved by OWNERS, pursuant to the Section G. ("Changes") to this Agreement.

B. Calculation of Fees and Charges:

<u>Description</u>	<u>Rate</u>	<u>Total 5-year Contract Amount Not to Exceed</u>
Base Fee – Per Recorded Document	\$0.30	\$9,000,000.00
OWNERS Annual Fee – Per Year	\$50,000.00	\$1,000,000.00
Total Contract Amount – Five Year Term		\$10,000,000.00

"Base Fee – Per Recorded Documents" means what the counties reported to the Office of the Insurance Commissioner pursuant to Section 27296 of the Government Code, for the previous calendar year. The amounts will be transcribed from the annual letter issued by the State of California Department of Justice Electronic Recording Delivery System Program.

1. In the event SECURE's annual revenues exceed annual expenditures, the surplus shall be applied to any previous year's shortfall.
 - a. If there is no "carry over" shortfall, the surplus revenue amount will be proportionally split (the percentages derived from an OWNER county's annual recordings divided by the total annual recordings of all four OWNERS) between the OWNERS and credited to their subsequent year's invoices.
 - b. Any surplus at the end of the final year of the contract will be proportionally split (the percentages derived from an OWNER county's annual recordings divided by the total annual recordings of all four OWNERS) between the OWNERS and returned to each OWNER.
2. In the event SECURE's annual expenditures exceed annual revenues, any prior year surpluses will be used to offset the revenue shortfall.

- a. If a revenue shortfall cannot be offset by previous a year's revenue surplus, the amount of the shortfall will be proportionally split (the percentages derived from an OWNER county's annual recordings divided by the total annual recordings of all four OWNERS) between the OWNERS and assessed on a supplemental invoice.
3. In the event the not to exceed amount is reached during the term of the Agreement LEAD COUNTY shall notify OWNERS. LEAD COUNTY shall not invoice OWNERS for any amounts that would be in excess of the not to exceed amount.
 - a. Any surplus remaining shall be proportionally split between the OWNERS based on the percentages derived from an OWNER county's annual recordings divided by the total annual recordings of all four OWNERS and multiplied by the surplus.
 - b. If there is a shortfall, LEAD COUNTY will not be responsible for any expenditure overruns and will not pay for work in excess of the not to exceed amount unless an amendment to cover those costs has been executed by the OWNERS.

C. Request for Payment:

LEAD COUNTY shall submit electronic invoices to each OWNER for services under this Agreement no later than March 31st of each year. The invoices shall include customary information including, but not limited to:

1. Signed Invoice cover sheet
2. Up-to-date total accounting of hours and annual cost for the project.
3. Up-to-date total accounting of revenue for the project
4. Report of overages and shortages relating to expenditures and revenue
5. Progress report for each activity.
6. List of employees who worked on the Scope of Services during the time covered by the Request for Payment, including their names, job titles, hourly rates, and assignments.

Payment(s) shall be submitted to LEAD COUNTY no later than 30 days following receipt of the invoice. LEAD COUNTY shall disburse from SECURE funds all approved sums payable on outstanding bills, and provide to the OWNERS copies of all billings submitted by and all payments made to any provider of services under this Agreement.