

**MULTI-COUNTY AGREEMENT BETWEEN THE COUNTIES OF LOS ANGELES, ORANGE, RIVERSIDE AND SAN DIEGO FOR THE SHARED OWNERSHIP AND ONGOING MAINTENANCE OF AN ELECTRONIC RECORDING DELIVERY SYSTEM**

This Multi-County agreement ("Agreement") is made and entered into on the 19~~th~~ day of August, 2008, between the **Counties of Los Angeles, Orange, Riverside and San Diego**, ("Counties") political subdivisions of the State of California.

**RECITALS**

WHEREAS, Assembly Bill 578 (Stats. 2004, Ch. 621, sec. 2), known as the Electronic Recording Delivery Act of 2004, set forth at Title 3, Division 2, Part 3, Chapter 6, Article 6 of the California Government Code (section 27390 et. seq.), authorizes County Recorders in California to accept digitized electronic records and certain digital electronic documents for recordation pursuant to the provisions and regulations being developed by the Department of Justice; and

WHEREAS, the Counties to this Agreement wish to share in the ownership and ongoing maintenance of an electronic recording delivery system, where authorized submitters (title insurer, underwriter title company, institutional lender, and government entities) would have single points of submission with the ability to submit documents to multiple counties;

NOW THEREFORE, the Counties, above mentioned, for and in consideration of the mutual promises and agreements herein continued, do agree to the following:

**AGREEMENT**

1. **Statement of Purpose:**

The purpose of this agreement is to allow the Counties to share in the ownership, cost and maintenance of a multi-county electronic recording delivery system. It will be more cost effective for each County to participate in a cooperative system as opposed to purchasing and maintaining a separate system. The electronic recording delivery system has the ability to facilitate access and communication with certain customers electronically that will enable each County's recording process to be more efficient and timely.

The "Counties" Los Angeles, Orange, San Diego and Riverside are the "Owners" of the electronic recording delivery system and any subsequent additional counties are considered the "Participants."

2. **Term:**

The term of this Agreement shall commence upon execution thereof by the Counties and shall continue in effect for a period of five (5) years and will automatically renew for an additional five (5) year period unless terminated or extended as provided herein. The Counties may further extend the term by written agreement

3. **Administration:**

- (a) Each party agrees to assign the County of Orange as the Lead County (“Lead County”). The powers, duties and responsibilities of the Lead County are set forth in Exhibit A.
- (b) The Lead County will coordinate the service preferences of the Agreement and enable implementation, training, hosting and support of a system known as the Statewide Electronic Courier Universal Recording Environment, “SECURE,” which will be compliant with the Electronic Recording Delivery Act of 2004 (AB 578).
- (c) The Counties shall each have an equal vote in any decision, including but not limited to, enhancements, modifications and maintenance to the system. The County Recorder or his/her designee shall be deemed the appointed representative of each County to exercise its vote under this Agreement. All voting powers shall reside with the Counties.
- (d) SECURE shall be the propriety software used by the Counties.

4. **Ownership:**

- (a) Each County shall have an equal share of all rights, title and ownership interest(s), (including but not limited to copyright), in the SECURE system.
- (b) The original and any copies of the SECURE software, (including source code), in whole or in part, are and will remain the property of the Counties, and this will be reflected in any agreement with vendors.
- (c) Unless otherwise agreed upon by the Counties, all software and related work to be provided by any vendor shall be the sole property of the Counties.
- (d) Any vendor hired to modify, enhance, and maintain the software shall have no ownership interest in any software or related work.
- (e) Upon majority approval by the Owners, the Lead County shall have the right to transfer and/or distribute software to any other office of the County Recorder within the State of California as “Participants.”

5. **Cost:**

- (a) The County of Orange shall pay the initial acquisition cost of \$2.52 million dollars. Each County that is a party to this Agreement shall pay an equal share of the initial acquisition costs and annual direct maintenance costs, as provided for in Exhibit B and Exhibit C. Exhibit C applies only to the County of Riverside.
- (b) Each County shall deposit their share of the initial acquisition cost and first year’s annual support costs of this Agreement in a project account to be established in the name of the Lead

County within sixty (60) days of the effective date of this Agreement. Lead County may only make disbursements from this account with majority approval of the Counties.

(c) The Lead County shall provide to the Counties copies of all billings submitted by and all payments made to any provider of services under this Agreement.

(d) The annual costs which include any adjustments and/or enhancement costs will be reviewed by the Lead County, shared with the other Counties, and adjusted annually as provided for in Exhibit B.

**6. Termination:**

A county may withdraw from the Agreement upon providing sixty (60) days written notice to the other Counties; however, the accumulated capital contribution of the withdrawing county shall remain in the project account for SECURE system use without compensation to the withdrawing county. Each withdrawing county shall remain liable for and shall pay its proportional share of any indebtedness incurred before withdrawing. The withdrawing county shall not be entitled to a credit or refund for any sums paid under this Agreement. The withdrawing county shall not otherwise effect this Agreement.

**7. Indemnification:**

(a) Except as provided in section 7(b), in lieu of and notwithstanding the *pro rata* risk allocation which might otherwise be imposed between the Counties pursuant to Government Code section 895.6, the Counties agree that all losses or liabilities incurred by a county shall not be shared *pro rata*, but instead the Counties agree that, pursuant to Government Code section 895.4, each of the Counties hereto shall fully indemnify and hold each of the other Counties, their officers, board members, employees and agents harmless from any claim, expense or cost (including attorney's fees), damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of that County's negligent acts, omissions, or willful misconduct of its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such county under this Agreement. Except as provided in Section 7(b), no county, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other Counties hereto or any provider of SECURE, and their board members, employees or agents, under or in connection with or arising out of the Agreement. It is further understood and agreed the indemnification herein extends to and includes liability which arises by operation of law as the result of any act, omission or occurrence related to this Agreement, or which arises from the work performed relative to this Agreement. Should the legality of this Agreement be challenged, the Counties shall equally share the cost of defense, litigation and any damages award.

(b) Notwithstanding any other provision in this MOU and to the fullest extent allowed by law, the County of Orange shall indemnify, defend and hold harmless the other parties to the MOU and their information and technology vendors (collectively "other parties") from and against any and all claims, demands, suit actions, proceedings, judgments, losses, damages, injuries, penalties, costs (including attorney's fees), expenses and liabilities resulting from a

claim that the SECURE system, in whole or in any part, that is in existence at the time of the execution of this Agreement infringes the intellectual property rights of any third party, including without limitation copyrights, patents, or trademarks. If the SECURE system or any part thereof that is in existence at the time of the execution of this Agreement is held to infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any third party, and other parties' use of the system or any other part thereof, is enjoined or interfered with in any manner, then the County of Orange, at its option, within ninety (90) calendar days of such injunction or interference may: (a) procure for other parties' the right to continue using the system free of any liability for infringement or violation; (b) replace or modify the system with a non-infringing system or product equivalent or better functionality; or (c) in the event the County of Orange is unable, after exercising its best efforts to implement one of the options set forth in subsection (a) or (b) above, accept the return of the system at the County of Orange's sole cost and expense and refund to all other parties an amount equal to the total amount paid by the other parties to the County of Orange for the system less the value attributed to the other parties' use of the system. The value attributed to the other parties' use of the system is the pro-rated amount of the acquisition cost as determined by the number of years the other parties had use of the SECURE system over the expected ten year term of this Agreement. For example, if the other parties had use of the SECURE system for three years at which time the system is deemed infringing and the County of Orange issues a refund under this provision, the other parties would receive a refund of seventy percent of their acquisition costs. Maintenance costs are not to be calculated into the refund amount.

#### 8. **Cooperation of parties:**

The Counties recognize that full cooperation is essential in handling of data and information contemplated by this Agreement. Unless otherwise provided by law, the Counties agree to provide any data, information, and documentation reasonably necessary to the performance of this Agreement.

#### 9. **Modification:**

No exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by the Counties in writing.

In the event that a significant system modification is needed, upon majority approval, all Counties shall pay an evenly divided portion of the modification costs.

In the event that a system modification is needed, and the modification be deemed "significant," as referred to in California Code of Regulations, Title 11, Division 1, Chapter 18, Article 6, section 999.167, all Counties to this Agreement shall pay an evenly divided portion of their certification costs to the State of California Attorney General.

#### 10. **Additional parties:**

Additional counties may participate in the use of the SECURE system upon majority approval of the Counties. Participants will be added by use of a separate Memorandum of Understanding Agreement

created and approved by the Counties. In addition, fees for use of the system by Participants shall be determined and imposed by the Counties.

**11. Successors and assigns:**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Counties.

**12. Assignment:**

This Agreement shall not be assigned by a county, either in whole or in part, without prior written consent of all Counties. Any assignment or purported assignment of this Agreement by a county without the prior written consent of all Counties will be deemed void and of no legal force or effect.

**13. Review for legal adequacy:**

Each County acknowledges and agrees that this Agreement has been reviewed and approved as to form by each County's respective legal counsel.

**14. Governing laws 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 sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California and the Counties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**15. Waiver:**

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by any County shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or omission of any County in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this Agreement.

**16. Severability:**

If any term or portion of this Agreement is held to be invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**17. Notices:**

All notices, billings, or other communications provided for in this Agreement shall be sent by postage prepaid first class mail to the respective Counties as provided in this paragraph.

The County of Los Angeles:

Sharon A. Gonterman  
Assistant Registrar-Recorder/County Clerk  
12400 Imperial Highway, Room 5013  
Norwalk, CA 90650  
(562) 462-2073

The County of Orange:

Renee Ramirez, Orange County Assistant Clerk-Recorder  
Hall of Finance and Records  
12 Civic Center Plaza, Room 101  
Santa Ana, CA 92701  
(714) 834-2248

The County of Riverside:

Bobbi Schutte, Chief Deputy Assessor-County Clerk Recorder  
2724 Gateway Drive  
Riverside, CA 92507  
(951) 486-7103

The County of San Diego:

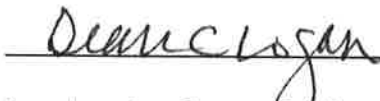
Diana Bradrick, San Diego County Chief Deputy Recorder  
1600 Pacific Highway, Room 260  
San Diego, CA 92101  
(619) 531-5236

**18. Signature in Counterparts:**


This Agreement may be executed in counterparts by all Counties. The Agreement is in effect as to any signatory party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Counties hereto have caused this Agreement to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

**THE COUNTY OF LOS ANGELES:**

By: Dean C. Logan  
Signature:   
Title: Los Angeles County Registrar-Recorder/County Clerk  
Dated: 11-18-08

**THE COUNTY OF LOS ANGELES COUNTY COUNSEL:**

Approved as to form by: Patrice Salseda  
Signature:   
Title: Deputy County Counsel  
Dated: July 23, 2008

Approved by the County of Los Angeles Board of Supervisors on: \_\_\_\_\_

**18. Signature in Counterparts:**

This Agreement may be executed in counterparts by all Counties. The Agreement is in effect as to any signatory party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Counties hereto have caused this Agreement to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

**THE COUNTY OF ORANGE:**

By: Tom Daly  
Signature: Tom Daly  
Title: Orange County Clerk-Recorder  
Dated: 8-22-08

**THE COUNTY OF ORANGE COUNTY COUNSEL:**

Approved as to form by: Karen R. Prather  
Signature: Karen R. Prather  
Title: Senior Deputy County Counsel  
Dated: July 17, 2008

Approved by the County of Orange Board of Supervisors on: 8/19/08



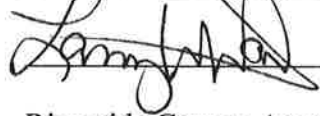
**18. Signature in Counterparts:**

This Agreement may be executed in counterparts by all Counties. The Agreement is in effect as to any signatory party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Counties hereto have caused this Agreement to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

**THE COUNTY OF RIVERSIDE:**

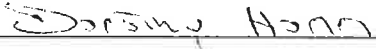
By: Larry W. Ward

Signature: 

Title: Riverside County Assessor-County Clerk-Recorder

Dated: 8-29-08

**THE COUNTY OF RIVERSIDE COUNTY COUNSEL:**

Approved as to form by: 

Signature: 

Title: Deputy County Counsel

Dated: 7-22-08

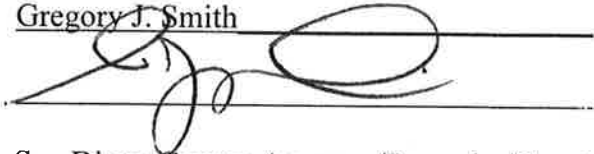
Approved by the County of Riverside Board of Supervisors on: 7-22-08

18. Signature in Counterparts:

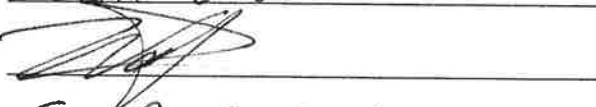
This Agreement may be executed in counterparts by all Counties. The Agreement is in effect as to any signatory party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Counties hereto have caused this Agreement to be executed and attested to by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

**THE COUNTY OF SAN DIEGO:**

By: Gregory J. Smith  
Signature:   
Title: San Diego County Assessor/Recorder/County Clerk  
Dated: 9-22-08

**THE COUNTY OF SAN DIEGO COUNTY COUNSEL:**

Approved as to form by: Walter deLorroll  
Signature:   
Title: Sr. Deputy County Counsel  
Dated: 7/21/08

Approved by the County of San Diego Board of Supervisors on: 9-16-08

## **EXHIBIT A**

### **Responsibilities**

The County of Orange, as the Lead County, shall perform the following functions:

1. Acquire all ownership rights to SECURE, which will be AB 578 compliant, and utilize guidance from nationally recognized standard setting bodies, which adheres to applicable Federal and State laws;
2. Ensure SECURE will support vendor specific connections to county back end users;
3. Supply Electronic Recording Application Program Interface (API) document to potential partners;
4. Implement, train, host, support and manage ongoing system operations and support capabilities for SECURE;
5. Work with potential submitters to install software and provide training;
6. In collaboration with San Diego, Riverside and Los Angeles counties, promote the SECURE system to other counties and authorized submitters;
7. Manage the SECURE accounts (approval/denial/suspension) for all county administrators;
8. Encourage the widespread adoption of the SECURE system;
9. Provide a mechanism for additional counties to join as Participants of SECURE on a ongoing fee basis;
10. Perform such other functions as are required to accomplish the purpose of this Agreement;
11. Serve as a liaison with the Office of the California Attorney General and the Counties to ensure that all standards are being met;
12. Select and manage server hosting facilities based on security, disaster survivability, and business continuity requirements;
13. Manage installation testing, and final acceptance of SECURE system modification/enhancements;
14. Work with the Counties and Participants to achieve certification of system;

15. Develop ongoing system management procedures and policies; and
16. Develop and manage process for system upgrades, enhancements, and support.

**Powers**

With the approval of the Counties, the Lead County shall have the authority to:

- a. Employ agents and employees;
- b. Make and enter into contracts for support and maintenance; and
- c. Perform all other acts reasonable and necessary to carry out the purpose of this Agreement.

## ***EXHIBIT B***

### **Costs**

The Lead County, shall:

- a. Receive and receipt for all money of SECURE and place it in a special established fund designated solely to SECURE;
- b. Be responsible upon his or her official bond for the safekeeping and disbursement of all SECURE money held by him or her;
- c. Annually collect the direct maintenance costs for SECURE for each County. The initial annual direct maintenance cost is estimated at \$100,000 per County;
- d. Review the annual costs for SECURE, to include any adjustment and/or enhancement costs, provide the results of the review to the Counties, and adjust them annually to only include direct costs;
- e. Disburse, when due, out of SECURE funds, all sums payable on outstanding bills and money owed approved by the Counties;
- f. Issue checks to pay demands against SECURE which have been approved by the Counties;
- g. Be responsible on his or her official bond for his or her approval of disbursement of SECURE money;
- h. Keep and maintain records and books of accounts on the basis of the uniform classification of accounts adopted by the State Controller (the books of accounts shall include records of assets, liabilities and of contributions made by each party); and
- i. Cause to be made an annual audit of the accounts and records of SECURE as prescribed in California Government Code sections 6505 and 26909.

## ***EXHIBIT C***

Riverside County shall deposit its share of the first year's annual support costs of this Agreement in a project account to be established in the name of the Lead County within sixty (60) days of the effective date of this Agreement. Riverside County shall also deposit its share of the initial acquisition cost incrementally, upon the occurrence of the following milestones:

1. The sum of \$100,000 within sixty (60) days of the effective date of this Agreement.
2. The sum of \$200,000 upon the mutual satisfaction of the Lead County and Riverside County of the development of the tasks and responsibilities as set out in the *ERDS Baseline Requirements and Technology Standards Matrix*.
3. The sum of \$200,000 when the SECURE system in Orange County is Certified by the California Attorney General.
4. The final payment of \$130,000 when the SECURE software is installed and operational in Riverside County and has been Certified by the California Attorney General.
5. All of the afore-mentioned sums may be disbursed by the Lead County with approval of the Counties.