

**MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN OWNER
COUNTIES AND PARTICIPANT FOR THE USE OF THE SECURE
ELECTRONIC RECORDING DELIVERY SYSTEM**

This Memorandum of Understanding Agreement ("MOU" or "Agreement") is made and entered into on the day of December 1, 2009, between the Owner Counties, Orange, Los Angeles, Riverside, San Diego ("Owners"), and the participant County of San Mateo ("Participant"), a political subdivision 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 in 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 of Orange, Los Angeles, Riverside and San Diego entered into an agreement to share the ownership and ongoing maintenance of a multi-county electronic recording delivery system, called the Statewide Electronic Courier Universal Recording Environment, "SECURE"; and

WHEREAS, the SECURE electronic recording delivery system is compliant with the Electronic Recording Delivery Act of 2004 for the electronic submission and subsequent recording of documents with county recorders; and

WHEREAS, the Counties, Orange, Los Angeles, Riverside and San Diego are the "Owners" of the SECURE electronic recording delivery system and any subsequent additional county is considered a "Participant"; and

WHEREAS, Orange County is the "Lead County" in developing, supporting this multi-county system and responsible for executing any agreements with participants with the approval of the other Owners.

NOW THEREFORE, the parties, 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 MOU is to allow a participant to share in the use of the SECURE multi-county electronic recording delivery system. It will be more cost effective for the Participant 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 communicate with certain customers electronically that will enable a county's recording process to be more efficient and timely.

2. **Term:**

The term of this MOU shall commence upon the execution of this MOU by the Lead County and the Participant 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 Owners and the Participant may further extend the term by written agreement.

3. **Administration:**

The duties and responsibilities of the parties, as well as the configuration of the system are set forth in Exhibit A.

4. **Fees and Costs:**

The annual costs which include any adjustments and/ or enhancement costs will be reviewed by the Lead County, shared with the Owners and Participant, adjusted annually and be paid as provided in Exhibit B.

5. **Default and Termination:**

Upon Participant's breach of any terms of this Agreement, including, but not limited to, the failure to pay any invoices for fees or services, Owners shall have the right to terminate this Agreement. Prior to termination for default due to breach, the Participant will be sent written notice specifying the cause. The notice will give Participant 10 days from the date the notice is issued to cure the default or make progress satisfactory to Owners in curing the default, unless a different time is given in the notice. If the Agreement is terminated, the initial buy-in fee for use of SECURE and any maintenance fees already paid will be retained by the Owners.

6. **Indemnification:**

(a) Except as provided in section 6(b), in lieu of and notwithstanding the *pro rata* risk allocation which might otherwise be imposed between the parties pursuant to

Government Code section 895.6, the parties agree that all losses or liabilities incurred by a county shall not be shared *pro rata*, but instead the parties agree that, pursuant to Government Code section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, 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 party'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 6(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 parties 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 that 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 Owners and Participant 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 Participant 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 the Participant's 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: (1) procure for the Participant the right to continue using the system free of any liability for infringement or violation; (2) replace or modify the system with a non-infringing system or product equivalent or better functionality; or (3) in the event the County of Orange is unable, after exercising its best efforts to implement one of the options set forth in subsection (1) or (2) above, accept the return of the system at the County of Orange's sole cost and expense and refund to the Participant an amount equal to the total amount paid by the Participant to the Owners for use of the system less the value attributed to the Participant's use of the system. The value attributed to the Participant's use of the system is a pro-rated amount of

the initial "buy in" fee as determined by the number of years the Participant had use of the SECURE system over the expected ten-year term of this Agreement. For example, if the Participant 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 Participant would receive a refund of seventy percent of their buy in fee. Maintenance fees are to be calculated into the refund amount.

7. **Cooperation of parties:**

The Participant recognizes that full cooperation is essential in the handling of data and information contemplated by this Agreement. Unless otherwise provided by law, Participant agrees to provide any data, information, and documentation reasonably necessary to the performance of this Agreement. Participant acknowledges there are other participant users of the system and that information provided may be used to ensure the operation of the SECURE system for all users.

8. **Modification:**

No alteration or variation of the terms of this Agreement shall be valid or binding unless made in writing by the parties. No exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by the Lead County in writing.

9. **Successors and assigns:**

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

10. **Assignment:**

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

11. **Review for legal adequacy:**

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

12. **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 parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

13. **Waiver:**

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by any party 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 either party 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.

14. **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.

15. **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.

Lead County for Owners

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

Participant

The County of San Mateo
Theresa Rabe
Deputy Assessor-County Clerk-Recorder
555 County Center, 3rd fl
Redwood City, CA 94063
(650) 363-1895

16. **Signatures in Counterparts:**

This MOU may be executed in counterparts by the parties. This MOU 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 parties hereto have caused this MOU 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 FOR ITSELF AND FOR OWNERS

By: _____

Signature: _____

Title: _____

Dated: _____

THE COUNTY OF ORANGE COUNTY COUNSEL

Approved as to form by: _____

Signature: _____

Title: _____

Dated: _____

THE COUNTY OF SAN MATEO

By: _____


Signature: _____

Title: _____

Dated: _____

THE COUNTY OF SAN MATEO COUNTY COUNSEL

Approved as to form by: REBECCA M. ARCHER

Signature: 

Title: Deputy County Counsel

Dated: 12-7-09

Approved by the County of San Mateo Board of Supervisors on:

Service Level Agreement for Participants of the SECURE Electronic Recording Delivery System

The SECURE electronic recording delivery system is AB 578 compliant in the electronic submission and subsequent recording of documents with county recorders. Orange County is the Lead County in developing and supporting this multi-county system.

A county application bridge, as referenced in this document, includes the hardware, software and network connections of the product that any participant county has put in place to use the SECURE Application Programming Interface (API) in order to connect their county recording system to SECURE.

Lead County Responsibilities

In its role as overseer of SECURE, the Lead County will hold the following general responsibilities:

1. Supply Electronic Recording API documentation to participants.
2. Implement, train, host, support and manage ongoing system operations and support capabilities.
3. Assist with coordination in installing software and providing training to submitters.
4. Manage the SECURE accounts (approval/denial/suspension) for all county administrators.
5. Administer the mechanism for additional counties to join as participants on an ongoing fee basis.
6. Serve as a liaison with the Office of the California Attorney General and the Counties to ensure that all standards are met.
7. Select and manage server hosting facilities based on security, disaster survivability, and business continuity requirements.
8. Manage installation testing, and final acceptance of SECURE system modification/enhancements.
9. Maintain ongoing system management procedures and policies.
10. Manage processes for change management, system upgrades, enhancements, and support.
11. Provide advanced notice of changes to configuration, software and/or Road Map.
12. Disburse funds for support costs and all software licensing.
13. Provide 24x7 technical point of contact.
14. Ensure that all security policies and best practices are enforced.

Participant County Responsibilities

Participant counties have the following general responsibilities:

1. Adhere to the general guidelines of the system design in the diagram entitled "SECURE Acceptable Configuration for Participant Counties."

2. Pay upon being invoiced for the initial "buy-in" fee outlined in exhibit B within 15 days of signing this MOU.
3. Pay upon being invoiced for the annual maintenance fee outlined in exhibit B once your system is available for testing.
4. Provide to Orange County Clerk-Recorder SECURE Program an updated list annually of the staff at your County who is authorized to call in for SECURE support.
5. Pay all costs related to the establishment of your county application bridge, including hardware, software, software development and network connection to the Orange County Data Center.
6. Provide all support for your county application bridge, including hardware, software and network connection to the Orange County Data Center.
7. Work with Orange County as the Lead County in fulfilling the requirements set forth by the California Attorney General for system certification.
8. Practice effective change management of SECURE components that reside at your County location and include Orange County as part of the change management process.

System Availability and Support

SECURE will be implemented by participant counties in the configuration illustrated in the diagram entitled "SECURE Acceptable Configuration for Participant Counties." This agreement details service levels for the Lead County hosted components identified in this diagram.

The system includes the interconnected components illustrated in the diagram required to deliver recordable documents to a county recorder and return them after recording using a method that is AB 578 compliant. The Lead County guarantees that:

1. The system will be available, with the exception of weekly maintenance windows, which will be scheduled in advance, and unscheduled maintenance, which will be handled as outlined later in this document. Maintenance windows will be accomplished on Sundays where possible. When an urgent need arises, a maintenance window may be necessary during a day other than Sunday between the hours of 6 p.m. to 6 a.m.
2. The Lead County will provide one (1) week advance notice of scheduled maintenance. Unscheduled maintenance will be attended to based upon urgency. Participant counties will be notified within one (1) hour after unscheduled maintenance has been initiated and will be updated hourly via e-mail until the issue has been resolved. Unscheduled maintenance includes, but is not limited to, infrastructure or network problems. For recovery time and recovery point objectives, see "Data Recovery" and "Hardware Recovery" below.
3. The Lead County will provide telephone assistance for support of the system. The Lead County will use its best efforts to respond to service incidents

corresponding to severity (see table 1 below). Regarding telephone assistance types, a noncritical inquiry is defined as a request for information that has no impact on the service quality if not answered or acted upon promptly.

Table 1

Type	Description	Reply	Update	Metric	Availability
Urgent Ticket	Multiple Users Impacted	1 hr.	1 hr.	Automated Report	24x7
High Ticket	Single User Work Stoppage	3 hr.	24 hr.	Help Desk Report	24x7
Medium Ticket	Urgent, No Work Stoppage	3 hr.	48 hr.	Help Desk Report	24x7
Low Ticket	Process Improvement	24 hr.	1 wk.	Help Desk Report	8x5
Non-Critical Inquiry	Request for Information	24 hr.	24 hr.	Help Desk Report	8x5

Data Recovery

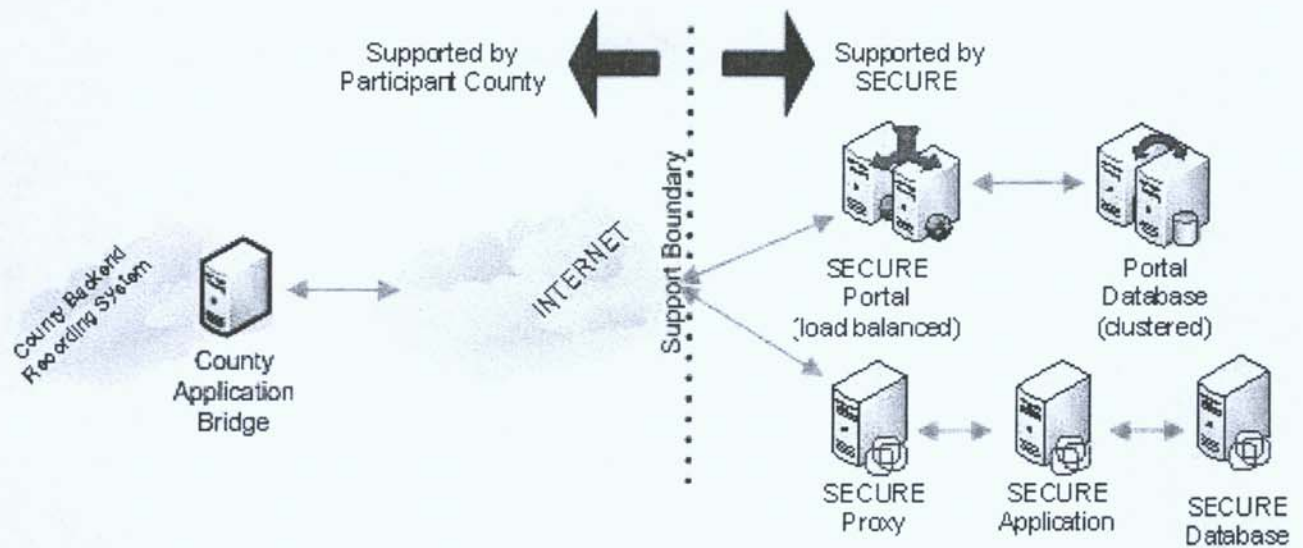
Full system backups will be accomplished at regular intervals of components hosted at the Orange County Data Center. In the event of data loss due to hardware, software or operating system failure, the recovery time objective (when the system returns to service) will be 24 hours, with a recovery point objective (system state) of 8 hours prior to incident.

Hardware Recovery

Lead County hosted components have built-in redundancy. In the event of a redundant component failure, spare components will be available to recover system redundancy within 4 hours. In the event of a non-redundant component failure, the recovery time objective will be 24 hours, with a recovery point objective of 8 hours.

SECURE Acceptable Configuration for Participant Counties

With the exception of the SECURE Portal Server and SECURE Portal Database (which are shared by all counties), all components run in a virtual, clustered environment. If there are non-shared components that do not use the virtual environment, these assets will need to be purchased at additional cost to the participant county.



SECURE Participant Fee Structure

SECURE Owners have agreed to a four-tiered fee structure for incoming participants. The fee structure includes both an initial "buy-in" fee and an annual maintenance fee. The participant fee structure is as follows:

<u>Tier No.</u>	<u>County Size (Annual Docs)</u>	<u>Initial "buy-in" Fee</u>	<u>Annual Maint. Fee</u>
Tier 1	> 300,000 docs	\$100,000	\$50,000
Tier 2	100,001 – 300,000 docs	\$50,000	\$25,000
Tier 3	30,000 – 100,000 docs	\$20,000	\$10,000
Tier 4	< 30,000 docs	\$0	\$5,000

1. The county size is based upon the number of recorded documents (not titles) recorded during the previous calendar year.
2. The "buy-in" fee will be used for future enhancements/modifications to the SECURE system or other purchases voted on by the Owners. There will be no reimbursement to the SECURE Owners for their initial purchase price of the SECURE system.
3. The annual maintenance fee is calculated based on a participant's county size during the previous calendar year and is used for ongoing costs to support, host and maintain the SECURE system. If a participant's county size has increased or decreased during the previous calendar year, that participant shall pay the corresponding increased or decreased maintenance fee for the following calendar year.
4. Payment for the initial "buy-in" of the SECURE system will be due no later than 15 days after the execution of the Agreement. Payment shall be made to Orange County, as the designated Lead County. Checks will be made payable to Orange County Clerk-Recorder and mailed to the following address:

Orange County Clerk-Recorder
Attn: SECURE ERDS
Hall of Finance and Records
12 Civic center Plaza, Room 101
Santa Ana, CA, 92701

System set up and testing will proceed after payment is received for the initial "buy-in." At the time where the system can support connections for testing from the Participant County, as determined by mutual agreement of the Lead County and the Participant County, Participant shall pay the annual maintenance fee.

The annual maintenance fee for the calendar year in which the Participant County's system was capable of supporting connections for testing will be prorated as follows: (a) if the system became available for testing on or after January 1st, but before July 1st, the Participant County shall pay the full maintenance fee for that calendar year, or (b) if the system became available for testing on or after July 1st, but before January 1st, the Participant County shall pay one half the maintenance fee for that calendar year. For the subsequent calendar years of the Agreement, the invoices for the annual maintenance fees will be mailed December 1st of the preceding year and will become due and payable on January 1st of each year. Failure to pay any invoices for fees or services will constitute a breach of this Agreement.