



MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN OWNER COUNTIES AND PARTNER 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 April 26, 2023, between the counties of Los Angeles, Orange, Riverside, and San Diego (collectively "Owners") that own the Statewide Electronic Courier Universal Recording Environment ("SECURE"), and the county of San Mateo ("Partner"), a political subdivision of the State of California. Owners and Partner may be collectively referred to herein as the "Parties"

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 promulgated 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, Partner would like to submit electronic documents through SECURE; and

WHEREAS, Orange County as the designated lead county ("Lead County") and acting through the Orange County Clerk-Recorder takes the lead role in developing, supporting this multi-county system, and is responsible for executing any agreements with Partners 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 Partner to share in the use of the SECURE multi-county electronic recording delivery system. It will be more cost effective for the Partner 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 Partner and shall continue in effect for a term of 5 years, ending on April 26, 2028. The Owners and the Partner 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:

This is a fixed rate agreement for all related services. Owners agree to accept the specified compensation set forth in Exhibit B, Compensation and Payment, as full remuneration for providing all equipment, performing all services, furnishing all staffing and materials necessary, and performing all duties and obligations hereunder.

5. Indemnification:

The parties agree that, pursuant to Government Code section 895.4, the parties shall fully indemnify and hold harmless each other and their officers, board members, employees and agents 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 that party 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. Should the legality of this Agreement be challenged, the Owners and Partner shall equally share the cost of defense, litigation and any damages award.

Notwithstanding any other provision in this MOU and to the fullest extent allowed by law, 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 Partner's use of the system or any other part thereof, is enjoined or interfered with in any manner, then Owners, at their option, within ninety (90) calendar days of such injunction or interference may: (1) procure for the Partner 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 Owners are 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 Owners' sole cost and expense and refund to the Partner a pro-rated amount of the annual maintenance fees paid by the Partner to the Owners for the calendar year. The annual maintenance fees refunded will be calculated as the pro-rated amount determined by maintenance fees paid for the

calendar year less the number of months the Partner had use of the SECURE system for that year.

Cooperation of parties:

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

If a Partner department or division enters into a separate SECURE agreement for the SECURE Government to Government ("G2G") portal program, Partner shall ensure that all SECURE recording requirements, including implementation of all security measures and credential requirements, as included in Exhibit A.

7. 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.

8. 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.

9. Assignment:

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

10. 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.

11. 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.

12. 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.

13. 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.

14. Termination:

- a. Either party may terminate this Agreement for any reason by providing 30 calendar days written notice of termination.
- b. Upon Partner's breach of any terms of the 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, Partner will be sent written notice specifying the cause. The notice will give Partner 10 calendar 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.
- c. In the event of termination by Partner through written notice or due to Partner's breach, Owners shall retain the initial buy-in fee and any other maintenance fees collected.

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
The County of Orange
Hugh Nguyen
Orange County Clerk-Recorder
County Administration South
601 N. Ross St.
Santa Ana, CA, 92701
(714) 834-2248

Partner
The County of San Mateo
Mark Church
Assessor-Clerk-Recorder-Chief Elections Officer
555 County Center
Redwood City, CA 94063
(650)363-4524

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.

Signatures to Follow

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.

LEAD COUNTY

THE COUNTY OF ORANGE, a political subdivision of the State of California

By: Hugh Nguyen

Signature: _____

Title: Orange County Clerk-Recorder

Dated: _____

**THE OFFICE OF THE ORANGE COUNTY COUNSEL
APPROVED AS TO FORM**

Jacqueline Guzman

Digitally signed by Jacqueline Guzman
DN: cn=Jacqueline Guzman, o=County of Orange, ou=Office of
the County Counsel, email=jacqueline.guzman@co.co.ocgov.com,
c=US
Date: 2023.03.29 10:48:28 -07'00'

Signature: _____

Title: Deputy County Counsel

Dated: _____

Signature Pages Continue on Next Page

For County:

COUNTY OF SAN MATEO

By: Resolution No.
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A

Service Level Agreement for Partners 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, responsible for handling the administrative functions, and negotiating and executing any contract relating to the support and maintenance of SECURE.

A county interface with SECURE, as referenced in this document, includes the hardware, software and network connections of the product that any Partner 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. Provide Electronic Recording API documentation to Partners.
2. Host, support and manage ongoing system operations and support capabilities.
3. Assist with coordination in implementing new submitters.
4. Manage the SECURE accounts (approval/denial/suspension) for all county administrators.
5. Administer the mechanism for additional counties to join as Partners 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 technical point of contact.
14. Ensure that all security policies and best practices are enforced.
15. Train new submitters.

Partner County Responsibilities

Partner counties have the following general responsibilities:

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

2. Pay the Lead County upon being invoiced for the initial “buy-in” fee outlined in exhibit B within 15 days of signing this MOU.
3. Pay the Lead County upon being invoiced for the annual maintenance fee outlined in Exhibit B once the SECURE system can support connections for testing from the Partner County, as determined by mutual agreement of the Lead County and the Partner County.
4. Provide to the Lead County an updated list annually of the staff at Partner County who is authorized to call in for SECURE support.
5. Pay all costs related to the establishment of Partner County’s interface with SECURE, including hardware, software, software development and network connection to SECURE.
6. Provide all support for Partner County’s interface with SECURE, including hardware, software and network connection to SECURE.
7. Work with the Lead County in fulfilling the requirements set forth by the California Attorney General for system certification.
8. Carry out any new user or new submitter implementation steps that require onsite visits for submitters that reside within Partner County.
9. Collect required documentation from submitters and send to the Lead County.
10. Provide a copy of Partner County’s current computer security policy annually to the Lead County (will not be shared beyond the Lead County).
11. Carry out annual ERDS submitter onsite local inspections for submitters that reside within Partner County. Local inspection will verify address, workstation(s) and staff, with results provided to the Lead County.
12. Provision County queues in the SECURE Administrator website for submitters that submit to Partner County.

System Availability and Support

SECURE will be implemented by Partner Counties in the configuration illustrated in the diagram entitled “SECURE Acceptable Configuration for Partner 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.
2. The Lead County will provide one (1) week advance notice of scheduled maintenance. Unscheduled maintenance will be attended to based upon urgency. Partner 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. Be advised that Partner County shall also to provide one (1) week advance notice of scheduled maintenance, so that Lead County may be prepared to provide assistance during such maintenance.
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), as determined by Lead County. 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.

Assistance requested during Lead County non-business hours (nights, weekends and Lead County holidays) will be attended to on an on-call basis, with urgency determined by Lead County.

Table 1

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

Data Recovery

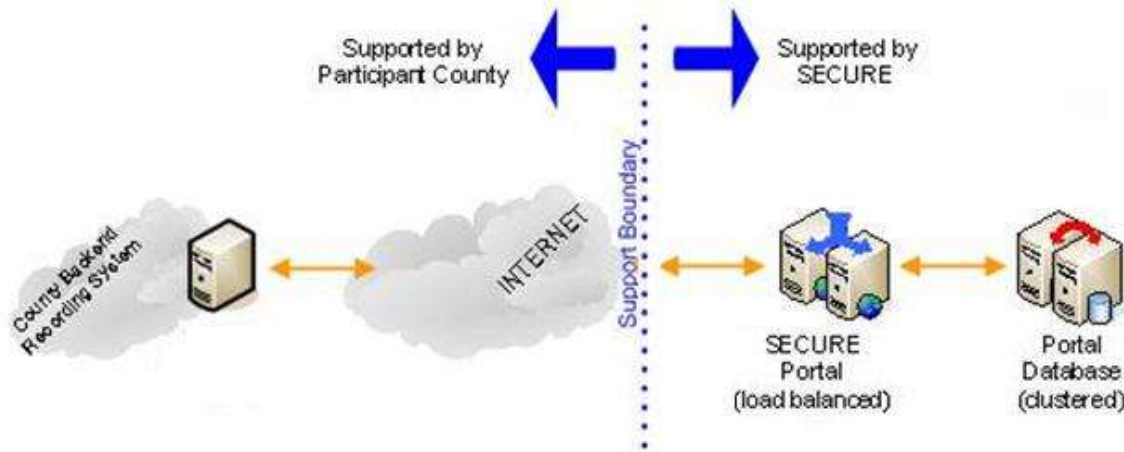
Full system backups will be accomplished at regular intervals of the SECURE components. In the event of data loss due to hardware, software or operating system failure, the recovery time objective (when the system returns to service) will be 24 hours, with a recovery point objective (system state) of 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 Partner Counties

With the exception of the SECURE Portal Database (which is shared by all counties), all components run in a virtual, clustered environment. The below illustration delineates the support boundary for determining what the Partner County is responsible to support and what areas the Lead County is responsible for.



Security and Credential Requirements for Partner Counties

The following need to be provided to the Lead County prior to access being granted to the SECURE System:

1. Eligibility as a government entity.
2. Completed Initial Contact Information form and applicable signed SECURE MOU.
3. A completed SECURE Hardware/Software Checklist for each submitter workstation.
4. List of staff that require login access to the SECURE System.
5. Signed Acknowledgement of Responsibilities form for staff that require login access to the SECURE System.
6. Evidence of identity proofing of staff that require login access to the SECURE System.
7. Copy of Partner County's current computer security policy (annual requirement).

Exhibit B
SECURE Partner Fee Structure

A. Initial Buy-In Fee

SECURE Owners have agreed to a three-tiered fee structure for incoming Partners. The Partner fee structure is as follows:

<u>Tier No.</u>	<u>County Size (Annual Docs)</u>	<u>Initial “buy-in” Fee</u>
Tier 1	> 300,000 docs	\$100,000
Tier 2	100,001 – 300,000 docs	\$50,000
Tier 3	0 – 100,000 docs	\$25,000

The buy-in fee will be used to reimburse the Lead County for setup and onboarding costs to incorporate the new Partner into the SECURE system, for enhancements or modifications to the SECURE system, or other purchases voted on by the Owners. Payment for the initial buy-in of the SECURE system will be due no later than 15 days after the execution of the Agreement.

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

B. Annual Maintenance Fee

The Partner counties annual maintenance fee will be \$0.30 per recorded document for the previous calendar year as reported to the Office of the Insurance Commissioner pursuant to Section 27296 of the Government Code. The recorded document amount will be transcribed from the annual letter issued by the State of California Department of Justice Electronic Recording Delivery System Program, and billed once per fiscal year.

C. Request for Payment

Lead County shall submit electronic invoices to each Partner for service under this Agreement no later than March 31st of each year. Payment shall be submitted to Lead County no later than 30 days following receipt of the invoice. Checks will be made payable to Orange County Clerk-Recorder and mailed to the following address:

Orange County Clerk-Recorder

Attn: Finance
County Administration South
601 N. Ross Street
Santa Ana, CA 92701

Failure to pay any invoices for services or to meet any other obligation of the Agreement may result in the termination of the Agreement upon the concurrence of the Owners. The Partner County will be given written notice of any termination with an opportunity to cure the breach of the Agreement within 10 days. If Partner County fails to cure the breach and the Agreement is terminated, the initial buy-in fee will be retained, as well as any maintenance fee that has already been paid.