

**MEMORANDUM OF UNDERSTANDING BETWEEN CERTNA AND
MONTEREY COUNTY FOR ELECTRONIC RECORDATION
IMPLEMENTATION PURSUANT TO GOVERNMENT CODE SECTION
27390 *et seq.***

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and executed as of this ____ day of _____, 2021 and effective on July 1, 2022, by and between the **California Electronic Recording Transaction Network Authority** ("CERTNA"), a Joint Powers Authority, and **MONTEREY** County, a political subdivision of the State of California ("COUNTY").

RECITALS

CERTNA has developed and implemented an electronic recording system pursuant to Government Code section 27390 *et seq.* (the " CERTNA System"). The CERTNA System has been certified by the California Attorney General, and participants in the CERTNA System can accept for recordation DIGITIZED ELECTRONIC RECORDS and DIGITAL ELECTRONIC RECORDS pursuant to Government Code section 27390 *et seq.* and regulations issued pursuant thereto. COUNTY seeks to participate in the CERTNA System. The rights and responsibilities established by this MOU are intended to assure the continuing security and lawful operation of the CERTNA System under Government Code section 27390 *et seq.* and applicable regulations.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CERTNA and COUNTY hereby agree as follows:

ARTICLE I - DEFINITIONS

Terms used in this MOU in all capital letters and not otherwise defined herein have the meaning given in Government Code section 27390 *et seq.*

ARTICLE II - GENERAL DUTIES AND RESPONSIBILITIES

A. The Term of this Agreement shall be for an indefinite period beginning on the Effective Date of this Agreement.

B. COUNTY agrees to become a voluntary participant in the CERTNA System. COUNTY is designated as a "Client-Level Member" of CERTNA entitling them to receive the services and benefits set forth on APPENDIX A, attached hereto and incorporated herein by reference, from CERTNA, with rights and responsibilities defined by this MOU. COUNTY is not a party to the Joint Powers Agreement that governs CERTNA.

C. For participation in the CERTNA System, COUNTY shall pay to CERTNA fees calculated pursuant to the TIER PRICING PLAN (the "ERDS FEES"), which is based on the total number of document titles recorded with the COUNTY annually and for which an electronic recording delivery fee of \$1.00 is collected by COUNTY at the time of recording such documents (the "ERDS FEE DOCUMENT TITLES"). No later than February 1st of each year, COUNTY will report to CERTNA the number of ERDS FEE DOCUMENT TITLES recorded in the preceding year. No later than March 1st of each year CERTNA shall provide to COUNTY an invoice of all ERDS FEES due annually based on the volume of ERDS FEE DOCUMENT TITLES reported and the then current TIER PRICING PLAN (as defined below), and COUNTY shall pay such fees within thirty (30) days of receipt of the invoice. The TIER PRICING PLAN is attached hereto as APPENDIX B (the "TIER PRICING PLAN"), and is incorporated into this MOU by reference. The TIER PRICING PLAN may be revised by CERTNA once each calendar year, but any revised TIER PRICING PLAN is not effective until at least ninety (90) days after CERTNA provides COUNTY with notice of the revised TIER PRICING PLAN. Notwithstanding the provisions of Article IV, Section D of this MOU,

the TIER PRICING PLAN may be revised as provided in the foregoing sentence and such revisions do not require a formal amendment to this MOU. Any revised TIER PRICING PLAN shall bear the date that it is effective and shall supersede the preceding TIER PRICING PLAN. COUNTY shall have the option to terminate this MOU at no extra cost upon notice of revisions to the TIER PRICING PLAN by CERTNA and in such a case, COUNTY shall have thirty (30) days to notify CERTNA of its intention to terminate this MOU for this reason. Other costs that are ancillary to COUNTY's participation in the CERTNA System, such as the required SECURITY TESTING, are not included in the TIER PRICING PLAN and are the sole responsibility of COUNTY.

D. COUNTY shall install at COUNTY's facilities, pursuant to applicable law and CERTNA guidelines attached hereto as APPENDIX C and incorporated into this MOU by reference, the necessary hardware and software for COUNTY's access to the CERTNA System. CERTNA and COUNTY shall work together to test the installation to ensure the installation is functional and is protected by applicable security systems.

E. CERTNA retains ownership of the CERTNA software and is responsible for any modifications, upgrades, or enhancements. CERTNA has final authority on the functionality, enhancements, or upgrades of the CERTNA software.

F. COUNTY is expressly prohibited from making any software/hardware modification to the CERTNA system without written consent of CERTNA.

G. CERTNA, or COUNTY, or the California State Attorney General, may terminate access to the CERTNA System, or any part thereof, or may terminate access of any authorized COUNTY staff or CERTNA staff, at any time it deems it necessary to protect the CERTNA System, to protect the public interest, to protect the integrity of public records, to protect homeowners or real property owners from financial harm, or at any other time as authorized by

law. No cause of action or liability against the COUNTY, or CERTNA, or the California Attorney General shall arise from any decision of the COUNTY, or CERTNA, or California Attorney General to terminate or deny access of any person or entity to the CERTNA System.

H. Access to the CERTNA software, scan, and transmission process shall be governed by an authentication system approved by CERTNA and COUNTY ("AUTHENTICATION SYSTEM"). All administrative access to the AUTHENTICATION SYSTEM shall be restricted to COUNTY employees, CERTNA employees, California Attorney General employees, and authorized COMPUTER SECURITY AUDITORS. COUNTY shall delete or modify security access for those individuals who had AUTHENTICATION SYSTEM access but are no longer in its employ and shall notify CERTNA of any change in employee status **as it relates to CERTNA.**

I. COUNTY shall provide CERTNA with reasonable physical access at the COUNTY Recorder's Office during normal business hours to all of COUNTY's hardware and software interacting with the CERTNA System. Access to COUNTY hardware and system by CERTNA shall be limited to only that which directly relates to services agreed to in the terms and conditions herein.

ARTICLE III - TECHNICAL REQUIREMENTS

A. COUNTY shall accept DIGITIZED ELECTRONIC RECORDS or DIGITAL ELECTRONIC RECORDS of recordable Instruments sent via the CERTNA System in conformance with Government Code section 27390 *et seq.* and applicable regulations.

B. CERTNA represents to COUNTY that the CERTNA System has been certified by the California State Attorney General as required by Government Code section 27390 *et seq.*

C. CERTNA represents and warrants to COUNTY that the CERTNA System will allow COUNTY to accept for recording electronic INSTRUMENTS (as defined in the Title 11 Division 1, Chapter 18 of the California Code of Regulations), in accordance with Government Code section 27390 *et seq.*

ARTICLE IV - GENERAL PROVISIONS

A. In performance of this MOU, CERTNA and COUNTY shall each act in an independent capacity and not as an officer, employee, or agent of the other.

B. Neither COUNTY nor CERTNA shall enter into any subcontract for services covered by this MOU without first obtaining written approval from the other party, which consent shall not be unreasonably withheld. Any subcontract entered into by COUNTY or CERTNA shall be subject to the same terms and conditions as this MOU. Notwithstanding any subcontract, CERTNA and COUNTY shall remain liable for all terms and conditions herein.

C. This MOU shall not be assigned by CERTNA or COUNTY without the written consent of the other party.

D. This MOU is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and supersedes any and all prior or contemporaneous Memoranda of Understanding, or understandings, or contracts. Except for revisions to the TIER PRICING PLAN made pursuant to Article II, Section B, this MOU may be changed or modified only upon the written consent of the parties hereto. Any alteration, variation, modification, amendment or waiver of the provisions of this MOU shall be valid only when reduced to writing and signed by the parties hereto.

E. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this MOU, the party with knowledge of the problem shall notify the other party as soon as possible via electronic messaging and by

telephone.

F. This MOU shall be governed by the laws of the State of California, and the venue for any dispute between the parties arising out of this MOU shall be the Superior Court of California, County of Kern.

G. CERTNA shall have the absolute right to review and audit any aspect of the CERTNA System, including security, all related records, books, papers, documents, and other pertinent items as requested. CERTNA shall notify the COUNTY thirty (30) days in advance before conducting an audit of CERTNA System. CERTNA shall provide the COUNTY, upon request, a copy of the results of the audit of the CERTNA System, as it pertains to COUNTY related records, books, papers, documents, and other pertinent items audited. The California Attorney General and authorized COMPUTER SECURITY AUDITORS have the right to review and audit any aspect of the CERTNA System, including security, all related records, books, papers, documents, and other pertinent items under Government Code section 27390 et seq. and applicable regulations. COUNTY shall provide full cooperation in any auditing or monitoring conducted. All records pertaining to services under this MOU shall be available for examination and audit by CERTNA representatives and other authorized personnel for a period of one year from the date of their creation.

H. COUNTY agrees to indemnify, defend and hold harmless CERTNA, its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from COUNTY's acts, errors or omissions in performing the MOU and for any costs or expenses incurred by CERTNA on account of any claim based on the COUNTY's acts, errors or omissions arising out of its performance of this MOU, except where such indemnification is prohibited by law. CERTNA agrees to indemnify, defend and

hold harmless RECORDER and COUNTY, its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from CERTNA's acts, errors or omissions in performing this MOU and for any costs or expenses incurred by COUNTY on account of any claim based on CERTNA's acts, errors or omissions arising out of its performance of this MOU, except where such indemnification is prohibited by law.

I. CERTNA WARRANTS THAT IT HAS THE SOLE AND EXCLUSIVE RIGHT TO AUTHORIZE COUNTY'S USE OF THE SERVICES DESCRIBED. If any software or product as described in this Agreement is, or in CERTNA's reasonable opinion is likely to be held to be considered infringing as the result of a challenge to CERTNA's proprietary right to allow COUNTY'S use, CERTNA at its sole expense and option may: a) procure the right for County to continue using it; or b) replace or modify it so that it becomes non-infringing while giving equivalent performance; alternatively, CERTNA may decide to litigate the claim to judgment, in which case County may continue to use the software or product consistent with the terms of this Agreement.

ARTICLE V - NOTICES AND REPORTS

Any notice or report desired to be served by either party upon the other shall be addressed, personally delivered, or mailed to the respective parties as set forth below:

COUNTY: Stephen L. Vagnini
Assessor-County Clerk/Recorder
Monterey County Recorder's Office
168 W. Alisal Street, 1st Floor
Salinas, CA 93901

CERTNA: Rich Sherman
Strategic Operations Director
CERTNA
1115 Truxtun Ave., 3rd Floor
Bakersfield, CA 93301

Either party hereto may at any time, by giving ten (10) days written notice to the other party, designate any other contact party, address or facsimile number in substitution of the contact party address or facsimile number to which such notice or communication shall be given.

ARTICLE VI -TERM AND TERMINATION

A. This MOU shall take effect as of the EFFECTIVE DATE and shall continue in full force and effect unless otherwise terminated as provided in this MOU.

Either party may terminate this MOU for any reason by serving the other party with prior written notice of at least thirty (30) days. In the event of such termination by either party, the ERDS FEES, as calculated pursuant to Section II.B. above, shall be paid by COUNTY

on a daily pro-rated basis using a three-hundred and sixty (360) day year, ending on the last day of service.

B. Upon termination, all CERTNA software and/or equipment owned by CERTNA or COUNTY must be returned to its owner within thirty (30) days of termination.

C. In addition to other termination provisions contained herein, in the event that either party determines that the other party's performance of its duties or other terms of this MOU are deficient in any manner, notice of such deficiency shall be sent in writing. Any deficiency shall be remedied to the reasonable satisfaction of the aggrieved party within five business days of such notification, or the other party may, at its option, terminate this MOU immediately upon written notice.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above written.

CERTNA

By: _____
Name: Rich Sherman
Title: Strategic Operations Director

COUNTY

Approved as to Form:

By: _____
Name: Stephen L. Vagnini
Title: Assessor-County Clerk/Recorder

By: _____
Name: Brian Briggs
Title: Deputy County Counsel

APPENDIX A

Services and Benefits *	Director-Level	Client-Level
Seat on Board of Directors	X	
• Develop/Adopt Annual Operating Budget	X	Public Input
• Approve System Upgrades & Enhancements	X	User Group Input
• Brown Act Organization (Public)	X	X
• Organizational Stability (JPA)	X	X
• Software Source Code Beneficiary (Owner)	X	
• Full-Time, Dedicated Support (Helpdesk)	X	X
Support Service Level Agreement (Response)	2 business hours	4 business hours
Access to National Submitters (Bulk Submission)	X	X
Access to Local Submitters (Digitized Submission)	X	X
Technical Standards Committee	Voting	Member
Certification Policies and Procedures Committee	Voting	Member
Access to Documentation Library	X	X
• User Guides	X	X
• Administrator Guides	X	X
• Resolution/MOU Templates	X	X
CeRTNAcademy Training Library	X	Limited
• Administrator Training	X	X
CeRTNAccess List Server and Support Board	X	X
DOJ Certification Support	X	County Paid
Recorder Vendor Interface Support/Training	X	X
Submission Vendor Interface Support/Training	X	X
Submitter/County MOU Administration & Support	X	X
Free Web-based Submission Client	X	X
Full County-Level Administrative Access	X	X
Security Provisioning and Management Support	X	X
ACH Support	X	X
Established Vendor Interfaces	X	X
Fully Redundant System Infrastructure (ERDS)	X	X

*CERTNA shall not data mine or otherwise compile metadata from information or materials provided by COUNTY except as reasonably necessary for the purpose of enabling CERTNA to maintain or enhance the services provided herein; and company shall not sell to a third party, or use for commercial purposes, or otherwise, any information or materials provided by COUNTY.



MEMBERSHIP FEE STRUCTURE - EFFECTIVE 01/01/2021

CLIENT-LEVEL COUNTY

- Charged based on an annual licensing cost according to the county's annual recording volumes and prorated to the month of accepting electronically submitted documents for production recording.

Fee Matrix

County's Annual Recording Level	Initial Cost	Annual Cost
>50,001 document titles recorded	\$0	\$0.30 per title
25,001 – 50,000 document titles recorded	\$0	\$0.25 per title
10,001 – 25,000 document titles recorded	\$0	\$0.20 per title
< 10,001 document titles recorded	\$0	\$0



p. 909-831-2674
Patrick.Honny@CeRTNA.com

APPENDIX C

Minimum Workstation Requirements:

Processor: Intel core i5 or i7

Memory: 32 GB

Disk Storage: >500 GB HDD.

USB Port: Available USB 3 port

OS: Windows 10 Professional 64-bit

Wi-Fi Adapter (Optional for business continuity scenario)

Non-authenticated internet access. For best results, access speeds should be in excess of 5 MBPS up and down.

Note: The CeRTNA ERDS and G2G workstations will need to have network access to the shared folder UNC path where the CeRTNA XML transactions will be stored and retrieved.