

1 **MEMORANDUM OF UNDERSTANDING BETWEEN**  
2 **CERTNA AND CITY AND COUNTY OF SAN FRANCISCO ASSESSOR-RECORDER**  
3 **FOR AB 578 ELECTRONIC RECORDATION IMPLEMENTATION**

4 THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and  
5 executed as of this 18th day of January, 2017, by and between the California  
6 Electronic Recording Transaction Network Authority, hereinafter referred to as  
7 "CERTNA", a Joint Powers Authority, and City and County of San Francisco, a  
8 municipal corporation, hereinafter referred to as "COUNTY", acting by and through its  
9 Assessor-Recorder.

10 **RECITALS**

11 CERTNA has developed and implemented an electronic recording delivery  
12 system pursuant to Assembly Bill 578 (Stats. 2004, Ch. 621, Sec. 2, California  
13 Government Code Sections 27390 et seq. ("AB 578")) as approved by the California  
14 State Attorney General (the "CERTNA AB 578 System"). The CERTNA AB 578  
15 System has been certified by the California Attorney General, and participants in the  
16 CERTNA 578 System can accept for recordation DIGITIZED ELECTRONIC  
17 RECORDS and certain DIGITAL ELECTRONIC RECORDS pursuant to AB 578 and  
18 regulations issued pursuant thereto. COUNTY seeks to participate in the CERTNA AB  
19 578 System. The rights and responsibilities established by this MOU are intended to  
20 assure the continuing security and lawful operation of the CERTNA AB 578 System  
21 under Government Code Sections 27390 et seq. and applicable regulations.

22 **AGREEMENT**

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

26 **ARTICLE I - DEFINITIONS**

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

1                                   **ARTICLE II - GENERAL DUTIES AND RESPONSIBILITIES**

2                   **A. County Membership.** COUNTY agrees to become a voluntary  
3 participant in the CERTNA AS 578 System. COUNTY is designated as a "Client-level  
4 member" of CERTNA entitling them to receive the services and benefits set forth on  
5 APPENDIX A attached hereto and incorporated herein, from CERTNA, and with rights  
6 and responsibilities defined by this MOU, but COUNTY is not a member of CERTNA  
7 Joint Powers Authority and is not a party to the Joint Powers Agreement that governs  
8 CERTNA.

9                   **B. Term of the MOU.** This MOU shall take effect as of January 11,  
10 2016 and shall continue in full force and effect for three years thereafter unless  
11 otherwise terminated as provided in this MOU. COUNTY and CERTNA may extend the  
12 term of this MOU pursuant to an executed amendment.

13                   **C. Effective Date of the MOU.** This MOU shall become effective  
14 when the COUNTY's Controller has certified to the availability of funds and CERTNA  
15 has been notified in writing.

16                   **D. Compensation.** For participation in the CERTNA AS 578 System,  
17 COUNTY shall pay to CERTNA fees (the "ERDS FEES") calculated pursuant to the tier  
18 pricing plan attached hereto as APPENDIX B (the "TIER PRICING PLAN"), and  
19 incorporated into this MOU by reference, which is based on the number of documents  
20 recorded with COUNTY annually (whether electronically or by walk-in), AND for which  
21 an electronic recording delivery fee of \$1.00 is collected by COUNTY at the time of  
22 recording such documents (the "ERD FEE DOCUMENTS"). No later than February 1  
23 of each year, COUNTY will report to CERTNA the number of ERD FEE DOCUMENTS  
24 recorded the previous year. No later than March 1 of each year CERTNA shall provide  
25 to COUNTY an invoice of all ERD FEES due annually based on the volume of ERD  
26 FEE DOCUMENTS reported and the then current TIER PRICING PLAN, and COUNTY  
27 shall pay the invoiced ERD FEES within 30 days of receipt of the invoice. The TIER  
28 PRICING PLAN may be revised by CERTNA once each calendar year, but any revised

1 TIER PRICING PLAN is not effective until at least 90 days after CERTNA provides  
2 COUNTY with notice of the revised TIER PRICING PLAN. Notwithstanding the  
3 provisions of Article IV, Section D of this MOU, the TIER PRICING PLAN may be  
4 revised as provided in the foregoing sentence and such revision does not require a  
5 formal amendment to this MOU. Any revised TIER PRICING PLAN shall bear the date  
6 that it is effective and shall supersede the preceding TIER PRICING PLAN. Other  
7 costs that are ancillary to COUNTY's participation in the CERTNA AB 578 System,  
8 such as the required SECURITY TESTING, are not included in the TIER PRICING  
9 PLAN and are the sole responsibility of COUNTY. COUNTY's payment of ERD FEES  
10 will not exceed forty-thousand dollars and no cents (\$40,000.00) for any calendar year  
11 during the first three years of this MOU, and COUNTY's aggregate payment of ERD  
12 FEES during the first three years of this MOU will not exceed one hundred and twenty-  
13 thousand dollars and no cents (\$120,000.00). In no event shall COUNTY be liable for  
14 interest or late charges for any late payments.

15 **E. Payment Does Not Imply Acceptance of Work.** The granting of  
16 any payment by COUNTY, or the receipt thereof by CERTNA, shall in no way lessen  
17 the liability of CERTNA to replace unsatisfactory work, the CERTNA AB 578 System  
18 software, although the unsatisfactory character of such work, or the CERTNA AB 578  
19 System software may not have been apparent or detected at the time such payment  
20 was made. The CERTNA AB 578 System software, components, or workmanship that  
21 do not conform to the requirements of this MOU may be rejected by COUNTY and in  
22 such case must be replaced by CERTNA without delay.

23 **F. Installation of Necessary Software and Hardware.** COUNTY  
24 shall install at COUNTY's facilities pursuant to applicable law and CERTNA guidelines  
25 attached hereto as APPENDIX C and incorporated into this MOU by reference, the  
26 necessary hardware and software for COUNTY's access and connection to the  
27 CERTNA AS 578 System. CERTNA and COUNTY shall work together to test the  
28 installation to ensure that the installation is functional and is protected by applicable

1 security systems. CERTNA acknowledges that COUNTY's use of ATPac will satisfy  
2 CERTNA's software requirements.

3 **G. Software Ownership.** CERTNA retains ownership of the  
4 CERTNA AB 578 System software and is responsible for any modifications, upgrades,  
5 maintenance and/or enhancements. CERTNA has final authority on the functionality,  
6 enhancements, or upgrades of the CERTNA AB 578 System software.

7 **H. Modification Prohibition.** COUNTY is expressly prohibited from  
8 making any software/hardware modification to the CERTNA AB 578 System without  
9 written consent of CERTNA.

10 **I. Unauthorized Use; Termination.** CERTNA or COUNTY or the  
11 California Attorney General may terminate access to the CERTNA AB 578 System, or  
12 any part thereof, or may terminate access of any authorized COUNTY staff or  
13 CERTNA staff, at any time it deems it necessary to protect the CERTNA AB 578  
14 System, to protect the public interest, to protect the integrity of public records, to  
15 protect homeowners or real property owners from financial harm, or at any other time  
16 as authorized by law. No cause of action or liability against the COUNTY or CERTNA  
17 or California Attorney General shall arise from any decision of the COUNTY or  
18 CERTNA or California Attorney General to terminate or deny access of any person or  
19 entity to the CERTNA AB 578 System.

20 **J. Access to System.** Access to the CERTNA AB 578 System  
21 software, scan, and transmission process shall be governed by an authentication  
22 system approved by CERTNA and COUNTY (as approved, the "AUTHENTICATION  
23 SYSTEM"). All administrative access to the authentication system shall be restricted to  
24 COUNTY employees and CERTNA employees and California Attorney General  
25 employees and authorized COMPUTER SECURITY AUDITORS. COUNTY shall  
26 delete or modify AUTHENTICATION SYSTEM access for those individuals who had  
27 AUTHENTICATION SYSTEM access and leave its employ and notify CERTNA of any  
28 change in such employee's status.



1           **K. Software and Hardware Inspection.** COUNTY shall provide  
2 CERTNA with physical access at the COUNTY Recorder's office during normal  
3 business hours to all of COUNTY's hardware and software interacting with the  
4 CERTNA AB 578 System, provide that the COUNTY is given at least 24 business  
5 hours notice prior to such inspection.

6           **L. Responsibility for Equipment.** COUNTY shall not be  
7 responsible for any damage to persons or property as a result of the use, misuse or  
8 failure of any equipment used by CERTNA, or by any of its employees, even though  
9 such equipment be furnished, rented or loaned to CERTNA by COUNTY. The  
10 acceptance or use of such equipment by CERTNA or any of its employees means that  
11 CERTNA accepts full responsibility for and agrees to exonerate, indemnify, defend and  
12 save harmless COUNTY from and against any and all claims for any damage or injury  
13 of any type arising from the use, misuse or failure of such equipment, whether such  
14 damage be to CERTNA, its employees, COUNTY employees or third parties, or to  
15 property belonging to any of the above.

16                           **ARTICLE III - TECHNICAL REQUIREMENTS; SYSTEM LICENSE;**  
17                           **WARRANTIES AND REPRESENTATIONS.**

18  
19           **A.** COUNTY shall accept DIGITIZED ELECTRONIC RECORDS or  
20 DIGITAL ELECTRONIC RECORDS of recordable instruments sent via the CERTNA  
21 AB 578 System in conformance with Government Code section 27390 et seq. and  
22 applicable regulations. CERTNA acknowledges that COUNTY's use of ATPac will  
23 satisfy CERTNA's software requirements.

24           **B. Grant of License.** Subject to the terms and conditions of this  
25 MOU, CERTNA grants to COUNTY a term, non-exclusive, non-transferable license to  
26 use for its municipal purposes the CERTNA AB 578 System software.

27           **C.** CERTNA represents to COUNTY that the CERTNA AB 578  
28 System has been certified by the California State Attorney General as required by

1 Government Code Sections 27390 et seq.

2           **D.** CERTNA represents and warrants to COUNTY that the CERTNA  
3 AB 578 System will allow COUNTY to accept for recording electronic INSTRUMENTS  
4 (as defined in the Title 11, Division 1, Chapter 18 of the California Code of  
5 Regulations), in accordance with AB 578.

6           **E. Right to Grant License.** CERTNA hereby warrants that the  
7 CERTNA AB 578 System furnished pursuant to this MOU will, prior to its transfer to  
8 COUNTY, either be the sole and exclusive property of CERTNA, or that CERTNA is  
9 properly licensed to issue sublicenses for third-party software applications or  
10 components integrated with, or provided as part of, the licensed CERTNA AB 578  
11 System.

#### 12                                   **ARTICLE IV - GENERAL PROVISIONS**

13           **A. Certification of Funds; Budget and Fiscal Provisions;**  
14 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the  
15 budget and fiscal provisions of the COUNTY's Charter. Charges will accrue only after  
16 prior written authorization certified by the Controller, and the amount of COUNTY's  
17 obligation hereunder shall not at any time exceed the amount certified for the purpose  
18 and period stated in such advance authorization. This Agreement will terminate  
19 without penalty, liability or expense of any kind to COUNTY at the end of any fiscal  
20 year if funds are not appropriated for the next succeeding fiscal year. If funds are  
21 appropriated for a portion of the fiscal year, this Agreement will terminate, without  
22 penalty, liability or expense of any kind at the end of the term for which funds are  
23 appropriated. COUNTY has no obligation to make appropriations for this Agreement in  
24 lieu of appropriations for new or other agreements. COUNTY budget decisions are  
25 subject to the discretion of the Mayor and the Board of Supervisors. CERTNA's  
26 assumption of risk of possible non-appropriation is part of the consideration for this  
27 Agreement.

28                                   **THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER**

1 PROVISIONS OF THIS AGREEMENT.

2           **B. Submitting False Claims; Monetary Penalties.** Pursuant to San  
3 Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who  
4 submits a false claim shall be liable to the COUNTY for the statutory penalties set forth  
5 in that section. The text of Section 21.35, along with the entire San Francisco  
6 Administrative Code is available on the web at  
7 <http://www.municode.com/Library/c1ientCodePage.aspx?clientID=4201>. A contractor,  
8 subcontractor or consultant will be deemed to have submitted a false claim to the  
9 COUNTY if the contractor, subcontractor or consultant: (a) knowingly presents or  
10 causes to be presented to an officer or employee of the COUNTY a false claim or  
11 request for payment or approval; (b) knowingly makes, uses, or causes to be made or  
12 used a false record or statement to get a false claim paid or approved by the COUNTY;  
13 (c) conspires to defraud the COUNTY by getting a false claim allowed or paid by the  
14 COUNTY; (d) knowingly makes, uses, or causes to be made or used a false record or  
15 statement to conceal, avoid, or decrease an obligation to pay or transmit money or  
16 property to the COUNTY; or (e) is a beneficiary of an inadvertent submission of a  
17 false claim to the COUNTY, subsequently discovers the falsity of the claim, and fails to  
18 disclose the false claim to the COUNTY within a reasonable time after discovery of the  
19 false claim.

20           **C. Guaranteed Maximum Costs.** The COUNTY's obligation  
21 hereunder shall not at any time exceed the amount certified by the Controller for the  
22 purpose and period stated in such certification. Except as may be provided by  
23 COUNTY ordinances governing emergency conditions, the COUNTY and its  
24 employees and officers are not authorized to request CERTNA to perform services or  
25 to provide materials, equipment and supplies that would result in CERTNA performing  
26 services or providing materials, equipment and supplies that are beyond the scope of  
27 the services, materials, equipment and supplies agreed upon in the MOU unless the  
28 MOU is amended in writing and approved as required by law to authorize additional

1 services, materials, equipment or supplies. The COUNTY is not required to reimburse  
2 CERTNA for services, materials, equipment or supplies that are provided by CERTNA  
3 which are beyond the scope of the services, materials, equipment and supplies agreed  
4 upon in the MOU and which were not approved by a written amendment to the MOU  
5 having been lawfully executed by the COUNTY. The COUNTY and its employees and  
6 officers are not authorized to offer or promise to CERTNA additional funding for the  
7 MOU which would exceed the maximum amount of funding provided for in the MOU for  
8 CERTNA's performance under the MOU. Additional funding for the MOU in excess of  
9 the maximum provided in the MOU shall require lawful approval and certification by the  
10 Controller of the City and County of San Francisco. The COUNTY is not required to  
11 honor any offered or promised additional funding for an MOU which exceeds the  
12 maximum provided in the MOU which requires lawful approval and certification of the  
13 Controller when the lawful approval and certification by the Controller has not been  
14 obtained. The Controller is not authorized to make payments on any contract for which  
15 funds have not been certified as available in the budget or by supplemental  
16 appropriation.

17 **D. Taxes.** Payment of any taxes, including possessory interest  
18 taxes, and California sales and use taxes, levied upon this MOU, the transaction, or the  
19 services delivered pursuant hereto, shall be the obligation of CERTNA.

20 **E. Insurance.**

21 (a.) Without in any way limiting CERTNA's liability pursuant to  
22 the "Indemnification" section of this Agreement, CERTNA must maintain in force,  
23 during the full term of the Agreement, insurance in the following amounts and  
24 coverages:

25 (1) Workers' Compensation, in statutory amounts, with  
26 Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness;  
27 and

28 (2) Commercial General Liability Insurance with limits

1 not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for  
2 Bodily Injury and Property Damage, including Contractual Liability, Personal Injury,  
3 Products and Completed Operations; and

4 (3) Commercial Automobile Liability Insurance with limits  
5 not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and  
6 Property Damage, including Owned, Non-Owned and Hired auto coverage, as  
7 applicable.

8 (4) Technology Errors and Omissions Liability insurance.

9 CERTNA shall obtain and maintain throughout the duration of the contract technology  
10 errors and omissions liability coverage with limits of \$1,000,000 per occurrence/loss.

11 The policy shall at a minimum cover professional misconduct or lack of the requisite  
12 skill required for the performance of services defined in the contract and shall also  
13 provide coverage for the following risks:

14 i.) Liability arising from theft, dissemination,  
15 and/or use of confidential information, including but not limited to, bank and credit card  
16 account information or personal information, such as name, address, social security  
17 numbers, stored or transmitted in electronic form.

18 ii) Network security liability arising from the  
19 unauthorized access to, use of, or tampering with computers or computer systems,  
20 including hacker attacks.

21 iii) Liability arising from the introduction of a  
22 computer virus into, or otherwise causing damage to the District's or third person's  
23 computer, computer system, network, or similar computer related property and the  
24 data, software, and programs thereon.

25 If coverage is maintained on a claims-made basis,  
26 CONTRACTOR shall maintain such coverage for an additional period of three (3) years  
27 following termination of the contract.

28 (b.) Commercial General Liability and Commercial Automobile

1 Liability Insurance policies must be endorsed to provide:

2 (1) Name as Additional Insured the City and County of  
3 San Francisco, its Officers, Agents, and Employees.

4 (2) That such policies are primary insurance to any other  
5 insurance available to the Additional Insureds, with respect to any claims arising out of  
6 this Agreement, and that insurance applies separately to each insured against whom  
7 claim is made or suit is brought.

8 (c.) All policies shall be endorsed to provide thirty days'  
9 advance written notice to the City of reduction or nonrenewal of coverages or  
10 cancellation of coverages for any reason.

11 (d.) Should any of the required insurance be provided under a  
12 claims-made form, CERTNA shall maintain such coverage continuously throughout the  
13 term of this Agreement and, without lapse, for a period of three years beyond the  
14 expiration of this Agreement, to the effect that, should occurrences during the contract  
15 term give rise to claims made after expiration of the Agreement, such claims shall be  
16 covered by such claims-made policies.

17 (e.) Should any required insurance lapse during the term of this  
18 Agreement, requests for payments originating after such lapse shall not be processed  
19 until the City receives satisfactory evidence of reinstated coverage as required by this  
20 Agreement, effective as of the lapse date. If insurance is not reinstated, the City may,  
21 at its sole option, terminate this Agreement effective on the date of such lapse of  
22 insurance.

23 (f.) Before commencing any Services, CERTNA shall furnish to  
24 City certificates of insurance and additional insured policy endorsements with insurers  
25 with ratings comparable to A-, VIII or higher, that are authorized to do business in the  
26 State of California, and that are satisfactory to City, in form evidencing all coverages  
27 set forth above. Approval of the insurance by City shall not relieve or decrease  
28 CERTNA's liability hereunder.



1 (g.) The Workers' Compensation policy(ies) shall be endorsed  
2 with a waiver of subrogation in favor of the City for all work performed by the CERTNA,  
3 its employees, agents and subcontractors.

4 (h.) Nothing in this MOU shall prohibit CERTNA from using its  
5 self insurance program to satisfy the insurance requirements, as listed above, not  
6 currently covered under CERTNA's levels of insurance. CERTNA shall provide a  
7 Letter of Self-Insurance to COUNTY for the remaining insurance requirements not  
8 currently covered by CERTNA's insurance.

9 **F. Independent Contractor.** In the performance of this MOU,  
10 CERTNA and COUNTY shall each act in an independent capacity and not as an  
11 officer, employee, or agent of the other.

12 **G. Subcontracting.** Neither COUNTY OR CERTNA shall enter into  
13 any subcontract for services covered by this MOU without first obtaining written  
14 approval from the other party. Any subcontract shall be subject to the same terms and  
15 conditions as this MOU.

16 **H. Assignment.** The services to be performed by CERTNA are  
17 personal in character and neither this MOU nor any duties or obligations hereunder  
18 may be assigned or delegated by CERTNA unless first approved by COUNTY by  
19 written instrument executed and approved in the same manner as this MOU.

20 **I. Entire Agreement.** This MOU is intended by the parties hereto as  
21 a final expression of their understanding with respect to the subject matter hereof and  
22 supersedes any and all prior or contemporaneous Memoranda of Understanding or  
23 understandings or contracts.

24 **J. Modification of MOU.** Except for the revisions to the TIER  
25 PRICING PLAN made pursuant to Article II, Section B, this MOU may not be modified,  
26 nor may compliance with any of its terms be waived, except by written instrument  
27 executed and approved in the same manner as this MOU.

28 **K. Reporting of Software Problems.** In the event of a problem or

1 potential problem that could impact the quality or quantity of work, services, or the level  
2 of performance under this MOU, the party with knowledge of the problem shall notify  
3 the other party as soon as possible in writing and by telephone.

4 **L. Governing Law; Venue.** This MOU shall be governed by the laws  
5 of the State of California. Venue for all litigation relative to the formation, interpretation  
6 and performance of this MOU shall be San Francisco.

7 **M. Proprietary or Confidential Information of County.** CERTNA  
8 understands and agrees that, in the performance of the work or services under this  
9 Agreement or in contemplation thereof, CERTNA may have access to private or  
10 confidential information which may be owned or controlled by COUNTY and that such  
11 information may contain proprietary or confidential details, the disclosure of which to  
12 third parties may be damaging to COUNTY. CERTNA agrees that all private or  
13 confidential information disclosed by COUNTY to CERTNA shall be held in confidence  
14 and used only in performance of the Agreement. CERTNA shall exercise the same  
15 standard of care to protect such information as a reasonably prudent contractor would  
16 use to protect its own proprietary data.

17 **N. Protection of Private Information.** CERTNA has read and  
18 agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2,  
19 "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative  
20 Code Chapter 12M, "Protection of Private Information," which are incorporated herein  
21 as if fully set forth. CERTNA agrees that in the event a court of competent jurisdiction  
22 enters a final judgment that contains a finding that CERTNA has failed to comply with  
23 the requirements of Section 12M.2 of the San Francisco Administrative Code, such  
24 violation shall be a material breach of the MOU. In such an event, in addition to any  
25 other remedies available to it under equity or law, the COUNTY may terminate the  
26 MOU, file a false claim action against Contractor pursuant to Chapter 6 or Chapter 21  
27 of the Administrative Code, or debar CERTNA from engaging in any additional  
28 contractual relationships with COUNTY.

1           **O.     Audit and Inspection of Records by CERTNA.** CERTNA shall  
2 have the absolute right to review and audit any aspect of the CERTNA AB 578 System,  
3 security, all related records, books, papers, documents, and other pertinent items as  
4 requested. The California Attorney General and COMPUTER SECURITY AUDITORS  
5 have the right to review and audit any aspect of the CERTNA AB 578 System, security,  
6 all related records, books, papers, documents, and other pertinent items under  
7 Government Code section 27390 et seq. and applicable regulations. COUNTY shall  
8 provide full cooperation in any auditing or monitoring conducted. All records pertaining  
9 to services under this MOU shall be available for examination and audit by CERTNA  
10 representatives and other authorized personnel for a period of one year from the date  
11 of their creation.

12           **P.     Audit and Inspection of Records by COUNTY.** CERTNA agrees  
13 to maintain and make available to COUNTY, during regular business hours, accurate  
14 books and accounting records relating to its work under this MOU. CERTNA will  
15 permit COUNTY to audit, examine and make excerpts and transcripts from such books  
16 and records, and to make audits of all invoices, materials, payrolls, records or  
17 personnel and other data related to all other matters covered by this MOU, whether  
18 funded in whole or in part under this MOU. CERTNA shall maintain such data and  
19 records in an accessible location and condition for a period of not less than five years  
20 after final payment under this MOU or until after final audit has been resolved,  
21 whichever is later. The State of California or any federal agency having an interest in  
22 the subject matter of this MOU shall have the same rights conferred upon COUNTY by  
23 this Section.

24           **Q.     Mutual Indemnification.** COUNTY agrees to indemnify, defend  
25 and hold harmless CERTNA, its authorized officers, employees, agents and volunteers  
26 from any and all claims, actions, losses, damages and/or liability arising from COUNTY  
27 acts, errors or omissions and for any costs or expenses incurred by CERTNA on  
28 account of any claim therefore, except where such indemnification is prohibited by law.

1 CERTNA agrees to indemnify, defend and hold harmless COUNTY, its authorized  
2 officers, employees, agents and volunteers from any and all claims, actions, losses,  
3 damages and/or liability arising from CERTNA's acts, errors or omissions and for any  
4 costs or expenses incurred by COUNTY on account of any claim therefore, except  
5 where such indemnification is prohibited by law. In the event of concurrent negligence  
6 of COUNTY, its authorized officers, employees, agents and volunteers, and CERTNA  
7 and its authorized officers, employees, agents and volunteers, the liability for any and  
8 all claims for injuries or damages to persons and/or property shall be apportioned  
9 under the California theory of comparative negligence as presently established or as  
10 may hereafter be modified.

11 **R. Infringement Indemnification.** If notified promptly in writing of  
12 any judicial action brought against COUNTY based on an allegation that COUNTY's  
13 use of the CERTNA AB 578 System software infringes a patent, copyright, or any right  
14 of a third party or constitutes misuse or misappropriation of a trade secret or any other  
15 right in intellectual property (Infringement), CERTNA will hold City harmless and defend  
16 such action at its own expense. CERTNA will pay the costs and damages awarded in  
17 any such action or the cost of settling such action, provided that CERTNA shall have  
18 sole control of the defense of any such action and all negotiations or its settlement or  
19 compromise. If notified promptly in writing of any informal claim (other than a judicial  
20 action) brought against COUNTY based on an allegation that COUNTY's use of the  
21 CERTNA AB 578 System software constitutes Infringement, CERTNA will pay the  
22 costs associated with resolving such claim and will pay the settlement amount (if any),  
23 provided that CERTNA shall have sole control of the resolution of any such claim and  
24 all negotiations for its settlement.

25 In the event that a final injunction is obtained against COUNTY's use of  
26 the CERTNA AB 578 System software by reason of Infringement, or in CERTNA's  
27 opinion COUNTY's use of the CERTNA AB 578 System software is likely to become  
28 the subject of Infringement, CERTNAS may at its option and expense: (a) procure for

1 COUNTY the right to continue to use the CERTNA AB 578 System software as  
2 contemplated hereunder, (b) replace the CERTNA AB 578 System software with a  
3 non-infringing, functionally equivalent substitute software system, or (c) suitably modify  
4 the CERTNA AB 578 System software to make its use hereunder non-infringing while  
5 retaining functional equivalency to the unmodified version of the CERTNA AB 578  
6 System software. If none of these options is reasonably available to CERTNA, then  
7 this MOU may be terminated at the option of either party hereto and CERTNA shall  
8 refund to COUNTY all amounts paid under this Agreement for the license of such  
9 infringing software. Any unauthorized modification or attempted modification of the  
10 CERTNA AB 578 System software by COUNTY or any failure by COUNTY to  
11 implement any improvements or updates to the CERTNA AB 578 System software, as  
12 supplied by CERTNA, shall void this indemnity unless COUNTY has obtained prior  
13 written authorization from CERTNA permitting such modification, attempted  
14 modification or failure to implement. CERTNA shall have no liability for any claim of  
15 Infringement based on COUNTY's use or combination of the CERTNA AB 578 System  
16 software with products or data of the type for which the CERTNA AB 578 System  
17 software was neither designed nor intended to be used.

18 **S. Limitation of Liability.** COUNTY'S PAYMENT OBLIGATIONS  
19 UNDER THIS MOU SHALL BE LIMITED TO THE PAYMENT OF THE  
20 COMPENSATION PROVIDED FOR IN ARTICLE II, SECTION D, "COMPENSATION",  
21 OF THIS MOU. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MOU, IN  
22 NO EVENT SHALL COUNTY OR CERTNA BE LIABLE, REGARDLESS OF  
23 WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL,  
24 CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT  
25 LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS  
26 MOU OR THE SERVICES PERFORMED IN CONNECTION WITH THIS MOU.  
27 NOTWITHSTANDING THE ABOVE, THE LIMITATION OF LIABILITY DOES NOT  
28 APPLY TO ARTICLE IV, SECTION Q, "MUTUAL INDEMNIFICATION," OF THIS

1 AGREEMENT.

2           **T. Sunshine Ordinance.** CERTNA acknowledges that this MOU and  
3 all records related to its formation, CERTNA's performance, and COUNTY's payment  
4 are subject to the California Public Records Act, (California Government Code §6250  
5 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative  
6 Code Chapter 67). Such records are subject to public inspection and copying unless  
7 exempt from disclosure under federal, state or local law.

8           **U. Non-Waiver of Rights.** The omission by either party at any time  
9 to enforce any default or right reserved to it, or to require performance of any of the  
10 terms, covenants, or provisions hereof by the other party at the time designated, shall  
11 not be a waiver of any such default or right to which the party is entitled, nor shall it in  
12 any way affect the right of the party to enforce such provisions thereafter.

13           **V. Conflict of Interest.** Through its execution of this MOU, CERTNA  
14 acknowledges that it is familiar with the provision of Section 15.103 of the COUNTY's  
15 Charter, Article III, Chapter 2 of the COUNTY's Campaign and Governmental Code,  
16 and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the  
17 State of California, and certifies that it does not know of any facts which constitutes a  
18 violation of said provisions and agrees that it will immediately notify the COUNTY if it  
19 becomes aware of any such fact during the term of this Agreement.

20           **W. Severability.** Should the application of any provision of this MOU  
21 to any particular facts or circumstances be found by a court of competent jurisdiction to  
22 be invalid or unenforceable, then (a) the validity of other provisions of this MOU shall  
23 not be affected or impaired thereby, and (b) such provision shall be enforced to the  
24 maximum extent possible so as to effect the intent of the parties and shall be reformed  
25 without further action by the parties to the extent necessary to make such provision  
26 valid and enforceable.

27           **X. Cooperative Drafting.** This Agreement has been drafted through  
28 a cooperative effort of both parties, and both parties have had an opportunity to have



1 the Agreement reviewed and revised by legal counsel. No party shall be considered  
2 the drafter of this Agreement, and no presumption or rule that an ambiguity shall be  
3 construed against the party drafting the clause shall apply to the interpretation or  
4 enforcement of this Agreement.

5 **ARTICLE V - NOTICES AND REPORTS**

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

9  
10 COUNTY: Carmen Chu  
11 Assessor-Recorder  
12 City and County of San Francisco  
13 City Hall, Room 190  
14 San Francisco, CA 94102

15 CERTNA: Patrick Honny  
16 Executive Director  
17 CERTNA  
18 222 W. Hospitality Lane  
19 San Bernardino, CA 92415

20 **ARTICLE VI -TERMINATION**

21 **A. Termination for Convenience.** Either party may terminate this  
22 MOU for any reason by serving the other party with prior written notice of at least thirty  
23 (30) days. In the event of such termination, the ERD FEES, as calculated pursuant to  
24 Article II, Section B. above, shall be paid by COUNTY through the end of the current  
25 calendar year (December 31).

26 **B.** Upon termination, all CERTNA AB 578 System software and/or  
27 equipment owned by CERTNA or COUNTY must be returned to its owner within thirty  
28 (30) days of termination.

**C. Termination for Cause.** 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

1 manner, notice of such deficiency shall be sent in writing. Any deficiency shall be  
2 remedied within five business days of such notification, or the other party may, at its  
3 option, terminate this MOU immediately upon written notice. Notwithstanding any other  
4 provision of this MOU, should CERTNA fails to remedy its performance within five  
5 business days of receiving notice from COUNTY and COUNTY terminates this MOU,  
6 COUNTY shall owe CERTNA only the ERD FEES due as of the date of termination.

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

**CITY**

**CONTRACTOR**

Approved by:

California Electronic Recording  
Transaction Network Authority  
("CERTNA")

**Carmen Chu**  
Assessor-Recorder  
Office of the Assessor-Recorder  
City and County of San Francisco

**Patrick Honny**  
Executive Director  
222 W Hospitality Ln., First Floor  
San Bernardino, CA 92415

City vendor number: **86565**

Approved as to Form:

Approved as to Form:

Dennis J. Herrera  
City Attorney

Jean-Rene Basle  
San Bernardino County Counsel  
and CERTNA General Counsel

By:

By:

**Moe Jamil**  
Deputy City Attorney

**Robert F. Messinger**  
Principal Assistant County Counsel

**Appendices**

- A: Client Level Member Services and Benefits
- B: TIER PRICING PLAN
- C: CERTNA Installation Guidelines

APPENDIX A

Client Level Member Services and Benefits

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

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APPENDIX B  
TIER PRICING PLAN

County's Annual Recording Level	Initial Cost	Annual Cost
<input checked="" type="checkbox"/> > 500,000 documents recorded	\$0	\$100,000
<input checked="" type="checkbox"/> 400,001 - 500,000 documents recorded	\$0	\$80,000
<input checked="" type="checkbox"/> 300,001 - 400,000 documents recorded	\$0	\$60,000
<input checked="" type="checkbox"/> 200,001 - 300,000 documents recorded	\$0	\$40,000
<input checked="" type="checkbox"/> 100,001 - 200,000 documents recorded	\$0	\$20,000
<input checked="" type="checkbox"/> < 100,001 documents recorded	\$0	\$10,000

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## APPENDIX C

### CERTNA Installation Guidelines

- PC with 4 GB of RAM (installed in a secure location)
- 32-bit OS installed (Windows 7)
- Internet Connection (> 1.5 Mbps Up/Download, >3 Mbps preferred)
- Scanner (300 dpi, TIFF Group 4, duplex) Submitter systems only.\
- Printer (local or network)
- Workgroup configuration recommended
- Individual user accounts created and configured (non-admin)
- Administrator account renamed
- Guest account disabled
- Internet Explorer 8 browser configured per CERTNA Configuration Guide (per user)
- Anti-malware installed (Microsoft Security Essentials or equivalent)  
<http://www.microsoft.com/security.essentials/>
- As administrator, run Microsoft Baseline Security Analyzer 2,2 and clear all issues (exceptions)  
<http://technet.microsoft.com/en-us/security/cc184923>