

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

THIS MEMORANDUM OF UNDERSTANDING (hereinafter “MOU”) is made and executed as of this th day of _____, 2021, (the “EFFECTIVE DATE”), by and between the California Electronic Recording Transaction Network Authority (“CERTNA”), a Joint Powers Authority, and Mendocino County, a political subdivision of the State of California (“COUNTY”).

RECITALS

CERTNA has developed and implemented an electronic recording system pursuant to Government Code 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 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 Sections 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. 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, from CERTNA, with rights and responsibilities defined by this MOU. COUNTY is not a party to the Joint Powers Agreement that governs CERTNA.

B. 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 1 of each year, COUNTY will report to CERTNA the number of ERD FEE DOCUMENT TITLES recorded in the preceding year. No later than March 1 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 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 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. 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.

C. 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 that the installation is functional and is protected by applicable security systems.

D. 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.

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

F. 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 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.

G. 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 and CERTNA employees and California Attorney General employees and authorized COMPUTER SECURITY AUDITORS. COUNTY shall delete or modify security access for those individuals who had AUTHENTICATION SYSTEM access and leave its employ and notify CERTNA of any change in employee status.

H. COUNTY shall provide CERTNA with 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.

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 Sections 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 Sections 27390 *et seq.*

ARTICLE IV – GENERAL PROVISIONS

A. In the 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. Any subcontract shall be subject to the same terms and conditions as this MOU.

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.

G. CERTNA shall have the absolute right to review and audit any aspect of the CERTNA System, security, all related records, books, papers, documents, and other pertinent items as requested. The California Attorney General and authorized COMPUTER SECURITY AUDITORS have the right to review and audit any aspect of the CERTNA System, 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.

ARTICLE VI – 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:

CERTNA:

Brett Zamora
Interim Executive 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 VII – 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.

B. 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 County the ERDS FEES, as calculated pursuant to Section II.B. above, shall be paid by COUNTY through the end of the calendar year (December 31) in which termination takes place. In the event of such termination, by CERTNA the ERDS FEES, as calculated pursuant to Section II.B. above, shall be paid by COUNTY through the end of the second month following notice of termination by CERTNA. Proration of the fee to be accomplished with the mutual agreement of County and CERTNA.

C. 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.

D. 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 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: Brett Zamora
Title: Interim Executive Director

COUNTY

By: _____
Name:
Title: