



COUNTY OF LOS ANGELES

**REGISTRAR-RECORDER/COUNTY CLERK**

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024

**CONNOR B. McCORMACK**  
Registrar-Recorder/County Clerk

August 30, 2005

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**RESOLUTION FOR PARTICIPATION IN THE  
STATE OF CALIFORNIA  
ELECTRONIC RECORDING DELIVERY ACT OF 2004  
(All Districts) (3 Votes)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Adopt a resolution (Attachment I) approving the County of Los Angeles (County) participation in the State of California Electronic Recording Delivery Act of 2004 as enacted by Assembly Bill No. 578; and authorize the Registrar-Recorder/County Clerk (RR/CC), or her designee, to execute a Memorandum of Understanding (MOU) substantially similar to Attachment II with the California Department of Justice (DOJ) for County participation in the Electronic Recording Delivery System.
2. Authorize the RR/CC, or her designee, to amend or terminate the MOU as needed provided that County Counsel approval is obtained prior to executing an amendment or termination.
3. Authorize the RR/CC, or her designee, to negotiate and execute Submitter Agreements, in accordance with the rules and regulations established by the California Attorney General for use with Title companies and lending institutions who wish to submit Real Property records electronically, providing County Counsel reviews said Submitter Agreement and approval as to form is obtained.

4. Pursuant to Government Code section (GC) 27397(c) (2) & (3), authorize the RR/CC, or her designee, provided that approval by the Board of Supervisors is obtained and the matter is brought before a public hearing, to 1) impose a fee upon any vendor seeking approval of software and other services as part of an electronic recording delivery system and 2) impose a fee upon any person seeking a Submitter Agreement
5. Delegate the authority to the RR/CC, provided that approval by the Board of Supervisors is obtained and the matter is brought before a public hearing, to assess a statutory surcharge on recorded Real Property instruments and to increase or decrease the fee as needed, up to a maximum charge not to exceed one dollar (\$1.00) per document to offset the cost of the Electronic Recording Delivery System.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to allow the County participation in the California Electronic Recording Delivery System. Participation in the program will enable the County to improve and modernize its systems of recording and handling Real Property instruments by permitting the electronic delivery, recording and return of specified instruments.

#### **Implementation of Strategic Plan Goals**

This request supports the County Strategic Plan as follows:

**Goal No. 3: Organizational Effectiveness:** Ensure that service delivery systems are efficient, effective, and goal-oriented. Approval of the recommended action will convert the current manual paper-based system of recording Real Property instruments to an electronic recording delivery system which will greatly improve efficiency and effectiveness, and service delivery to County residents

#### **FISCAL IMPACT/FINANCING**

Pursuant to AB 578, GC 27393 requires the Attorney General to develop regulations for review, approval and oversight. GC 27397 requires any county establishing an E-recording system to pay the Attorney General for cost of regulations and oversight and allows county recorders to establish a new fee up to one dollar (\$1.00) per recorded document to cover cost to Attorney General, E-recording system, the review and approval of vendors and authorized submitters, and security testing. The total fees assessed by a county can not exceed the reasonable cost for maintaining the system and Attorney General oversight.

The initial cost to the County to participate in the Electronic Recording Delivery System, which was determined by the total number of Real Property instruments recorded during the 2004 calendar year, is \$252,249. The cost will be paid from the Recorder Modernization Trust Fund monies. Thereafter, the annual cost will be determined by the total number of Real Property instruments recorded in the previous calendar year. The annual cost and any other service related costs will be paid by the statutory surcharge assessed on recorded Real Property instruments. There is no impact to the NCC.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

AB 578 was signed into law on September 21, 2004 and took effect immediately. The legislative action authorized county recorders to establish electronic recording systems for the electronic recording of Real Property instruments and requires the Attorney General to develop regulations for review, approval and oversight of the program. AB 578 requires an MOU by participating counties; approval by resolution of the Board of Supervisors; and requires interested counties to submit a Letter of Intent. As such, RR/CC submitted the Letter of Intent (Attachment III) on June 17, 2005 as a notice of interest to participate in the program.

In September 2005, the DOJ will mail an MOU substantially similar to Attachment II to counties that submitted a Letter of Intent. The terms of the MOU are negotiable to meet the specific needs of each participating county. RR/CC will work with County Counsel to ensure County requirements are met and secure County Counsel approval as to form prior to submitting MOU to DOJ. The final signed MOU is due to the DOJ on October 14, 2005.

The Chief Administrative Office has reviewed and approved this Board letter. County Counsel has reviewed this Board letter and approved as to form the attached resolution.

### **IMPACT ON CURRENT SERVICES**

Approval of the recommended action will provide a fast, efficient, and effective method of recording Real Property instruments to better serve County residents.

**CONCLUSION**

Upon approval of the recommendation, it is requested that the Executive Officer/Clerk of the Board return one originally stamped copy of the adopted Board letter to:

County of Los Angeles  
Registrar-Recorder/County Clerk  
12400 Imperial Highway, Room 7201  
Norwalk, CA 90650

Attention: Ngozi Ume  
Head, Management Services

Respectfully submitted,

CONNOR B. McCORMACK  
Registrar-Recorder/County Clerk

CBM:NU:rl

Attachment (3)

c: Chief Administrative Officer  
County Counsel

**RESOLUTION OF THE COUNTY OF LOS ANGELES  
BOARD OF SUPERVISORS  
APPROVING THE COUNTY OF LOS ANGELES  
PARTICIPATION  
IN THE  
ELECTRONIC RECORDING DELIVERY ACT OF 2004**

**RESOLUTION OF THE COUNTY OF LOS ANGELES BOARD OF SUPERVISORS  
APPROVING THE COUNTY OF LOS ANGELES PARTICIPATION IN THE  
ELECTRONIC RECORDING DELIVERY ACT OF 2004**

**WHEREAS**, California Assembly Bill No. 578 of 2004 has been enacted to authorize a county recorder to establish an Electronic Recording Delivery System for the recording of specified digitized and digital electronic records; and

**WHEREAS**, said legislation requires a resolution from the County of Los Angeles Board of Supervisors to authorize County participation in the Electronic Recording Delivery System; and

**WHEREAS**, AB 578, GC 27397 authorizes a county recorder to impose a fee in an amount up to and including one dollar (\$1) for each Real Property instrument that is recorded by county; and

**WHEREAS**, AB 578, GC 27397 (c) (2 & 3) authorizes a county recorder to impose a fee upon any vendor seeking approval of software and other services as part of an electronic recording delivery system and upon any person seeking a Submitter Agreement; and

**WHEREAS**, the California Attorney General has been delegated the authority and responsibility for establishing regulations and the regulation and oversight of the Electronic Recording Delivery System; and

**NOW, THEREFORE, BE IT RESOLVED** that the County of Los Angeles Board of Supervisors:

1. Approves the County participation in Electronic Recording Delivery Act of 2004;
2. Appoints the County of Los Angeles Registrar-Recorder/County Clerk, or her designee, as agent to conduct all negotiations and execute and submit all documents which may be necessary for the completion of the aforementioned project.
3. Approves the County of Los Angeles Registrar-Recorder/County Clerk, or her designee, as agent, to impose a fee to be adopted by the Board of Supervisors and after a public hearing, in an amount up to and including one dollar (\$1) for each Real Property instrument that is recorded by the County.
4. Approves the County of Los Angeles Registrar Recorder/County Clerk, or her designee, as agent to impose a fee to be adopted by the Board of Supervisors and brought before a Public Hearing, upon any vendor seeking approval of software and other services as part of an electronic recording delivery system and to impose a fee upon any person seeking a Submitter Agreement.
5. Approves the County of Los Angeles Registrar Recorder/County Clerk, or her designee, as agent to issue payments to the California Attorney General through the Department of Justice for County's allocated share of the direct cost of program oversight.

The foregoing resolution was on the \_\_\_\_\_ day of August, 2005, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.

VIOLET VARONA-LUKENS, Executive  
Officer-Clerk of the Board of Supervisors  
of the County of Los Angeles

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

BY THE OFFICE OF COUNTY COUNSEL  
RAYMOND G. FORTNER JR, County Counsel

By \_\_\_\_\_  
Derrick Au  
Senior Deputy County Counsel

Electronic Recording Delivery System  
Costs for Developing and Implementing Regulations  
Memorandum of Understanding

<b>NOTE: Each county's Memorandum of Understanding (MOU) will be written to meet their individual county needs, including for multiple years</b>
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#### Parties

This Memorandum of Understanding (MOU) is between the California Department of Justice, hereinafter, referred to as "DOJ" and the County of \_\_\_\_\_, hereinafter referred to as "County."

#### Purpose

The purpose of this MOU is to comply with the Electronic Recording Delivery Act of 2004 (Gov. Code, §§ 27390-27399; "Act")<sup>1</sup> It is the intent of the Legislature "to develop a system to permit the electronic delivery; recording, and return of instruments affecting right, title, or interest in real property." (Stats. 2004, ch. 621, § 1, subd. (a).) The purpose of the electronic recording delivery system is to enable the County to improve: and modernize the counties' systems for recording and handling documents by permitting the electronic delivery, recording and return of specified instruments.

#### Acknowledgments

Both County and DOJ acknowledge that under the Act specific statutory duties must be performed *before* a county puts its electronic recording system into operation. For example, the Attorney General must adopt regulations "for the review, approval, and oversight of electronic recording delivery systems" (§ 27393); evaluate and certify the system selected by each county (§§ 27391, subd. (a); 27392, subd. (a)); "approve software and other services" (§ 27392, subd. (b)); establish a list of approved computer security auditors (§ 27394), after conducting criminal background checks (§ 27395); and certify that each county's submission method will be secure (§ 27397.5, subd. (d)). These initial duties of the Attorney General bring with them "start up" costs--costs that cannot be adequately met by the Act's scheme of generating revenue through the collection of recording fees authorized in section 2739. Furthermore, each county is responsible for paying the costs of developing, operating, and monitoring its electronic recording system. (§ 27397, subd. (a).) :

"(a) A county establishing an electronic recording delivery system under this article *shall pay for the direct cost of regulation and oversight by the Attorney General.*"

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<sup>1</sup> Hereafter, references to the Government Code are by section number only.

## Agreement

DOJ and County hereby consent and agree that County will pay DOJ for an allocated share of the direct cost of developing and implementing regulations and other costs in support of the Electronic Recording Delivery Act (ERDA) of 2004, as set forth in Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3. The development of regulations is being pursued to enable the Attorney General to provide review, approval and oversight of electronic recording delivery systems.

### General Provisions

County agrees to pay DOJ for an allocated share of the direct costs of developing and implementing regulations which may include all or part of the following direct costs: staff, consultant, and vendor costs for program development and implementation including hearings, meetings, travel, site visits, minutes, mailing, legal review of regulations, procedure and forms development, advertisement, and drafting and writing of regulations. Continuation of this Memorandum of Understanding beyond the first year will allow the DOJ to issue a new estimated cost figure for the next fiscal year without the necessity of a new Letter of Intent from the County. Continuation of this Memorandum of Understanding beyond the first year shall allow the DOJ' to include the cost of regulation and oversight.

### County to County Formula

The direct cost of establishing the regulations and regulation and oversight is allocated to each county by the total documents recorded and filed as reported to the Office of the Insurance Commissioner, as provided in Government Code section 27296, for the previous year. The formula to determine a county's proportionate cost is set by the total documents recorded and filed per individual counties divided by the total documents recorded and filed by all participating counties. The percentage figure obtained for each county is applied to the estimated annual costs of the Attorney General to arrive at an individual county figure.. .

### Estimated Cost of the Attorney General

The estimated costs of the Attorney General are those costs projected to be incurred in the next fiscal year and the costs incurred to date in establishing the regulations. County agrees to pay the DOJ for actual expenditures incurred and in accordance with the estimated costs specified herein, which is attached hereto and made a part of this MOU. The County shall annually provide the total documents recorded and filed as reported to the Office of the Insurance Commissioner, as provided in Government Code section 27296, for the previous year. The DOJ shall issue an annual estimated cost to the County based on the Cost to County Formula. The estimated cost to the County will be incorporated herein by reference.

### Payback and/or Carry Over

If the actual costs exceed the estimated costs, the parties will amend this MOU to capture the additional costs. If the total actual costs are less than the estimated costs, DOJ will provide a refund to the County or allow for a carry over and credit toward the next Fiscal year at the County's discretion.

## DOJ Reporting

DOJ shall report to the County every ninety (90) days on the expenditures made by the DOJ in developing and implementing regulations.

## Payment

County shall pay to DOJ a lump sum of the estimated cost to the County, as incorporated herein by reference, toward the direct cost to be incurred by DOJ. Said lump sum payment to be delivered to DOJ within thirty (30) days of execution of the MOU. Payments to DOJ shall be deposited in the Electronic Recording Authorization Account, which is hereby created in the Special Deposit Fund.

Payment shall include a reference to this MOU and shall be made to:

California Department of  
Justice Accounting Office  
1300 I Street  
Sacramento, CA 95814

## Term of MOU

The term of this MOU will be from the date this MOU is signed by the DOJ and County MOU representatives until the end of the next fiscal year. An MOU will automatically renew unless one or both parties object or there are modifications to the MOU which would require mutual agreement and signatures by both parties.

A County Recorder reserves the right to terminate this MOU upon thirty (30) days written notice to the DOJ, however, no refund of start-up costs for establishing the regulations will be granted. Refunds of payment toward regulation and oversight will be prorated as incurred in the fiscal year at the time of termination. Upon termination of the Memorandum of Understanding without the mutual intent of the parties to renew, the County Recorder shall cease operation of its electronic recording delivery system.

## MOU Representatives

The MOU representatives during the term of this MOU will be:

County of	Department of Justice
Name: Phone:	Name: Paul Pane
Fax:	Phone: (916) 227-4705
E-mail:	Fax: (916) 227-2545 E-Mail: <a href="mailto:paul.pane@doj.ca.gov">paul.pane@doj.ca.gov</a>

**Agreed and Accepted**

Certification of MOU Representatives

I certify that I have read and understand the aforementioned statements and agree to comply with the requirements contained herein:

County of Registrar-Recorder/County Clerk  
Name:

Department of Justice  
Name: Paul Pane

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attachment: Estimated Costs: Attachment 1

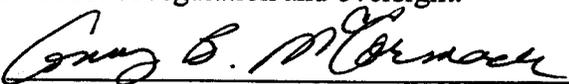
**Letter of Intent From County Participants  
Fiscal Year 2004/05 and Fiscal Year 2005/06**

**TO:** Paul Pane, Manager  
Department of Justice  
Field Operations / Electronic Recording Delivery System  
4949 Broadway, Suite C-217B  
Sacramento, CA 95820

**INTENT TO PARTICIPATE**

On behalf of the County of Los Angeles, I hereby notify the Attorney General of the County's intent to participate in the electronic recording delivery system established under the Electronic Recording Delivery Act of 2004. Pursuant to the Act, a participating county is responsible for paying the direct cost of establishing the regulations and the regulation and oversight by the Attorney General. I understand that the cost allocated to the County will depend on the number of participating counties and that the County shall receive the cost of participation from the California Department of Justice (DOJ). In order to determine the cost to the County of Los Angeles, enclosed herewith is a copy of the report of documents filed and recorded with the Office of the Insurance Commissioner as provided by Government Code section 27296, for the previous year. The DOJ shall respond with the cost to the County along with the estimated costs of the Attorney General for regulation and oversight to be incurred in the next fiscal year and the costs incurred to date in establishing the regulations.

Upon review and acceptance of the cost to the County, the County Recorder shall notify the DOJ of their interest to participate. The DOJ shall confirm the estimated cost to allow for any adjustments caused by a decrease or increase in county participation. If the final cost is satisfactory, the County will agree to enter into a Memorandum of Understanding with the DOJ to cover the direct cost of regulation and oversight.

Signature:   
County Recorder

Date: 4/17/05

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**INTENT TO NOT PARTICIPATE**

On behalf of the County of \_\_\_\_\_, I hereby notify the Attorney General of the County's intent to not participate in the electronic recording delivery system established under the Electronic Recording Delivery Act of 2004.

Signature: \_\_\_\_\_  
County Recorder

Date: \_\_\_\_\_