

SETTLEMENT AGREEMENT AND FULL RELEASE OF ALL CLAIMS

This Settlement Agreement and Full Release of Claims (hereinafter "AGREEMENT") is entered into by and between the California Electronic Recording Transaction Network Authority, for itself, members, employees, representatives, officers, officials, contractors, agents (hereafter referred to as "CeRTNA"), on the one hand, and the COUNTY OF SAN BERNARDINO, for itself, employees, representatives, officers, officials, contractors, agents and departments (hereafter referred to as "COUNTY"), on the other hand. CeRTNA and COUNTY are individually referred to herein as a "PARTY" and collectively referred to herein as the "PARTIES."

WHEREAS, CeRTNA was created as a Joint Powers Authority (JPA) in July, 2007 for the purposes of the design, development, implementation and on-going operation and maintenance of an Assembly Bill 578 (Government Code Sections 27390 et seq.) compliant Electronic Recording Delivery System (ERDS) as well as a Government Code section 27279 compliant system;

WHEREAS, the JPA was formed initially between the Counties of Kern and San Bernardino with the authority to add other counties to the JPA and remain in effect until terminated by the provisions of the Joint Powers Agreement Between the Counties of Kern and San Bernardino Creating the California Electronic Recording Transaction Network Authority ("JPA Agreement"), or as otherwise amended;

WHEREAS, the JPA is governed by a Board of Directors, which has the power to administer the authority of CeRTNA. Currently, the Board of Directors consists of the Recorders, or their delegates, from each of the following counties: Santa Cruz, San Joaquin, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Santa Clara, Shasta, and Solano;

WHEREAS, the JPA Agreement, which was accepted by all JPA members upon becoming a member of the JPA, provides in Section 11: "A party may withdraw from this Agreement as of the first day of July of any year following six months' notice to the other parties by resolution of intent to withdraw adopted by the legislative body of the party; provided, however, that CeRTNA assets directly attributable to the accumulated capital contribution of the withdrawing party shall remain with the system for use by CeRTNA

without compensation to the withdrawing party, until the termination of this agreement and the distribution of assets to all parties in winding up; and provided further that the withdrawing party shall remain liable for and shall pay its proportional share of any indebtedness incurred while the withdrawing party is a party.”

WHEREAS, as part of initial funding for the JPA the COUNTY loaned CeRTNA the amount of \$1,500,000 (COUNTY Loan) upon the promise that CeRTNA would repay COUNTY the loan principal and accrued interest from net operating revenue as available and as further memorialized in the document entitled Loan Agreement between County of San Bernardino and California Electronic Recording Transaction Network Authority. As of June 10, 2021, the amount of \$900,000 has been repaid on the COUNTY Loan and the amount of \$764,850 remains outstanding;

WHEREAS, as part of initial funding for the JPA, the County of Kern loaned CeRTNA the amount of \$500,000 (KERN loan) a portion of which has been repaid, and a portion of which remains outstanding;

WHEREAS, the loans from the COUNTY and KERN were necessary for the creation, maintenance and on-going operation of the ERDS, the use of which all members of CeRTNA and all client counties have been benefited;

WHEREAS, since the creation of CeRTNA the membership has grown to include the member counties of: Santa Cruz, San Joaquin, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Santa Clara, Shasta, and Solano and the client counties of: Modoc, Tehama, Glenn, Butte, Plumas, Yuba, Placer, Yolo, Napa, Sonoma, Calaveras, Contra Costa, Tuolumne, Mono, Alameda, San Francisco and San Luis Obispo;

WHEREAS, CeRTNA was for a period of time, a participant in the San Bernardino County Employee’s Retirement Association (SBCERA) for purposes of administration of the retirement plans for two CeRTNA employees: Patrick Honny and Brett Zamora (CeRTNA employees);

WHEREAS, pursuant to Government Code section 6508.1, the retirement liabilities of CeRTNA are the liability of the parties to the JPA Agreement. Pursuant to Government Code section 6508.2, prior to filing a notice of termination, the parties to a JPA must mutually agree to apportion the JPA’s retirement obligations among

themselves, provided that the agreement equals 100 percent of the retirement liability of the JPA;

WHEREAS, the COUNTY withdrew from CeRTNA effective June 30, 2020;

WHEREAS, the COUNTY and CeRTNA desire to settle any and all current and future debts and liabilities owed by CeRTNA to the COUNTY, including but not limited to the COUNTY Loan, and by the COUNTY to CeRTNA, including any future apportionment of retirement liability relating to the CeRTNA employees attributable to the COUNTY and the KERN Loan;

NOW THEREFORE, the PARTIES agree to the following:

1. Upon the effective date of this AGREEMENT, the COUNTY will consider the outstanding COUNTY Loan balance paid in full by CeRTNA as consideration for:

- a. The current and future retirement obligations owed by the COUNTY to CeRTNA for the CeRTNA employees calculated in the amount of \$615,222 being recognized by CeRTNA as paid in full, including any future apportioned liability pursuant to Government Code section 6508.2;
- b. The payment by CeRTNA to SBCERA the amount of \$615,222 as payment for the COUNTY's retirement obligation; and,
- c. Any obligation of the COUNTY for outstanding amounts due on the KERN loan being recognized as paid in full.

2. This AGREEMENT shall become effective upon approval by the San Bernardino County Board of Supervisors and the Board of Directors of CeRTNA in accordance with CeRTNA's voting procedures.

3. To the extent CeRTNA at a later date files a notice of termination pursuant to Government Code sections 20570 or 20571, or dissolves or ceases operation, any apportionment of retirement obligations required by California Government Code section 6508.2 attributable to the COUNTY will be in the amount described in 1.a. above and be considered fully satisfied. CeRTNA represents and warrants that in no event will CeRTNA or its member agencies attempt to attribute a higher amount of retirement obligation to the COUNTY, than that expressly agreed to herein.

4. The PARTIES hereby fully and permanently release and forever discharge each other and their current and former members, employees, representatives, officers, officials, agents and departments from any and all claims, demands, causes of action, rights, damages, costs, and liabilities of any nature whatsoever, whether now known or unknown, latent or patent, arising now or in the future, suspected or claimed, whether anticipatory or real, which they ever had, now have, or claim to have had against the other Party arising out of or related in any way to the subject matter of the COUNTY's membership in CeRTNA.

5. Each Party fully understands and expressly waives their rights or benefits under California Civil Code § 1542, which provides:

CALIFORNIA CIVIL CODE SECTION 1542 RELEASE

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In addition, each party agrees to waive all rights arising out of any law similar to California Civil Code section 1542 whether it is a local, state or federal law.

6. The PARTIES agree that this AGREEMENT relates to a compromise and settlement of the various claims between the PARTIES.

7. The parties represent and warrant that no portion of the liabilities discussed herein have been assigned or transferred to any other person, entity, firm or corporation not a party to this AGREEMENT, in any manner, including by way of subrogation of operation of law or otherwise.

8. The PARTIES agree that each side will bear their own attorney's fees and costs.

9. The PARTIES agree that this AGREEMENT shall be deemed breached and a cause of action accrued thereon immediately upon the commencement by any Party of any action or proceeding contrary to the terms of this AGREEMENT. In any such action

or proceeding this AGREEMENT may be pleaded as a defense, or may be asserted by way of counter-claim or cross-complaint.

10. The PARTIES fully understand and declare that if the facts under which this AGREEMENT is executed are found hereafter to be different from the facts now believed by them to be true they assume the risk of such possible differences in facts and hereby agree that this AGREEMENT shall be, and will remain, effective, notwithstanding such differences in facts.

11. The PARTIES further agree that this AGREEMENT shall be binding upon the PARTIES, their members, employees, agents, heirs, representatives, successors, assigns, officers, officials, agents and departments. Furthermore, the benefits contained in this AGREEMENT shall inure to the benefit of the PARTIES hereto, their members, employees, agents, heirs, representatives, successors, assigns, officers, officials, agents and departments.

12. The PARTIES certify they have not received any representations, promises or inducement from any of the PARTIES or from their representatives other than those expressed in this AGREEMENT. The PARTIES further certify that they are each represented by counsel or have had the opportunity to obtain counsel if so desired. The PARTIES are entering into this AGREEMENT in reliance upon their knowledge and understanding of the facts, the legal implications thereof, and the liability therefore as per the advice and legal counsel of their attorneys, or with the knowing waiver of the right to obtain such advice and counsel. The PARTIES understand and agree that this AGREEMENT is intended to be and is the complete and entire agreement of the PARTIES with respect to all matters contained herein and the PARTIES hereby affirm their understanding of the terms of this AGREEMENT. The PARTIES agree that this AGREEMENT is a binding contract and not merely a recital. The PARTIES further understand and agree that this AGREEMENT may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except in writing duly executed by all PARTIES or their authorized representatives.

13. This AGREEMENT shall be governed by and construed under and in accordance with the laws of the State of California and venue shall be the superior court in the County of San Bernardino, or the federal district court in the County of Riverside.

14. This AGREEMENT may be signed in counterparts. Photocopied, PDF, or facsimile signatures shall be treated as originals.

IN WITNESS WHEREOF, the PARTIES sign this AGREEMENT on the respective dates indicated.

DATED: _____

CeRTNA, Chairman of the Board of Directors

DATED: _____

Chairman Curt Hagman, County of San Bernardino

APPROVED AS TO FORM AND CONTENT

DATED: _____

Churchwell White, LLP

By: _____

Nubia Goldstein, Esq.
Attorneys for CeRTNA

DATED: _____

Michelle D. Blakemore
COUNTY COUNSEL

By: _____
Kristina M. Robb
Supervising Deputy County Counsel
Attorneys for the County of San Bernardino