



Agenda Submittal

Agenda #: 10 **Status:** Consent Calendar
Type: Miscellaneous **Department:** Assessor/Recorder
File #: 17-238 **Contact:** Marc Tonnesen, 784 6203
Agenda date: 4/11/2017 **Final action:** 4/11/2017
Title: Authorize the Assessor/Recorder to execute a Joint Powers Agreement with the California Electronic Recording Network Authority (CERTNA), a California Joint Powers Authority; and Delegate authority to the Assessor-Recorder to conduct negotiations, executions and submissions of documents which may be necessary for the participation of Solano County in CERTNA Electronic Delivery System
Governing body: Board of Supervisors
District: All
Attachments: 1. A - Resolution 2006-220, 2. B - 2016 MOU, 3. C1 - CERTNA JPA, 4. C2 - JPA Addendum - Solano, 5. D - CERTNA Resolution 2016-001, 6. E - CERTNA ERDS MOU, 7. Executed JPA Addendum - Solano, 8. Minute Order

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|----------|--------|
| 4/11/2017 | 1 | Board of Supervisors | Approved | |

Published Notice Required? Yes ☐ No ☒
Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board authorize the Assessor/Recorder to execute a Joint Powers Agreement with the California Electronic Recording Network Authority (CERTNA), a California Joint Powers Authority; and Delegate authority to the Assessor-Recorder to conduct negotiations, executions and submissions of documents which may be necessary for the participation of Solano County in CERTNA Electronic Delivery System (ERDS).

SUMMARY:

In 2006, the Board of Supervisors adopted Resolution 2006-220 which approved the County participation in the Electronic Recording Delivery Act of 2004 (ERDA), and authorized the Assessor/Recorder to execute a Memorandum of Understanding with the State Department of Justice (DOJ) in accordance with the ERDA, and approved the Assessor/Recorder to issue payments to the DOJ for the County's allocated share of the direct cost of program oversight.

CERTNA is a California Joint Powers Authority (JPA) that was created for the purpose of the design, development, implementation and on-going operation and maintenance of an ERDA-compliant Electronic Recording Delivery System (ERDS). The ERDS is used by multiple California counties to facilitate secure electronic recording. It is the Department's recommendation to execute a joint powers agreement (Agreement) with CERTNA to take full advantage of their services for the implementation and maintenance of an ERDS.

FINANCIAL IMPACT:

The annual cost to participate in CERTNA as a member of its Board of Directors is based on a per electronic

recorded document cost. This cost is based on a cost share with other CERTNA participating counties and is subject to change as more counties implement ERDS. Per Government Code section 27397 a county may impose a fee in an amount up to and including one dollar (\$1) for each instrument that is recorded by the county. For the Department's purpose, the fee collection will be contingent upon the California Attorney General's (AG) certification of the ERDS. The Recorder Special Revenue Fund may be utilized as determined by the Department to fund the cost associated prior to the certification from AG.

DISCUSSION:

The Assessor/Recorder seeks to implement an ERDS which will enable the Assessor/Recorder to adapt its current manual, paper-based system of recording to accept electronic submissions, greatly improving efficiency, effectiveness, and service delivery to the public. The Electronic Recording Delivery Act (ERDA) of 2004 (Assembly Bill 578, adding Government Code §§ 27390-27399, effective September 21, 2004) authorized a County Recorder, upon approval by resolution of the Board of Supervisors, to establish an ERDS for recording of specified digitized and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the DOJ. The Board of Supervisors approved the County for ERDS with the adoption of Resolution 2006-220 (Attachment A).

Utilizing e-recording technology eliminates time-consuming steps in the recording process, reducing repetitive motion by staff, allowing documents to be recorded and returned to submitters within a shorter timeframe, and decreasing the amount of paper generated. The process would allow an authorized submitter to send the image of a document and related information to the Assessor/Recorder's Office electronically, through a secured portal. Assessor/Recorder staff would receive and record the document and transmit the recorded information back to the submitter electronically through the same secured portal. Both the submitter and Assessor/Recorder's Office would save time previously lost while the documents are in transit, and repetitive motion tasks performed by Recorder staff, such as mail opening and extracting, page counting and scanning.

Under the terms of the ERDA, both the County and the DOJ must perform specific statutory duties before the County puts its ERDS into operation. The regulations require an extensive amount of oversight by the DOJ to obtain system certification and ensure ongoing compliance.

There are currently two e-recording systems certified for use by the DOJ: CERTNA and the Statewide Electronic Courier Universal Recording Environment (SECURE). CERTNA is a California JPA organization created to design, develop, implement and maintain the on-going operation of an ERDA-compliant ERDS. The system is used by multiple California counties to facilitate secure electronic recording. Counties have the option of joining the JPA as a full member with voting rights, sitting on the CERTNA Board of Directors, or as a Client County, which is a participant, but not a voting member. SECURE's ERDA-compliant ERDS, is owned and operated by four Southern California counties: Los Angeles, Orange, Riverside and San Diego. They allow counties to enter as a Partner County, with services on par with CERTNA's Client County participation. While both CERTNA and SECURE provide services with a yearly cost based on the number of documents recorded, SECURE also requires an initial fee of \$100,000.

Solano County is proposing to utilize CERTNA, as opposed to SECURE, due to the existence of a Board of Directors, no initial start-up fees, the successful implementation of CERTNA systems by neighboring counties, and the fact that no further integration with the current recording system is needed. On December 21, 2016 the Assessor/Recorder entered into a MOU (Attachment B) with CERTNA for usage of their Government to Government (G2G) e-recording portal, which allows other governmental agencies, such as the Board of Equalization and Franchise Tax Board, to electronically record with Solano County. The G2G system has just went live on March 29, 2017. The Solano County recording system interface necessary for the implementation of the proposed ERDS system is the same interface used for the implemented G2G system, resulting in no additional costs for additional interfaces. The expansion of services to include the CERTNA ERDS module for the other recording entities will be achieved with minimal effort on the part of the

Recorder's Office. Seventeen counties currently have operational ERDS utilizing the CERTNA portal, with two additional counties in process. Currently, 22 counties, including Solano, are utilizing CERTNA's G2G portal.

The Assessor/Recorder would join the JPA (Attachments C1 and C2) with CERTNA, as opposed to being a Client County, given the option of Director Level Benefits. As part of the CERTNA Board of Directors, the Assessor/Recorder will help guide and develop budgets, own the software source code, have unlimited technical support for the electronic recording software, and unlimited access to system training. By joining the JPA, the Assessor/Recorder will pay a per electronic recording cost as opposed to a flat yearly rate of \$25,000. As more counties participate in the CERTNA ERDS, most likely the electronic recording cost will decrease.

The CERTNA system uses Property Records Industry Association (PRIA) based "xml" (Extensible Markup Language, for encoding documents) standards and security, and is compliant with DOJ security requirements. Any individual accessing the CERTNA system, via the Assessor/Recorder's Office or otherwise, must obtain authorization from DOJ which includes background clearance and the use of two-factor security authentication. Should the Board approve establishment of the ERDS system, a DOJ audit will be performed prior to its launch and biennial audits will be required for continued use. A DOJ audit is required by ERDA, and verifies security and system compliance.

Authorized submitters are defined as title insurance companies, institutional lenders and underwritten title companies as specified in the ERDA. The Assessor/Recorder, through CERTNA, as defined in CERTNA Resolution No. 2016-001 (Attachment D), is required to execute an MOU (Attachment E) with each submitter and agent intending to electronically submit authorized electronic recordings to the Recorder's Office. The estimated launch date for electronic recording is by December 2017.

Prior to enacting ERDS, the Department will request the Board to approve a one dollar (\$1) fee and collection thereof for recording the first page of every real estate instrument, paper, or notice required or permitted by law to be recorded to be used solely for the implementation and ongoing operation of an ERDS as provided in the ERDA. This fee is expressly authorized by Government Code section 27397. All collection and cost of operation will be accounted in a separate budget unit in the Recorder's Special Revenue Fund.

Solano County recorded 135,404 documents in 2016. For FY 2017/18, the anticipated annual cost of participation in CERTNA will be \$43,000. Additionally, the DOJ requires all counties participating in the ERDA to pay a share of the DOJ costs of oversight. The estimated DOJ cost for the current budget year is less than \$8,000, which is included in the FY2017/18 recommended budget. Other costs, such as equipment/software maintenance, training and operation of the system, will be paid for by the fees collected for the program.

ALTERNATIVES:

The Board could choose not to authorize the department to execute a Joint Powers Agreement with the CERTNA. This is not recommended as this partnership will allow the department to take full advantage of their services for the implementation and maintenance of the ERDS in a cost effective manner.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the CERTNA JPA and MOU and approved them as to form.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION