

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, dated February 6, 2014 is between the Gila County Recorder's Office with principal offices located at 1400 E. Ash Street Globe, AZ 85501 ("**COUNTY**"), and, **Data Services, Inc.** with offices at 6424 E Tanque Verde, Suite C-1, Tucson, AZ 85715 ("**DATA SERVICES, INC**").

Gila County desires to offer the recording of real property documents by electronic means providing for the receiving and transmitting of documents electronically as an alternative means to conventional paper based documents and to assure that transactions are legally valid and enforceable as a result of the use of available electronic technologies to the mutual benefit of the **COUNTY** and the parties of the recording transactions.

For purposes of this Memorandum of Understanding, **Electronic Recording** is defined to be the electronically based submitting of documents from **DATA SERVICES, INC** to **COUNTY** and electronically based receipt of confirmation of recording from **COUNTY** to **DATA SERVICES, INC**.

All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Memorandum of Understanding outlines the procedures and rules for the trusted relationship between the parties involved in Electronic Recording in order to facilitate a safe and secure Electronic Recording relationship. Participation in the Electronic Recording program is voluntary.

DATA SERVICES, INC officials and the **COUNTY** Recorder of Deeds recognize the need to ensure that only original documents holding signatures that are properly notarized are submitted for electronic recording.

The **COUNTY** performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents.

DATA SERVICES, INC acknowledges that Electronic Recording permits its submitters to prepare, sign, and transmit in electronic format documents and business records, and that the documents or records shall be considered as the "original" record of the transaction in substitution for, and with the same intended effect as, paper documents.

By use of electronic or digital certificates to sign documents, **DATA SERVICES, INC** and its submitters will to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

The electronic recording data, including Book and Page numbers or other unique identification number, where appropriate, may be returned to the submitting organization.

Neither the **COUNTY** nor **DATA SERVICES, INC** shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any unintentional delay, omission or error in the Electronic Recording transmission or receipt.

DATA SERVICES, INC, and the **DATA SERVICES, INC** Submitter Agreement, requires all Submitters using the **DATA SERVICES, INC** system to contractually attest to the accuracy and completeness of the electronic records and to acknowledge responsibility for the content and legal sufficiency of the documents submitted to all Counties and Recording Jurisdictions through the **DATA SERVICES, INC** SOFTWARE PRODUCT (Electronic Recording System).

Should a dispute or legal action arise concerning any aspect of an electronic transaction, the **COUNTY** will be held harmless and not liable for any damages or legal fees.

Neither party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of God or other cause beyond the party's reasonable control including, without limitation, any mechanical, electronic or communications failure which prevents the parties from transmitting or receiving the electronic recording transactions.

There will be no added fees or costs of any kind charged by the **COUNTY** for Electronic Recording although **DATA SERVICES, INC** will be required to meet **COUNTY** requirements in order to record electronically.

DATA SERVICES, INC is responsible for the costs of the system or services provided by a third party that enables **DATA SERVICES, INC** to meet the Electronic Recording Program requirements.

COUNTY Responsibilities:

COUNTY shall attempt to protect the integrity of the Recordation process through ongoing monitoring of documents received and recorded through Electronic Recording means.

COUNTY shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. **COUNTY**, however, shall be held harmless and not liable for any damages resulting from software or equipment failure.

COUNTY shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual paper process.

DATA SERVICES, INC Responsibilities:

DATA SERVICES, INC shall work to insure that all security measures and credentials implemented are protected from unauthorized access. **DATA SERVICES, INC** assumes all responsibility for documents submitted through unique credentials provided to **DATA SERVICES, INC** for the purposes of engaging in Electronic Recording.

DATA SERVICES, INC shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission for errors, omissions, and other deformities

that would impact the validity of the document. This diligence includes adherence to **COUNTY** indexing standards.

DATA SERVICES, INC acknowledges that Electronic Recording permits its submitters to prepare, sign and transmit in electronic formats documents and **COUNTY** approved attachments, and the document or attachments shall be considered as the "original" record of the transaction in substitution for, and with the same intended effect as, paper documents. By use of electronic or digital certificates to sign documents, **DATA SERVICES, INC** and its submitters will be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

DATA SERVICES, INC must maintain an electronic audit trail of all activity.

DATA SERVICES, INC is responsible for supporting any technical issues associated with Electronic Recording through their submitting software program. **DATA SERVICES, INC** is solely responsible for any and all costs of the system or services that enable **DATA SERVICES, INC** to meet the Electronic Recording Program requirements.

General Understanding

COUNTY will not incur any liability for the information electronically transmitted by **DATA SERVICES, INC** to **COUNTY**.

COUNTY will not incur any liability for any breach of security, fraud or deceit as a result of Electronic Recording.

Neither the **COUNTY** nor **DATA SERVICES, INC**, nor any Electronic Recording Provider shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any unintentional delay, omission or error in the Electronic Recording transmission or receipt.

The Electronic Recording Provider, **COUNTY**, and **DATA SERVICES, INC** will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either Negotiation or mediation prior to initiating litigation.

The **COUNTY** and **DATA SERVICES, INC** acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, all parties agree to meet to discuss changes and additions to this Memorandum of Understanding.

ENTIRE AGREEMENT. Except as expressly provided otherwise herein, this Agreement represents the entire agreement between the parties. Attachment C, by mention made a binding part of this agreement.

TERMINATION. The term of this MOU shall be for one (1) year ("Initial Term"). After the Initial Term, Register of Deeds/Clerk/County Recorder and Data Services, Inc. agree to automatically renew with the same terms and conditions for successive one (1) year terms. Either party may terminate this Agreement without cause with 60 days written notice to the other party. User remains responsible for payment of fees for the filing and recordation of documents prior to the effective date of termination.

NO WARRANTIES/RELEASE OF LIABILITY. Absent gross Negligence or willful misconduct, **DATA SERVICES, INC** agrees to release the **COUNTY** from any liability in connection with the electronic filing and recordation of documents under this Agreement. Parties to the electronic recording transactions understand that there are no warranties, express or implied, in connection with such transactions.

ATTACHMENTS

Attachment A defines the technical specifications including format, models of recording supported, and transmission protocols of the electronic records required by **COUNTY. DATA SERVICES, INC** agrees to provide the transmission to the **COUNTY** following the specifications outlined. **DATA SERVICES, INC** understands that the specifications may change from time to time. In the event changes to the specification are required, the **COUNTY** will provide a written notice to the **DATA SERVICES, INC** within a reasonable timeframe.

Agreed and Accepted:

By:  (DATA SERVICES, INC)
Martin Thomas, President

Date: 21 Feb. 2014

Gila County, AZ

By:  (COUNTY)

Name: Don E. McDaniel, Jr.

Title: County Manager

Date: 2/26/14

Attachment A

Technical Specifications

Electronic Recording is defined based on the level of automation and structure of the transaction. The three levels of automation are as follows:

Model 1 Submitting organizations transmit scanned image copies of ink signed documents to the county. The county completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Model 2 Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to the county. The county performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned electronically to the submitting organization along with the electronic recording data.

Model 3 Submitting organizations transmit documents which have been created, signed and notarized electronically along with the electronic indexing information. The county performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents.

1) Format of the transmitted File:

PRIA file format standard will be used. Images will be in single page Group IV TIFF format

2) Communications Protocol and Options:

TCP/IP, HTTP and HTTPS

3) Security Framework:

Encryption will be 128bit file and image encryption. SSL and user login/password will be employed.

4) Returned File Format:

PRIA file format standard will be used. Images will be in single page Group IV TIFF format.

5) Models (or Levels) of Recording Supported:

Models 1, 2, and 3 are supported.

6) Electronic Signatures and Use of Digital Certificates:

The use of Electronic or Digital signatures, notary seals, and notary signatures are supported but are not required. **DATA SERVICES, INC** must work with the **COUNTY** to accommodate their use. Digitized signatures, notary signatures, and notary seals are immediately acceptable.

7) Indexing Requirement and Imaging Standards:

Will be determined by **DATA SERVICES, INC** and the **COUNTY** during the implementation process.

8) Acceptance/Rejection of Documents:

Submitted documents that are accepted for recording will be provided to **DATA SERVICES, INC** in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to Data Services, Inc in electronic format after recordation is complete. This confirmation will include the document image and **COUNTY** indexing data. **COUNTY** reserves the right to make changes to the index at a later date.

Submitted documents that are rejected by **COUNTY** will be returned to **DATA SERVICES, INC** in electronic format after rejection, along with a description of the reason(s) for rejection. These documents will be electronically returned to the originating submitter for correction and resubmission.

Attachment B

Contact Information:

Gila County:

[Name of Primary Contact]

[Title]

[Phone]

[Fax]

[e-mail]

[add secondary contact info if helpful]

Data Services, Inc:

John McGinnis

6424 E Tanque Verde, Ste C-1

Tucson, AZ 85715

520-618-7671

ATTACHMENT "C"

Gila County Contractor Standard Terms and Conditions Addendum

A. Addendum Applicability

Contractor and Gila County agree that the terms and conditions of this Addendum shall apply to and govern the contractual relationship between Contractor and Gila County and shall supplement any other contract or agreement entered into between the parties. In the event that the terms and conditions in this Addendum conflict with any provision of any other agreement entered into between the Contractor and Gila County (including a superiority provision similar to this provision), the terms and conditions of this Addendum shall control the contractual relationship between the parties and shall supersede any conflicting provisions found in any other contract or agreement. Contractor understands that acceptance of the terms and conditions contained in this Addendum is a condition precedent to entering into a contractual relationship with Gila County.

B. Contract Defined

As used in this Addendum, the term "Contract" shall refer to any written agreement between Gila County and a person, organization, corporation, company or other entity that provides supplies or services to Gila County regardless of the title or other name applied to that written agreement. The term includes by this reference all the terms and conditions of this Addendum.

C. Contractor Defined

As used in this Addendum, the term "Contractor" shall refer to a person, provider, organization, corporation, company or other entity providing supplies or services to Gila County pursuant to a written agreement regardless of the title or other name applied to "Contractor" in that written agreement.

D. Relationship to Parties

Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

E. Non-Appropriations Clause

Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

F. Hold Harmless/Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee

shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

G. Entire Contract Clause

The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral provision in conflict with this Contract shall have any force or effect.

H. Non-Waiver of Enforceability

Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

I. Governing Law

Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

J. Cancellation

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

K. Legal Arizona Workers Act Compliance

Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor.

DATA SERVICES, INC.:


Contractor

21 Feb 2014
~~24 Feb~~
Date