

**LEGISLATIVE COORDINATING COMMISSION
JOINT POWERS AGREEMENT**

This joint powers agreement (“Agreement”) is between the State of Minnesota, (“State”) acting through its Legislative Coordinating Commission on behalf of the Electronic Real Estate Recording Task Force (“Task Force”) and (county) (“County”).

Recitals

1. Minnesota Session laws 2000, chapter 391 established the Electronic Real Estate Recording Task Force. Other legislation involving the Task Force is Minnesota Session Laws, 2001, First Special Session, Chapter 10, article 2, sections 98 to 101; and Minnesota Session Laws 2002, chapter 365. Minnesota Session laws 2001, First Special Session, chapter 10, Article 2, Section 99 provides for the Legislative Coordinating Commission to provide administrative services for the Task Force.
2. The Task Force, through the Legislative Coordinating Commission, desires to contract with County _____ to test and evaluate various issues relating to electronically processing documents for certain real estate transactions using standards adopted by the Task Force.
3. County represents that it is duly qualified and agrees to perform all services described in this Agreement.

AGREEMENT

1. **Term of Agreement.**
 - 1.1 **Effective date: October 1, 2002**, or the date the Task Force obtains all signatures required, whichever is later. County must not begin work under this Agreement until this Agreement is fully executed and County has been notified by the Task Force’s Authorized Representative to begin the work.
 - 1.2 **Expiration date.** June 30, 2004, or until all obligations, including any additional tasks pursuant to paragraph 2, have been satisfactorily fulfilled, whichever occurs first.
 - 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this Agreement: 7. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12 Publicity and Endorsement; 13 Governing Law, Jurisdiction, and Venue; and 14 Data Disclosure.

County’s Duties

2. **County’s Duties.**
 - 2.1 **Duties.** The purpose of this Agreement is to support and facilitate a pilot program (“Pilot Program”) in which County will test the feasibility of employing electronic means to file certain types of real estate documents. Under this Pilot Program, County will implement, test and evaluate standards adopted by the Task Force for the electronic filing of real estate documents. County will have memoranda of understanding with title companies, lenders and other trusted submitters that will participate in the Pilot Program. County will report to and work under the direction of the Task Force’s Project Coordinator.

More specifically, the County will:

- A. Identify a Pilot Project program manager (“Manager”). Manager, who will be the county recorder or a designated County employee, will:
 - Establish a County project team that includes all appropriate internal processing divisions, information technology staff and appropriate vendors.

- Provide bi-weekly status reports to the Task Force Project Coordinator and to the Task Force's pilot maintenance consultants.

B. Identify and enter into a written memorandum of understanding ("MOA") with one or more Trusted Submitters. Trusted submitters include, but are not limited to, participating lenders, and title companies. The MOA must be substantially in accordance with the sample attached to this Agreement as Appendix D, and must be executed and submitted to the Task Force pursuant to paragraph 2.2 D before any documents are electronically submitted for filing to the County Recorder.

C. i) Provide to the Task Force a description of its internal office processes and the relationships with any outside vendors involved, or to be involved, in recording real estate transactions. The description must include:

- A plan for integration of the offices of the county recorder, auditor, treasurer or other county units involved in the real estate document filing process current internal electronic processing equipment with the electronic filing system
- A plan for integration of the electronic processing system provided by a vendor with the electronic filing system.
- A plan for integrating all county real estate filing offices' technology systems.

ii) Any agreement entered into by County for Pilot Projects are subject to the provisions of this Agreement and may not be inconsistent with this Agreement. Vendors are to be treated as subcontractors for purposes of enforcing the provisions of this Agreement.

D. County agrees to be responsible for insuring that the Pilot Project is conducted in accordance with Standards Version ____, adopted by the Task Force on _____ ____, 2002, and further agrees to take reasonable steps to insure that Trusted Submitters and vendors conduct their activities in accordance with Standards Version ____.

2.2 County deliverables and responsibilities.

A. County Pilot Project team is responsible for understanding:

- Electronic real estate recording standards and process needs
- Electronic real estate recording technology.

B. County has developed and submitted a Pilot County Project Plan to the Task Force attached to this Agreement as Attachment E for review and approval as part of this Agreement, that includes:

- A brief description of the Pilot Project and what will be accomplished.
- A statement indicating the County's commitment to working with the Task Force to implement and evaluate the electronic processing of real estate documents.
- An estimate of the volume of real estate documents that will be processed electronically.
- A timeline indicating key milestones in developing a system to accept certain types of real estate documents electronically, and then processing those documents.
- A budget describing the use of the funds provided under the Agreement, including a timeline for payment of the funds.
- An indication of intent to participate in Phase II of the Pilot Project, if agreeable to the parties to this Agreement.

C. County's Manager must:

- Manage the Pilot Project so that it meets established timelines, and meet requirements for all deliverables.
- Coordinate County's work and communication between different county process groups.

- Coordinate communication between vendors, other county process groups, and Task Force consultants regarding County's needs, issues and concerns.
- Meet at least quarterly with the Task Force Project Coordinator to provide an update on the status of the Pilot Project.

D. County must submit to the Task Force Project Coordinator all MOU with Trusted Submitters as described in 2.1 B as soon as MOU are executed.

3. General Provisions.

3.1 Testing Parameters. The Task Force, in order to provide for valid testing of the standards, may unilaterally amend the Project Plan to provide for reasonable additional testing conditions. In order to provide for diversity in testing and for a valid test of the standards, County 'back-office' software must be capable of receiving and electronically processing real estate documents submitted using any software complying with the standards tested in that phase of the Pilot Project.

3.2 Standards Version. The standards to be tested in any particular phase of this Pilot Project shall be approved by the Task Force, and once approved shall not be changed during the data-collection portion of any pilot phase except by mutual agreement, but may be changed to a newer approved version of the standards at the conclusion of that phase or prior to the beginning of any subsequent phase.

3.3 Continued pilot operations. County may continue to operate as a Pilot Project pursuant to this Agreement for the duration of the Agreement, even if the data-collection portion of the Pilot Project has concluded.

3.4 Vendor Agreements. Any agreements with vendors must be approved by the Executive Committee of the Task Force prior to taking effect. This approval will not be unreasonably withheld or delayed.

4. Consideration and Payment.

4.1 Consideration. The Task Force will pay for services provided by County under this Agreement as follows:

A. \$_____ to be paid upon execution of this Agreement.

B. \$_____ to be paid upon acceptance by the Task Force's Authorized Representative of the County's Pilot Project Plan .

C. Remaining funds will be paid in accordance with the budget provided in the County's Pilot Project Plan as and to the extent approved by the Task Force.

4.2 Expenses. No reimbursement for travel and subsistence expenses will be paid to County under this Agreement.

4.3 Total Obligation. The total obligation of the Task Force for all compensation and reimbursements to County under this Agreement will not exceed the total amount set forth in section 4.1.

4.4. Payment.

A. Invoices. The Task Force will promptly approve requests for payment after County presents an itemized invoice for the services actually performed and the Task Force's Authorized Representative accepts the invoiced services. Invoices must be submitted in a timely manner for milestones completed. Each invoice shall indicate the specific deliverable and the amount being charged for that portion. In the aggregate, no charges for specific deliverables will be paid which exceed 90% of the agreed-upon amount in paragraph 4.1 before the acceptance of the final product of this Agreement under paragraph 4.4 (B).

B. Retainage. Under Minnesota Statutes Section 3.225, subdivision 6, no more than 90% of the total amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by the Task Force's Authorized Representative. The balance due will be paid when the Task Force's authorized representative determines that County has satisfactorily fulfilled all the terms of this Agreement.

5. Conditions of Payment. All services provided by the County under this Agreement must be performed to the Task Force's satisfaction, as determined at the sole discretion of the Task Force's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. County will not receive payment for work found by the Task Force to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative. Task Force's Authorized Representative is Mary Kiffmeyer, Chair of the ERERTF or her successor, and has the responsibility to oversee the monitoring of County's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, the Task Force's Authorized Representative will certify acceptance on each invoice submitted for payment.

County's Authorized Representative is _____. If County's Authorized Representative changes at any time during this Agreement, County must immediately notify the Task Force.

7. Assignment, Amendments, Waiver, Contract Complete, and Disaster Recovery.

7.1 Assignment. The County may neither assign nor transfer any rights or obligations under this Agreement.

7.2 Amendments. Any amendment to this Agreement other than that described in Attachment A must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

7.3 Waiver. If the Task Force fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

7.4 Agreement Complete. This Agreement and attached Attachments A through D contain all agreements between the Task Force and County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

8. Liability. County must indemnify, save, and hold the Task Force, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the Task Force, arising from the performance of this Agreement by County or County's agents or employees. This clause will not be construed to bar any legal remedies County may have for the Task Force's failure to fulfill its obligations under this Agreement.

9. State Audits. Under Minn. Stat. § 16C.05, subd. 5, The County's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the Task Force and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

10. Government Data Practices and Intellectual Property.

10.1. Government Data Practices. County and Task Force will comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the Task Force under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by County under this Agreement. The civil remedies of Minn. Stat. §13.08 apply to the release of the data referred to in this clause by either County or the Task Force.

10.2. Intellectual Property Rights

(A) Intellectual Property Rights. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by County, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Agreement. Works includes “Documents.” Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by County, its employees, agents, or subcontractors, in the performance of this Agreement. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by County upon completion or cancellation of this Agreement. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The County assigns all right, title, and interest it may have in the Works and the Documents to the State. The County must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

(B) Obligations

1. *Notification.* Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by County, including its employees and subcontractors, in the performance of this Agreement, County will immediately give the Task Force’s Authorized Representative written notice, and will promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. *Representation.* County must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither County nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. County represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, County will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at County’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. County will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in County’s or the State’s opinion is likely to arise, County must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate

to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Workers' Compensation.

The County certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The County's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the Task Force's obligation or responsibility.

12. Publicity and Endorsement.

12.1 Publicity. Any publicity regarding the subject matter of this Agreement must identify the Task Force as the sponsoring agency and must not be released without prior written approval from the Task Force's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for County individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

12.2 Endorsement. County and its vendors must not claim that the Task Force endorses its products or services.

13. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14. Termination.

14.1 Termination by the Task Force. The Task Force may cancel this Agreement at any time, with or without cause, upon 30 days' written notice to County. Upon termination, County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed. *County may cancel this Agreement at any time, with or without cause, upon 30 days' written notice to Task Force. Upon termination, Task Force will be entitled to any funds paid to County in excess of the pro rata payments described above.* [Language in italics not yet reviewed]

14.2 Termination for Insufficient Funding. The Task Force may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to County. The Task Force is not obligated to pay for any services that are provided after notice and effective date of termination. However, County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The Task Force will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The Task Force must provide County notice of the lack of funding within a reasonable time of the Task Force's receiving that notice.

15. Data Disclosure.

Under Minn. Stat. § 270.66, and other applicable law, County consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided

to the Task Force, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring County to file state tax returns and pay delinquent state tax liabilities, if any.

16. Signatures:

ERERTF

By: _____
Mary Kiffmeyer

Chair, Electronic Real Estate
Recording Task Force

Date: _____

LCC

By: _____
Greg Hubinger

Director, Legislative Coordinating
Commission

Date: _____

By: _____
Senator Don Samuelson
Chair, Legislative Coordinating Commission

Date: _____

County

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Attachment A: Acceptance of Deliverables

The Task Force's Authorized Representative, in consultation with the Coordinator, will be the initial interpreter of this Contract and will judge the acceptability of the work hereunder.

Attachment B. Dispute Resolution

In the event of dispute between the Parties arising out of, or related to this Contract, but not related to acceptance of deliverables, (the "Dispute"), the Parties agree to utilize the procedures specified in this Attachment (the "Procedure") unless otherwise modified by agreement of the Parties at the time the dispute arises.

Dispute Resolution Procedure

Initiating Party: A party seeking to initiate the Procedure (the "Initiating Party") shall give written notice with supporting data to the other party within (5) five days of the occurrence of the event giving rise to the claim, dispute, or other matter, describing briefly the nature of the dispute and identifying an individual with authority to settle the dispute on its behalf.

Responding Party: The party receiving such notice (the "Responding Party") shall have five (5) days to provide the Initiating Party with a written response identifying an individual with authority to settle the Dispute on its behalf. (The individual so designated are the "Authorized Individuals").

Authorized Individuals: The Authorized Individuals shall make investigation as they deem appropriate and thereafter promptly (but in no event later than fifteen (15) days from the date of Initiating Party's notice shall commence discussion with each other concerning resolution of the Dispute.

Submission Date: If the Dispute has not been resolved within fifteen (15) days from commencement of discussions (such fifteenth day being the Submission Date) it shall be submitted to alternative dispute resolution ("ADR Process") in accordance with the following procedure.

Neutral: The parties shall have five (5) days from the Submission Date to agree upon a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral").

AAA Neutral: If no Neutral has been selected within such time, the parties agree to jointly request the American Arbitration Association to supply within five (5) days a list of potential neutrals with qualifications as specified by the parties in joint request.

Selection: Within five (5) days of receipt of the list, the parties shall independently rank the proposed candidates, shall simultaneously exchange rankings and shall select as the Neutral the individual receiving the highest combined ranking who is available to serve.

Place: In consultation with the Neutral the parties shall promptly designate a mutually convenient time and place for the ADR Process (and unless circumstances require otherwise, such time to be no later than ten (10) days after selection of the Neutral).

Information: In the event either of the parties has substantial need for information in the possession of the other party in order to prepare for the ADR Process, the parties shall attempt in good faith to agree on procedures for the expeditious exchange of information, with the help of the Neutral if required.

Summary: Five working days prior to the first scheduled session of ADR Process, each party shall deliver to the Neutral and to the other party a concise written summary of its view as to the facts, law and conclusion in connection with the matter in dispute.

Representation: In the ADR Process each party may be represented by their respective Authorized Individual and by counsel. In addition, each party may bring such additional persons as needed to respond to questions, contribute, inform and participate in the negotiations, the number of such additional persons to be agreed upon by the parties in advance, with assistance of the Neutral if necessary.

Format: The parties, in consultation with the Neutral, will agree upon a format for meetings, designed to assure that both the Neutral and the Authorized Individuals have opportunity to hear an oral presentation of each party's point of view and the matter in dispute, with or without assistance of counsel or others, but with assistance of the Neutral. To this end, the Neutral is authorized to conduct both joint meetings and separate private caucuses with parties. During the ADR Process, the Neutral will be free to divulge to the parties all information as to the other party.

Opinions: The Neutral, if no agreement has been reached between the parties, and not later than thirty (30) days after the first scheduled session of ADR Process, (i) shall provide his or her opinion to both parties on probable outcomes should the matter be litigated, and (ii) shall make one or more recommendations as to the terms of a possible settlement, upon any conditions imposed by the parties (including but not limited to, a minimum and maximum amount). The opinions and recommendations of the Neutral shall not be binding on the parties.

Process: The parties agree to participate in the ADR Process to its conclusion (as designated by the Neutral) and not to terminate negotiations concerning resolution of the matter in dispute until at least ten (10) days thereafter.

Claims: Unless requested by the Task Force to stop work, The County agrees to continue working to resolve the dispute during the ADR Process. The County shall raise any and all claims for additional compensation The County believes due and owing for such work during the ADR Process

Fees: The parties shall pay the fees of the Neutral equally. The Neutral shall be disqualified as a witness, consultant, expert or counsel for either party with respect to the matters in dispute and any related matters.

The ADR Process procedure is a compromise negotiation for purposes of applicable State and Federal rule of evidence. To the extent allowed by the Minnesota Data Practices Act, the entire process is confidential, and no stenographic, visual or audio record shall be made.

The rendering of a decision by the Task Force's Authorized Representative will be a condition precedent to The County's exercise of such rights and remedies as it may have under this Contract or at law in respect to any claim, dispute or other matter.

Attachment C: Errors or Omissions

1. The County will be responsible for the accuracy of the work and must within (30) thirty days of receipt of notice of any error, omission or negligent act make necessary revisions or corrections resulting from The County's errors, omissions, or negligent acts without additional compensation for a period of at least twelve (12) months after acceptance. Accuracy shall mean the work will be designed, developed and delivered according to Contract Specifications.
2. Acceptance of work by Task Force will not relieve The County of the responsibility for subsequent correction of any errors or omissions of any ambiguities.
3. The County must prepare any and all plans or data needed to correct errors and/or omissions without added compensation, even though the County may have already received final payment.
4. If errors, omissions and/or negligent acts are made by The County in any phase of the work, the correction of which may require additional work, The County will be promptly notified by Task Force and will be required to perform within (30) thirty days of such notification such additional work as may be necessary to correct these errors, omissions and/or negligent acts and without additional cost to Task Force.
5. If The County is aware of any errors, omissions and/or negligent acts made in any phase of the work, the corrections of which may require any additional work, The County must within thirty (30) days of such knowledge perform such additional work as may be necessary to correct these errors, omissions and/or negligent acts without additional cost to Task Force.
6. The County will be responsible for any damages incurred as a result of its errors, omissions, and/or negligent acts. Acceptance of the work by Task Force will not relieve The County of the responsibility for subsequent correction of any such errors, omissions and/or negligent acts, or of liability for loss or damages resulting therefrom.
7. The County must respond to Task Force's notice of any errors and/or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to The County. Notification will be by telephone, followed by Certified Mail.

Attachment D: Memorandum of Understanding with Trusted Submitters

Purpose: [County] and [Trusted submitter] are voluntarily participating in a pilot project (Project) initiated by the Electronic Real Estate Recording Task Force (ERER TF) to implement electronic recording of documents (E-DOCS) that meet ERER TF standards (“Standards”) and which are appropriate for the then-current phase of the Project and evaluate Standards governing E-DOCS. This statement is intended to generally describe the outlines of our joint commitment to participate in this Project and the conditions under which this participation is made and accepted.

County commits to:

- 1) Work cooperatively with [Trusted submitter] to enable the success of the Project.
- 2) Acquire and install the necessary hardware and software to electronically receive E-DOCS submitted by [Trusted submitter].
- 3) Develop any other agreements or understandings needed to process E-DOCS and submit these agreements or understandings to the ERER TF for approval, including agreements identifying the specific method of E-DOCS to be used.
- 4) Participate in the pilot project for the duration of Phase 1 and Phase 2 as indicated in the Task Force Project plan, and for any intervening time.
- 5) Implement for each phase of the Project the most current version of the Standards adopted prior to the beginning of that phase as well as the Project Plan as most recently approved by the Task Force.
- 6) Refrain from charging any extra fee for using or transmitting documents through the the electronic filing service.

Trusted submitter commits to:

- 1) Work cooperatively with [County] to ensure the success of the Project.
- 2) Acquire and install the necessary hardware and software to electronically create and submit E-DOCS that meet the Standards to [the County] and which are appropriate for the then-current phase of the Project.
- 3) Develop any other agreements or understandings needed to process these documents and submit these agreements or understandings to the ERER TF for approval, including agreements identifying the specific method of E-DOCS to be used..
- 4) Participate in the Project for the duration of Phase 1 and Phase 2 as indicated in the Task Force project plan, and for any intervening time.
- 5) Make an effort to submit E-DOCS, in lieu of paper documents, whenever feasible.
- 6) Submit E-DOCS for each phase of the Project that meet the most current Standards as well as the Project Plan as most recently approved by the Task Force.
- 7) Refrain from charging any extra fee for using or transmitting documents through the electronic filing service.

Either party may withdraw from this commitment at any time on written notice delivered to the other party. The only remedy for breach of this commitment by either party is for the other party to withdraw from this commitment.

Signed:

County

Date

Trusted submitter

Date

Attachment E: County Project Plan

[Attach County Project Plan Here]