

**STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

This contract is between the State of Minnesota, acting through its Legislative Coordinating Commission on behalf of the Electronic Real Estate Recording Task Force ("State") and Kinney and Lange P.A., 312 South Third Street, Minneapolis, MN 55415 ("Contractor").

Recitals

1. The State is in need of legal analysis services for the Electronic Real Estate Task Force (ERERTF) Project.
2. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the Task Force.

Contract

1 Term of Contract

- 1.1 Effective .** November 1, 2003, or the date the State obtains all required signatures, whichever is later.

The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

- 1.2 Expiration date. January 31, 2004,** or until all obligations have been satisfactorily fulfilled, whichever occurs first.

- 1.3 Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16, Data Disclosure.

2 Contractor's Duties

The Contractor, who is not a state employee, will provide a legal analysis of the impact of two patents on the development and implementation of electronic real estate recording standards, as provided in section 2.1 of the Request for Proposals.

3 Time

The Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence. Failure to meet negotiated timelines for ERERTF milestones and objectives may result in impositions and penalties pursuant to the contract upon notice from the ERERTF. The penalty for such failure to meet timelines is forfeiture of the retainage portion of this contract consisting of the final 10% of the payment under the contract, and an additional forfeiture of 10% of the contractual amount if there are at the time of the determination that this clause has not been met unpaid amounts of equal or excess amount. If payments have been made to Contractor such that less than this amount remains to be paid, then the Contractor must refund the difference between the amount yet unpaid and the amount of the forfeiture to the ERERTF.

4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Contractor under this contract as follows:

- (A) **Compensation.** The Contractor will be paid \$5,000..
- (B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this contract will not exceed \$0.
- (C) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor under this contract will not exceed \$5,000.

4.2. **Payment**

(A) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services Contractor will submit one invoice for all services performed upon completion of all duties required under the contract.

(B) **Retainage.** Under Minnesota Statutes Section 3.225, subdivision 6, no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.

5 **Conditions of Payment**

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

6 **Authorized Representative**

The State's Authorized Representative is Mary Kiffmeyer, Chair of the ERERTF or her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is David R. Fairbairn. If the Contractor's Authorized Representative changes at any time during this contract, the Contractor must immediately notify the State.

7 Assignment, Amendments, Waiver, and Contract Complete

7.1 **Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.

7.2 **Amendments.** Any amendment to this contract 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 contract, or their successors in office.

7.3 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

7.4 **Contract Complete.** This contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

8 Liability

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

9 State Audits

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

10 Government Data Practices and Intellectual Property

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

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

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 contract. 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 the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. 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 the Contractor, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this contract. 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 Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor 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 the Contractor, including its employees and subcontractors, in the performance of this contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. Representation. The Contractor 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 Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor 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, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’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. The Contractor 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 the Contractor’s or the State’s opinion is likely to arise, the Contractor 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 Affirmative Action

11.1 For contracts in excess of \$100,000.00 the Contractor certifies that it is in compliance with Minn. Stat. § 363A.36.

11.2 If the Contractor has had more than 40 full-time employees within the State of Minnesota on a single working day during the previous 12 months the Contractor must comply with the following Affirmative Action requirements for disabled workers:

(A) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) The Contractor will comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(C) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363.073, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(D) The Contractor will post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(E) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

12 Workers' Compensation

The Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor'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 State's obligation or responsibility.

13 Publicity and Endorsement

13.1 Publicity. Any publicity regarding the subject matter of this contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State'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 the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

13.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

14 Governing Law, Jurisdiction, and Venue

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

15 Termination

15.1 Termination by the State. The State may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15.2 Termination for Insufficient Funding. The State may immediately terminate this contract 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 the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

16 Data Disclosure

Under Minn. Stat. § 270.66, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, 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 the Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

1. ERERTF

By: _____

Title Chair, Electronic Real Estate Recording Task Force

Date: _____

2. LCC

By: _____

Title: Director, Legislative Coordinating Commission

Date: _____

By: _____

Title: Chair, Legislative Coordinating Commission

Date: _____

3. Contractor

By: _____

Title: David R. Fairbairn, President, Kinney and Lange, P.A.

Date: _____

Attachment A - Statement of Deliverables

A written opinion responding to the issues identified in the Request for Proposals.

Attachment B: Acceptance of Deliverables

The State's Authorized Representative will be the initial interpreter of this Contract and will judge the acceptability of the work hereunder.

Attachment C. 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 under attachment C, (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 State to stop work, the Contractor agrees to continue working to resolve the dispute during the ADR Process. Contractor shall raise any and all claims for additional compensation Contractor 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 State's Authorized Representative will be a condition precedent to Contractor'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 D: Errors or Omissions

1. Contractor 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 Contractor's errors, omissions, or negligent acts without additional compensation for a period of at least (12) months after acceptance. Accuracy shall mean the work will be designed, developed and delivered according to Contract Specifications.
2. Acceptance of work by State will not relieve Contractor of the responsibility for subsequent correction of any errors or omissions of any ambiguities.
3. Contractor must prepare any and all plans or data needed to correct errors and/or omissions without added compensation, even though contractor may have already received final payment.
4. If errors, omissions and/or negligent acts are made by Contractor in any phase of the work, the correction of which may require additional work, Contractor will be promptly notified by State 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 State.
5. If the Contractor 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, Contractor must within (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 State.
6. Contractor will be responsible for any damages incurred as a result of its errors, omissions, and/or negligent acts. Acceptance of the work by State will not relieve Contractor 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. Contractor must respond to State's notice of any errors and/or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the Contractor. Notification will be by telephone, followed by Certified Mail.

Attachment E: Exceptions to Terms and Conditions

A Contractor shall be presumed to be in agreement with the terms, conditions, and content of the RFP and standard contract (Appendix 9.1) unless the Contractor takes specific exception to one or more of the terms or conditions.

CONTRACTORS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A CONTRACTOR MATERIALLY DEVIATES FROM AN RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.

A materially deviation is an exception to a specification which (1) affords the Contractor taking the exception a competitive advantage over other Contractors; or (2) gives the State something significantly different than the State requested.

Instructions : Contractors must explicitly list all exceptions to RFP and State standard contract terms and conditions, if any. Reference the exact number of the State’s term and condition. If no exceptions exist, state “NONE” specifically. Exceptions must be taken to both the terms and conditions in the boilerplate contract developed specifically for this procurement and to the terms and conditions set forth in the RFP.

Contractor Name: Kinney and Lange, P.A.

Term(s) and Condition(s):

Number Explanation of Exception

Attachment F: Affidavit of Noncollusion

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the Business Analyst Services Request for Proposals dated November 26, 2001 has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Proposer's Firm Name: Kinney and Lange, P.A.

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

Attachment G: Contractor's Proposal

Attachment H: Original request for Proposal