

WINONA COUNTY
ENHANCED REMOTE ACCESS AGREEMENT

This agreement is entered into by and between the County of Winona, through its
Recorder's Office, 202 West 3rd Street, Winona MN 55987,
a body Corporate and politic existing under the laws of the State of Minnesota,
hereinafter referred to as "**County**," and

<i>(insert full name and mailing address)</i>

hereinafter referred to as the "**Subscriber**."

WITNESSETH:

WHEREAS, the County Recorder has created databases and electronic data compilations relating to certain real property records maintained by the County as a political subdivision of the State of Minnesota; and

WHEREAS, the County may charge a reasonable fee for providing enhanced access to data otherwise accessible; and

WHEREAS, the County has further developed software and systems to provide the information from these separate systems in a combined and enhanced interface which provides a substantial benefit to the Subscriber; and

WHEREAS, the Subscriber wishes to purchase "enhanced remote access" to the above mentioned databases and electronic data compilations made available to the Subscriber pursuant to the terms and conditions set forth in this Agreement below.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties set forth herein, it is hereby agreed that:

I. COUNTY DATA BASE ENHANCED REMOTE ACCESS

A. License

The County grants the Subscriber a nonexclusive, nontransferable, limited license to access certain real property databases and electronic data compilations through enhanced remote access during the term of this Agreement.

B. Ownership

The Data Base is the exclusive property of Winona County and the County reserves all rights of ownership, title and control to the Data Base under federal copyright law or other law relating to confidential and/or trade secret information. The parties agree that the development of the Data Base required the skilled efforts of professionals in its design and compilation and that the end product is the result of the original work of the County, its employees and agents. Pursuant to Minn. Stat. § 13.03, subd. 5 (2008), the Data Base is a trade secret of the County and may only be used as authorized herein.

C. Limitation of License

Neither the databases, electronic data compilations, nor any portion of either thereof, accessed through means of the enhanced remote access, may be used outside the scope of the Fair Use Provision of the United States Copyright Act, 17 U.S.C. § 107 and the Minnesota Data Practices Act, Minn. Stat. Ch. 13 unless authorized by the County's prior written permission. The County acknowledges that the Subscriber's "regular course of business" includes using the information provided by the County in the preparation of title searches, title work, title abstracts, and title insurance; all of which will be prepared and/or furnished for resale to the Subscriber's customers. The Subscriber acknowledges that the County's databases and electronic data compilations have commercial value. The Subscriber shall defend and indemnify the County against any claim arising out of the Subscriber's use of the license.

D. Rights and Data

Except for the license granted herein, all rights, title, and interest to all processes, formats, languages and media throughout the world, which record, demonstrate, and, or facilitate, the creation and utility of the County's databases and electronic data compilations, including all copyrights available thereto, are and shall continue to be the exclusive property of the County.

E. County Charges

Charges payable by the Subscriber for the enhanced remote access to the County's databases and electronic data compilations described in this Agreement are set forth in the County Fee Schedule and **Schedule A**. The County's charges for this non-entitlement service may be modified upon thirty (30) days' notice to the Subscriber in writing, by email or posted on-line.

F. Disclaimer of Warranties and Limitation of Liability

The County's goods and services provided pursuant to this Agreement are provided "as is," without warranty of any kind, express or implied, including, but not limited to, the warranties of performance, merchantability and fitness for a particular purpose. The index is not construed to be true and complete; rather it is a working copy subject to error, omission and future modification. The County does not warrant the correctness or validity of the database. Additionally, there are no warranties, guarantees or representations as to the suitability of the information for the Subscriber's purposes, or that use of the program or information will be without defect. (No consultations or advice is provided with records accessed.) The Subscriber's exclusive remedy and the County's entire liability hereunder, if any, for any claim(s) for damages relating to the County's databases and, or electronic data compilations, which are made against them, individually, or jointly, whether based in contract or negligence, shall be limited to the amount of the remote access charges paid by the Subscriber relative to the period of occurrence of the events which are the basis of the claim(s); provided, however, that the County shall have no liability whatsoever to the Subscriber for any claim(s) relating in any way to

(1) the Subscriber's inability or failure to perform legal, professional, or other research or related work or to perform such work properly or completely, even if assisted by the County; or

(2) any lost profits or other consequential, exemplary, incidental, indirect or special damages relating in whole or in part to the Subscriber's rights hereunder or use of, or inability to use, the County's databases and, or electronic data compilations, even if the County has been advised of the possibility of such damages. Further, the County shall have no liability whatsoever to the Subscriber for any claim(s) relating in any way to any database and, or electronic data compilation.

Because the Data Base is inherently complex and may not be completely free of errors, Subscriber is hereby advised to verify its work. In no event will the County be liable for direct, indirect, special, incidental or consequential damages arising out of the use of or inability to use the Data Base even if advised of the possibility of such damages.

Specifically, the County is not responsible for any costs including, but not limited to, those incurred as result of lost profits or revenue, loss of use of a computer program, loss of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for other similar costs.

G. Confidentiality

The Subscriber agrees not to disclose any information relating to the Subscriber's access code, password, or any other information relating to the County's computer security system. Any violation of this section by the Subscriber shall constitute a material breach of this Agreement. The Subscriber's obligation respecting confidentiality shall survive termination of this agreement. The Subscriber acknowledges and agrees that disclosure or use of the Data Base in breach of this Agreement could cause irreparable harm and significant injury to the County, which may be difficult to measure with certainty or to compensate through damages. Accordingly, Subscriber agrees that the County may seek and obtain against Subscriber and/or any other person or entity injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other equitable or legal remedies which may be available.

H. Access

The Subscriber will allow only employees of the Subscriber to access the enhanced remote access. Furthermore, the Subscriber shall be solely responsible for ensuring that Subscriber's employees are not security risks, and upon the County's request, the Subscriber will provide any information reasonably necessary for the County to evaluate network security issues relating to access to the County network services.

The County shall maintain the right to deny, postpone, or terminate the enhanced remote access at any time and without prior notice. Such termination of access will not constitute a material breach of this Agreement if the customer's enhanced remote access is reinstated within a reasonable period of time.

II. SOFTWARE AND EQUIPMENT FOR INTERNET ACCESS

Subscriber's Equipment

The Subscriber's enhanced remote access to the County's databases and electronic data compilations shall be facilitated via the Internet. The Subscriber is responsible for providing and maintaining all hardware, software, modem, telephone access, and all other equipment required to access the County's databases and data compilations through the enhanced remote access.

III. GENERAL PROVISIONS

A. Billing and Payment

The County will require Subscriber to pay for initial setup and the first two monthly charges when receiving a signed Agreement. The County shall then invoice Subscriber a month in advance for remote access to the county's databases. Billing cycles run from the first day to the last day of each month. Monthly subscription fees will not be divided or assessed for fractional portions of a month. If payment is not received, the County will lock down the Subscriber's "remote access" to the County's database starting the first day of the month not paid for. To reinstate access, Subscriber must pay another setup fee, current and following month's fees. If the level the Subscriber has chosen is insufficient during the month, the Subscriber may pay the difference in fees to increase to the next level. The following month, the Subscriber will remain at the higher level.

B. Taxes

Charges are exclusive of sales, use and other taxes, which are the responsibility of the Subscriber.

C. Responsibility of Subscriber

The Subscriber shall be responsible for all remote access to and use of the County's databases and data compilations by the Subscriber's personnel or by means of the Subscriber's equipment or passwords, whether or not the Subscriber has knowledge of or authorized such remote access and use.

D. Independent Contractor Status

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures or associates between the parties

hereto or as constituting (Subscriber) as the employee of the County for any purpose or in any manner whatsoever.

E. Limitation of Claims

Except for claims relating to charges of improper use of the County's databases and, or data compilations, no claim, regardless of form, which in any way arises out of this Agreement or the use of, or inability to use the County's databases and, or electronic data compilations, may be made nor action based upon such claim brought, to any party hereto more than one year after the basis for the claim becomes known to the party desiring to assert it.

F. Termination

This Agreement shall continue in force until terminated. This Agreement may be terminated at any time by the County, with or without cause. The Subscriber may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to the County and agrees to pay all fees accrued during the thirty (30) days.

G. Integrated Agreement

This Agreement contains all of the terms and conditions agreed on by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

H. Representations

No representations not set forth herein have induced the making of this contract. The undersigned have read and understand the entire contract and now state, and in consideration of this Agreement agree, that no representation, promise, or agreement not expressed in this Agreement has been made to induce the undersigned to enter into it.

I. Amendments

All materials alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly executed by authorized representatives of the parties. The County's charges for this non-entitlement service may be modified upon thirty (30) days' notice to the Subscriber in writing, by email or posted on-line. Any alterations, modifications, or variations deemed not to be material by agreement of the parties shall not require written approval.

J. Interrupted Performance Beyond Control of County

The County's performance hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies, and the like.

K. Governing Law and Venue

This Agreement shall be governed and construed under the laws of the state of Minnesota and any legal actions taken pursuant to the terms and conditions of this Agreement shall be venued in state district court located in Winona, Minnesota.

L. Assignment

Neither this Agreement nor any part or portion hereof shall be assigned, sublicensed, or otherwise transferred by the Subscriber without the County's prior written consent.

M. Savings Clause

Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

N. Nonwaiver

Failure of any party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

O. Incorporation

Schedule A is incorporated verbatim as a part of this Agreement.

P. Notices

All notices hereunder shall be delivered in person, by United States mail or by email to the following:

SUBSCRIBER: (insert name, title, mailing address & phone number)

Email address: _____

WINONA COUNTY:

Winona County
202 West 3rd Street
Winona, MN 55987
507-457-6340

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement effective this ____ day of _____, _____.

SUBSCRIBER

By: _____

Printed name: _____

Printed title: _____

By: _____

Printed name: _____

Printed title: _____

WINONA COUNTY

By: _____

Printed name: _____

Winona County Administration

Date: _____

**WINONA COUNTY ENHANCED REMOTE ACCESS AGREEMENT
SCHEDULE A**

1. The County at its sole option may interrupt the enhanced remote access to its databases and electronic data compilations at any time, without prior notice, and for any reason.
2. The Subscriber is allowed remote access to certain County databases and electronic data compilations through enhanced access enabling software. Remote access will be available at all times possible. Interruption for reasons including maintenance, backups, downed systems etc. will occur without notice and for any reason.
3. The Subscriber hereby agrees to pay the County non-refundable charges:

Account Setup	\$50.00 per site
Level I	\$100 per month (includes \$25 monthly access and 1-150 document images)
Level II	\$150 per month (includes \$25 monthly access and 151-300 document images)
Level III	\$250 per month (includes \$25 monthly access and 301-500 document images)
Level IV	\$400 per month (included \$25 monthly access and 501-800 document images)

4. Account setup and the first two month's level fee is required with two signed agreements. Payments will be made by check, payable to Winona County, and sent to:

Bob Bambenek
Winona County Recorder
202 West 3rd Street
Winona, MN 55987

5. Monthly billing will consist of the following month's level fee.
6. The County's charges for this non-entitlement service may be modified upon thirty (30) days' notice to the Subscriber in writing or posted on-line.
7. Upon receipt of this signed Agreement and payment, Subscriber will be notified when their account is activated.