

**BENTON COUNTY
ENHANCED REMOTE ACCESS AGREEMENT**

This agreement is entered into by and between the County of Benton, through its Recorder, 531 Dewey Street, P.O. Box 129, Foley, MN 56329, a body corporate and politic existing under the laws of the State of Minnesota, hereinafter referred to as "County," and (insert full name and mailing address)

hereinafter referred to as the "Subscriber."

WITNESSETH:

WHEREAS, the County Recorder has created data bases 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 Subscriber wishes to have "enhanced remote access" to the above mentioned data bases 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. 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 Subscriber shall not in any way enhance or alter public records accessed, or attempt to do so, or disclose any protected nonpublic data, nonpublic data, private data and confidential data, as these terms are defined by Minn. Stat. Ch. 13, contained thereon. The Subscriber shall not sell any copies of the records accessed.

C. 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 data bases and electronic data compilations, including all copyrights available thereto, are and shall continue to be the exclusive property of the County.

D. County Charges

Charges payable by the Subscriber for the enhanced remote access to the County's data bases and electronic data compilations described in this Agreement are set forth in fee schedule set by the Benton County Board of Commissioners. The County's charges for this non-entitlement service may be modified upon thirty (30) days' notice to the Subscriber in writing or on-line.

E. 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 SUBSCRIBER'S EXCLUSIVE REMEDY AND THE COUNTY'S ENTIRE LIABILITY HEREUNDER, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE COUNTY'S DATA BASES 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 DATA BASES 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 DATA BASE AND, OR ELECTRONIC DATA COMPILATION.

F. Confidentiality

The Subscriber agrees that the Subscriber's password is for the sole use by the Subscriber and agrees to keep Subscriber's password confidential. Subscriber shall notify the Recorder immediately of any loss, theft, or unauthorized use of Subscriber's password. A password may be changed and coordinated through the Recorder. Any violation of this section by the Subscriber shall constitute a material breach of this Agreement.

G. Access

The County shall maintain the right to deny, postpone, or cancel 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.

The Subscriber is allowed remote access to certain County databases and electronic data compilations. Remote access will be available at all times possible. Interruption for backups, downed systems, etc. will occur without notice and for any reason.

The County at its sole option may interrupt the enhanced remote access to its data bases and electronic data compilations at any time, without prior notice, and for any reason.

PROHIBITION ON DATA MINING.

Data mining is PROHIBITED. Massive downloads of data, files, images, etc., cause major slowdowns and crashes of County systems. Benton County's data bases are not designed for, nor are they intended for large data downloads. LARGE, MASS, and/or CONTINUOUS DOWNLOADING IS PROHIBITED. Using web technologies such as "bot" programs or any other program, system, or method to perform massive downloads of images or data for any Benton County program or system is PROHIBITED. Any use of any portion of Benton County data base systems and data compilations to create private company data base systems for data or image distribution of Benton County records is PROHIBITED. Any such action would be a misuse of Benton County property, programs, systems, data bases and data compilations. Any violation of the PROHIBITION ON DATA MINING shall

constitute a material breach of this Agreement and shall result in immediate termination of Subscriber's license.

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 data bases and data compilations through the enhanced remote access.

III. GENERAL PROVISIONS

A. Billing and Payment

Monthly statements will be billed, with payments due by the 1st of the month of the month of the following each billing cycle. If payment is not timely received by the Recorder, the Subscriber's "remote access" to the County Recorder's database will be discontinued.

Checks shall be made payable to the Benton County Recorder and sent to:

CHERYL KANTOR
BENTON COUNTY RECORDING SUPERVISOR
531 DEWEY STREET, P.O. BOX 129
FOLEY, MN 56329

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 data bases 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. Limitation of Claims

Except for claims relating to charges of improper use of the County's data bases 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 data bases 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.

E. Termination

This Agreement shall continue in force until terminated by prior written notice of termination to the other party. Notwithstanding the foregoing, 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.

F. 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.

G. 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.

H. 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. Any alterations, modifications, or variations deemed not to be material by agreement of the parties shall not require written approval.

I. Force Majeure

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.

J. 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 Foley, Minnesota.

K. 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.

L. 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.

M. 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.

N. Notices

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

SUBSCRIBER (insert name, title and mailing address)

ACCESS BEGINNING (MONTH) _____

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this agreement **this** _____ **day** **of** _____, _____.

SUBSCRIBER

BY: _____

Name: _____

Title: _____

BY: _____

Name: _____

Title: _____

BENTON COUNTY

BY _____

Cheryl Kantor, Recording Supervisor

Date: _____

BENTON COUNTY RECORDER

Cheryl Kantor

Recording Supervisor

531 Dewey Street, P.O. Box 129

Foley, MN 56329