

CARVER COUNTY
ENHANCED REMOTE ACCESS AGREEMENT

This agreement is entered into by and between the County of Carver, through its Land Records Department 600 East Fourth Street, Chaska, MN 55318, 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 below)

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

I. COUNTY DATABASE 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 Carver 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 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 through 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.

E. 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 **Schedule A**. 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.

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 County's entire liability hereunder and the Subscriber's exclusive remedy , if any, shall be limited to claim(s) for damages relating to substantial defects which impairs the Subscriber's use of the data base and, or electronic data compilations, for the purpose stated herein, whether based in contract or negligence, shall be limited to the right to terminate this agreement; 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.

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 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 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.

II. SOFTWARE AND EQUIPMENT FOR INTERNET ACCESS

A. 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

The Subscriber shall maintain an escrow account for payment of all charges regarding the county's "remote access" for data bases and electronic data compilations. The Subscriber's escrow account shall be reduced by the amount of all charges. If such payment is unavailable in the Subscriber's escrow account, the Subscriber's "remote access" to the County Recorder's database may be discontinued.

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 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 venturers or associates between the parties hereto or as constituting (Contractor) as the employee of the County for any purpose or in any manner whatsoever.

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 Chaska, Minnesota.

K. Assignment

Neither this Agreement nor any part of 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. Incorporation

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

O. Notices

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

SUBSCRIBER (insert name, title and mailing address)

CARVER COUNTY

Kathy Smith
Land Records Manager
600 East 4th Street
Chaska, MN 55318

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

SUBSCRIBER (insert name and title)

BY: _____

CARVER COUNTY

BY: _____

Kathy Smith
Land Records Manager

Title: _____

Date: _____

BY: _____

Name

Title: _____

CARVER COUNTY ENHANCED REMOTE ACCESS AGREEMENT

Schedule A

1. 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.
2. 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.
3. The Subscriber hereby agrees to pay the County non-refundable charges: Contact the Carver County Recorder's office for current fees set forth by the Carver County Board of Commissioners.
4. The County will provide Initial setup free of charge. Charges for viewing the document images on the remote access system shall be made by credit card or the escrow payment system.
5. The Subscriber Company is responsible for payment of all image requests made by the registered users of the company. Payment for image copies shall be made by credit card or through the escrow payment system.