

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into between the County of Scott, by and through the Scott County Public Works and Lands Division, hereinafter "County", and _____, hereinafter "User."

WHEREAS, the County has certain proprietary digital cartographic data and/or program information (Data Base) which it has created and which it desires to market pursuant to Minn. Stat. §375.85 and which would be beneficial to the User; and

WHEREAS, the Data Base was developed and is being developed with a significant expenditure of public funds; and

WHEREAS, the Data Base has commercial value; and

WHEREAS, the County claims proprietary ownership and copyright interest in the Data Base; and

WHEREAS, User desires to access the proprietary data of the County through this License Agreement and is willing to compensate the County in return.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

ARTICLE I **General Provisions**

1.1 **Purpose.** The purpose of this Agreement is to define the rights and obligations of the parties with respect to the granting by the County of a license to User for the use of the County's Data Base or a portion thereof for the project set forth herein.

1.2 **Recitals.** The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein.

1.3 **Modifications.** Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, signed by Authorized Representatives of the County and User.

1.4 **Consideration.** The user shall pay to the County, as consideration for the license and other agreements set forth herein, as follows: _____

1.5 **Term.** Regardless of the date of the signatures on this Agreement, this Agreement shall be in effect from the date of User's receipt, in digital form, of any portion of the County's geographical Data Base, unless earlier terminated by law or according to the terms herein.

ARTICLE II
Definitions

For the purpose of the Contract, unless the language or context clearly indicates that a different meaning is intended, the words, terms, or phrases stated below, shall be defined as follows:

- 2.1 Data Base: _____

- 2.2 Project: _____

ARTICLE III
Rights of Ownership

3.1 **Ownership.** The Data Base is the exclusive property of Scott 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 (1988), the Data Base is a trade secret of the County and may only be used as authorized herein.

3.2 **Obligation of Confidentiality.** User acknowledges and agrees that the County reserves all rights of the ownership, title, and control of the Data Base. User agrees that it will treat the Data Base as confidential and trade secret information. User will not under any circumstances disclose or disseminate the Data Base or any portion thereof to any other person, firm, entity, or organization except as expressly authorized herein, or any employee of User who does not need access thereto in the performance of the Project. User will keep and maintain the Data Base in a secure manner so as to reasonably preclude unauthorized use, dissemination, or disclosure.

3.3 **Assistance.** At the request of the County and expense of the User, User shall use good faith and reasonable efforts to assist the County in identifying any use, copying, or disclosure of the Data Base by any current or former personnel, of User or anyone else who may have come in possession of said Data Base while the same was in User's possession, in any manner that is contrary to the provisions of this Agreement; provided that the County has first provided User with information reasonably justifying the conclusion of the County that such contrary use may have occurred.

3.4 **Survival of Confidentiality Obligations.** User's obligations respecting confidentiality of the Data Base shall survive termination of this Agreement.

3.5 **Injunctive Relief.** User 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, User agrees that the County may seek and obtain against User and/or 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.

ARTICLE IV
License

4.1 License. The County hereby grants to User a non-exclusive, non-transferable license to use the Data Base in accord with the provisions stated in this Agreement.

- A. User may use the Data Base only for the purpose of the Project.
- B. User may make one copy of the Data Base for backup purposes only.
- C. Except for off-site backup, User shall keep the Data Base on its premises at its business address, and shall not allow or cause it or any copy of it to be removed from said premises.
- D. User may not use, copy, modify, assign, or transfer the Data Base or any copy, modification or merged portion thereof, in whole or in part, except as expressly provided for in this Agreement.

4.2 Copyright Notice. User shall affix the following notice on all copies of the Data Base in such a manner and location to give notice:

Copyright 1997, by Scott County. All rights reserved. No part of this Data Base may be copied, reproduced, or transmitted in any form or by any means whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage and retrieval system, without written permission from Scott County.

ARTICLE V
Limit on Liability

The parties specifically agree as follows:

5.1 The County is furnishing the Data Base on an "as is" basis, without any support whatsoever, and without representation or warranty, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Data Base. The County makes no representation or warranties, express, or implied, with respect to the reuse of the data provided herewith, regardless of its format or the means of its transmission. There is no guarantee or representation to the User as to the accuracy, currency, suitability, or reliability of this data for any purpose. The User accepts the data "as is", and assumes all risks associated with its use. By acceptance of this data, the user agrees not to transmit this data or provide access to it or any part of it to another party unless this Agreement so provides, and unless the User shall include with the data a copy of this disclaimer.

5.2 The County's sole liability and User's exclusive remedy for any substantial defect which impairs the use of the Data Base for the purpose stated herein shall be the right to terminate this Agreement.

5.3 Because the Data Base is inherently complex and may not be completely free of errors, User 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.

5.4 Specifically, the County is not responsible for any action or consequential damages 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 damages.

ARTICLE VI
Miscellaneous

6.1 Minnesota Law to Govern. This Agreement shall be governed by and construed in accordance with the substantive and procedure laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota.

6.2 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 User as the employee of the County for any purpose or in any manner whatsoever.

6.3 Separability. In the event any provision of this agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the agreement to fail its purpose.

6.4 Waiver. The waiver of any default by either party, or the failure to give notice of any default, shall not constitute a waiver of any subsequent default or be deemed to be a failure to give such notice with respect to any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be modification for the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of the County and User.

6.5 Authorized Representative. The following named persons are designated the Authorized Representatives of parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to the County, the Authorized Representative shall have only the authority specifically or generally granted by the County Board. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

To County: Insert Name Address

To User: Insert Name Address

6.6 Final Agreement. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

IN WITNESS WHEREOF, the parties have caused this Agreement on the date indicated below:

SCOTT COUNTY

BY: _____

TITLE: _____

DATE: _____

USER

BY: _____

TITLE: _____

DATE: _____