JOINT ORDINANCE

COMMISSIONERS ORDINANCE NO. 2006-18

COUNCIL ORDINANCE NO. 2007 1

An Ordinance of the Warrick County Board of Commissioners and Warrick County Council establishing fees for electronic map data created and maintained by Warrick County and restricting certain commercial reproduction of said electronic map data.

WHEREAS, Indiana Code 36-1-3-8(a)(6) and Indiana Code 5-14-3-8(j) provides that a public agency may establish a fee for the provision of copies of electronic map data; and,

WHEREAS, Indiana Code 5-14-3-8.5 provides that the fiscal body of a political subdivision may adopt an Ordinance to establish an electronic map generation fund for the deposit and use of funds collected for the provision of electronic map data; and,

WHEREAS, Indiana Code 5-14-3-2 defines "direct cost" that may be charged by a public agency for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval; and,

WHEREAS, Indiana Code 5-14-3-2 defines "electronic map" as copyrighted data created and provided by a public agency from an electronic geographic information system; and,

WHEREAS, Indiana Code 5-14-3-2 defines "person" as an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity; and,

WHEREAS, Indiana Code 5-14-3-3(e) provides that a political subdivision may enact an ordinance prescribing the conditions under which a person who receives electronic data may or may not use that information for commercial purposes; and

WHEREAS, it is in the best interests of the citizens of Warrick County that both the Warrick County Board of Commissioners and Warrick County Council approve the terms of this Ordinance to conform to the terms of Code 5-14-3.

IT IS THEREBY ORDAINED by the Board of Commissioners of Warrick County and the Warrick County Council as follows:

1. Title and Definitions – This Ordinance and any parts herein shall be known as the Warrick County Electronic Map Ordinance.

In accordance with Indiana Code 5-14-3-2, "person" as used in this Agreement is defined as an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity, and "electronic map data" as used in this Agreement is defined as copyrighted data created and provided by a public agency from an electronic geographic information system.

2. Fee Schedule – Pursuant to Indiana Code 5-14-3-8(j) the County may charge a fee, uniform to all persons for providing electronic map data that is based upon a reasonable percentage of the County's direct cost of maintaining upgrading and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the person(s).

In the case where disclosable and nondisclosable electronic map data are combined, Indiana Code 5-14-3-6 provides that the County may charge a reasonable fee for the County's direct cost of computer programming to separate disclosable from nondisclosable electronic map data.

It is hereby established by the Warrick County Commissioners and County Council that the initial fee schedule for the transmission of electronic map data is as set forth in an attached Fee Schedule that is incorporated by reference herein.

If the County contracts with a third party contractor to handle the transmission of County electronic map data, the third party contractor shall receive 2/3, and the County 1/3 of the fees charged the person for electronic map data . This fee schedule shall be reviewed on an annual basis and may be changed on an annual basis to reflect the change in the cost in providing the electronic map data.

3. Exceptions to Fee Schedule – Pursuant to Indiana Code 5-14-3-8(k) any Public Agency, as defined by Indiana Code 5-14-3-2, located within the County or within adjacent counties that agrees to share with the County any electronic map information that that Public Agency might have, if any, that is of the same type as is being shared by the County, the County will agree to automatically approve a Data Sharing Application with that Public Agency and waive that portion of the electronic map fee that would otherwise be retained by the County.

Pursuant to Indiana Code 5-14-3-8(k) the County's retained portion of the electronic map fee shall be waived at the County's discretion if the use of the electronic map data will be used for a noncommercial purpose, including the following: Public Agencies that do not agree to share with County the same type of electronic map data being provided by the County, Nonprofit activities, Journalism, and/or Academic research.

4. Third Party Contractor – In accordance with Indiana Code 5-14-3-3.6, electronic map information may be provided to person(s) through the County's own computer gateway, or by agreement through a computer gateway of a third party contractor. Indiana Code 5-14-3-3.6(e) provides that a contract entered into under this section may require the payment of a reasonable fee to either the third party contractor, the County, or both.

In accordance with Indiana Code 5-14-3-4, neither the County nor the third party contractor shall disclose electronic map data that is specifically excepted from disclosure requirements.

5. Payment - Where the County is using its own computer gateway for the provision to person(s) of electronic map data, payment shall be made by the person(s) at the time of delivery. Where the County has entered into an agreement with a third party contractor to provide electronic map data through the third party contractor's computer gateway, the third party contractor shall handle the billing and invoicing of the fees charged and shall agree to send by U.S. mail that portion of the fee due the County to the County's Electronic Map Generation Fund within 10 business days of the receipt of payment of fees to the third party contractor by the person(s) making the purchase.

6. Compliance with State Statutes - Nothing herein shall compel any office or their contracted third party contractor to charge a fee for copies if the fee imposed by this Ordinance is contrary to state law. In the event the fees in this Ordinance are contrary to any charges established by State statute, the State statute shall apply.

7. Use Restrictions and Notice - Pursuant to the provisions of Indiana Code 5-14-3-3(e), no person, other than those authorized in writing by the Board of Commissioners, may use the electronic map data provided by the County for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by request to any other person for these purposes. This includes the repackaging or assimilation of electronic map data for a commercial purpose in paper or electronic media.

A person who uses information in a manner contrary to this Ordinance or a rule or ordinance adopted under Indiana Code 5-14-3-3 may be prohibited by the County from obtaining any electronic map data.

The following notice regarding data ownership, restrictions, and qualifications shall be provided to every person that receives a copy of the County's electronic map data.

"Warrick County electronic map data is the property of Warrick County, Indiana. All electronic map data supplied by Warrick County has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The County does not guarantee the positional or thematic accuracy of the data. The cartographic digital file server is not a legal representation of any of the features depicted, and the County disclaims any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be and/or expressly excluded. The data represents an actual reproduction of data contained in the County's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. Therefore, the County cannot be held liable for errors or omissions in the data. The recipient's uses and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify Warrick County and its employees and officers. This indemnity covers reasonable attorney's fees and all court costs associated with the defense of Warrick County arising out of this disclaimer. The recipient may copy this data into computer memory or onto computer storage devices and prepare derivative works from it for the recipient's own use.

Pursuant to the provisions of Indiana Code 5-14-3-3(e), no person, other than those authorized in writing by the Board of Commissioners may use the electronic map data provided by the County for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by request to any other person for these purposes. A person who uses information in a manner contrary to a rule or ordinance adopted under Indiana Code 5-14-3-3(e) may be prohibited by the Board of Commissioners from obtaining any electronic map data.

Please refer to Warrick County Ordinance 200_-_____ for any other restrictions on the use of electronic map data or penalties for the misuse electronic map data."

A copy of the language contained in this section shall be conspicuously posted in all offices where electronic map data is sold in the County, and shall be provided to any person(s) (as defined by Indiana Code 5-14-3-2) who desires to purchase electronic map data from the County.

8. Use Violation Penalty - Any person(s) who violates the terms and conditions of this Ordinance by failing to pay for purchased electronic map data shall be liable for total fee charged for the electronic map data plus attorney's fees and the cost of collection.

Any person(s) who violates the restrictions on the use of electronic map data as set forth in Section 7 of this Ordinance shall be guilty of an infraction and may be fined by the County up to Two Thousand Five Hundred ($2,500), and each violation shall be deemed a separate offence. Also, in the event that there is an improper use of electronic map data as set forth in Section 7 of this Ordinance or in violation of State or Federal Law, the County may prohibit the person(s) (as defined by Indiana Code 5-14-3-2) from obtaining any electronic map data and seek injunctive relief from any misuse of electronic map data by the person(s) who originally purchased the electronic map data or any other person(s) who has received a copy of the electronic map data.

9. Electronic Map Generation Fund - Pursuant to Indiana Code 5-14-3-8.5, the Warrick County Council hereby establishes the Warrick County Electronic Map Generation Fund. The Electronic Map Generation Fund shall consist of fees charged for providing electronic map data to person(s) in accordance with Indiana Code 5-14-3-8(j) and be subject to the appropriation by the Warrick County Council. In accordance with Indiana Code 5-14-3-8.5(b), all funds collected in the Electronic Map Generation Fund shall be specifically dedicated to the following purposes:

a. The maintenance, upgrading, and enhancement of the electronic map.
b. The reimbursement of expenses incurred by a public agency in supplying an electronic map in the form requested by the person(s).

10. Dispute Resolution - Any person who has a dispute, or seeks relief from the terms of this Ordinance may seek resolution of that dispute or relief from the Board of Commissioners of Warrick County.

11. Ordinance Codification - The Auditor of Warrick County shall cause a copy of this Ordinance to be codified in the Warrick County Code.

12. Effective Date - This Ordinance shall be effective on the ___ day of _____, 200_, and all Ordinances in conflict herewith are repealed.

PASSED ON THIS 4th DAY OF JANUARY, 2007.

WARRICK COUNTY
BOARD OF COMMISSIONERS

Carl Jay Conner

Don Williams

Phillip H. Baxter

WARRICK COUNTY
COUNTY COUNCIL

Tim Mosbey

Greg Richmond

Gerald Barr

David Hochmeister

Ray McCarty

ATTESTED BY:

WARRICK COUNTY AUDITOR

Richard I. Kixmiller / SKA
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Joint Ordinance Board of Commissioners 2006-18
County Council Ordinance 2007-01

4 pages + cover sheet

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