

## ORDINANCE NO. 2010-1

AN ORDINANCE to establish a way to monitor and regulate the sale and distribution of GIS data.

BE IT ORDAINED by the Brookings County Commission, Brookings County, South Dakota, to promote and protect Geographic Information System (GIS) Data Access and Distribution

### General Provisions and Definitions

#### Section 1 Purpose:

This Ordinance is created under specific statutory authority of Chapter 7-18A-3 of the South Dakota Codified Laws. It is the intent of this ordinance to monitor by regulation and policy, the sale and distribution of GIS data and information pursuant to the GIS Coordinator and Steering Committee. The policies and procedures under this ordinance are intended to be prospective in nature.

#### Section 2 Title:

This portion of the Brookings County Ordinances shall be now cited and referred to as Ordinance NO. 2010-1 – Geographic Information System (GIS) Data Access and Distribution.

#### Section 3 Definitions:

For the purpose of clarity in this title or in subsequent data Restrictive Release Statements, the following terms are defined:

- **Derivative Data or Products:** All works created by the Licensee which Incorporate all or part of Brookings County data, including, but not limited to, a revision, modification, translation, abridgement, condensation, expansion, collection, compilation, or any other form of, or modification to, the data.
- **dGI:** digital Geographic Information, a synonym for geospatial data.
- **Geospatial Data:** The digital, geographic and location-based information, including related attribute records, data files, and metadata that are stored and maintained in the Data Owner's computer systems.
- **Geodata:** A synonym for geospatial data.
- **GIS:** Geographic Information System, the collection of computers, software, databases, and data that enable geospatial data to be received, manipulated, displayed, and distributed.
- **Licensee:** Any recipient of the Brookings County data that has agreed in good faith to the terms of the License Agreement, and is conducting data related activities accordingly.

- **Metadata:** Information that describes geospatial data, such as the contact person in the data owner's agency, the contents of the dGI database, the data accuracy, projection, currency (date of capture), and format of the data.

## **Authority and Oversight**

### **Section 4 Commission Department:**

The Commission Department shall designate, develop, implement and maintain a Geographic Information System (GIS). GIS data and media shall be defined in writing by the GIS Coordinator and shall consist of printed media and digital data that has been created, collected, formatted, manipulated or otherwise maintained by the Brookings County Commission Department or a designee thereof. The GIS will primarily be used by the various agencies of Brookings County. The GIS Coordinator or a designee thereof shall provide oversight for access to GIS data by internal Brookings County departments, employees and elected officials.

### **Section 5 GIS Steering Committee:**

A GIS Steering Committee shall be developed to review applications and grant authorization for access and dissemination of GIS data by external persons or entities. The GIS Steering Committee shall consist of the following core persons or designees thereof:

- 1) Brookings County GIS Coordinator, Committee Chairman
- 2) Brookings County Equalization Director
- 3) Brookings County Planning and Zoning Director
- 4) Brookings County Commission Assistant
- 5) Brookings County Technology Coordinator
- 6) Brookings County Commissioner

The GIS Steering Committee shall meet at least once each calendar quarter with special meetings to be called by the Committee Chairman as the need arises. Other individuals may be asked to participate in Steering Committee meetings but may not vote unless attending as a designee of one of the aforementioned core persons. For access to GIS data to be granted, a quorum of the GIS Steering Committee (at least 3 members) must approve a request in writing.

## **Data Distribution Methods, Services and Fees**

### **Section 6 General:**

Brookings County intends to make its geospatial data available through one or more of the following methods pursuant to the Restrictive Release Agreement and depending on the availability and capability of the GIS staff, the availability and capability of licensed data re-distributors, and the availability and capability of such internet-based applications as it deems practical and affordable:

- Copies of the GIS databases in the GIS format used by Brookings County (or translated into a specified standard format), to be provided in such electronic

output media as Brookings County is capable of producing (for example, CD, tape or disk).

- Copies of the GIS databases in the GIS format used by Brookings County (or translated into a specified standard format), to be provided as downloadable files through a File Transfer Portal (FTP) via the internet.
- Read and Write/Update access to authorized data partners, distributed via methods to be determined on a case-by-case basis.
- Special requests for information, analysis, or data products, which are subsets of Brookings County digital GIS databases (e.g., custom data services, including data extraction, translation, reformat, or reclassification of data).
- Read-only access to the GIS databases (via the internet) through special application programs commissioned by Brookings County. These programs will allow selective query and display of the data as well as printing of maps and data tables, but will not grant access to downloading or copying of the database.

#### **Section 7 GIS Standard Data Products and Pricing List:**

In order to facilitate the exchange or translation of data among different GIS system formats, Brookings County shall maintain a database, which shall include a current list of GIS data, products and pricing including designations of ownership, privacy and security restrictions. The list shall be amended as necessary by the Commission Department and annually reviewed and recommended by the GIS Steering Committee.

This document may be used for internal management of the data resources and to inform data requesters and data Licensees so that they may use the data effectively. The GIS Data Product List may include, but is not limited to, themes, layers and features of mapped elements and corresponding key-linking and descriptive attributes. The List should include the spheroid, datum, and map projection for each theme or layer. The List should also include tables that diagram the contents of data records, the linkages between record types, and the linkages between related databases that store information pertaining to the mapped features.

The GIS Data should but is not required to embed suitable descriptive information (metadata) into data files so as to enable other GIS systems to read and translate the data. Such capabilities shall be employed whenever practical. Brookings County shall utilize database standards in structuring and identifying its database contents whenever practical and feasible. Such standards include those published by the Federal Geographic Data Committee (FGDC) as well as others.

#### **Section 8 Fees for GIS Data:**

The Brookings County GIS Steering Committee may grant to other government entities, institutions, organizations or individual's access to GIS web-based data at no cost to the government entities, institutions, organizations or individual; to be determined by the GIS Steering Committee.

If distribution of specific GIS data is approved by the GIS Steering Committee, the GIS data shall be available in either paper format or in ESRI Shape File or Geodatabase digital format, whichever has been requested and approved.

Fees for specific GIS data sets, preparation costs including an hourly Customization Fee for custom data services including data extraction, translation, reformatting or reclassification of data and Standard Product Fees including digital or paper media among others shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to GIS data sets and any fees collected in association with access to such will be administered by the Brookings County Commission Department.

### **Section 9 Subscriptions to Web-Based GIS Data:**

All GIS subscriptions issued pursuant to this section shall be executed by the person or entity requesting the full web based GIS site access. The subscription fee shall be set and adjusted annually, as necessary, by the GIS Steering Committee. A database of individuals and organizations having access to the web-based data and any fees collected in association with access to such will be administered jointly by the Brookings County Equalization and Commission Departments.

### **License Agreement**

#### **Section 10 Restrictive Release Agreement:**

Requests for GIS data must be accompanied by a Restrictive Release Agreement to be completed by the person or entity (or designee thereof) requesting the data. Specific intentions for access to and dissemination of the data must be provided within each request. Members of the GIS Steering Committee or their designees shall either approve or deny any written request for the proposed use of the GIS data. If such use is approved, a Written Permission Form shall be issued upon receiving a signed Restrictive Release Agreement from the requestor acknowledging the intention to comply with the express conditions and understandings outlined within the Agreement.

#### **Section 11 Copyright and Copyright Notice:**

Brookings County asserts its right to regulate the distribution of its data through its claim of ownership as a copyright. All title, ownership, and intellectual property rights which may exist or be created with the geospatial data shall remain with Brookings County.

The organizational structure of the GIS databases, the coding of the GIS databases, the format of the GIS databases and the graphic design of its maps are the property of Brookings County, as registered and protected by U.S. copyright statutes and treaties.

All publications, including via the internet, using any of the data for release to the public or to others outside the Licensee's organization or using geographic information derived from the data and identifiable there from must include a copyright notice such as:

"Copyright, <dd/mm/yyyy>, <Brookings County, SD>" or

"Derived from data that is Copyright, <dd/mm/yyyy>, <Brookings County, SD>"

#### **Section 12 Data Security and Oversight:**

If written permission is granted, the data requestor will keep and maintain the GIS data in a secure manner, will keep a record of the location of the GIS data, and will return the GIS data to Brookings County or destroy the GIS data and inform Brookings County of the same upon the cessation of the use of the GIS data. The data requestor will have an ongoing and continual duty to notify any employees, agents, contractors or other individuals having access to the GIS data as a part of the requestor's authorized use of the GIS data of there restrictions set forth in this section and in the Written Permission Form, and to ensure that the employees, agents, contractors or other individuals comply with the same.

#### **Section 13 General Disclaimer:**

All subscription holders, data requestors and the public acknowledge and understand that GIS data is not a legally recorded map, survey, or legal document and that GIS data may contain errors; the GIS data is for reference only and the subscription holders, the public and data requestors will not use or rely upon the GIS data in any other way.

Further, all subscription holders, data requestors and the public acknowledge and understand that Brookings County has provided the GIS data on an "as is" basis and makes no representations, guarantees or warranties regarding the GIS data, including but not limited to representations, guarantees or warranties that the GIS data is fit for any purpose, or is accurate, complete or correct; and further that Brookings County expressly disclaims any and all liability of any nature whatsoever arising out of any use of the GIS data by any person or entity.

#### **Section 14 Data Corrections and Additions:**

Users of Brookings County GIS data that correct errors in the data, or that update the data with more current information, shall make these modifications available to Brookings County. These data updates, additions, revisions, or corrections shall be provided in a format compatible with the format from which the data were received from Brookings County.

#### **Section 15 Release of Indemnity:**

All subscription holders, data requestors and the public shall defend, release, indemnify and save and hold harmless Brookings County and its officers, agents and employees from any and all claims, damages, demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless of the legal theory(s) upon which premised, which in any way result from, are connected with, or arise out of, directly or indirectly, the actions or omissions of any person or entity in connection with any use of the GIS data obtained by any person or entity; from Brookings County, whether such use is authorized or unauthorized, by any

person or entity, including actions or omissions of any person or entity; officers, employees, agents, representatives, invitees, subscription holders, data requestors sub-consultants, or any other individual obtaining access to the GIS data provided by Brookings County to the subscription holders, data requestors or the public;

#### **Section 16 Penalty for Improper Acquisition and Misuse:**

The GIS Steering Committee may terminate any agreement with any subscription holder or data requester who is determined to have acquired, maintained, used, or disseminated GIS Data in violation of the terms of this Ordinance or the terms of such agreement. In the event of such termination the subscription holder or data requester shall not be entitled to a refund of any sums paid under such agreement and the GIS Steering Committee may deny such subscription holder or data requester any further access to GIS Data.

#### **Section 17 Unauthorized Use:**

The subscription holders and data requestors shall, upon request from Brookings County, use its best efforts to assist Brookings County in identifying any unauthorized use of the GIS data by any person or entity that may have gained possession of the GIS data provided by the Brookings County to the subscription holders or data requestors.

#### **Section 18 Causes for Injunction:**

The subscription holders or data requestors acknowledge and understand that any use it makes of the GIS data that is not in compliance with this section or provided for by a subscription or Written Permission will cause irreparable harm and significant injury to Brookings County and that Brookings County may seek and obtain injunctive relief against the subscription holders, data requestors, or any person or entity, for acting or threatening to engage in or facilitate the unauthorized use of the GIS data, in addition to any other equitable or legal remedies that may be available to Brookings County.

#### **Data Redistribution and Third Party License**

#### **Section 19 Sublicensing:**

Any individual, organization or agency that has obtained a subscription to GIS web-based information from Brookings County shall not sublicense, assign, lease, post on the internet, transfer, sell, abuse or intend to abuse as to commit harm, allow the use of, permit access to, distribute, allow interactive rights to, or otherwise make the GIS data available to any other person or entity except as specifically provided for in the Written Permission Form and authorized by the GIS Steering Committee.

#### **Section 20 General:**

Recipients of Brookings County data (Licensees) may not redistribute or re-sell the data to third parties unless they notify Brookings County they intend to do so and agree to the relevant terms of the License Agreement, specifically, payment of a resale royalty fee, and the requiring of third party recipients to sign a similar License Agreement protecting the rights of Brookings County. Licensees that sell or distribute the data to

third parties shall obtain their agreement to the same licensing terms as are stated herein. Third parties shall sign a similar License Agreement with the Licensee. Third parties shall not be permitted to redistribute or resell the data unless they sign a License Agreement with Brookings County.

**Section 21 Value Added Services:**

Licensees are permitted to create application programs that query and analyze the data and produce specific products there from. These are considered to be value-added services, not subject to Brookings County rights regarding data redistribution. (For example; a printed map of boat ramp locations or an on-line guide to restaurants).

Passed First Reading Feb. 9, 2010  
Passed Second Reading Feb. 16, 2010  
Adopted Feb. 16, 2010  
Published March 4, 2010  
Effective Date Mar. 24, 2010

Alan Gregg  
Vice-Chairman  
Brookings County Commission

ATTEST: Nikki Buseth  
Brookings County Finance Officer