

# CONTRACT AGREEMENT

## KUCERA INTERNATIONAL INCORPORATED

AERIAL PHOTOGRAPHY - DIGITAL PHOTOGRAMMETRY - GIS SERVICES

MAIN OFFICE:	38133 Western Parkway	Willoughby, Ohio 44094	(440) 975-4230
BRANCH OFFICES:	3889 Grove City Road	Grove City, Ohio 43123	(614) 539-3925
	110 W Reynolds St., Suite 207	Plant City, Florida 33563	(813) 754-9247
	1121 Boyce Road, #3100	Pittsburgh, Pennsylvania 15241	(724) 942-2881

This Agreement is made this 24<sup>th</sup> day of February, 2015, between the City of Grand Island, 100 E. First Street, Grand Island, Nebraska, 68801, hereinafter referred to as the "City," and Kucera International Inc., an Ohio corporation, 38133 Western Parkway, Willoughby, OH 44094, hereinafter referred to as the "Consultant."

**WHEREAS**, The City desires to engage the Consultant to provide 2015 Digital Orthophotography Services as solicited through the City's 2015 High Resolution Aerial Photography proposal request.

**WHEREAS**, the Consultant desires to render those services as described in Section 1: Scope of Services;

**NOW, THEREFORE**, The City and the Consultant in consideration of the mutual covenants contained herein agree as follows:

### SECTION 1: SCOPE OF SERVICES

A. The Consultant will provide to the City professional aerial imaging/photogrammetric services which will generally consist of new (Spring 2015 leaf off) digital aerial photography, aerotriangulation, digital elevation model (DEM) updating/preparation and color digital orthophoto mapping at 6" resolution covering the City's designated area of approximately 118 square miles. The data deliverables will include FGDC metadata for the project orthophotography.

The services to be performed are more specifically described in the Grand Island Metropolitan Planning Organization (GIAMPO) 2015 High Resolution Aerial Photography RFP and the Consultant's corresponding proposal submission, relevant excerpts of which are attached hereto as Exhibits A and B respectively.

### SECTION 2: DEFINITION OF TERMS

A. **Contract Officer** - shall refer to the duly designated City official charged with general administration and coordination of matters related to this Agreement on behalf of the City.

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B. **Project Coordinator(s)** - shall refer to the City's designated person or persons who will serve as primary points of contact and be responsible for coordinating all aspects of work to be performed with the Consultant's assigned Project Manager.

C. **Chief Administrator** - shall refer to an official of the Consultant charged with general administration and coordination of matters related to this Agreement.

D. **Project Manager** – shall refer to the person assigned by the Consultant to serve as the Consultant's primary point of contact, with responsibility for oversight of the Consultant's work, reporting the status of the work, and otherwise coordinated with the City Project Coordinator.

E. **Project Area(s)** - shall refer to the areas designated for which the Consultant shall perform the services referenced and described in this Agreement.

F. **Work/Deliverables** - shall refer to all data provided to the City corresponding to the contracted services and described herein, e.g., imagery, reports, digital mapping, etc.

G. **Delivery** - shall refer to transmittal of data corresponding to the contracted services from the Consultant to the City.

H. **Acceptance** - shall refer to the City's written or verbal acknowledgment of approval of deliverables submitted and associated series performed by the Consultant.

**SECTION 3: RESPONSIBILITIES OF THE CITY**

A. The City shall assign a Project Coordinator(s) with the authority to review and approve materials and deliverables submitted by the Consultant to act as contact between the City and Consultant.

B. The City shall within a reasonable time frame review any samples or deliverables and approve or comment on same.

C. The City shall within a reasonable time after a request is received from Consultant answer or address any unforeseen questions that may arise during the course of the work to be performed by Consultant.

D. The City shall provide any designated City-owned or contracted source data to the Consultant required to complete the project work and shall apprise the Consultant as possible of other known available source materials which may aid in the performance and check of the work.

E. The City at its expense shall pay for the shipment of any materials to the Consultant.

**SECTION 4: RESPONSIBILITIES OF THE CONSULTANT**

- A. The Consultant agrees to perform in a professional manner all of the services outlined in Section 1: Scope of Services and as further described in Exhibits A and B.
- B. The Consultant agrees that no changes shall be made in the services outlined in Section 1: Scope of Services and/or Exhibits A and B without the express written prior consent and Agreement of the City and the Consultant.
- C. The Consultant shall be fully responsible for the technical adequacy and accuracy of the work. No action by the City in its review, approval and/or acceptance or by any payment made hereunder shall be construed as a waiver of the technical adequacy and accuracy of the Consultant's work.
- D. The Consultant shall assign to the work a Project Manager whose duties will be to oversee and coordinate the work with the City's Project Coordinator(s) and make regular status reports to City.
- E. The Consultant shall pay for the shipment of all deliverables and materials to the City.
- F. The Consultant shall begin to perform the services upon receipt of City's notice to proceed signed by the Contract Officer or designee of the same and shall complete such work as outlines in Section 5: Time of Completion.
- G. The Consultant will retain a backup copy of all significant interim and final data produced for the contract, e.g., raw aerial imagery, updated DEM, digital orthophoto imagery, etc.
- H. The Consultant shall obtain any non-City owned/outside source materials designated for use in the completion of the contract work.

**SECTION 5: TIME OF COMPLETION**

The Consultant agrees to complete the project work according to the following schedule:

<b><i>Phase</i></b>	<b><i>Start</i></b>	<b><i>Complete</i></b>
Project initiation	3/1/15	3/5/15
Ground control surveying	3/5/15	3/15/15
Aerial flyover	3/15/15	4/15/15
Aerial data processing, inspection	4/15/15	5/30/15
Aerotriangulation and DEM update	6/1/15	6/30/15
Pilot project	7/1/15	7/30/15
Digital orthophoto production/delivery	8/1/15	9/15/15
Project wrap-up/metadata	9/15/15	9/30/15

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The contract work shall be completed by September 2015, with the exception of add-on work mutually agreed to be subsequently completed and any revisions or additions to the work required for contract compliance determined subsequent to completion/delivery

Consultant agrees to exercise reasonable care and diligence in anticipating potential problems and delays in completing the work. Such care shall include anticipating and making provision for loss of critical employees, normal failure of equipment, and other such schedule-disrupting occurrences normally experienced and reasonably capable of being anticipated by like organizations.

Extensions of time may be granted by the City upon written request of the Consultant, provided such request is made prior to the expiration of this Agreement, do not involve acts of failure by Consultant to exercise reasonable care and diligence as noted above, and are based on documented evidence of need under one or more of the following criteria:

1. Any required aerial photo reflights which may be necessary and cannot be completed during the calendar year in which the Project Area work is authorized.
2. Delays by the City in providing notices to proceed, the City-designated source data, or review/acceptance of the Consultant's work.
3. Significant changes in the scope of work/project parameters which affect scheduling.
4. Acts of nature or other conditions or circumstances beyond the control of the Consultant which are not due to its negligence or that of its employees, agents or assigns, but which affect the Consultant's ability to perform.

**SECTION 6: PROGRESS REPORTS**

Following the first day of execution of this Agreement, the Consultant shall submit reports of progress monthly or as otherwise required which describe work completed up to the date of such report.

**SECTION 7: DELIVERY OF WORK/DELIVERABLES**

Consultant shall report/certify to the City when the work or any portion thereof has been completed and products of such work have been delivered to City for inspection.

**SECTION 8: INDEPENDENT CONTRACTOR STATUS**

The status of the Consultant under this Agreement with respect to the services to be performed by the Consultant hereunder shall be that of "independent contractor." Nothing herein shall be construed to create an employer/employee

relationship between the City and the Consultant or any other subconsultant hired by the Consultant.

**SECTION 9: COVENANT AGAINST CONTINGENT FEES**

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, the City shall have the right to annul this Agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, percentage, brokerage fee, gifts, or contingent fee.

**SECTION 10: INSURANCE**

Consultant shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect Consultant and the City from claims for damages for personal injury, including accidental death, as well as for claims for property damage, which might arise from operations under this Agreement, whether such operations be by Consultant or any subconsultants, or by anyone directly or indirectly employed by either of them.

Consultant shall also take out and maintain for the term of this Agreement the following coverages: \$2 million general aggregate general liability; \$1 million combined single limit automobile liability; \$3 million aircraft insurance; \$5 million excess liability; statutory workers' compensation liability; and professional liability in the amount of not less than \$1 million. The City, its elected and appointed officials and employees are to be named as additional insureds.

All insurance policies shall be issued by responsible companies who are acceptable to the City. The Consultant shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall contain a clause to the effect that the policy will not be canceled, reduced, restricted, or limited until thirty (30) days after the City has been notified in writing by registered or certified mail, return receipt requested. Certificates of insurance shall contain transcript from the proper office of the insurer, the location, the operations to which the insurance applies, the expiration date, and the above-indicated notification clause.

**SECTION 11: WARRANTY**

The Consultant, by signing this Agreement, acknowledges full understanding of the extent and character of the work required and the conditions surrounding the performance thereof. The City will not be responsible for any alleged misunderstanding of conditions surrounding the performance thereof. It is

understood that the execution of this Agreement by the Consultant serves as its stated commitment to fulfill all the conditions referred to in this Agreement.

Consultant warrants that the work performed and deliverables provided under this Agreement shall conform to the project specifications and the relevant recognized standards and procedures of the aerial mapping profession, including ASPRS Class 1 accuracy standards as applicable. The work shall be of high quality, and within the tolerances allowed by the project specifications and standards.

The warranty will apply indefinitely for major errors/defects found in Consultant's mapping and for one year from the time of final data delivery for cosmetic/minor revisions and replacement of lost data files previously documented to be delivered. The Consultant shall not be liable for secondary, incidental or consequential damages of any nature resulting from any work properly performed under this Agreement.

#### **SECTION 12: INSPECTION AND CORRECTION**

The Consultant shall correct any major defects/errors in the work found following the City's review period, and shall make accessible to the City any information, data, materials and processes the City deems reasonably necessary to evaluate and confirm the accuracy and quality of Consultant's work. The Consultant shall not be liable for any expense of the City's review or inspection processes.

The City shall promptly following its inspection notify the Consultant of the nature of any work deemed non-acceptable. Upon such notification Consultant shall within sixty (60) days replace, modify or adjust its work to meet specifications, at its expense. Work shall be considered acceptable to the City if indicated as such by the absence of other notification. If a fault requires a repeat of the aerial flyover of the project area, the repeat flyover will be performed at the first available opportunity at a time of the year mutually agreed upon with and approved by the City. All rework shall be made at no additional cost to the City.

#### **SECTION 13: ACCEPTANCE**

The City shall give written notice of its acceptance or non-acceptance of work to Consultant within a 90-day review period. If no such notice is given to the Consultant, the work shall be deemed accepted by the City, subject to the Consultant's warranty.

#### **SECTION 14: OWNERSHIP AND USE OF PROJECT DATA**

A. The Consultant hereby understands and acknowledges that any and all information gathered, generated and delivered to the City as outlined in the Scope of Services is for the exclusive use and benefit of the City, and shall be the sole property of the City and that such information shall not be disseminated by the Consultant without the express written consent of the City.

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B. All information, data, designs, plans, drawings, maps, imagery, specifications or other work furnished to or developed for the City by the Consultant, its employees, agents, or assigns, pursuant to this Agreement, shall be the sole property of the City, and all rights therein are reserved by the City. The Consultant, its assigns, employees, or agents shall not provide any imagery or map data developed under this Agreement to any party other than the City without the City's consent.

C. During the course of the work, the Consultant, upon the express written consent of the City, may fill requests by non-City agents, business entities or individuals for services/products from the project data which are not part of this Agreement. Should this occur, the Consultant shall charge a reasonable fee for its service and at the City's option will credit the City an agreed upon percentage of such fees.

D. Upon the completion of the work, the City may at its option enter into a contract with the Consultant to supply products and services which the City may not be equipped to furnish to non-City agencies or individuals. The Consultant will as needed furnish a list of products and services over and above those furnished to the City along with fees for such products and services, and the City may direct the Consultant to charge such fees for them, as the City deems appropriate.

E. The Consultant hereby agrees to maintain a backup of the project deliverables and/or datasets needed to recreate the same, including a copy maintained off site. Should the City suffer the loss of any of its data the Consultant agrees to replace same from its files at a reasonable fee for a period of ten years.

F. The City shall be entitled to rely on the technical accuracy of the data furnished by the Consultant with the understanding that the Consultant is not responsible for alterations made to and/or improper interpretation/use of the data by the City.

**SECTION 15: COPYRIGHTS AND DISCLAIMERS**

A. Copyright and title to all final deliverable products (e.g., aerial imagery, digital orthophotography) shall pass from the Consultant to the City upon City's payment for the deliverables.

B. Use by an outside party of the project data while in the Consultant's possession shall require advance approval from the City.

C. If the project data is to be made available by the City for use by outside entities, the City and City shall prior to entering an Agreement with said outside entity prepare a statement/disclaimer as to its proper use/interpretation for the protection of both the City and Consultant.

**SECTION 16: COMPENSATION FOR CONSULTANT'S SERVICES**

In consideration for the services performed hereunder, Consultant shall be paid the following by project phase:

1. Aerial photo flyover	\$ 8,350
2. Ground control survey	\$ 3,750
3. Aerotriangulation and DEM update	\$ 1,200
4. Digital orthophotography and metadata	<u>\$ 4,600</u>
<b>Total Contract Amount</b>	<b>\$ 17,900</b>

Invoicing for each phase will be based upon documentation of percentage completion and/or transmittal of corresponding phase deliverable.

The fees listed above include all ancillary services/products required for each cost item as defined in Exhibits A and B. Optional services will only be performed by the Consultant with written authorization of the City at mutually agreed cost.

**SECTION 17: INVOICING**

The Consultant's invoices shall be submitted over the course of the contract and reflect work completed and delivered and/or documented by percentage of project phases as indicated in Section 16 (Compensation) of the Contract Agreement. The City agrees to review and process/pay the Consultant's invoice within thirty (30) days of receipt. If an invoice is validly disputed by the City or otherwise found to be in error, the invoice will be voided and a new invoice submitted at the agreed amount with a new thirty (30) day payment period.

**SECTION 18: PRICE GUARANTEE**

The fees quoted for work contracted for by the City as part of this Agreement, or quoted by the Contractor for additional services during the course of this Agreement shall be applicable until December 31, 2015. Should the City defer any portion of the originally specified work beyond this date, the fee for such work deferred may be adjusted by the Consumer Price Index (CPI) for the prior year or other mutually agreed upon factor.

**SECTION 19: COMPLIANCE WITH THE LAW**

A. The Consultant under this Agreement is an equal opportunity employer and shall conduct all contract activities without regard to race, color, national origin, sex, sexual orientation, religion, age, and other such contract participant



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characteristics to the extent that such do not interfere with satisfactory contract performance.

B. The Consultant shall at all times observe and comply with all applicable statutes, ordinances, rules and regulations of federal, state and local governments in effect at the execution of this Agreement.

**SECTION 20: TERMINATION**

This Agreement shall terminate upon the City's acceptance of and payment for all authorized deliverables and services. The Consultant will retain a backup copy of all final and significant interim data deliverables for the contract, e.g., aerial imagery, DEM, digital orthophoto imagery, etc.

The City may terminate this Agreement with 60 days written notice to the Consultant for reasons unrelated to the Consultant's performance (e.g., lack of adequate funding for continuation). In the event of such termination, the City shall be liable for the payment of all work properly performed prior to the effective date of termination, including all portions of work which were partially completed.

If for any cause the Consultant shall default in the performance of this Agreement or any part thereof and has failed to address such default within sixty (60) days after receipt of written notice sent by certified mail, return receipt requested, specifying such default, the City may terminate this Agreement at its option and sue the Consultant based upon a failure of the Consultant to adhere to this Agreement.

**SECTION 21: AMENDMENTS**

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of each party hereto.

**SECTION 22: AGREEMENT INTEGRITY AND PRECEDENCE**

This document and attachments represent the full and final Agreement between the Consultant and the City. If any provisions of the Agreement are deemed void or unenforceable, all other provisions will remain in effect.

In the event of a discrepancy, conflict, or incongruity between the project RFP specifications (Exhibit A) and the Consultant's technical proposal (Exhibit B) or other directives not mutually agreed to by the City and Consultant, the project RFP specifications (Exhibit A) shall have precedence unless otherwise mutually agreed by the City and the Consultant.

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**SECTION 23: JURISDICTION AND SIGNATURES**

This Contract is hereby signed in the State of Nebraska and the laws of the State of Nebraska shall be applicable hereto.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date hereinabove first written.

CITY OF GRAND ISLAND

By:   
Authorized CITY Representative

KUCERA INTERNATIONAL INC.

By:   
John Antalovich, Jr., PE  
President