

CONTRACT AGREEMENT

KUCERA INTERNATIONAL INCORPORATED

AERIAL PHOTOGRAPHY - DIGITAL PHOTOGRAMMETRY - GIS SERVICES

MAIN OFFICE:	38133 Western Parkway	Willoughby, Ohio 44094	(440) 975-4230
BRANCH OFFICES:	300 South Jackson Street	Denver, Colorado 80290	(303) 456-1820
	3889 Grove City Road	Grove City, Ohio 43123	(614) 539-3925
	2215 South Florida Ave.	Lakeland, Florida 33803	(941) 686-8640
	1121 Boyce Road, #3100	Pittsburgh, Pennsylvania 15241	(724) 942-2881

This Agreement is made this 10th day of March, 2005, between Scott County, Iowa, a body politic, 416 West Fourth Street, Davenport, IA 52801-1187, hereinafter referred to as the "County," and Kucera International Inc., an Ohio corporation, 38133 Western Parkway, Willoughby, OH 44094, hereinafter referred to as the "Consultant."

WHEREAS, the County desires to engage the Consultant to provide professional services in connection with the project as described in a Request for Proposal issued by the Bi-State Regional Commission on November 23, 2004; and

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

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

SECTION 1: SCOPE OF SERVICES

The Consultant will provide to the County photogrammetric services generally described as color aerial photography, aerial LiDAR surveying, digital elevation model (DEM) production, and color digital orthophoto mapping and more specifically described in the Bi-State Regional Planning Commission Request for Proposal and Consultant's response thereto, attached hereto as Exhibits A and B, respectively. The aerial LiDAR survey work described in Exhibit B is hereby modified to change the survey flight altitude to approximately 9100' and to process the LiDAR survey data to a digital elevation model (DEM) supporting both ortho image rectification and 4' contour topography generation, including augmentation of the LiDAR DEM with stereocompiled breakline data.

SECTION 2: DEFINITION OF TERMS

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

B. **Project Coordinator(s)** - shall refer to the County's or Contract Officer's designated person or persons responsible for coordinating all aspects of work to be performed with the Consultant's assigned Project Manager. Such coordination shall include, but not be limited to, the review and acceptance of any hardcopy and computer digital file samples submitted by the Consultant.

C. **Project Manager** - shall refer to the person assigned by the Consultant to oversee the Consultant's work, coordinate with the County, and periodically report the status of the work to the Contract Officer or the County's Project Coordinator.

D. **Project Area** - shall refer to that portion of the County for which the Consultant shall perform the service outlined in this agreement during a designated period of time, i.e., months, calendar year, fiscal year, etc.

E. **Work/Deliverables** - shall refer to all photography, photo indexes, aerotriangulation reports, orthophotography, planimetric mapping, documents, services, and byproducts of such services of whatever kind and nature purchased by the County under this agreement and as described herein.

F. **Delivery** - shall mean the receipt in good order and condition, by the County Contract Officer or Project Coordinator(s), of all deliverables purchased by County from Consultant under this agreement.

G. **Acceptance** - shall refer to the County's written or verbal acknowledgment of its approval in adequacy, accuracy, and quality of deliverables submitted by Consultant, following the County's successful review of deliverables.

H. **RFP** - shall refer to the County's Request for Proposal issued November 23, 2004, and addenda thereto.

SECTION 3: RESPONSIBILITIES OF THE COUNTY

The County shall be responsible for providing the following services to the Consultant:

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

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- B. The County shall promptly review any samples or deliverables and approve or comment on same.
- C. Should there be any military or otherwise restricted air space within the County, the County shall obtain permission for Consultant to overfly same.
- D. The County shall promptly answer or address any unforeseen questions that may arise during the course of the work to be performed by Consultant.
- E. The County shall provide any source materials (e.g., maps, DEM/DTM data, etc.) it may have to the Consultant which Consultant requires in order to perform the services hereunder.
- F. The County at its expense shall pay for the shipment of any materials to the Consultant.
- G. The County shall coordinate assistance to the Consultant, to every extent possible, from other governmental agencies and bodies necessary for obtaining the work products that are the subject of this agreement.

SECTION 4: RESPONSIBILITIES OF THE CONSULTANT

- A. 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. Further, nothing herein shall be construed to create an employer/employee relationship between the County and the Consultant or any other subconsultant hired by the Consultant.
- B. The Consultant agrees to perform in good, timely and professional manner all of the services outlined in Section 1: Scope of Services.
- C. The Consultant agrees that no changes shall be made in the services outlined in Section 1: Scope of Services except as noted in this agreement without the express written prior consent and agreement of the County and the Consultant.
- D. The County shall not be responsible for the technical adequacy and accuracy of the Consultant's work. No action by the County 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.

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E. The Consultant shall assign to the work a Project Manager whose duties will be to oversee and coordinate the work with the County's Project Coordinator(s) and make periodic and timely work status reports to the County.

F. The Consultant shall pay for the shipment of all deliverables to the County.

G. The Consultant shall begin to perform the services upon receipt of a notice to proceed signed by the Contract Officer or his designee and shall complete such work as outlined in Section 5: Time of Completion.

SECTION 5: TIME OF COMPLETION

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

<u>Phase</u>	<u>Start</u>	<u>Complete</u>
Project initiation	1/1/05	1/31/05
Ground control survey/targeting	2/1/05	3/15/05
Aerial photography/airborne GPS	3/15/05	4/15/05
Aerial LiDAR survey	3/15/05	4/15/05
Aerial film processing, inspection, scanning	4/15/05	5/31/05
Airborne GPS/IMU and LiDAR DEM processing	4/15/05	5/31/05
Pilot project	6/1/05	6/30/05
Aerotriangulation	6/1/05	7/31/05
Stereocompilation/DEM production	7/1/05	10/31/05
Digital orthophoto production	7/1/05	12/31/05
Project wrap-up	1/1/06	1/31/06

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This agreement shall terminate upon acceptance of all deliverables and services authorized by the County to be furnished by the Consultant to the County and payment therefor made by the County to the Consultant.

Consultant agrees to exercise reasonable care and diligence in anticipating potential problems and delays regarding its performance. 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 organizations such as it. Nevertheless, extensions of time shall be granted by the County 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 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 County in providing Consultant with notices to proceed, or delays in County's inspection and testing of Consultant's work; or
3. Acts of nature or other circumstances beyond the control of the Consultant which are not due to its negligence or that of its subcontractors, employees, agents or assigns, but which affect the Consultant's ability to perform.

As time is of the utmost importance, the County wishes to have the work completed as soon as possible. However, any failure to complete the Scope of Work by the designated date which arises out of causes beyond the control and without the fault or negligence of the Consultant shall be deemed a reasonable extension of time and shall not result in a reduction of total compensation to the Consultant.

SECTION 6: 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, commission, 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 County shall have the right to annul this agreement without liability, or, at its discretion, to deduct from

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the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

SECTION 7: 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 8: INSURANCE

Consultant shall take out and maintain during the life of this agreement such public liability and property damage insurance as shall protect Consultant, its subcontractors, and the County 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 its subcontractor, 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; \$5 million excess liability; statutory workers' compensation liability; and professional liability in the amount of not less than \$1 million.

All insurance coverages required in this agreement shall be maintained in force for one (1) year after final payment of purchases made thereunder. The Consultant shall provide the County with certificates of insurance on all policies required under this agreement within ten (10) days of execution of this agreement and prior to the start of work.

All insurance policies shall be issued by responsible companies who are acceptable to the County. 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 fifteen (15) days after the County 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-mentioned County notification clause.

Consultant shall indemnify and hold County harmless from any damages, cost, claims or expenses which may arise as a result of any failure on the part of the Consultant to provide accurate and/or complete data and information to the

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county as outlined and required by the terms and conditions of this agreement except as may be defined in Section 9: Warranty.

SECTION 9: 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 County 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 County's RFP specifications and applicable professional standards in effect at the time of the signing of this agreement, including, but not limited to, National Map Accuracy Standards published by the US Bureau of the Budget, large-scale map accuracy standards published by the American Society of Photogrammetry and Remote Sensing, and applicable generally accepted practices of the photogrammetric profession. The work shall be of the highest quality, and shall be within the tolerances allowed by the above-cited references. If the Consultant is notified in writing by County of a discrepancy, deficiency, inaccuracy, or fault in the work, within thirty (30) days of such notice the Consultant shall re-perform such portions of the work necessary to correct the fault, except that any work requiring a re-flight may have to be performed in the following photographic season. All such corrections shall be made at no additional cost to the County.

Consultant agrees that all work shall be performed regularly, diligently, and uninterrupted at such a rate of progress as will ensure full completion thereof within the time specified in Section 5: Time of Completion or as mutually agreed upon by the Consultant and the Project Coordinator(s).

All work/deliverables provided by the Consultant shall be fit for the purpose(s) intended as referenced in the County's RFP. The Consultant shall not be liable for secondary, incidental or consequential damages of any nature resulting from any work performed under this agreement.

SECTION 10: DELIVERY OF WORK/DELIVERABLES

Consultant shall certify in writing to the County when the work or any portion thereof has been completed and products of such work have been delivered to the County for inspection.

SECTION 11: PROGRESS REPORTS

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

SECTION 12: INSPECTION

It is the County's intention that all deliverables by the Consultant be reviewed and inspected by the Project Coordinator(s). The County shall notify the Consultant of the acceptability or non-acceptability of such work within sixty (60) days of receipt thereof. Final orthophotos shall be subject to inspection throughout the entire contract period and the County shall, at a mutually agreed upon schedule, notify the Consultant of the results of such inspection. Within ninety (90) days following final delivery by Consultant, the County shall notify the Consultant of any non-acceptable work. Consultant shall make accessible to the County whatever information, data, materials and processes the County 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 County's review or inspection processes.

SECTION 13: ACCEPTANCE

After the delivery, review and inspection of the work, the County shall give written notice of its acceptance or non-acceptance of work to Consultant within thirty (30) working days after completion of its review. If such notice is not given by the County to Consultant, the work shall be deemed accepted by the County.

SECTION 14: NON-ACCEPTABILITY OF WORK

The County shall promptly notify the Consultant of the nature of any work deemed non-acceptable. Upon such notification to Consultant that its work fails to meet the specifications set forth or referenced herein, Consultant shall promptly replace, modify or adjust its work to meet specifications, at its expense.

SECTION 15: USE OF ENGINEERING INFORMATION

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

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B. The Consultant shall store the aerial film in its vault for a period of ten years or until such earlier time that the County requests that it be delivered to it.

C. During the course of the work, the Consultant, upon the express written consent of the County, may fill requests by non-county agents, business entities or individuals for photography or orthophotography not part of this agreement. Should this occur, the Consultant shall charge a reasonable fee for its service and credit to County 15% of such fees. Such credits will be applied to fees to be paid to the Consultant by the County.

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

E. The Consultant hereby agrees to maintain one copy of all information gathered, generated and delivered to the County within its office in digital computer file form to serve as a backup to the data furnished to the County. Should the County 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 County shall be entitled to rely on the technical accuracy of the information furnished to the County by the Consultant and the County hereby agrees that it will not alter or otherwise change the data produced by the Consultant except for scale, combining files, or updating road data, etc., without the Consultant's specific written authorization. The County understands that computer enlargement of the scale of any product does not increase its accuracy. The accuracy of any data is determined by the scale at which the data is compiled.

SECTION 16: COPYRIGHTS AND DISCLAIMERS

A. The County will maintain ownership and title to all final project image and map data and the Consultant will not copyright such data.

B. While the aerial photography and digital image and computer data are in the Consultant's possession, the County may authorize their use for a non-county third party, provided that such entity acknowledges the copyright and license to use the data for a specific purpose.

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C. As digital data can be easily altered and or misused, the County, together with Consultant, shall draft an appropriate statement that will cover the use of any data that may from time to time be given to other non-county entities for their use.

SECTION 17: TERMS AND CONDITIONS OF CONSULTANT'S SERVICES

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

	<i>Product</i>	<i>Unit Rate</i>	<i># Sq. Miles</i>	<i>Total</i>
1.	Color aerial photo and 1"=400' scale orthophotos with 1' pixel resolution	~\$56.95/ sq. mile	~525.57	\$29,931.11
2.	4' contour grade LiDAR DEM and breaklines	~\$27,42/ sq. mile	~519.11	\$14,232.19
3.	Color aerial photo and 1"=100' scale orthophotos with 0.5' pixel resolution	~\$375/ sq. mile	~186.11	\$69,791.94
4.	Black and white conversion of color orthophotos	~\$0.99/ sq. mile	~519.11	\$513.19
5.	Compressed orthophoto image mosaics	-----	-----	\$2,400.00
6.	Scandex flight index	-----	-----	Included
	Total Contract Cost	-----	-----	\$116,868.43
7.	Optional 4' contour topo generated from LiDAR DEM	\$22.50/ sq. mile		

SECTION 18: COMPLIANCE WITH THE LAW

A. The Consultant shall not discriminate by any reason of age, color, handicap, national origin, race, religion or sex which is unrelated to the duties or position of applicants for employment by the Consultant.

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

SECTION 19: PRICE PROTECTION

The fees quoted for work contracted for by the County as part of this agreement, or quoted by Contractor for additional services during the course of this agreement shall be applicable until December 31, 2006. Should the County

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defer any portion of the work beyond this date, the fee for such work deferred will be adjusted by the CPI for the prior year.

SECTION 20: TERMINATION

The County may terminate this agreement with 60 days' written notice to the Consultant in the event that adequate funding to continue the work is not provided by the County. In the event of such termination by the County, the County shall be liable for the payment of all work properly performed prior to the effective date of termination, and for all portions of work which are in process, and, by their nature, can be shown not reasonably capable of being canceled until completion, plus other reasonable costs of termination.

If for any cause the Consultant shall default in the performance of this Agreement or any part thereof and has failed to cure such default within sixty (60) days after receipt of written notice sent by certified mail, return receipt requested, specifying such default, the County may terminate this agreement at its option and sue the Consultant based upon a failure of the Consultant to complete the work outlined in this agreement in a timely fashion and/or additional expenses caused as a direct and proximate result of said breach in default.

Damages attributed to any such failure by the Consultant to complete the work outlined in this Agreement in a timely manner shall not exceed the fees for the actual work authorized.

SECTION 21: INVOICING

Consultant agrees to invoice County no more than once monthly in an amount not less than \$500.00. Said invoice will be based on and submitted with a monthly progress report detailing the Consultant's best estimate of the percentage of work phases completed up to the date of the invoice. Within thirty (30) days of receipt of invoices submitted by the Consultant, the County agrees to pay the Consultant the fees invoiced for the period. The Consultant shall not begin invoicing until after July 1, 2005.

SECTION 22: CONFIDENTIALITY AND RIGHTS TO CONSULTANT'S WORK

All information, data, designs, plans, drawings, maps, photographs, specifications or other work furnished to or developed for the County by the Consultant, its employees, agents, or assigns, pursuant to this agreement, shall be the sole property of the County, and all rights therein are reserved by the County. The Consultant, its assigns, employees, or agents shall not give nor sell to a non-governmental third party, nor allow to be used by a non-governmental

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third party, any information, data, designs, plans, drawings, notes, maps, photographs, specifications, or other work furnished to or developed for the County under this agreement, without the express written consent of the County. Inquiries to the Consultant, whether direct or indirect, for products of this agreement shall be referred to the County Contract Officer unless otherwise requested by the County.

SECTION 23: CONFLICT

In the event of a conflict between this agreement, the RFP, and the Consultant's proposal, the RFP and the Consultant's proposal shall supersede this agreement due to them being the specific and this agreement being the general.

This contract is hereby signed in the State of Iowa and the laws of the State of Iowa shall be applicable hereto.

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

COUNTY OF SCOTT

KUCERA INTERNATIONAL INC.

By: _____
Larry Minard
Chairman of the Board

By: _____
John Antalovich, Jr., PE
President

ATTESTED TO: _____
Scott County Auditor
Karen Fitzsimmons