

Contract
by and between

Cuyahoga County, Ohio

and

Kucera International Inc.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2011 by and between Cuyahoga County, Ohio ("the County"), on behalf of the Information Services Center and **Kucera International Inc.** ("Kucera"), a Ohio corporation with principal offices at 38133 Western Parkway, Willoughby, Ohio 44094 ("the Provider").

WHEREAS, the County issued a Request for Proposal Number IS-10-18582 ("RFP # IS-10-18582") for Aerial Photography and Related Photogrammetric Services, for the County Information Services Center /GIS Department, and

WHEREAS, Kucera is the RFP awarded provider of Aerial Photography and Related Photogrammetric Services; and

WHEREAS, Cuyahoga County desires to avail itself of such services of Kucera and Kucera is willing to provide such services to the County all upon the terms and conditions set forth in this contract, as further supplemented herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Kucera and the County agree as follows:

ARTICLE I - AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Kucera shall provide the County with Aerial Photography and Related Photogrammetric Services as outlined in Schedule A of this agreement. If in the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.
- 1.2 Term. The initial term of this Contract shall commence as of February 1, 2011 and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of 11 months from the commencement date (2/1/2011 through 12/31/2011) at a cost not to exceed Sixty Six Thousand Dollars and Zero Cents. (\$66,000.00).

ARTICLE II - SCOPE OF WORK

- 2.1 Rendering of Services. Kucera hereby agrees to render the services identified in Article 1.1 the initial term which shall in no event exceed the amount of Sixty Six Thousand Dollars and Zero Cents (\$66,000.00). County agrees to pay all Charges invoiced by Kucera.

ARTICLE III - PAYMENT AND INVOICING

- 3.1 Payment. During the term of this Contract, the County shall pay Kucera for the services rendered to Cuyahoga County upon the completion of the project Pricing Schedule attached hereto as Schedule B.
- 3.2 Invoicing. Kucera shall invoice the County for services rendered hereunder upon the completion of services. Said invoice shall describe, on a line item, the services rendered, the date rendered. Kucera shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
John Kable, III, GISP
1255 Euclid Avenue, 4th Floor
Cleveland, OH 44115

- 3.3 Record Audit Retention. Kucera agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of one (1) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Kucera be notified that an audit has been commenced pursuant to Ohio Revised Code §117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

ARTICLE IV - INDEMNITIES AND WARRANTIES

- 1.2 4.1 Indemnities and Warranties. Kucera shall indemnify and hold Customer and its Agencies and their respective officers, directors, partner, principal, employees, agents, successors and permitted assignees harmless against damages arising out of third party claims resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) or loss of or damage to tangible real or tangible personal property, to the extent that such liability, loss, damage or expense was proximately caused by the negligent act or omission or the willful or intentional

misconduct of the party from whom indemnity is sought, its agents, employees or subcontractors, in connection with the provision or use of Services. Kucera shall not be liable under this Section 4.2 for damages caused by service or equipment that is not furnished by Kucera under this Agreement.

- 4.2 Condition Precedent to Indemnification. The indemnities in Article IV are conditioned upon the County providing Kucera prompt written notice of the claim, allegation or action for which indemnification is sought, together with full information and reasonable cooperation and full opportunity to control the response thereto and the defense thereof.

ARTICLE V - CHANGE ORDERS AND APPROVAL PROCESS

- 5.1 Change Order. Any change order or amendment requiring, or necessitating, an increase beyond the not to exceed price limit listed in section 2.1 of this contract, shall require the approval of the Cuyahoga County Executive. If Kucera chooses to provide services in excess of the price limit, Kucera shall provide such services at its risk.

ARTICLE VI - DISPUTE RESOLUTION AND TERMINATION ARTICLE VII - DISPUTE RESOLUTION AND TERMINATION

- 6.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Kucera and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Kucera or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

- 6.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Kucera, however, shall be paid for all services and/or materials provided on or prior to the date of termination.
- 6.3 Termination for Financial Instability. In the event that Kucera becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Kucera of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 6.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VII – MISCELLANEOUS

- 7.1 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated herein:

Schedule A – Kucera - Project Understanding, (including Statement of Work) and Methodology

Schedule B- Cost / Invoice / Payment Schedule

- 7.2 Relationship of Parties. Kucera is performing pursuant to this Contract only as an independent contractor. Kucera has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth

in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between Kucera and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

- 7.3 Force Majeure. Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, the other party hereto, or third parties (excluding subcontractors or agents), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

- 7.4 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:
John Hunter
Cuyahoga County Information Services Center
1255 Euclid Avenue, 4th Floor
Cleveland, OH 44115

In the case of Kucera:
Kucera International Inc.
Ronald Martin
38133 Western Parkway
Willoughby, Ohio 44094-7589

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

- 7.5 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is

capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

- 7.6 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.
- 7.7 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 7.8 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 7.9 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness. Venue in any action brought under this Contract shall be in Cuyahoga County.
- 7.10 Security Standards. If applicable, Kucera shall maintain reasonable security standards consistent with the security of the Cuyahoga County Information Services Center, upon receipt of such standards by the addressee identified in Section 7.1. These include strict control of access to data and maintaining confidentiality gained while carrying out its duties.
- 7.11 Social Security Act. Kucera shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Kucera for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Kucera also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.12 Assignment. Kucera shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive by resolution.

7.13 Contract Processing. Kucera shall submit one (1) original contractual agreements with original signatures to the following:

Cuyahoga County Information Services Center
Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, OH 44115

7.14 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Kucera prior to the execution of this agreement by the County Executive, the same will be provided at Kucera's risk, and payment therefore can not, and will not, be made unless and until this agreement is approved by the County Executive. Upon approval by the County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

ARTICLE VIII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

8.1 Electronic Signature. By entering into this Contract, Kucera, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

8.2 Compliance with ORC. Kucera further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County

IN WITNESS WHEREOF, the County and Kucera have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written above.

Kucera International Inc.

BY:  _____



Cuyahoga County, Ohio

BY:  _____

Edward FitzGerald, County Executive