



## Contract Agreement

This Agreement is made this 2nd day of February, 2023, between the City of Augusta, 535 Telfair Street, Augusta GA 30901, 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 professional aerial lidar data capture and mapping services as described in the City’s Bid Item # 23-128.

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

The Consultant will provide to the City professional services which will generally consist aerial lidar surveying, impervious surface mapping, manhole with rim elevation feature mapping, and all necessary ancillary and specified services (e.g. ground control and checkpoint surveying) covering the City’s designated approximately 260 square mile area. The aerial lidar surveying will be accomplished to USGS QL1 standards and the feature mapping will be accomplished using source data provided by the City (e.g. , 2021 3” orthoimagery ) along with the new aerial lidar data as needed.

The project areas, services, and deliverables are more specifically described in City’s December 2022 Bid Item # 23-128 and the Consultant’s January 4, 2023 bid response, 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 City.



- 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 coordinating with the City Project Coordinator.
- E. **Project Area** – shall refer to the area designated by the City 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., data, reports, 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 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. City shall assign a Project Coordinator(s) with the authority to review and approve materials and deliverables submitted by the Consultant and to act as liaison between the City and Consultant.
- B. City shall within a reasonable time frame review any samples or deliverables and approve or comment on same.
- C. City shall within a reasonable time after a request is received from the Consultant answer or address any unforeseen questions that may arise during the course of the work to be performed by the Consultant.
- D. City shall provide any City-designated source data or support to the Consultant required to complete the project work.



E. 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 the 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 outlined 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., lidar return and feature mapping datasets.

H. The Consultant shall obtain any non-City owned/provided outside source data 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:

Phase	Start	Complete
Project Initiation + Mobilization	2/2/23	2/6/23



Aerial lidar flyover	2/6/23	2/27/23
Ground Control + Checkpoint Survey	2/15/23	3/30/23
Lidar processing / Georeferencing	3/15/23	4/15/23
Lidar classification and hydro feature mapping	4/15/23	6/30/23
Lidar reports and hydro- flattened DEM	7/1/23	8/30/23
Impervious surface and manhole mapping	2/15/23	9/30/23
Project wrap-up	10/1/23	10/15/23

The contract work of the project shall be completed by September 2023, 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 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 reflights which may be necessary and cannot be completed during the calendar year in which the Project Area work is authorized.
2. Extensions by the City in providing notices to proceed, 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 semi-monthly which describe work completed up to the date of such report.

## SECTION 7: DELIVERY OF WORK/DELIVERABLES

Consultant shall inform the City when the work or any portion thereof has been completed and products of such work have been delivered to the 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. The City has an interest only in the results to be achieved, and the conduct and control of the services to be provided will lie solely with the Consultant and its employees, 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: INDEMNIFICATION

The Consultant will indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the services, provided that any such claims, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or



omission of the Consultant and any directly or indirectly employed by the Consultant or anyone for whose acts any of them may be liable. In any and all claims against the City or its agents or employees, by any employee of the Consultant, directly or indirectly employed, or anyone for whose acts may be held liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the City or under the Worker's Compensation Act, Disability Benefits Act or other employee benefits acts.

## SECTION 11: INSURANCE

Consultant shall maintain during the life of this Agreement such public liability and property damage insurance as shall protect Consultant and the City (including officials and employees) 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 the Consultant or any subconsultants, or by anyone directly or indirectly employed by either of them.

Consultant shall also maintain for the term of this Agreement insurance coverages of at least \$1 million combined single limit per occurrence bodily injury, personal injury, and property damage liability, \$2 million general aggregate liability, \$1 million claim errors and omissions and Georgia statutory workers' compensation liability.

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 12: 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 the specified USGS QL1 standards. The work shall be of high quality, and within the tolerances allowed by the project specifications and standards. If the Consultant is notified in writing by the City 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. If the 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 reworks shall be made at no additional cost to the City.

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 13: 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.

#### **SECTION 14: ACCEPTANCE**

The City shall give written notice of its acceptance or non-acceptance of work to the 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 15: OWNERSHIP AND USE OF PROJECT DATA

- A. The Consultant hereby understands and acknowledges that all information gathered, generated, and delivered to the City as outlined in Section 1: Scope of Services is for the exclusive use and benefit of the City, and shall be the sole property of City and that such information shall not be disseminated by the Consultant without the express written consent of the City.
- 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. 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. The Consultant hereby agrees to maintain one copy of all information gathered, generated, and delivered within its office in digital computer file form to serve as a backup to the data furnished to the City.
- E. 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 16: COPYRIGHTS AND DISCLAIMERS

- A. Copyright and title to all final deliverable products shall pass from the Consultant to the City upon the City 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 Consultant 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 17: COMPENSATION FOR CONSULTANT'S SERVICES**

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

Service/Deliverable	Fee
USGS QL1 Aerial Lidar Acquisition and Deliverables	\$56,500.00
Lidar DEM and 1' Contours	\$20,000.00
Media Drive	\$500.00
Impervious Surface feature mapping	\$91,000.00
Manhole feature mapping with rim elevation	\$11,180.00
<b>Total:</b>	<b>\$179,180.00</b>

The fees listed above include all ancillary services/products required for each fee item as defined in Exhibits A and B.

**SECTION 18: 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 17: Compensation for Consultant's Services". 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 19: ADDED SERVICES**

Added services as requested by the City may be performed as mutually agreed with the Consultant and authorized by the City. The added services and cost will be documented and made part of this Agreement by Amendment signed by the City and the Consultant.



**SECTION 20: PRICE GUARANTEE**

The fees quoted for work contracted for or 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, 2023. Should 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 21: NOTICES**

- A. All notices, demands, requests, instructions, approvals, and claims shall be in writing.
- B. Any notice to or demand upon the Consultant’s shall be sufficiently given if delivered to the Consultant’s Project Manager, or if deposited in the United States Mail in a sealed, postage prepaid envelope, or delivered, with charges prepaid, to any telegraph company for transmission, by electronic mail, or facsimile, in each case addressed as follows:

Kucera International Inc.  
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 \_\_\_\_\_  
 \_\_\_\_\_  
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- C. All papers required to be delivered to the City shall, unless otherwise specified in writing, be delivered to the Project Coordinator. Any notice to or demand upon the City shall be sufficiently given if delivered to the Office of said Management Point-of-Contact or if deposited in the United States Mail in a sealed, postage prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission, by electronic mail, or facsimile, in each case addressed as follows:

Augusta, Georgia  
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## SECTION 22: 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 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. If any discrepancy or inconsistency should be discovered in these Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, Consultant shall herewith report the same in writing to the City. Consultant shall at all times observe and comply with all such existing and future laws, ordinances and regulations, and shall protect and indemnify the City and its agents against the violation of any such law, ordinance, regulation, order or decree, whether by himself or by his employees.

## SECTION 23: TERMINATION

This Agreement shall terminate upon the City's acceptance of and payment for all authorized deliverables and services.

Termination for Convenience. Either party may terminate this Agreement, for its own convenience, by providing thirty (30) days' written notice to the other party. In the event of such termination, 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.

Termination for Default. This Agreement can be terminated based upon Consultant's failure to perform based upon the occurrence of any one of the following: Consultant's breach of this Agreement for failure to abide by the terms of this Agreement, Consultant's bankruptcy, lack or loss of skilled personnel, or Consultant undertaking or failing to undertake an action in compliance with any laws, ordinances, rules, regulations, or orders of any public body having jurisdictions. The City shall have the right to terminate this Agreement with thirty (30) days' written notice to Consultant. In the event that Consultant cannot cure the default within thirty (30) days from the date of the written notice of termination, this Agreement shall automatically terminate after the thirtieth (30<sup>th</sup>) day. Consultant shall be liable for any losses occurring as a result of any event of default.



Any termination of Consultant's services will not affect any right of the City against the Consultant then existing or which may thereafter occur. Any retention of payment of monies by the City due to Consultant will not release the Consultant from compliance with the Agreement Documents.

## SECTION 24: AMENDMENTS

Modification Requires Legislative Approval. No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of each party hereto. Consultant acknowledges that this Agreement and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Consultant is deemed to possess knowledge concerning the City's ability to assume contractual obligations and the consequences of Consultant's provision of goods or services to the City under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that Consultant may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Consultant agrees that if it provides goods or services to the City under a contract that has not received proper legislative authorization or if Consultant provides goods or services to the City in excess of the any contractually authorized goods or services, as required by the City's Charter and Code, the City may withhold payment for any unauthorized goods or services provided by Consultant. Service Provider assumes all risk of non-payment for the provision of any unauthorized goods or services to the City, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all the City contracts for goods and services, except revenue producing contracts. .Notwithstanding the forgoing, the City shall provide Consultant a certified copy of the legislative authorization from the Board of Commissioners for this Agreement, and any amendment, change order, modification, addition of deliverables, or similar document. The City further acknowledges that Consultant shall not commence any work that is contained in any this Agreement, or any amendment, change order, modification, addition of deliverables, or similar document, until it has received said certified copy of the legislative authorization, and that Consultant shall not be liable under this Agreement, or under law or equity, for any delays which are due to its not timely receiving said legislative authorization.

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 RFQ 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 RFQ specifications shall have precedence unless otherwise mutually agreed by the City and the Consultant.

#### **SECTION 25: ASSIGNMENT**

Neither party may assign or subcontract its rights or obligations under this Agreement without prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of its assets. The Consultant shall not assign the whole or any part of this Agreement or any monies due or to become due hereunder without written consent of the City. In case the Consultant assigns all or any part of any monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Consultant shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this Agreement.

#### **SECTION 26: GEORGIA OPEN RECORDS ACT**

Consultant acknowledges that this Agreement and certain documentation that this Agreement may receive may be subject to the Georgia Open Records Act (OCGA §50-18-70, et seq.) (hereinafter the "Act"). Consultant shall cooperate in a commercially reasonable manner in responding to such requests and shall make relevant non-exempt records that may be in its possession as defined in, and which are subject to the Act, available for inspection and copying as required under the Act. Confidential and Proprietary documentation and/or information that Augusta may receive from the Consultant shall be marked as such and shall attach an affidavit attesting to the confidential and proprietary nature of the documentation and/or information, and shall be subject to the relevant exclusions pursuant to the Act.

#### **SECTION 27: LOCAL SMALL BUSINESS PROGRAM**

Although the solicitation for which this Agreement was procured did not contain a local small business goal, should consultant choose to engage a local small business at any point during the performance of this Agreement, then, in accordance with Chapter 10B of the AUGUSTA, GA. CODE, Consultant expressly agrees to collect and maintain all records necessary for Augusta, Georgia to evaluate the effectiveness of its Local Small Business Opportunity Program and to make such records available to Augusta, Georgia. Such documents shall be in the format specified by the Director of Compliance and



shall be submitted at such times as required by Augusta, Georgia. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor and/or collecting liquidated damages.

#### **SECTION 28: 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 RFQ 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 RFQ specifications shall have precedence unless otherwise mutually agreed by the City and the Consultant.

#### **SECTION 29: JURISDICTION AND SIGNATURES**

This Agreement is hereby signed in the State of Georgia and the laws of the State of Georgia shall be applicable hereto. This Agreement shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of Georgia. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal or state courts located in Richmond County, Georgia. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. This section shall survive the termination of this Agreement.



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

Agreed to by: City of Augusta, Georgia

Signature:

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agreed to by: Kucera International, Inc.

Signature:

Name:

John Antalovich, Jr.

Title:

President

Date:

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