



City of East Moline Committee of the Whole

City Council Chambers
915 16th Avenue
East Moline, IL 61244

DATE: **March 16, 2009**

TIME: **7:15 P.M.**

<i>1</i>	R.I. County Raceway Events	Alderman Dave Kelley
<i>2</i>	FEMA Project Repair – Work Progress	Tim Kammler
<i>3</i>	2009 Aerial Photography Contract	Tim Kammler
<i>4</i>	Loan to Paul Andrew	Jim Hughes

Memo

To: Rich Keehner – City Administrator
Cc: Jim Hughes – Finance Director
Bill Phares – City Attorney
Dave Lambrecht – Maintenance Services Director
From: Tim Kammler, Director of Engineering
Date: February 23, 2009
Re: **FEMA Damage Repair Projects – Construction Process**

We have received the anticipated funds from FEMA for their approved portion of the infrastructure repairs required around the City due to damage incurred during the storms in June of 2008. These funds were approved by FEMA based on photos and rough cost estimates for each damage site, as compiled by our staff and McClure Engineering.

Since the funds have been received, we have compiled project area plans that show our proposed access route for each group of damage sites, and we have also compiled a list of anticipated temporary construction easements that we will need to get property owner approval for access and construction.

It was originally our intention to prepare contract documents to bid this work out, however as we started to prepare these documents, it became clear that it would be very difficult, due to the nature of the work, to prepare bid documents that were clear enough for a contractor to prepare an "informed bid" without visiting the dozens of these sites with our staff acting as tour guides. There is simply too much variety of work, too much variation in access, etc. to put reasonable bid documents together without spending a tremendous amount of time, which is in short supply due to the number of capital improvement projects we are already managing.

After coming to this conclusion, I met briefly with Dave Lambrecht to discuss the possibility of performing some of this work with our drainage crew and/or other MS staffers. While we don't have equipment for most of the work (which would require an excavator), there are some portions which Dave believes we can perform the needed repairs with our staff, which we will do.

For the remaining damage areas, the simplest and most cost-effective approach for the City (in my opinion) is to work with a contractor on a time & material basis to perform the needed repairs. In order to proceed with this approach, and as a standard bidding process does not seem appropriate for this work, I would propose the following course of action in order to select a contractor:

1. Request a schedule of hourly rates from a number of local contractors
2. Request any discount in the hourly rates that each contractor would provide the City, if selected for the work proposed (assuming at least \$200,000 in fees), and any other pertinent information that the contractor would like to submit.

3. A selection team consisting of Engineering Director, MS Director and Finance director (with Administrator as ex-official member) would review the rates, discounts, and other information provided.
4. Interview a "short list" of three (3) contractors to discuss construction procedures, workflow, access, costs, etc. Prior working relationship with City staff and prior service provided to the City would be factors as well.
5. Selection team would select a contractor based on the best overall value and service to the City and provide the recommendation to the City Council.
6. Engineering Director would take the recommendation to City Council for review and approval.

After selection of the Contractor, a T&M contract could be executed (subject to review and approval by City Administrator and City Attorney) and work could then proceed, weather permitting. It is likely that work could start on a limited basis in April and May, and be completed by mid-Summer.

One further advantage of doing the work on a Time & Material basis is that it would allow our staff, should staff availability and equipment permit, to do more work in-house. For example, on a few damage sites, we may be able to provide trucking for rock or earth excavation for the contractor using an excavator, which would save us some fees by doing so.

Please call me with any questions and let me know at your earliest convenience if you think this sounds like a reasonable course of action.

TDK

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
	2215 South Florida Avenue	Lakeland, Florida 33803	(941) 686-8640
	1121 Boyce Road, #3100	Pittsburgh, Pennsylvania 15241	(724) 942-2881

This Agreement is made this ___ day of _____, 2009, between the City of East Moline, Illinois, 1200 13th Avenue, East Moline, IL 61244, 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 services in connection with the project as outlined in the Bi-State Commission's Quad Cities Aerial Mapping Project Request for Proposals issued January 15, 2009; and

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 aerial photogrammetric services which will generally consist of aerial photography, ground and airborne control surveying, aerotriangulation, digital elevation model (DEM) acquisition/updates, digital orthophotography, optional planimetric feature mapping, and optional digital terrain model (DTM) and two foot contour topographic mapping. The aerial photography will be acquired in direct RGBIR digital form at a 0.4' (flying height ~4000' above ground) image resolution and will be georeferenced to a combination of airborne GPS/IMU and targeted ground control using a softcopy aerotriangulation process. The georeferenced imagery will be ortho-rectified to existing (2005) Bi-State project lidar DEM, which will be photogrammetrically reviewed and updated as needed to support the rectification. The digital orthophotography will be furnished in color at 1"=100' scale, 0.4' image resolution. The optional planimetric feature mapping will be performed at 1"=100' scale and will include the specified impervious surface features. The optional DTM for two foot contour mapping will be produced from the project aerial imagery or a combination of the aerial imagery and a new aerial lidar survey. The services will cover the City and/or designated interior and exterior peripheral areas.

The services to be performed are more specifically described in the Bi-State Commission's January 15, 2009 Quad Cities Aerial Mapping Project RFP and Kucera's proposal response dated February 5, 2009, 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.

B. **Project Coordinator(s)** - shall refer to the City'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 City, and periodically report the status of the work to the Contract Officer or the City's Project Coordinator.

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

E. **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.

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

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

H. **RFP** - shall refer to the Bi-State Commission's Quad Cities Aerial Mapping Project request for proposals dated January 15, 2009 and associated addendums and correspondence.

I. **Proposal** – shall refer to Kucera International's proposal to the Bi-State Commission for the project work dated February 5, 2009.

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 liaison between the City and Consultant.

B. The City shall within ninety (90) days of receipt 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 source materials 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 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 the 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., raw aerial imagery, updated DEM, digital orthophoto imagery, etc. at no added cost to the City.

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 as outlined in the Consultant's proposal:

<i>Phase</i>	<i>Start</i>	<i>Complete</i>
Project initiation	2/23/09	3/18/09
Ground control survey/targeting	3/18/09	3/23/09
Aerial photo flyover	3/24/09	4/24/09
Aerial data processing/reduction and review	4/24/09	5/30/09
Preliminary orthophoto delivery	5/1/09	5/8/09
Aerotriangulation	5/24/09	7/15/09
Pilot project	7/15/09	8/15/09
DEM review/update	8/15/09	9/30/09
Digital orthophoto production and delivery	9/1/09	10/15/09
Optional planimetric/topographic mapping	10/1/09	12/15/09
Project wrap-up/metadata	12/15/09	12/31/09

The contract work shall be completed by December 31, 2009, 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.

The 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 can 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 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, City-designated source materials, 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 circumstances beyond the control of the Consultant which is 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 at least monthly which describe work completed up to the date of such report.

SECTION 7: DELIVERY OF WORK/DELIVERABLES

Consultant shall certify to 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.

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, 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 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, commission, 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, its subcontractors, 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 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; \$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 officials and employees are to be named as additional insureds.

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 City 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 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-mentioned City notification clause.

Consultant shall indemnify and hold City 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 City as outlined and required by the terms and conditions of this Agreement except as may be defined in Section 11: Warranty.

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 City's specifications. The orthophotography and optional planimetric mapping produced will meet ASPRS Class 1 and National Standards for Spatial Data Accuracy (NSSDA) as applicable, i.e., having a root mean square horizontal displacement error (RMSE) within 1' for ground-based locations determined from the imagery/mapping in relation to their "true" (accurately surveyed) positions. The vertical displacement for the optional contour mapping will be limited to 0.5' for spot elevation readings and 1' for contour-derived elevations at a 90% confidence. The work shall be of high quality, and shall be within the tolerances allowed by the above-cited references. If the Consultant is notified in writing by 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 rework shall be made at no additional cost to the City.

The warranty will apply indefinitely for major errors/defects found in Consultants' mapping and for one year from the time of final 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 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 whatever 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 if indicated as such in the absence of other notification.~~

SECTION 13: ACCEPTANCE

~~The City shall give written notice of its acceptance or non-acceptance of work to Consultant within ten (10) working days of the 90-day review period. If no such notice is given to the Consultant, the work shall be deemed accepted by the City.~~

SECTION 14: 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.

~~B. All information, data, designs, plans, drawings, maps, photographs, 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 imagery or mapping not part of this Agreement or not as yet delivered to the City. 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 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 one copy of all information gathered, generated and delivered to the City within its office in digital computer file form to serve as a backup to the data furnished to the City. 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, e.g., image enlargement significantly greater than the specified map scale scales and associated accuracies.

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 the City's payment for the deliverables.~~

B. ~~Use by a third party of the project aerial photography and associated digital imagery while in the Consultant's processing 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 the 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. Digital aerial photography acquisition	\$ 4,850
2. Color digital orthophotography	3,950
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Total base fee	\$ 8,800

Optional Services:

3. Planimetric feature mapping (entire City area – 29.5 sq. miles)	51,000
4. DTM and 2' contour topography	
a. Entire city area (approximately 29.5 sq. miles)	34,950
b. Land annexed in Fall, 2008 (approximately 10 sq. miles)	12,000
c. Triumph site (approximately 2 sq. miles)	2,400

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

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 out and a new invoice submitted at the agreed amount with a new thirty (30) day payment period.

SECTION 18: PRICE PROTECTION

The fees quoted for work contracted for by the City as part of this Agreement, or quoted by Contractor for additional services during the course of this Agreement shall be applicable until March 1, 2010. Should the City defer any portion of the work beyond this date, the fee for such work deferred will 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 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 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 film, 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 cure 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

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.

SECTION 23: ATTORNEY FEES

In the event either party has to institute any legal action for breach of this agreement or to enforce the terms thereof, the prevailing party shall be entitled to recover any and all costs associated with having to institute such action, including, but not limited to, attorneys' fees and all costs as a result of the action

SECTION 24: JURISDICTION AND SIGNATURES

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

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

CITY OF EAST MOLINE

KUCERA INTERNATIONAL INC.

By: _____
Authorized City Representative

By: _____
John Antalovich, Jr., PE
President

