

Professional Services Agreement

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made by and between Hall County, Georgia (referred to herein as "Client") with offices at 2875 Browns Bridge Road, Gainesville, GA 30504 and NV5 GEOSPATIAL, Inc. a Wisconsin corporation (referred to herein as "Consultant") with offices at 10033 Dr. MLK Jr. Street N, Suite 200, St. Petersburg, FL 33716.

- I. **ENGAGEMENT.** Client desires to engage Consultant to provide Services as described in Exhibit A, Scope of Services. The "General Terms and Conditions" set forth as "Exhibit B" are hereby made a part of this Agreement. No deviation from the "Terms and Conditions for Professional Services" are authorized without the express written consent of Consultant.
- II. **SCOPE OF WORK.** Consultant shall provide Services in accordance with the "Scope of Work" attached hereto as "Exhibit A". Scope of Work (SOW), incorporated by reference to these terms and conditions, shall mean the technical description of the work to be performed. "Documentation" shall mean deliverable documentation in accordance with the SOW for services described therein. "Equipment" shall mean all equipment used by NV5 Geospatial, Inc. for the purpose of providing services as described in the SOW. Consultant agrees to commence Services embraced by this Agreement on 7/17/2023.
- III. **METHOD AND LEVEL OF COMPENSATION.** Consultant shall provide Services as described in Exhibit A for in consideration of a sum of \$82,875.00. Consultant will not exceed this amount in billings and/or commitments without prior written authorization from Client.
- IV. **INVOICES.** For payment of Services, Consultant shall invoice the account of: **Hall County, 2875 Browns Bridge Road, Gainesville, GA 30504, Rebecca Evans, GIS Manager**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives this 17 day of July, 2023. Signers warrant that they have the authority to bind the respective parties to this Agreement.

Date: July 17, 2023

Date: July 17, 2023

Client: **Hall County, GA**

NV5 GEOSPATIAL, INC.

By: _____


By: 

Name: _____

Name: Robert VanderMeer

Title: _____

Title: Vice President



APPROVED AS TO FORM

William J. Linkous, III

Deputy County Attorney

EXHIBIT A

SCOPE OF SERVICES

| 2023 Hall County Planimetric Mapping Update | | Price (USD) | |
|---|---------------------|-------------|--------------------|
| TOTAL | | | \$82,875.00 |
| Includes: | | | |
| Hall County Buildings | \$ 39,525.00 | | |
| Hall County Road Edges | \$ 32,250.00 | | |
| Gainesville Additional Impervious | \$ 11,100.00 | | |
| <p>All data is to be delivered in an ESRI geodatabase format. The Coordinate System shall be Georgia State Plane West, FIPS 1002, U. S. Survey Feet. All work shall be performed under the supervision of a certified photogrammetrist.</p> | | | |

APPROVED AS TO FORM
William J. Landon III

EXHIBIT B

GENERAL TERMS AND CONDITIONS

- 1. The Agreement.** This Agreement between the parties, which shall describe and govern Client's engagement of Consultant to provide services (referred to herein as "Services") identified in the Proposal, consists of the Proposal, these General Terms and Conditions, Consultant's pricing, and any exhibits or attachments referenced in any of these documents. Together these elements constitute the entire agreement between the parties, superseding any and all prior negotiations, correspondence, or agreements, either written or oral, with respect to the subject matter of this engagement.
- 2. Standard of Care.** The parties will consult and cooperate to coordinate Services with the activities of Client employees and other representatives. The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project. Consultant shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. Consultant shall not be held liable for problems that may occur if Consultant's recommendations are not followed. In performance of Services and this Agreement, Consultant will comply in general accordance with applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other governmental requirements (including, but not limited to, such requirements imposed on Client with respect to Services).
- 3. Schedule.** Consultant will use best efforts to perform Services in accordance with agreed upon schedule. Consultant is not responsible for delays as a result of acts of God, earthquake, fire, explosion, flood, the elements; strikes, lockouts, boycotts, picketing, labor disturbances or differences with workers; acts of the public enemy, war, rebellion, riots, acts of the government (federal, state, or municipal); shelter in place, quarantines, work restrictions or related government orders or mandates arising from or in connection with pandemics including COVID-19 (coronavirus), weather conditions adversely affecting aerial acquisition, flight clearances for access to air and space, aviation security restrictions, equipment failures or interruptions in communications systems; or any cause whatsoever beyond the control of the party in default. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this Agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause Consultant to perform extra services, such services shall be paid for by Client as extra services in accordance with paragraph.
- 4. Changes.** Client may make changes in Services within the general scope of this Agreement (including, but not limited to, additions to or deletions from Services, suspension of performance, and changes in schedule) by giving Consultant written notice of the same. If a change causes an increase or decrease in the time or costs required to perform Services according to this Agreement, the schedule and compensation for such Services will be equitably adjusted to reflect such increase or decrease, and the Agreement will be amended in writing accordingly.

5. Additional Services. Client agrees that if Client requests services not specified in the scope of services described in this Agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this Agreement, or as identified via an amendment to the original Agreement.

6. Billing and Payment. Consultant will issue progress invoices, including applicable taxes, thereafter to Client as work is performed, but no more frequently than weekly. Undisputed progress invoices are payable by Client thirty (30) days after receipt of the invoice. Where the method of contract payment is based on a time-and-materials basis, the minimum time segment for the charging of work is one half hour. Salary increases will become effective immediately upon Consultant's authorization and will be reflected in the next invoice submitted to Client. All payments will be made in United States Dollars. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due as set forth in this Section. In such an event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall also be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Consultant reserves the right to withhold all reports or deliverables and suspend any and all services, including but not limited to a stop work order on the project, unless and until payment is made by Customer in accordance with this Agreement.

Should Consultant be subpoenaed or called upon to testify for or on behalf of the Client or for consulting services on matters arising out of or related to the Work, Client shall compensate Consultant for its time at a rate of two times (2x) the Consultant's standard billing rates.

7. Site Access and Conditions. Client will provide Consultant access to the Project site for all equipment and personnel necessary for the performance of the Services. As required to effectuate such access, Client will notify all owners, lessees, contractors, subcontractors, and other possessors of the Project site that Consultant must be allowed free access to the site. While Consultant agrees to take reasonable precautions to minimize damage to the site, Client understands that, in the normal course of performing the Services, some damage may occur, and further understands that Consultant is not responsible for the correction of any such damage unless so specified in the Proposal.

Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all

portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.

8. Reports. If requested by Client and agreed to by Consultant, Consultant will prepare and submit to Client a written report describing Services performed during the prior month and Services planned for the current month.

9. Confidential Information. Information acquired by Consultant in connection with Services (from Client or a third party or developed by Consultant) and not generally available to the public will constitute confidential information of Client (*Confidential Information*). "Confidential Information" shall include any and all oral, written or electronically transmitted information of a proprietary nature which is either owned by the Parties, or owned by any affiliate of the Parties and licensed to the other Party, including, but not limited to, any information relating to services or products that is not generally available to the public, including without limitation, identification of customers; business methods, strategies and practices; internal operations; pricing and billing; financial data; costs; personnel information; customer and supplier contacts and needs; sales lists; technology; software; computer programs; computer systems; inventions; patents-pending; product development; trade secrets of any kind; any information designated as confidential by either Party or that Party's clients; and all oral, written or electronically transmitted information learned by the receiving Party from the disclosing Party's employees, agents, or through inspection of the other Parties' property, that relate to the categories of information listed above. Confidential Information shall not include information that (i) is now or subsequently becomes generally available to the public through no fault or breach of this Agreement on the part of the receiving Party; (ii) the receiving Party can demonstrate to have had rightfully in its possession prior to disclosure by the other Party; (iii) is independently developed by either Party without the use of any Confidential Information; or (d) the receiving Party rightfully obtains from a third party who has the right to transfer or disclose it without a duty of confidentiality and/or nondisclosure.

Consultant will use and disclose Confidential Information only as reasonably required for performance of Services in accordance with this Agreement or as otherwise authorized in writing by Client. Consultant will not publish Confidential Information without prior written consent of Client. Without limitation of the foregoing, Consultant will not divert or misappropriate Confidential Information for Consultant benefit or the benefit of a third party. Consultant will take appropriate steps to protect Confidential Information from unauthorized use or disclosure.

10. Intellectual Property and Ownership of Documents. "Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs) and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. "Pre-Existing Materials" means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or

used by in connection with performing the Services, in each case developed or acquired prior to the commencement or independently of this Agreement.

Each party will retain all right, title, and interest in and to its own Pre-Existing Intellectual Property irrespective of any disclosure of such Pre-Existing Intellectual Property to the other party, subject to any licenses granted herein. All documents prepared by the Consultant pursuant to this Agreement, including but not limited to reports, field data, field notes, laboratory test data, calculations, and estimates are instruments of service in respect to the subject project. As such, the originals of all such documents shall be retained by and remain the property of the Consultant. The Client shall be entitled to copies of all such documents produced by the Consultant under this Agreement.

11. Limitations of Work Product. It is understood and the parties agree that the Client shall not use or reuse said documents or information contained therein for additions or modifications to the subject project, for other projects, or for completion of this project by another consultant, except by prior written agreement between the parties hereto and with appropriate compensation to the Consultant for such use or reuse. Any such use or reuse by the Client shall be at the Client's sole risk and without liability or legal exposure to the Consultant. Further, to the extent permitted by law, the Client shall defend, indemnify and hold harmless the Consultant, its officers, associates, servants, employees, consultants and agents, from and against any and all claims, demands, damages, losses or expenses of whatever kind or nature, including attorney's fees, arising out of/or claimed to arise out of any such unauthorized use or reuse of said documents or information.

12. Risk Allocation and Limitations of Liability. No employee or agent of Consultant shall have individual liability to Client. To the extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is greater. If Client desires a limit of liability greater than that provided above, Client and Consultant shall mutually agree in writing as to the amount of such limit and the additional compensation to be paid to Consultant for assumption of such additional risk. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL CONSULTANT BE LIABLE TO CLIENT FOR LIQUIDATED, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. Liability for Others. Consultant shall not be responsible for the acts or omissions of the Client, architect, architect's other consultants, contractor, subcontractor, other third parties or their respective agents, employees, assigns, successors, or other persons performing any of the work. Consultant shall promptly notify Client if Consultant becomes aware of any inconsistencies in the services or information provided by other parties.

14. Indemnification by Client. To the extent allowed by law, Client agrees to indemnify and save harmless Consultant and any affiliation thereof, its officers, agents and employees from and against any and all claims and liability, loss, expenses, suits, damages, judgments, demands, and costs (including reasonable legal fees and expenses) arising out of: (i) the acts or omissions of Client, its employees, agents or its subcontractors; (ii) injury or death to persons, or loss of or damage to property, or fines which may result by reason of buying, selling, distribution, or use of any goods or services provided under this Agreement except to the extent that such damage is due solely and directly to the negligence of Consultant; (iii) false claims submitted by Client under this Agreement or as a result of a Client misrepresentation of fact, or fraud by Client.

15. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for services performed through the date of termination, plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

16. Relationship of Parties. Consultant is an independent contractor, not an employee or agent of Client. Without limitation of the foregoing, Consultant will (a) not enter into any contract, agreement, or other commitment, or incur any obligation or liability, in the name or otherwise on behalf of Client; (b) not be entitled to any worker compensation, pension, retirement, insurance, or other benefits afforded to employees of Client; (c) provide for federal income tax and other withholding related to Consultant compensation; (d) pay social security, unemployment, and other employer taxes related to Consultant employment, employees, or compensation; (e) provide worker compensation and other insurance related to Consultant employment or employees; and (f) perform all reporting, recordkeeping, administrative, and similar functions related to Consultant employment, employees, or compensation.

17. Dispute Resolution. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the State where the Project is located. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

Any cause of action brought against Consultant shall be brought within one year of the work or Services performed under this Agreement. In an action, suit, or other legal proceeding to enforce a right or remedy under this Agreement, the prevailing party will be entitled to recover its costs and expenses (including, without limitation, expert witness and attorney fees) reasonably incurred in connection with such action, suit, or other proceeding or any appeal thereof. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

18. Assigns. Client may not assign this Agreement or any right or obligation hereunder without the prior written consent of Consultant, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

19. Waiver of Jury Trial. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

20. Governing Law and Survival. The validity of this Agreement, these terms, their interpretation, and performance shall be governed by the laws of the State in which the Project is located. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability, indemnification, and non-solicitation & hiring of employees shall survive the termination of this Agreement for any reason. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

21. Enforceability. This Agreement shall be interpreted by the parties in a manner that ensures this Agreement's general accordance with applicable local, state, federal, or foreign laws. The parties affirm that this Agreement is a collaborative effort between Client and Consultant, with no single party considered the drafter of this Agreement or having the drafting of this document construed against them.

22. Severability. Should a court find one of the provisions of this Agreement unenforceable, the remaining provisions of this Agreement shall remain in full force and affect.

23. Entire Agreement. To the extent allowed by law, any agreement that is part of the scope of Consultant's Services and incorporated by reference into this Agreement shall be subordinated to the terms and conditions of this Agreement where they conflict. This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.