

**NEOCITY SERVICE AGREEMENT**

**By and Between**

**NEOCITY IMPROVEMENT DISTRICT,  
a dependent special district of Osceola County, Florida**

**AND**

**NEOCITY PROPERTY OWNERS' ASSOCIATION, INC.  
a Florida nonprofit corporation**

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## **NEOCITY SERVICE AGREEMENT**

**THIS NEOCITY SERVICE AGREEMENT** (this "Service Agreement") is made and entered into as of July 15, 2024, by and between the NeoCity Improvement District, a dependent special district of Osceola County, Florida (the "District") and the NeoCity Property Owners' Association, Inc., a Florida nonprofit corporation (the "Association").

### **W I T N E S S E T H:**

**WHEREAS**, the District has been created by Ordinance No. 2023-08 (the Ordinance") enacted by the Board of County Commissioners of Osceola County, Florida (the "County") on February 6, 2023, for the purpose of acquiring, constructing, operating and maintaining certain common areas owned by the County and located within the District; and

**WHEREAS**, the Association is a nonprofit corporation created to provide services providing benefit to the owners of property within the District, which may include the maintenance of common areas; and

**WHEREAS**, both the District and the Association are authorized to impose special assessments to fund their respective services; and

**WHEREAS**, as a special purpose unit of local government, the District is authorized to collect its special assessments on the ad valorem tax roll, which typically results in a higher collection percentage; and

**WHEREAS**, the Board of Directors of the Association (the "Association Board") will be elected by the property owners and the parties have determined that it would be the most effective entity to maintain common areas owned by the County and located within the District; and

**WHEREAS**, the parties desire to enter into this Service Agreement to provide a framework for the District to impose special assessments and provide funds to the Association for the maintenance of common areas owned by the County and located within the District; and

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:

**SECTION 1. DEFINITIONS.** The terms used in this Service Agreement shall be given their normal, commonly understood definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Ordinance, unless the context indicates otherwise.

### **SECTION 2. REPRESENTATIONS OF THE PARTIES.**

(A) The District makes the following representations as the basis for the undertakings on the part of Association herein contained:

(1) The District is a dependent special district of Osceola County, Florida, and has all requisite power and authority to enter into the transactions contemplated by this Service Agreement and to carry out its obligations hereunder.

(2) The District is not in default under any provisions of applicable law material to the performance of its obligations under this Service Agreement.

(3) The District has duly authorized the execution and delivery of this Service Agreement, and assuming the due authorization, execution and delivery by Association, this Service Agreement constitutes a valid and legally binding obligation of the District, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(4) The authorization, execution and delivery of this Service Agreement, and the compliance by the District with the provisions hereof will not conflict with or constitute a material breach of, or default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida relating to the District or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which the District is subject or by which it is bound.

(5) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the District, threatened against or affecting the District, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Service Agreement, or any agreement or instrument to which the District is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(B) Association makes the following representations as the basis for the undertakings on the part of the District herein contained:

(1) Association is a Florida nonprofit corporation and has all requisite power and authority to enter into the transactions contemplated by this Service Agreement and to carry out its obligations hereunder.

(2) Association is not in default under any provisions of applicable law material to the performance of its obligations under this Service Agreement.

(3) Association has duly authorized the execution and delivery of this Service Agreement, and assuming the due authorization, execution and delivery by the District, this Service Agreement constitutes a valid and legally binding obligation of Association, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(4) The authorization, execution and delivery of this Service Agreement, and the compliance by Association with the provisions hereof will not conflict with or constitute a material breach of, or default under, Association's bylaws or any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State of Florida or, to its knowledge, the State of Florida relating to Association or its affairs, or any ordinance, resolution, agreement, mortgage, lease or other instrument to which Association is subject or by which it is bound.

(5) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Association, threatened against or affecting Association, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Service Agreement, or any agreement or instrument to which Association is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

**SECTION 3. COMMON AREA MAINTENANCE OBLIGATION.** The Association shall perform the District O&M Services in accordance with the minimum standards attached hereto as Appendix A and by this reference made a part hereof (the "Minimum Service Standards"). Nothing herein shall be construed as requiring the Association to perform any activity which is outside of the scope of the Minimum Service Standards and the Association's obligations hereunder shall be limited to the use of District Funds, reasonably applied. At its option, the Association may exceed the Minimum Service Standards. The District hereby assigns its nonexclusive license over the Common Areas to the Association for the limited purpose of providing the District O&M Services hereunder.

**SECTION 4. COMMON AREA MAINTENANCE FUNDING.**

(A) Not less than forty-five days prior to the date County departments are required to submit budgets for each Fiscal Year, as identified in the calendar promulgated by the County's chief executive officer for development of the County's annual budget for each Fiscal Year (the "Budget Calendar"), the District Manager shall provide a copy of the Budget Calendar to the Association.

(B) The Association shall prepare a budget for the District Expenses in accordance with the uniform chart of accounts prescribed in Uniform Accounting System Manual promulgated by the State of Florida Department of Financial Services Bureau of Accounting (the "District Service Budget"), which shall be approved at a regular or special meeting of the Association Board. The District Service Budget shall include the Association's estimate of the District Expenses for the next Fiscal Year. The District Service Budget for the first Fiscal Year under this Service Agreement shall include a reserve equal to twenty percent of the Common Area Expenses. On or prior to the date County departments are required to submit budgets for each Fiscal Year, as identified in the Budget Calendar, the Association shall submit its proposed District Service Budget for the next Fiscal Year to the District Manager. The Association shall provide reasonable justification for the amounts included in the proposed District Service Budget.

(C) The District Manager shall include an amount equal to the Association's proposed District Service Budget as a line item in the District's proposed annual budget and shall include an amount equal to the Assessable District O&M Expenses (as defined in the Initial Assessment Resolution) in the Special Assessment calculation made pursuant to Section 4.01 of the Ordinance, Initial Assessment Resolution prepared pursuant to Section 4.02 of the Ordinance and the preliminary Assessment Roll prepared pursuant to Section 4.03 of the Ordinance. Upon completion of the foregoing, the District Manager shall publish and mail the notices required by Sections 4.04 and 4.05 of the Ordinance.

(D) The District Board shall conduct a public hearing to approve its annual budget, as required by Section 3.08 of the Ordinance, and a public hearing to adopt the Final Assessment Resolution, as required by Section 4.06 of the Ordinance. The District's adopted annual budget shall include a specific amount identified as the District Service Budget.

(E) On October 1 of each Fiscal Year, the District shall pay an amount equal to one-sixth of the approved District Service Budget to the Association. An amount equal to one-twelfth of the approved District Service Budget shall be paid to the Association on the first day of each month thereafter until the full amount of the District Service Budget has been paid. Funds provided by the Association by the District hereunder are referred to as "District Funds."

#### **SECTION 5. PROCUREMENT.**

(A) The following minimum requirements shall govern all purchases by the Association made using District Funds:

(1) Category One – Purchases of goods or services with a value less than \$5,000 shall be made from vendors at reasonable prices, without a requirement for quotations or bids.

(2) Category Two – Purchases of goods or services with a value between \$5,000 and \$24,999, inclusive, shall require three verbal quotations documented in writing.

(3) Category Three – Purchases of goods or services with a value of \$25,000 or more shall require sealed competitive bids. Notice of each invitation to submit competitive bids shall be published in a newspaper of general circulation at least 10 days prior to the bid opening and shall include the date and time of bid opening.

(B) The following purchases shall be exempt from the requirements set forth in subsection (A):

(1) legal, accounting and similar professional services;

(2) professional services within the scope of the practice architecture, professional engineering, landscape architecture, or registered surveying and mapping, which must be procured pursuant to the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes;

(3) sole source items, i.e., goods and services for which it is determined after conducting a diligent, good faith review of availability, that there is only one source; and

(4) emergency purchases, i.e., purchases necessitated by a threat to public health, welfare, or safety under emergency conditions, which includes those situations where the operation of the Association would be seriously impaired if immediate action is not taken.

(C) Compliance with the requirements set forth in this Section shall be documented for all purchases made using funds provided by the District pursuant to Section 4 hereof and records thereof maintained by the Association.

**SECTION 6. INSURANCE.**

(A) At all times during the term of this Service Agreement, the Association shall:

(1) maintain commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Common Areas, or otherwise arising under this Service Agreement;

(2) maintain umbrella or excess liability insurance;

(3) maintain commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;

(4) maintain appropriate workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Florida; and

(5) maintain professional liability insurance and self-insured employment practices liability coverage.

(B) Such liability insurance shall be maintained in the following minimum amounts:

(1) Commercial General Liability

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$1,000,000 products-completed operations aggregate

(2) Automobile Liability

\$1,000,000 per accident (PI and PD combined single limit)

(3) Umbrella or Excess Liability

\$3,000,000 per occurrence and aggregate

(4) Workers Compensation

As required by law

(5) Professional Liability/Errors & Omissions

\$1,000,000 each occurrence/aggregate – to include entity coverage

(6) Crime Coverage

Type: Blanket Crime Bond Limit: \$500,000

(C) All such insurance shall be written in form and substance satisfactory to the District in its reasonable judgment by an insurance company of recognized responsibility authorized to do business in the State of Florida; provided that insurance companies with a rating from A. M. Best Company of A-7 or better shall be deemed satisfactory. Upon failure of the Association to procure, maintain, and pay all premiums therefor, the District may, at its option, do so, and the Association agrees to pay the cost thereof to the District upon demand, together with interest thereon at the Prime Rate. Notwithstanding the foregoing, the District shall provide 30 days' written notice to the Association of its intent to procure insurance upon the Association's failure to do so, during which period the Association shall be entitled to cure its failure; provided however, that no notice or opportunity to cure shall be required if insurance for the Common Areas has lapsed. The Association shall furnish evidence of such insurance to the District. The certificate shall contain a standard insurance industry statement prohibiting cancellation, termination, or modification of the policy or reduction of coverage without first giving the District thirty days prior written notice of such proposed action, except in the event of non-payment of the premium, for which the District shall be given 10 days written notice of such proposed action.

## **SECTION 7. PUBLIC RECORDS.**

(A) The Association acknowledges that by virtue of this Service Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If the Association will act on behalf of the District, as provided under Section 119.011(2), Florida Statutes, the Association, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

(1) Keep and maintain public records required by the District to perform the service.

(2) Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.



(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the District.

(4) Upon completion of the contract, transfer, at no cost, to the District all public records in possession of the Association or keep and maintain public records required by the District to perform the service. If the Association transfers all public records to the District upon completion of the contract, the Association shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Association keeps and maintains public records upon completion of the contract, the Association shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

(5) If the Association does not comply with a public records request, the District shall enforce the contract provisions in accordance with the Service Agreement.

(B) Any questions regarding the application of Chapter 119, Florida Statutes, to the Association's duty to provide public records relating to this Service Agreement should be directed to the District's custodian of public records at

Public Information Office  
1 Courthouse Square, Suite 3100  
Kissimmee, FL 34741  
407-742-0100  
BCCPIO@osceola.org

**SECTION 8. AUDIT.** In the performance of this Service Agreement, the Association shall keep books, records, and accounts of all activities related to the District Funds in compliance with generally accepted accounting procedures. Throughout the term of this Service Agreement, books, records, and accounts related to the District Funds shall be open to inspection during regular business hours by an authorized representative of the District, and shall be retained by the Association for a period of three years after termination of this Management Agreement, or until the full District audit is complete, whichever comes first. The District shall retain the right to audit the books during the three-year retention period. All books, records, and accounts related to the District Funds shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes.

**SECTION 9. TERM.** This Service Agreement shall become effective as of July 15, 2024, and remain in effect through September 30 of the last Fiscal Year for which Special Assessments are imposed by the District to fund the District Service Budget and for such period thereafter as may be required for the performance of an audit pursuant to Section 8 hereof.

**SECTION 10. ASSIGNABILITY.** This Service Agreement shall not be assignable by either the District or the Association without the prior written consent of the other party, which consent may be given or withheld in such party's sole discretion.

**SECTION 11. RESOLUTION OF DISPUTES.**

(A) The District and the Association agree to cooperate and act in good faith at all times when dealing with each other. If a dispute arises between the parties, the parties shall attempt to resolve their differences quickly and informally. If they are unable to do so, they shall seek relief by initiating a non-binding mediation process, pursuant to the following subsection (B).

(B) All claims, disputes and controversies arising out of or related to the performance, interpretation, application or enforcement of this Service Agreement, including but not limited to claims for payment and claims for breach of this Service Agreement, shall be referred to non-binding mediation before initiation of any adjudicative action or proceeding, at law or in equity, unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise. The Association and District agree to participate fully in the mediation process and conscientiously attempt to resolve their dispute. Except as provided below, each party shall bear its own expenses in connection with the mediation. Both parties shall pay equally for the services of the mediator. The mediation shall take place in Osceola County, Florida. At any time during the dispute resolution process, the Association may request the County's chief executive officer (the "County Manager") to consider the disputed issue. The Association's written request shall be delivered to the County Manager and it shall describe the Association's proposed solution for resolving the dispute. The County Manager may request, and the Association shall timely provide, any additional information that is reasonably necessary to evaluate the disputed issue and the Association's proposal. The County Manager shall fully and fairly consider the Association's proposal in a timely manner. Upon request, the County Manager shall meet with the Association and discuss its proposal. If the Manager rejects the Association's proposal in whole or in part, the Association may submit a written request to the County Manager for an opportunity to present its proposed solution to the Board. Thereafter, the Association shall be allowed to present its proposal to the Board at a duly noticed public meeting. The Board may accept or reject the Association's proposal, or take other action that the Board deems appropriate, in the Board's sole discretion.

**SECTION 12. NO JOINT VENTURE.** Nothing in this Service Agreement shall be deemed to constitute the creation of a joint venture or partnership relationship between the parties to this Service Agreement.

**SECTION 13. ASSIGNMENT.** This Service Agreement shall not be assigned by the District or Association without the prior written consent of the other party, which consent may be given or withheld in such party's sole discretion.

**SECTION 14. NON-WAIVER.** The failure of any party to insist upon another party's compliance with its obligations under this Service Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.

**SECTION 15. COUNTERPARTS.** This Service Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Service Agreement, so that in making proof of this Service Agreement, it shall only be necessary to produce or account for one such counterpart.

**SECTION 16. ENTIRE AGREEMENT.** This Service Agreement, including the Appendices, which are incorporated herein by reference, constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

**SECTION 17. BINDING EFFECT.** This Service Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns.

**SECTION 18. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Service Agreement shall be binding unless executed in writing by all parties hereto. No waiver of any of the provisions of this Service Agreement shall be deemed or shall constitute a waiver of any other provision of this Service Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 19. NOTICES TO PARTIES.** Whenever this Service Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (A) by hand delivery to the person(s) hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five days after the document was electronically transmitted) upon the date so delivered to and received by the person to whom it is at the address set forth opposite the party's name below:

To the District:        *Don Fisher*  
                              *1 Courthouse Square, Suite 4100*  
                              *Kissimmee, Florida 34741*

To Association:        *Amanda Clavijo*  
                              *1 Courthouse Square, Suite 2100*  
                              *Kissimmee, Florida 34741*

Either of the foregoing parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed.

**SECTION 20. SEVERABILITY.** In the event any one or more of the provisions contained in this Service Agreement shall for any reason be held to be invalid, illegal or

unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Service Agreement shall be revised so as to cure such invalid, illegal or unenforceable provision to carry out as nearly as possible the original intent of the parties.

**SECTION 21. GOVERNING LAW AND VENUE.** This Service Agreement and all agreements entered into in connection herewith will be performed in Osceola County. The laws of Florida shall govern the validity, construction, enforcement and interpretation of this Service Agreement without regard to its choice of law principles. The parties agree that jurisdiction and venue for any action arising under this Service Agreement shall lie exclusively within the state courts of Florida in Osceola County, or the United States District Court for the Middle District of Florida, Orlando Division. The parties specifically waive the right to any other jurisdiction and venue, and the defense based on inconvenient forum.

**SECTION 22. LITIGATION.**

(A) In any action at law or in equity between the parties hereto occasioned by a default hereunder, the substantially prevailing party shall be entitled to collect its reasonable attorneys' fees actually incurred in the action from the non-prevailing party. As used herein, the term "substantially prevailing party" shall mean the party who receives substantially the relief sought. If the prevailing party utilizes "in-house" counsel, such party's reasonable costs, expenses and overhead for the time expended by the prevailing party for such in-house counsel in the aforementioned action shall be recoverable by the prevailing party in the same manner as other attorneys' fees.

(B) Each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury with respect to any litigation (including but not limited to any counterclaims, cross claims or third party claims), whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the relief sought by any party, and regardless of whether such causes of action, defenses or counterclaims are based on, or arise out of, under or in connection with this Service Agreement or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statement (whether verbal or written), or otherwise. Any party hereto may file a copy of this Service Agreement with any court as conclusive evidence of the consent of the parties hereto to the waiver of any right they may have to trial by jury.

**IN WITNESS WHEREOF**, the Board of District Commissioners of Osceola, Florida, has caused this Service Agreement to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**NEOCITY IMPROVEMENT DISTRICT**


By:   
\_\_\_\_\_  
Chair/Vice Chair  
Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
District Manager

**IN WITNESS WHEREOF**, the NeoCity Property Owners' Association, Inc. has caused this Service Agreement to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**NEOCITY PROPERTY OWNERS'  
ASSOCIATION, INC.**

By:  \_\_\_\_\_  
President/Vice President

ATTEST:

  
\_\_\_\_\_  
Witness

**APPENDIX A**  
**MINIMUM SERVICE STANDARDS**

<b>Number</b>	<b>Item</b>	<b>Cycles per Year</b>
1.	Mowing and landscaping services.	46
2.	Mowing and landscaping – drainage ditch.	24
3.	Mowing and trimming of the perimeter wall to include herbicide treatment as needed.	24
4.	Herbicide application of the fenced in areas.	12
5.	Additional Services such as clearing and debris removal, tree placement, Crepe Myrtle trimming, and moss removal, etc.	As needed.
6.	Mulch installation and removal.	2
7.	Plant replacement.	As needed.
8.	Palm tree trimming.	2
9.	Trimming of ornamental landscape grass.	1
10.	Irrigation system monthly inspection.	12
11.	Irrigation system service/maintenance.	As needed.
12.	Herbicide, pest control & fertilization – lawn and shrub treatment.	6
13.	Aquatic weed maintenance.	As needed.