

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF OKEECHOBEE
AND
NUNEZ LAWCARE AND LANDSCAPING INC.**

THE PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made effective as of the 1st day of October, 2023 (the "Effective Date"), by and between the CITY OF OKEECHOBEE, a Florida municipal corporation, whose principal address is 55 SE 3rd Avenue, Room 100, Okeechobee, FL 34974 (hereinafter the "City"), and Nunez Lawncare and Landscaping Inc., a Florida Corporation, whose address is 3650 SE 36 Ave, Okeechobee, FL 34974 (hereinafter, the "Contractor").

WHEREAS, the Contractor will perform services on behalf of the City, all as further set forth during negotiations with the City, attached hereto as Exhibit A ("Scope of Services"); and

WHEREAS, the Contractor and City, through mutual negotiation, have agreed upon a fee for the Services; and

WHEREAS, the City desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows:

1. Scope of Services.

- 1.1 Contractor shall provide the Services set forth in the attached Exhibit A, incorporated herein by reference.
- 1.2 Contractor shall furnish all reports, documents, information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter "Deliverables").

2. Term/Commencement Date.

- 2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect until September 30, 2024, unless earlier terminated in accordance with Paragraph 8. The City shall have the right to renew the term of the Agreement for two (2) additional one (1) year terms, and amend the terms and conditions, upon written notice to Contractor at least 30 days prior to expiration of the term.
- 2.2 Contractor agrees that time is of the essence and Contractor shall complete the Services within the term of this Agreement, unless extended by the City Administrator.

3. Compensation and Payment.

- 3.1 Compensation for Services provided by Contractor shall be in accordance with the Rate Schedule and Compensation and Payment Terms attached hereto as Exhibit B.
- 3.2 Contractor shall deliver an invoice to City no more often than once per month detailing Services completed and the amount due to Contractor under this Agreement. Fees shall be paid in arrears each month, pursuant to the Contractor's invoice, which shall be based upon the percentage of work completed for each task invoiced. The City shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Administrator.

4. Subcontractors.

- 4.1 The Contractor shall be responsible for all payments to any Subcontractors and shall maintain responsibility for all work related to the Services.
- 4.2 Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Public Works Director, which approval shall be granted or withheld in the Public Works Director's sole and absolute discretion.

5. City's Responsibilities.

- 5.1 City shall make available any maps, plans, existing studies, reports, staff and representatives, and other data pertinent to the Services and in possession of the City, and provide criteria requested by Contractor to assist Contractor in performing the Services.
- 5.2 Upon Contractor's request, City shall reasonably cooperate in arranging access to public information that may be required for Contractor to perform the Services.

6. Contractor's Responsibilities.

- 6.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to City requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.
- 6.2 The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for City as an independent contractor of the City.

7. Termination.

- 7.1 The City may terminate this Agreement without cause by providing no fewer than sixty (60) calendar days written notice to the Contractor, or immediately with cause.
- 7.2 Upon receipt of the City's written notice of termination, Contractor shall immediately stop work on the project unless directed otherwise by the Public Works Director.
- 7.3 In the event of termination by the City, the Contractor shall be paid for all work accepted by the Public Works Director up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 15.5.

8. Insurance.

- 8.1 Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to City, naming the City as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers naming the City as additional insured. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the City as it deems necessary or prudent.
 - a. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
 - b. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
 - c. Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive

than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

- 8.2 Certificate of Insurance. Certificates of Insurance shall be provided to the City, reflecting the City as an Additional Insured (except with respect to professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by City and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to the City prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.
- 8.3 Additional Insured. Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the City is to be specifically included as an Additional Insured for the liability of the City resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 8.4 Loss Payee. The City is to be specifically named as a loss payee under the Contractor's Professional Insurance policy so that the City will be a third-party beneficiary entitled to receive all money payable under the relevant policy for any claims, damages, or losses in connection with, related to, or arising from Contractor's Services or performance pursuant to this Agreement.

8.5 Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

8.6 The provisions of this section shall survive termination of this Agreement.

9. Nondiscrimination.

During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. Attorney Fees and Waiver of Jury Trial.

10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

10.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

11. Indemnification.

11.1 Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's negligent acts, errors, or omissions arising out of the performance or nonperformance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's negligent performance or non-performance of this Agreement.

11.2 The provisions of this section shall survive termination of this Agreement.

12. Notices/Authorized Representatives.

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Public Works Director
City of Okeechobee
55 SE 3rd Avenue, Room 101
Okeechobee, FL 34974

With a copy to: John J. Fumero, Esq.
City Attorney
Nason Yeager Gerson Harris & Fumero, PA
750 Park of Commerce Blvd., Suite 210
Boca Raton, FL 33487

For the Contractor: Nunez Lawncare and Landscaping Inc.
c/o Cristal Nunez
4833 NE 122nd Drive
Okeechobee, FL 34972

13. Governing Laws.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Okeechobee County, Florida.

14. Entire Agreement/Modification/Amendment.

14.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14.3 Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

15. Ownership and Access to Records and Audits.

15.1 Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions

reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

- 15.2 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall 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 Agreement, and following completion of the Agreement until the records are transferred to the City.
- 15.3 Upon request from the City's custodian of public records, Contractor shall provide the City 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- 15.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
- 15.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Administrator, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 15.6 Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 15.7 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Lane Earnest-Gamiotea, CMC
Mailing address: 55 SE 3rd Avenue, Room 100
Okeechobee, FL 34974
Telephone number: 863-763-3372
Email: lgamiotea@cityofokeechobee.com

16. Nonassignability.

This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Administrator. The City is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

17. Severability.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. Independent Contractor.

The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise, or venture between the parties.

19. Compliance with Laws.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

20. E-Verify.

Contractor has verified that its employees are authorized to work in the U.S. and certifies that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the Department of Homeland Security, U.S. Citizenship, and Immigration Services Form I-9. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify. Contractor shall expressly require any subcontractors performing work or providing services pursuant to this contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

21. Waiver.

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach, or wrongful conduct.

22. Survival of Provisions.

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. Prohibition of Contingency Fees.

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, Council, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. Public Entity Crimes Affidavit.

Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

FOR THE CONTRACTOR:

By: _____

Name: _____

Title: _____

Date Executed: _____

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

FOR THE CITY:

CITY OF OKEECHOBEE,
a Florida municipal corporation

Dowling R. Watford Jr., Mayor

Date: _____

ATTEST:

Lane Gamiotea, CMC
City Clerk

Approved as to Form and Legal Sufficiency:

John J. Fumero, Esq.
Nason Yeager Gerson Harris & Fumero, P.A.
City Attorney

EXHIBIT A

LANDSCAPE MAINTENANCE SCOPE OF SERVICES

The Contractor submitted a Request for Qualifications (RFQ) on May 11, 2023, and was awarded the RFQ by the City Council on June 20, 2023. Council directed staff to negotiate a Scope of Services from October 1, 2023, to September 30, 2024, as agreed upon during negotiations not to exceed \$100,000.

The work is described as follows:

General ground landscape maintenance in Flagler Park, City Hall, City Hall Park, Police Station/Chamber of Commerce Building, Endcaps along Park Street, and Centennial Park including but not limited to mowing, trimming, edging, weeding, pruning, trimming of plants, shrubs/bushes, and adding mulch where needed.

General ground landscape maintenance in City maintained landscape beds located in FDOT right-of-way, State Road 70 (N Park Street) from West 12th Avenue to East 13th Avenue, US Highway 441 (Parrott Avenue) from South 23rd Street to North 15th Street. Maintenance is including but not limited to mowing, trimming, edging, weeding, pruning, trimming of plants, shrubs/bushes, and adding mulch where needed.

Mowing and landscape maintenance shall be performed no less that 43 times per year , or accordingly to make sure that maintained areas have a neat appearance at all times, no matter how many times the contractor must perform maintenance..

The selected Contractor will be responsible for the entire scope of work, hiring licensed Subcontractors, and paying for all plans and permits from the City of Okeechobee and/or other agencies.

EXHIBIT B
RATE SCHEDULE AND COMPENSATION AND PAYMENT TERMS

The Rate Schedule for Services performed pursuant to this Agreement are as follows:

<u>SERVICE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Tree or Palm Labor	ANSI A300 Standard Practices Tree Crew Man Hours for 3-4 Crew Members	\$350/hr
Landscaping Labor Crew	Landscape crew hours: This labor cost is per hour calculating 4-5 Crew Members.	\$225/hr.
Irrigation Labor	Irrigation Master Tech Labor Hours	\$65/hr
Irrigation Helper	Irrigation helper	\$45/hr
Mulch Labor	Labor for Mulch Laying	\$60/hr
Fertilizer	Fertilizer Treatment	TBD on area