



SCHOOL BOARD OF CLAY COUNTY

900 WALNUT STREET, GREEN COVE SPRINGS, FLORIDA 32043

SERVICE AGREEMENT

By and Between

The School Board of Clay County, Florida

And

Agrow Pro Inc.

This Agreement ("Agreement") is made by and between The School Board of Clay County, Florida, a political subdivision of the State of Florida, located at 900 Walnut Street, Green Cove Springs, FL 32043, hereinafter referred to as "SBCC," and Agrow Pro Inc. whose business address is 1339 Kavie Ct, Green Cove Springs, FL 32043, hereinafter referred to as "Contractor," each individual referred to as a "Party" and, collectively, the "Parties."

WITNESSETH:

WHEREAS, SBCC desires to secure a contractual relationship for the purpose of providing ATHLETIC FIELD MAINTENANCE SERVICES for Clay County District Schools, as outlined in Exhibit "A," Scope of Services ("Services"), and

WHEREAS, these Services have been competitively solicited pursuant to Request for Proposal, which has been assigned to RFP # 20-MA-319 by SBCC for tracking purposes.

NOW THEREFORE, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. DEFINITIONS

The following definitions of terms associated with this Agreement are provided to establish a common understanding between both Parties to this Agreement, as to the intended application, interpretation, and usage of terms in connection with this Agreement.

- 1.1. **"AGREEMENT"** refers to the executed Agreement by and between SBCC and Contractor.
- 1.2. **"AMENDMENT"** means a written document authorized by the parties to this Agreement which, when executed by both parties, sets forth any changes to that certain scope of services ("Services"), attached hereto as Exhibit "A" and incorporated herein by reference, that contemplates a change in the Services, work, and materials to be provided and performed by Contractor pursuant to this Agreement, sets forth the basis of compensation due to Contractor of, and sets forth the time period and/or schedule for performance and completion thereof.
- 1.3. **"CONFIDENTIALITY"** For purposes hereof, "Confidential Information" shall mean any non-public information of the other party that is designated as confidential, or that the receiving party knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Confidential Information shall not include any information which: (i) a party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other party; (ii) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of a party; (iii) a party has developed independently without reference to any Confidential Information of the other party; (iv) a party can demonstrate such information came into its possession from a third-party who had a bona fide right to make such information available; or (v) is subject to the Florida Public Records Law, Chapter 119, F.S., or any other information required to be disclosed by a valid court order or agency of government.

- 1.4. **"CONTRACTOR"** means Agrow Pro Inc., a Party hereto, who is authorized to conduct business in the State of Florida, offering Services hereunder, which has executed this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the Services, work, and materials, including services and/or work of any approved sub-contractors, required under the covenants, terms, and provisions contained in this Agreement and any and all Amendments thereto. "Contractor" may be used interchangeably with Bidder.
- 1.5. **"FUNDS"** shall mean payment made by SBCC to Contractor hereunder.
- 1.6. **"SBCC"** shall mean Clay County District Schools and may be used interchangeably with SBCC or District or The School Board of Clay County, Florida.
- 1.7. **"PARTIES"** shall mean the parties entering into this Agreement, SBCC and Contractor, respectively.
- 1.8. **"SBCC"** shall mean The School Board of Clay County, Florida, a political subdivision of the State of Florida, and may be used interchangeably with SBCC or District or Clay County District Schools.
- 1.9. **"SERVICES"** shall mean the services as set forth and required, pursuant to the Agreement and described in further detail in Exhibit "A," attached hereto and incorporated herein by reference.

2. AMENDMENTS AND MODIFICATIONS

No Amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the parties.

3. TERM AND TERMINATION

- 3.1. The term of this Agreement will cover the initial three (3) year period beginning January 1, 2021 through December 31, 2023 and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the Parties. This agreement by mutual assent of the parties may be extended for three (3) additional one (1) year periods or a portion thereof, up to a cumulative total of six (6) years.
- 3.2. In the event, the awarded bidder violates any of the provisions of this RFP or fails to perform their obligation under this contract in a manner satisfactory to the SBCC as per specifications, the Supervisor of Purchasing shall give written notice to the Contractor setting forth the deficiencies and unless the deficiencies are corrected within ten (10) days, recommendation shall be made to the SBCC for immediate cancellation of the contract. Failure of the Contractor to correct deficiencies shall give the SBCC the right to cancel this contract, but failure by the SBCC to exercise this right, in any instance, shall not prevent the subsequent exercise of this right by the SBCC or prejudice its claim for damages resulting from such default, violations, breach of contract or other failures whether or not an expressed written agreement exists for the provision of such goods and/or service. Upon cancellation, hereunder the SBCC may pursue any and all legal remedies as provided herein and pursuant to the contract and by law. The SBCC reserves the right to terminate any contract resulting from this invitation at any time for cause, upon giving seven (7) days prior written notice to the other party. If said contract should be terminated for cause or convenience as provided herein, the SBCC shall be relieved of all obligations under said contract. The SBCC shall only be required to pay to the award bidder that amount of the contract actually satisfactorily performed to the date of termination and shall not be responsible for any consequential damage, future damages or damages caused by lost profits, inconvenience or overhead expense to the Contractor. The SBCC may cancel the contract upon ninety (90) days written notice for reasons other than cause and Contractor shall have no legal recourse or cause of action against the SBCC damages resulting from said cancellation.

4. PAYMENT

SBCC agrees to provide Funds for the Agreement as outlined in Exhibit "B," Fee Schedule, which is attached hereto and incorporated herein. Contractor shall be paid in accordance with the Florida Prompt Payment Act, Florida Statutes Chapter 218, upon submission of invoices to the SBCC at the prices stipulated on the contract at the time the order is placed, less deductions if any, after services rendered and accepted by SBCC in accordance with the Florida Prompt Payment Act. An original invoice referencing a SBCC purchase order number shall be submitted for payment to SBCC Accounts Payable Department, 814 Walnut Street, Green Cove Springs, FL 32043. Failure to follow these instructions may result in delay in processing invoices for payment.

5. AVAILABILITY OF FUNDS

The obligations of SBCC under this Agreement are subject to the availability of Funds lawfully appropriated for its purpose by the State of Florida and SBCC. In the event sufficient budgeted funds are not available for a new fiscal period, the purchasing department shall notify the Contractor of such an occurrence and the RFP and any resulting contract shall terminate on the last day of the current fiscal period without penalty or expense to the SBCC.

6. PERSONNEL

- 6.1. All of the Services herein shall be performed by Contractor or under its supervision, and all personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services. All employees and/or sub-contractors of the Contractor shall be considered to be at all times the sole employees and responsibility of Contractor under their sole direction and not an employee or agent of SBCC. The contractor shall supply competent employees and/or sub-contractors and the SBCC may require the Contractor to remove an employee and/or sub-contractor whose presence on SBCC property is not in the best interest of the SBCC. Each employee and or sub-contractor of contractor shall have and wear proper identification while on SBCC property and are required to sign in/out at main office or other designated place upon arrival and when leaving job site, if applicable.
- 6.2. In accordance with the Jessica Lunsford Act the bidder and all their employees, as required by law, shall undergo and pass a Level II fingerprinting and background check as required by F.S. 1012.465, 467 or 468 and possess a SBCC fingerprinting clearance card prior to entry upon SBCC property. All costs associated with obtaining fingerprinting and background check shall be at no expense to the SBCC.

7. FEDERAL AND STATE TAX

- 7.1. SBCC does not pay Federal Excise and State taxes. Tax exemption number is on the Purchase Order. Contractor shall not be exempted from paying applicable sales tax to State of Florida and/or federal government, as case may be, for the purchase of materials to fulfill contractual obligations with SBCC, nor shall Contractor be authorized to use SBCC's tax exemption number in securing such materials.
- 7.2. Contractor shall be responsible for payment of its own FICA and social security benefits with respect to this Agreement.

8. DOCUMENTATION AND REPORTING

In the performance of this Agreement, Contractor shall maintain books, records, and accounts of all activities in compliance with standard accounting procedures. Documentation in connection with the description of the Services as set forth in Exhibit "A" attached hereto shall be provided.

9. INSURANCE

At its sole expense, Contractor shall take out and maintain all insurance policies required below with companies authorized to do business under the laws of the State of FL. and satisfactory to the School Board. **The Contractor SHALL ensure that any sub-Contractor they use maintain the same level of insurance coverage.** Insurer shall be rated A- with an FSC V or better in the current AM Best Guide through the life of the contract to include any renewal periods. Insurance shall remain in effect for the term of this Agreement and such insurance will apply to Contractor, its employees, agents, and subcontractors.

- 9.1 **WORKERS' COMPENSATION INSURANCE:** Contractor is responsible for assuring that valid Worker's Compensation Insurance as required by Chapter 440, Florida Statutes is maintained for all of their employees and sub-Contractors employed at the site of the project. Such insurance shall comply fully with Florida Worker's Compensation Law. In case any class of employees engaged in hazardous work under this Contract at the site of the project is not protected under the Workers' Compensation Statute the Contractor shall provide adequate insurance satisfactory to the Owner, for protection of his employees not otherwise protected. SBCC shall accept an approved Certificate of Election to be Exempt from Florida's Workers' Compensation Law.

State

- Statutory

Employer's Liability

- Per Accident \$100,000.00

- Disease, Policy Limit \$500,000.00 - Disease, Each Employee \$100,000.00

9.2 **COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE:**

Including Premises Operation, Independent Contractor's Protective, Products and Completed Operation Board Form, Contractual Liability in at least the following amounts and coverage's:

Bodily Injury

Property Damage

Personal Injury

- Each Occurrence \$1,000,000.00 - Each Occurrence \$1,000,000.00 - Annual Aggregate \$1,000,000.00
- Annual Aggregate \$2,000,000.00 - Annual Aggregate \$2,000,000.00
- Completed Operations and Products Liability shall be maintained for one (1) year after final payment

9.3. **AUTOMOBILE INSURANCE:** Including all owned, non-owned and hired vehicles used in connection with the work in at least the following amounts and coverage's:

Bodily Injury

Property Damage

- Each Person \$1,000,000.00 - Each Occurrence \$1,000,000.00
- Each Occurrence \$1,000,000.00
- Each Accident – Single Limit – Bodily Injury and Property Damage combined one million dollars (\$1,000,000.00)

9.4 **Contractor agrees to the following as it relates to all above required insurance:**

- 9.4.1. Contractor shall furnish, prior to commencement of performance under this contract, to the SBCC Purchasing Department, Certificate(s) of Insurance which clearly indicate the insurance coverage required above have been obtained. **Certificate(s) of Insurance shall be submitted directly from Contractor's Insurance Agent and Mark All Certificates Attn: SBCC Purchasing Department, as Certificate Holder (with 30 day Notice of Cancellation or Change in Coverage) and list The School Board of Clay County as Additional Insured.** Receipt of proof of insurance shall not be construed as an approval of Contractor's insurance or a release or waiver of Contractor's obligation to provide required insurance..
- 9.4.2. To the extent permitted by law, Contractor's insurance shall contain a waive rights to recover from SBCC or its insurance.

10. STANDARD OF CARE

In providing Services under this Agreement, Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by SBCC, Contractor will correct those Services not meeting such a standard.

11. INDEMNIFICATION

Notwithstanding any contrary contractual language, nothing in any agreement shall be construed or interpreted to increase the scope or dollar limit of the School's or School Board's liability beyond that which is set forth in 768.28 Fla. Stat. , or to otherwise waive School's or School Board's sovereign immunity, or to require School or School Board to indemnify the Contractor or any other person, corporation or legal entity of any kind or nature whatsoever for injury or loss resulting from any acts other than the negligent acts of School or School Board or its agents or employees. Contractor shall, in addition to any other statutory or common law obligation to indemnify the School Board of Clay County, Florida, indemnify, defend and hold harmless the School Board of Clay County, Florida, its agents, officers, elected officials and employees against all claims, actions, liabilities, damages, losses, costs, fines punitive damages and expenses of any kind or nature whatsoever, including but not limited to attorney's fees and legal costs, brought against the School Board of Clay County, Florida, and/or its agents, officers, elected officials, employees and assigns, by any individual, corporation, consortium or any other legal person or entity, arising out of or caused by acts or omissions, negligence, recklessness, intentional wrongful misconduct, violations of laws, statutes, ordinances, government administration orders, rules or regulations of the contractor, contractor's employees, officers, agents, subcontractors, sub-subcontractors, material man or agents of any tier or their respective employees. This indemnification clause shall not be construed to require any indemnitor to indemnify the School Board of Clay County, Florida, for any negligence on the part of the School Board of Clay County, Florida, its agents or employees. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation, or benefits payable by or for the contractor or any subcontractor under workers' compensation acts, disability benefit acts, other employee benefits acts or any statutory bar. This indemnification/hold harmless provision shall survive the termination of any contract with the School Board of Clay County, Florida.

12. SUCCESSORS AND ASSIGNS

The successful Contractor(s) shall not assign, transfer, convey, sublet, or otherwise dispose of this contract, or of any or all rights, title or interest herein, or their power to execute such contract to any person, company or corporation without prior written consent of the School Board. The successful Contractor(s) have the sole and exclusive responsibility for furnishing services in accordance with this contract. The successful Contractor(s) obligations cannot be delegated.

13. GOVERNING LAW AND REMEDIES

- 13.1. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in the state courts located in Clay County, Florida and the Agreement, shall conform to applicable Florida Statutes, and be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- 13.2. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

14. CONFLICT OF INTEREST

Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, F.S. Contractor further represents that no person having any interest shall be employed for said performance of services. Contractor shall promptly notify SBCC in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances which may influence or appear to influence Contractor's judgment or quality of Services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstances and the nature of work that Contractor may undertake. Contractor shall request an opinion by SBCC as to whether the association, interest, or circumstance would, in the opinion of SBCC, constitute a conflict of interest if entered into by Contractor. SBCC agrees to notify Contractor of its opinion by certified mail within thirty (30) calendar days of receipt of notification by Contractor. If, in the opinion of SBCC, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Contractor, SBCC shall so state in its response, and Contractor may, at its option, enter into said association, interest, or circumstance and it shall be deemed not a conflict of interest with respect to the Services provided to SBCC by Contractor under the terms of this Agreement. If SBCC, in its sole discretion, determines that there is a conflict, Contractor shall not enter into or if already entered into, will immediately terminate such arrangement or Agreement with the subject business associate.

15. INDEPENDENT CONTRACTOR RELATIONSHIP

- 15.1. Contractor is, and shall be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of SBCC. All persons engaged in any of the work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to Contractor's sole direction, supervision, and control. Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Contractor's relationship and the relationship of its employees to SBCC shall be that of an independent contractor and not as employees or agents of SBCC. Contractor does not have the power or authority to bind SBCC in any promise, agreement, or representation.
- 15.2. Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other Party.

16. ARREARS

Contractor shall not pledge SBCC's credit or make it a guarantor of payment or surety for any agreement, debt, obligation, judgment, lien, or any form of indebtedness. Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

17. PUBLIC RECORDS

- 17.1. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by SBCC in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to SBCC, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.
- 17.2. A request to inspect or copy public records relating to SBCC's contract for services must be made directly to SBCC's Custodian of Public Records. If SBCC does not possess the requested records, SBCC's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to SBCC or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with SBCC's request for records, SBCC shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.
- 17.3. Should Contractor fail to provide the requested public records to SBCC within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
- 17.4. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to SBCC. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to SBCC, all public records in its possession or keep and maintain public records required by SBCC to perform the services. If Contractor transfers all public records to SBCC, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to SBCC pursuant to the requirements of this Article. All public records stored electronically must be provided to SBCC in a format that is compatible with the information technology systems of SBCC.
- 17.5. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR SHALL CONTACT THE SCHOOL DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT 900 WALNUT STREET, GREEN COVE SPRINGS, FLORIDA 32043, OR AT 904-336-6500, OR AT: PRR@MYONECLAY.NET**

18. CONTINGENT FEES

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

19. ACCESS AND AUDITS

Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the services. All Contractors, contracts and subcontractors shall give access to the SBCC, the appropriate Federal agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the Contractor which are directly pertinent to this specific RFP/contract for the purpose of making audit, examination, excerpts and transcriptions. All Contractors, contractors and subcontractors shall retain all records pertaining to this RFP/contract for three (3) years after SBCC makes final payment and all other pending matters closed.

20. NONDISCRIMINATION

Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.

21. SURVIVAL

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.

22. AUTHORITY

Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

23. COMPLIANCE WITH LAWS

Contractor agrees it shall comply with all applicable Federal, State, and Local laws, codes, ordinances, permitting, and regulations as well as applicable SBCC policies and regulations, rules, and guidelines in connection with the Services to be provided hereunder. Contractor shall obtain and possess throughout the term of this Agreement all licenses and permits required for its operations under Federal, Florida, and local laws and shall comply with all fire, health, and other applicable regulatory codes. SBCC agrees it shall comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services to be provided hereunder.

24. SEVERABILITY

In case of any one or more of the provisions contained in this RFP shall be for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this RFP shall be considered as if such invalid.

25. NAMES; TRADEMARKS

Contractor shall acquire no rights under the Agreement to, and shall not use, The School Board of Clay County, either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark in any of Contractor's advertising, publicity, or promotion; to express or imply any endorsement by SBCC of its Services; or in any other manner without the prior review and written approval by SBCC. This clause shall survive the expiration or sooner termination of this Agreement.

26. PROTECTION AND HANDLING OF DATA

- 26.1. **Data Confidentiality** - Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information. Contractor will provide SBCC with written notice before disclosing information so that SBCC may seek an appropriate protective order or other remedy. Contractor shall exercise commercially reasonable efforts to keep the Protected Information confidential.

- 26.2. **Safekeeping and Security** - As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.
- 26.3. **Non-Disclosure** – Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and SBCC.

27. NON-EXCLUSIVE AGREEMENT

The Parties understand and agree this Agreement is a non-exclusive agreement and the Parties hereto may participate in other comparable services to and from any other person or entity.

28. ENTIRETY OF AGREEMENT

SBCC and Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto. In the event a conflict arises, the Parties shall discuss any such conflict and the priority of controlling documents shall be as follows: this Agreement, the RFP 20-MA-319 solicitation, any addenda, and Contractor's response to the solicitation. Note that SBCC reserves the exclusive right to rectify any conflicts in its sole discretion.

29. CONSTRUCTION OF AGREEMENT

Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

30. OTHER CONDITIONS

- 30.1. **Legal Authority** - It is understood that those signing this Agreement have the legal authority to enter into binding Agreements. Contractor hereby certifies he/she is an authorized representative, officer or employee having authority to legally bind the company or firm by submitting the following information as firm's (Bidder and/or Contractor) RFP. Bidder agrees to complete and unconditional acceptance of the contents of all pages in its Request For Proposal (RFP), and all appendices and the contents of any Addenda released hereto; Bidder agrees to be bound to any and all specifications, terms, conditions contained in RFP, and any released Addenda and understands that the following are requirements of RFP; Bidder certifies its offer was made without prior understanding, agreement, or connection with any corporation, firm, business entity or person submitting an offer for the same services(s), and is in all respects fair and without collusion or fraud. Bidder acknowledges that all information contained herein is part of the public record as defined by State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this RFP are true and accurate.
- 30.2. **Terms and Conditions** - This Agreement and RFP 20-MA-319 contain all the terms and conditions agreed upon by the Parties. Items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the Parties hereto.

31. NON-WAIVER

The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder shall not be deemed a waiver thereof; nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party shall be deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party.

32. FORCE MAJEURE

Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to payment, confidentiality, and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (a "Force Majeure Event"), including acts of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor dispute, wide spread outbreak of disease or pandemic, governmental act, failure of the internet, power failure, or energy, utility, or telecommunications interruptions, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the party experiencing the initial delay cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.

33. NOTICE

All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA

Attention: Purchasing Department
800 Center Street
Green Cove Springs, FL 32043

AGROW PRO INC.

Attention: William Kyle Hutchings
1339 Kavie Ct,
Green Cove Springs, FL 32043

IN WITNESS WHEREOF, SBCC has made and executed this Agreement and Contractor has made and executed this Agreement on the day and year written below.

AGROW PRO INC.



Authorized Representative Signature

 
Name & Title (Type or Print) Date

THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA

Mary Bolla Date
School Board Chair

Exhibit "A"

**SCOPE OF SERVICES
per RFP 20-MA-319**

SCOPE OF SERVICES – The District wishes to receive proposals for selection of a Contractor(s) to provide Athletic Field Maintenance Services at various schools and facilities from the date of award through December 31, 2023, with renewal options.

The goal of SBCC and these services is to enhance the athletic fields and improve the appearance and care for all sites. Contractor(s) shall service sites and coordinate services with SBCC Representatives for each site, and inform those representatives of all treatments, services and completion status of said services.

SBCC currently has 13 sites located throughout Clay County, Florida that may require services under this RFP. Addresses for those sites are included as Appendix A, and maps of those sites are included as Appendix B. Site review/visits can be arranged by contacting John Sgromolo at (904)336-6919 or via email at john.sgromolo@myoneclay.net. Upon written notification to the Contractor, sites shall be added, or deleted, at the sole discretion of the School Board.

These sites include baseball, softball, football and practice fields. SBCC reserves the right to add or delete sites as necessary for the duration of the contract. Contractor(s) shall be able to perform services at any SBCC site. Pricing submitted by Contractor(s) under this RFP will be held for any additional site based upon the pricing given herein.

The majority of orders under this RFP will be placed by the SBCC Representative for each site. Any and all work ordered under this RFP is **upon request**, on an as needed basis only. Therefore, no minimum or maximum amount of work is guaranteed.

THE SERVICES:

1.1 All work performed under this RFP will be in the best interest of safety at all times, especially when students are present in and around designated areas. No power equipment shall be operated in the vicinity of students during periods such as class change, recess, after school care, fire drills, etc. Proper operation of equipment to include installed manufacturer safety devices is the awarded contractor's responsibility. Shirts and work pants must be worn at all times.

1.2 The awarded Contractor(s) shall provide as required, all necessary labor, materials, equipment and transportation to provide complete athletic field maintenance and services as required by the SBCC, and as specified in this RFP.

1.3 The awarded Contractor(s) must comply with all local, state and federal codes and School Board Rules.

1.4 The awarded Contractor(s) shall be responsible for any damage to District property, personal property or visitor property due to negligence on the part of the awarded contractor's employees or agents. The awarded Contractor(s) agree to repair, at own expense, any damage that was caused by the awarded Contractor(s), their employees or their agents.

1.5 The awarded Contractor(s) will be responsible for the removal of any blemish, tarnish or marking left on District grounds resulting from the awarded contractor's equipment. Specifically, but not limited to, concrete.

1.6 The awarded Contractor(s) shall, and in addition to all other guarantees, be responsible for faulty labor or workmanship and shall promptly correct improper work, without cost to the District, within 48 hours after receipt of notification of such faulty labor or workmanship. If the awarded Contractor fails within 48 hours to correct defects, the District shall be entitled to have such work remedied and the awarded contractor shall be fully liable for all costs and expense reasonably incurred by the District.

1.7 It is anticipated that most work will be accomplished Monday through Friday, taking into consideration holidays, or other school calendar days when the school may be closed. Any work disruptive to the operation of the school may require work to be performed after school hours or on a non-school day. Work performed on any day other than Monday through Friday must be cleared with the SBCC Representative prior to the commencement of the work.

1.8 If an unforeseen situation arises at any site that will affect the services, an authorized SBCC Representative will contact the awarded Contractor(s). The services may or may not be rescheduled, whichever is in the best interest of the District.

1.9 If conditions exist which prevent the awarded Contractor(s) from completing requested services, they must contact the appropriate SBCC Representative within 24 hours to reschedule remaining work.

1.10 TYPE OF SERVICE AND DESCRIPTION:

Contractor(s) shall be expected to perform the following types of services per the information contained herein. All of these services will be provided by the selected Contractor(s) **upon request** on any other applicable SBCC sites. This list of services is given for proposal purposes only and to inform vendors of the types of services that may be needed. This list does not limit or obligate SBCC.

- Weed Control and Management – Contractor will apply both liquid and granular herbicides to all fields as required to control all broad leaf weeds, sedges and grassy weeds on all fields and in accordance with plan agreed upon with SBCC Representatives.
- Insect Control and Management – Contractor will apply both liquid and granular insecticides as required to preventatively control turf damaging insects and fire ants and in accordance with plan agreed upon with SBCC Representatives.
- Fertilization – Contractor will apply both liquid and granular fertilizer to all fields as required to maintain turf color and vigor and in accordance with plan agreed upon with SBCC Representatives.
- Aeration – Contractor will aerate using tractor mounted equipment as required and in accordance with plan agreed upon with SBCC Representatives.
- Seed spreading and removal – Contractor will apply seeds using a tractor mounted spreader or walk behind drop spreader for infields and tight spaces. Removal of perennial rye grasses will be in accordance with plan agreed upon with SBCC Representatives.
- Verticutting – Contractor will verticut using tractor mounted equipment as required and in accordance with plan agreed upon with SBCC Representatives. Verticutting includes removal and disposal of debris on campus as directed by SBCC Representatives.
- Material Hauling (Infield Conditioner/Warning Track Material) – Contractor will haul all material in turf friendly trailers, and provide any required material.

- Top Dressing – Contractor will apply top dressing as requested by SBCC Representatives.
- Rototilling – Contractor will rototill softball/baseball infields or any other needed areas.
- Fungus/Disease Control – Contractor will apply required fungicides on all fields as required to control nematodes and any other fungi and in accordance with plan agreed upon with SBCC Representatives.
- Sod Removal and Replacement – Contractor shall remove/add necessary sod to conform to dimensions required or as directed by SBCC. Sod will be supplied by Contractor.
- Optional and additional services to athletic fields as necessary as directed by SBCC.
Optional services include:
 - Infield conditioner spreading
 - Warning track grading
 - Turf reconstruction
 - Replacement of sod where needed

1.11 Lead Supervisor shall meet with SBCC Representatives prior to the commencement of any project. Description of services and details for completion, methodology and any other pertinent information will be discussed.

1.12 Crew Supervision:

It is the responsibility of the Contractor's Lead Supervisor to direct their crew and employees and convey all pertinent information that was expressed prior to work commencement. The SBCC Representative will not be responsible for explaining work to the crew.

SERVICE PERFORMANCE:

2.1 The Contractor(s) shall have full responsibility for systematically and professionally servicing the agreed to areas as requested. Service will be as agreed upon by SBCC and Contractor(s) and proceed in a contiguous manner. If the minimum acceptable performance is not achieved for any area of the project within a reasonable time frame following project completion, additional service shall be the responsibility of the Contractor(s) at no cost to SBCC. A reasonable time frame is dependent upon scope of work and weather conditions.

2.2 SBCC will rely on Contractor(s) to utilize the best, safe and efficient methods for performing services for each of its sites. SBCC is open to work with Contractor(s) to utilize the best possible methods to perform service with as little interference to the site as possible.

2.3 Please note that all methods for performing services shall be approved by SBCC prior to use. Any method deemed unnecessary, inefficient or dangerous to the site shall not be performed at any site.

2.4 Contractor(s) may also perform these additional miscellaneous services:

- Professional assistance to determine possible solutions to issues with Athletic Fields.
- Provide pricing proposals on athletic field maintenance as requested.

2.5 The Contractor(s) shall immediately notify the SBCC Representative upon discovery of any new or problematic issues. SBCC will be the sole determiner if action is required.

2.6 HERBICIDE/INSECTICIDE/CHEMICAL APPLICATION:

Contractor(s) will be permitted to use herbicides/insecticides/chemicals in certain areas to assist in the performance of services under this RFP. Contractor(s) will be responsible to provide any and all herbicides, insecticides or other chemicals/materials necessary to perform services. Contractor(s) shall ensure that all restricted-use pesticides/herbicides/chemicals will be applied only by employees licensed by the Florida Department of Agriculture and Consumer Services with the appropriate Commercial Applicator License. That license will be a Category 3 Ornamental and Turf Pest Control License. Contractor(s) shall provide copies of these licenses within 24 hours of request. Failure to do so will result in the proposal being considered non-responsive. Furthermore, at no time shall any chemical be applied when any students or staff members are present in the immediate area. Any violation will be cause for immediate termination of contract from site or all sites.

Contractor(s) will be expected to comply with all herbicide/insecticide/chemical labels in its applications. ALL CHEMICALS SHALL BE USED IN ACCORDANCE WITH THEIR LABEL INSTRUCTIONS. Contractors will provide SBCC Representatives with a Material Safety Data Sheet (MSDS) for any chemical they apply, every time they apply it. The Contractor is liable for any penalty, fines, or damages resulting from the misuse of chemicals.

Contractor(s) shall list on the included sheet (Pricing Section D), any chemicals that will have a high usage in the work described herein. Chemical information shall include name, brand name, manufacturer, EPA Registration #, any model or MSDS # applicable and a brief description/purpose of usage. Please note it is not necessary to submit MSDs with RFP for those chemicals listed. Any and all MSDS will be collected from Contractor(s) after award and prior to usage.

Any and all chemicals must be approved by SBCC prior to usage.

While on the job site all chemicals must be kept secured at all times and handled in leak free containers per any and all applicable laws.

The Contractor is responsible for any leaks, spills, environmental damage, or theft of materials from the job site and for reporting quantities to the Florida Department of Environmental Protection in such cases. The Contractor shall be responsible for immediate work stoppage and clean-up operation in the event of any spill of herbicide, petroleum product or other hazardous material. The Contractor shall have on site at all times, appropriate first-aid and spill kit(s).

The Contractor shall properly dispose of chemical containers as set forth in the label instructions and in accordance with applicable federal, state and local requirements.. SBCC dumpsters are not to be utilized at any time during the course of the contract and all empty chemical containers will be removed by Contractor from site.

At no time will any chemical or spray be permitted to be used around or near playgrounds, playground equipment or on P.E. fields or equipment. Any violation will be cause for immediate termination at site and possible termination from all contracted sites.

Throughout the duration of the contract, it is understood that newly researched chemical products may become available. SBCC may consider these chemicals as they are made available. Contractor(s) shall meet with SBCC to discuss alternate products or new technologies that may increase efficiency, safety and/or be more environmentally safe at any time during the course of the contract. Any new product will be reviewed and either rejected or accepted at SBCC's discretion.

Contractor(s) will be responsible for supplying their personnel with any and all personal protective equipment for their operators. Failure to do so may be grounds for termination of contract.

2.7 ESTIMATES:

At the request of SBCC, Contractor(s) will provide estimates. At the time of the request, an authorized SBCC Representative will contact the awarded Contractor(s) and give a detailed description and further specifications of the project at hand. Contractor shall provide written, "not to exceed" estimates on all services as directed by the SBCC Representative. Contractor(s) should familiarize themselves with the extent of the work for each service/project to be performed and any conditions that may in any manner affect the work to be done and the equipment, materials and labor required. Estimates shall be priced per all pricing submitted under this RFP, to include the labor and itemized material list, number of calendar days required for project completion and lead time before work can commence. Contractor(s) should also include an assessment of any site or additional repairs to larger damaged areas or any other general observation of interest to the SBCC Representative.

After the initial contact by SBCC and response from Contractor(s), a meeting may take place prior to estimate being submitted. A meeting should be scheduled within three (3) to five (5) days from the original response. Written estimates shall be provided within five (5) business days of either the initial contact or any meeting. It shall be the Contractor's responsibility to ensure they have all information to prepare accurate estimates and to respond accordingly to SBCC. All estimates shall be clearly broken down using pricing from this RFP.

Estimates on projects may be utilized to determine if projects are cost effective and fiscally allowable by SBCC. Contractor(s) may expect to submit estimates that may be changed, altered or rejected. When an estimate has been approved, a purchase order will be issued and authorization to commence the project will be given by the SBCC Representative. **No work shall commence without a purchase order and District authorization.**

2.8 SBCC reserves the right to add supplementary specifications to any service(s) that fall under the scope of this RFP. Supplementary specifications may be for larger or special circumstances, at the time of said project. A price may be negotiated at the time if necessary for any supplementary specifications.

2.9 In the event additional work is required outside of an approved or scheduled service or project, the Contractor shall not proceed without the written approval of SBCC. This includes any emergencies that may arise. The Contractor shall be forewarned that only the SBCC Representative may order or approve work to be performed.

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Exhibit “B”

**FEES FOR SERVICES
Per Agrow Pro Inc.
RFP 20-MA-319 Price Proposal**

PRICING

A. Standard Services – Fixed Labor Rates:

Contractor(s) are expected to provide a rate for each of the specific services listed below, that shall include all supervision, labor costs, equipment, machinery, insurances, overhead, vehicle use charges, profit, travel time, mileage; and all tools or hand tools normally associated with the trade or industry standard and be exclusive of taxes as well as any other items necessary for the proper execution and completion of any services rendered under this RFP. **No additional charges or hidden costs shall be allotted during the course of the contract.** Contractor(s) shall provide pricing for all items listed below, failure to do so shall be cause for proposal to be deemed non-responsive.

	<u>Service</u>		<u>Cost Per Application</u>	<u>Per</u>
1.	Herbicide Application	Liquid	\$35	Acre
		Granular	\$35	Acre
2.	Insecticide Application	Liquid	\$35	Acre
		Granular	\$35	Acre
3.	Fertilizer Application	Liquid	\$35	Acre
		Granular	\$35	Acre
4.	Fungus / Disease control	Liquid	\$35	Acre
		Granular	\$40	Acre
5.	Aeration – Football Stadium		\$100	Acre
6.	Aeration – Baseball		\$100	Acre
7.	Aeration – Softball		\$100	Acre
8.	Verticutting – Football Stadium		\$125	Acre
	Verticutting – Baseball		\$125	Acre
	Verticutting – Softball		\$125	Acre
	Rototill – Football Stadium		\$.01	Square Foot
	Rototill – Baseball		\$.015	Square Foot
	Rototill – Softball		\$.015	Square Foot
	Top Dressing – Football Stadium		\$700	24 Ton Load
	Top Dressing – Baseball		\$700	24 Ton Load
	Top Dressing – Softball		\$700	24 Ton Load
9.	Sod removal / replacement		\$1.00 (419 Bermuda)	Square Foot

B. Additional Services – Fixed Labor Rates:

Contractor shall supply hourly labor rates below for any and all **additional services** that are similar in scope and intent of this RFP or for work at the request of SBCC. Rates shall be provided for a Lead Supervisor and technician. All labor rates shall include the use of truck, tools and all other items necessary for satisfactory service. Rates shall be provided for standard business hours (M-F, 7am to 5pm) and non-standard business hours (anytime/day outside of standard business hours). All hourly rates and times shall start on the “job site”. Any travel time expenses shall be borne by the Contractor and will not be reimbursed by SBCC.

<u>Trade</u>	<u>Standard Hourly Rate</u>	<u>Non Standard Hourly Rate</u>
Lead Supervisor	\$100	\$100
Technician	\$50	\$50
Other:	\$25	\$25
Other:	\$	\$

C. Optional Services - Fixed Labor Rates:

Contractor(s) may provide a rate for each of the optional specific services listed herein, that shall include all supervision, labor costs, equipment, machinery, insurances, overhead, vehicle use charges, profit, travel time, mileage; and all tools, or hand tools normally associated with the trade or industry standard and be exclusive of taxes as well as any other items necessary for the proper execution and completion of any services rendered under this RFP. **No additional charges or hidden costs shall be allotted during the course of the contract.**

	<u>Service</u>	<u>Cost</u>	<u>Per</u>
	Warning track grading	\$.015	Square Foot
	Infield Conditioner spreading	\$.015	Square Foot
	Rye seed spreading	\$35	Acre
	Rye Grass removal	\$25 (chemical removal)	Acre

D. Chemicals/Materials/Sand/Seed/Infield Conditioner:

Any and all chemicals, materials, sand, seeds or conditioners directly related to the services described herein shall be noted below unless otherwise noted in this RFP. Please list any below that may have high usage under this RFP, along with the markup percentage. Chemical pricing is per pound for granular and per gallon for liquid. Sand, seed and infield conditioner pricing is per 50lb bag.

<u>Name</u>	<u>Brand</u>	<u>Manufacturer</u>	<u>EPA#</u>	<u>MSDS#</u>	<u>Usage</u>	<u>Price</u>
Rye seed	Sunbird	PRG Seed	N/A	N/A	Flexible	10% above cost
Infield Conditioner	Diamond Pro		N/A	N/A	Moderate/High	10% above cost
Green Divot Sand	Diamond Pro		N/A	N/A	Low	10% above cost
Dismiss NXT	Dismiss	FMC			Medium	2% above cost
Drive XLRB		BASF			Medium	2% above cost
Celsius		Bayer			Medium	2% above cost
Pendulum		BASF			Medium	2% above cost
Barricade		Syngenta			Medium	2% above cost
Specticle		Bayer			Medium	2% above cost
Talstor					Medium	2% above cost
Merit		Bayer			Medium	2% above cost
21-0-0		Howard			Medium	2% above cost
List an overall % above cost to products that Contractor can supply but that are not listed above.						2% above cost

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