

Service Agreement

This 2023 Service Agreement (the "Agreement") is entered into between Southern Soils Turf Solutions, LLC ("Southern Soils") and City of Ocala Recreation & Parks Department (the "Customer") for the application of Bayer Chipco Choice (the "Product") to the turf areas identified in the Treatment Information section herein and as directed by the Turf Manager.

Customer & Sales Rep Information

Customer Name: City of Ocala Recreation & Parks Department
Course/Field Name: Various Parks

Distributor Name: Howard Fertilizer & Chemical, Inc.

Customer Contact Name: Richie Crile
Customer Contact Email: rcrile@ocalafl.org
Customer Contact Cell: 352-251-5608

Distributor Rep Contact: Gary James
Distributor Rep Email: gjames@howardfert.com
Distributor Rep Cell: (386) 804-7191

Job Site Information

Job Site Address: 1307 NW 4th Avenue , Ocala, FL 34475
Job Site County: Marion

Billing Address: 1307 NW 4th Avenue, Ocala, FL 34475
Sales Tax Exempt: Yes No **If Yes, please enter Tax Exempt Number:**

Treatment Information

Product Applied: Bayer Chipco Choice
Booked Acreage: 60

Scheduled Application Date: Apr 21, 2023

of 50lb Bags Required: 30 Bags*

*In the event there is supplemental acreage, Southern Soils will have additional bags available for purchase, if needed.

Treatment Area (Check all that applies):

Fairways	Greens	Tees	Range Tees	Rough	Green Complex	Tee Complex
Approaches	Wall-to-wall	Athletic Fields	Polo Field	Common Area		

Additional Treatment Instructions: (Please describe treatment areas and/or instructions)

Application of Customer Supplied Product	
1-20 Acres	\$110 per acre
21+ Acres	\$100 per acre

Southern Soils Supplied Product*	
\$240 per acre	
*Includes Product and Application @ 25lbs per acre	

Please note that multiple treatment dates and/or job site locations are priced as separate applications. All jobs are invoiced based on actual acreage treated. State and County sales tax are paid in advance, and no additional sales tax will be included on the final invoice. A "Fuel Surcharge" fee may be implemented as necessary due to fluctuation in fuel prices and/or unforeseen economic circumstances.

Service Agreement

Terms and Conditions

The CUSTOMER is responsible for arranging and coordinating the purchase and delivery of the PRODUCT through a DISTRIBUTOR unless the Product is to be provided by SOUTHERN SOILS. SOUTHERN SOILS, a Certified Applicator, will apply the PRODUCT in accordance with the label to those areas designated by the CUSTOMER as identified in this Agreement. The CUSTOMER agrees that this area is accurately identified in the TREATMENT AREA section of this Agreement. SOUTHERN SOILS will apply the PRODUCT on the scheduled application date, or a date mutually agreed upon by SOUTHERN SOILS and the CUSTOMER. The CUSTOMER agrees to provide a written notice at least ten (10) days prior to the scheduled application date if any changes to the scheduled application date are required. CUSTOMER agrees to pay a \$500.00 rescheduling fee in the event the CUSTOMER cancels or reschedules the application date within 10 days of the scheduled application date, except for reasons due to weather.

The DISTRIBUTOR is responsible for providing to the CUSTOMER an MSDS and a label for the PRODUCT prior to the scheduled application date. **SOUTHERN SOILS, DOES NOT MAKE OR EXTEND ANY WARRANTY FOR MERCHANTABILITY OR FITNESS, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. CUSTOMER must comply with all application requirements as specified on the PRODUCT label.**

SOUTHERN SOILS will notify the CUSTOMER in the event SOUTHERN SOILS adds a fuel surcharge to cover fuel costs, which will be at SOUTHERN SOILS' sole discretion and based on applicable market conditions. SOUTHERN SOILS will invoice the CUSTOMER within ten (10) business days of the date the application is completed, and unless otherwise agreed to, the CUSTOMER agrees to pay SOUTHERN SOILS within 15 days of the actual date of application.

1. **Express Disclaimer of Warranties.** Customer expressly acknowledges and agrees that any warranties with respect to the products to be applied or provided under or pursuant to this Agreement (the "Product") and the services provided or to be provided under this Agreement ("Services") are expressly limited to the warranties, if any, provided by the Product manufacturer, and that Southern Soils is in no way responsible for any warranties or representations relating to the Product, the application of the Product, or the Services. CUSTOMER expressly acknowledges and agrees THAT Southern Soils MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE PRODUCT, THE SERVICES, OR THE SUITABILITY OF THE PRODUCT FOR APPLICATION, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL SOUTHERN SOILS BE LIABLE OR RESPONSIBLE FOR ANY LOST PROFITS, LOST INCOME, LOST REVENUE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR EXPENSE OCCASIONED BY THE PRODUCTS OR THE SERVICES.
2. **Indemnification and Release.** Customer shall indemnify, defend, and hold harmless Southern Soils and its members, managers, agents, employees, officers, directors, shareholders, parents, subsidiaries, affiliates, successors, and assigns (together, with Southern Soils, the "Indemnified Parties") from and against any and all Liabilities (as hereinafter defined) which any one or more of the Indemnified Parties may incur, suffer, or be required to pay resulting from or arising in connection with any personal injury, death, loss of use, diminution in value, or other property damage arising out of, resulting from, or relating to the Product, the application of the Product, this Agreement, and/or the Services, but excepting only actual and material property damage caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Customer further releases, and waives any and all claims against, the Indemnified Parties resulting from or arising in connection with any personal injury, death, loss of use, diminution in value, or other property damage arising out of, resulting from, or relating to the Product, the application of the Product, this Agreement, and/or the Services, but excepting only actual and material property damage caused solely by the gross negligence or willful misconduct of the Indemnified Parties. For purposes of this Section, "Liabilities" means any and all actual or threatened liabilities, losses, damages, penalties, fines, assessments, expenses, and costs of any kind or nature required to be paid by any one or more of the Indemnified Parties to any third party, whether direct or indirect, absolute or contingent, known or unknown, including without limitation costs of settlement, reasonable attorneys' fees, and related costs and expenses.

The releases contained in this Section extend and apply to, and also cover and include, all unknown, unforeseen, unanticipated and unsuspected injuries, damages, losses, and liabilities, and the consequences thereof, as well as those now disclosed and known to exist. Customer acknowledges that it has read and understands Section 1542 of the California Civil Code which reads as follows: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

***NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City of Ocala to which sovereign immunity may be applicable, or of any rights or limits or liability existing under Florida Statute §768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any processing brought under this Agreement is barred by any applicable statute of limitations.

Customer hereby expressly waives and relinquishes all rights and benefits under that section of the California Civil Code and further expressly waives the provisions of any applicable laws that provide in substance that releases shall not extend to claims, demands, injuries, or damages that are unsuspected or unknown to exist at the time this Agreement is executed. Customer acknowledges that it may subsequently discover facts different from, or in addition to, those that Customer knows or believes to be true with respect to the claims released in this Agreement and agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts.

3. **Noncompliance.** In the event Customer is dissatisfied with all or any portion of the Services, Customer shall have seven days from the date such Services were performed to notify Southern Soils, in writing, of any defects or nonconformance. After this seven-day period, Customer will be deemed to have irrevocably accepted all Services provided by Southern Soils as is. Notwithstanding the foregoing, in no event shall Southern Soils be responsible for any inquiries, complaints, or claims relating to the Product. Customer expressly acknowledges and agrees that all inquiries, complaints, or claims relating to the Product shall be directed to, and shall be the sole responsibility of, the product manufacturer and/or distributor. In no event shall Southern Soils be deemed to be a distributor of the Product.
4. **Late Payments.** Invoices or amounts not paid when due will accrue interest on the unpaid balance thereof at a rate equal to the lesser of 18 percent per annum (1.5 percent per month) and the maximum rate allowed by law. Customer shall be responsible for all attorney's fees and costs incurred by Southern Soils in the collection of any amounts due, whether or not litigation is commenced.
5. **Representations and Warranties of Customer.** Customer represents and warrants to Southern Soils as follows:
 - a. Customer is duly organized, validly existing and in good standing under the laws of its state of incorporation/organization or appropriate country. It has all requisite power and authority to enter into this Agreement and perform its obligations hereunder.
 - b. The execution, delivery, and performance by Customer of its obligations under this Agreement have been duly authorized by all necessary action of Customer.
 - c. This Agreement constitutes the legal, valid, and binding obligation of Customer and is enforceable against Customer in accordance with its terms and does not conflict with any other contracts or agreements to which Customer is a party.
 - d. Customer has made its own independent investigation with respect to the Products and their application to Customer's property and is not relying on any representations or statements of Southern Soils or its members, managers, agents, employees, officers, directors, shareholders, parents, subsidiaries, or affiliates that are not expressly set forth in this Agreement.
6. **Attorney's Fees.** In the event suit is brought by the Customer against Southern Soils relating in any way to this Agreement, the Product, and/or the Services provided or to be provided by Southern Soils, and in the event Southern Soils is the prevailing party in such suit, Customer shall pay all of Southern Soils' attorney's fees and costs incurred in defense of such suit, including but not limited to all pre-suit, trial level, and appellate level costs.
7. **Independent Contractors.** Customer and Southern Soils (individually, a "Party", and collectively, the "Parties") are each independent contractors and neither Party is an employee, agent, representative, partner, or joint venturer of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other.

Service Agreement

8. **Governing Law, Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. If any provision of this Agreement conflicts with any statute or rule of any law in Florida or is otherwise unenforceable for any reason, then that provision shall be deemed severable from or enforceable to the maximum extent permitted by law, as the case may be, and that provision shall not invalidate any other provision of this Agreement. Each of the Parties agrees that any legal action or proceeding with respect to this Agreement may be brought exclusively in the state courts located in Collier County, Florida, or the federal court presiding over such county, and by execution and delivery of this Agreement, each Party to this Agreement irrevocably submits itself in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid courts in any legal action or proceeding arising out of this Agreement. Each of the Parties to this Agreement irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to in this Section. Nothing in this paragraph will affect or eliminate any right to serve process in any other manner permitted by law. THE PARTIES IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY OF ANY CAUSE OR ACTION, CLAIM, COUNTERCLAIM, OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY PORTION OF THIS AGREEMENT, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY. THE PARTIES REPRESENT THAT THEY HAVE CONSULTED WITH COUNSEL REGARDING THE MEANING AND EFFECT OF THE FOREGOING WAIVER OF THEIR JURY TRIAL RIGHT.
9. **Force Majeure.** If the performance by Southern Soils of Services or any other obligation under this Agreement is prevented, restricted, interfered with, or delayed by reason of Force Majeure (as is hereinafter defined), Southern Soils shall be excused from such performance to the extent of such prevention, restriction, interference, or delay, provided that Southern Soils shall use commercially reasonable efforts to continue performance whenever such causes are removed. For purposes of this Agreement, "Force Majeure" is defined as: acts of God; acts, regulations, orders, decrees, or laws of any government or agency thereof, war, fire, floods, export issues, civil commotion, labor disturbances, shortages, strikes, or disputes, Product shortages, epidemic or pandemic, governmental shutdowns or actions, or other causes beyond the reasonable control of Southern Soils.
10. **Severability.** If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any person, entity, party or circumstance is held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement (or the remaining portion thereof) or the application of such provision to any other parties or circumstances.
11. **Survival.** The terms of this Agreement shall survive its termination.
12. **No Third-Party Beneficiary.** Each Party to this Agreement intends that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties to this Agreement.
13. **Entire Agreement.** This Agreement and all exhibits hereto set forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merge all prior discussions and agreements, both oral and written, between the Parties. Customer acknowledges and agrees that, in entering into this Agreement, Customer is not relying on any promise, agreement, or statement, whether written or oral, that is not expressly and fully set forth in this Agreement. Customer agrees that the use of pre-printed forms, including emails, or acknowledgements is for convenience only and any such pre-printed terms and conditions stated thereon are void and of no effect. No amendment or modification to this Agreement shall be valid unless set forth in writing, which writing specifically references that it is serving as an amendment this Agreement and signed by duly authorized representatives of both Parties.
14. **Interpretation.** The headings and section references contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.
15. **Counterparts; Delivery by Facsimile or E-Mail.** This Agreement may be executed in one or more counterparts, all of which taken together will constitute one instrument. Any signature page delivered via facsimile or e-mail shall be binding to the same extent as an original signature page. Any electronic signature of a Party shall be binding to the same extent as an original signature.

Thomas D. Seeber

01/13/2023

Thomas D. Seeber, President Southern Soils

Date

Ken Whitehead

02 / 17 / 2023

Turf Manager or Authorized Representative

Date

Approved as to form and legality:

William E. Sexton

William E. Sexton, Esq.
City Attorney

Title	FOR SIGNATURES - 2023 Services Agreement for Chipco Slit...
File name	FOR SIGNATURES - ... (REC 220074).pdf
Document ID	93ab17aa3e45bd248e13ca539c73be3a4a96e291
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



02 / 08 / 2023
16:04:23 UTC-5

Sent for signature to William E. Sexton (wsexton@ocalafl.org), Howard Fertilizer & Chemical, Inc. (gJames@howardfert.com) and Ken Whitehead (kwhitehead@ocalafl.org) from biverson@ocalafl.org
IP: 216.255.240.104



02 / 08 / 2023
16:32:16 UTC-5

Viewed by William E. Sexton (wsexton@ocalafl.org)
IP: 216.255.240.104



02 / 08 / 2023
16:32:31 UTC-5

Signed by William E. Sexton (wsexton@ocalafl.org)
IP: 216.255.240.104



02 / 08 / 2023
18:53:21 UTC-5

Viewed by Howard Fertilizer & Chemical, Inc. (gJames@howardfert.com)
IP: 68.205.170.235

Title	FOR SIGNATURES - 2023 Services Agreement for Chipco Slit...
File name	FOR SIGNATURES - ... (REC 220074).pdf
Document ID	93ab17aa3e45bd248e13ca539c73be3a4a96e291
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



02 / 16 / 2023
15:53:34 UTC-5

Signed by Howard Fertilizer & Chemical, Inc.
(gjames@howardfert.com)
IP: 174.239.65.90



02 / 17 / 2023
10:50:25 UTC-5

Viewed by Ken Whitehead (kwhitehead@ocalafl.org)
IP: 216.255.240.104



02 / 17 / 2023
11:11:42 UTC-5

Signed by Ken Whitehead (kwhitehead@ocalafl.org)
IP: 216.255.240.104



02 / 17 / 2023
11:11:42 UTC-5

The document has been completed.