

**Street Median Island Mowing and Trimming Services Contract
City of Waukesha – Kujawa Enterprises Inc. (KEI)**

Street Median Mowing

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and Kujawa Enterprises, Inc. (KEI), referred to as Contractor. Together the City and Contractor are referred to as the Parties.

Recitals

The City has opted to contract out Street Median Mowing, and has determined that the Contractor is qualified to perform the mowing. Contractor is willing to perform the street median mowing.

Now, therefore, the City and Contractor agree and contract as follows:

1. Contractor Obligations.

- a. **Schedule.** The Contractor will provide to City a yearly mowing schedule that allocates adequate personnel and equipment to complete the entire weekly mowing. The Contractor must maintain this schedule with the ability to use Saturdays to catch up on time lost due to unsuitable weather and/or turf conditions. The Contractor will notify the City of any changes to the schedule. The City agrees to provide notice of cancelation by noon of the day proceeding scheduled work to be canceled.
- b. **Litter, Debris and Cleanup.** The Contractor will be responsible for the proper removal of trash, downed tree limbs less than 4" diameter and debris from the islands. Anything larger contact the City Grounds Maintenance Supervisor.
- c. **Mowing – Trash and Debris.** The entire site will be picked up and trash and debris disposed of before mowing begins. Mowing over or placing litter or debris in the trees, landscape beds or street curb area is not acceptable. Grass will not be blown into the streets or allowed to accumulate in the curb line or sewers. All efforts will be made to keep grass on the island.
- d. **Height of Cut.** Mowers will be rotary type and the height of cut will be set at between 2 1/2- 3 inches. Grounds Maintenance Supervisor shall have the right to check equipment for compliance. The Contractor shall adjust lawn mowing heights at the written request of the City.
- e. **Frequency of Mowing.** Mowing will be completed once (1) every 7-10 days starting the second week of **April continuing through October 31th (20-22-time mowing/trimming season)**. Cuttings may be reduced or adjusted based on weather conditions and/or growth rate (must be coordinated with the Grounds Maintenance Supervisor). A Right of Way (ROW) permit will be issued by the City to the Contractor in accordance with State of Wisconsin DOT standards.
- f. **Trimming and Edging.** Contractor shall be responsible at **EVERY** lawn mowing for trimming around permanent objects such as trees, shrubs, mulch and plant beds, sign posts, fencing, near buildings, in curbs and gutters, and any other part of the lawn area where the lawn mowers may not be able to reach during routine mowing. Areas to be trimmed shall be brought to the same level as the mowing level of the lawn. The contractor is also responsible for control of weeds in the cracks of the concrete curbing surrounding the median and any concrete that is attached to or extends the end of the island including sidewalk crossings, traffic controls, etc. The contractor must take care not to damage objects during mowing and trimming operation. If the contractor choses to use chemicals to control weeds in the curb line.

- g. Final Appearance.** Picking up or bagging of cut grass and raking of leaves are not normally required. Mowing patterns shall be such that the clippings are evenly distributed, not windrowed into noticeable deposits. At the City's discretion, unevenly distributed grass clippings may have to be picked up. Grass clippings will not be allowed to accumulate on the road or curb lines. Mowing patterns will be established and equipment operated so that the height of cut is uniform and no scalping occurs. Mowing pattern will be consistent throughout the lawn area and satisfactory to the City. Trees, shrubs and other plants should not be "barked" by running into them with the mowing equipment.
- h. Personnel.** The Contractor's Contract Administrator must be available by phone and email. Contractor shall have in its employ, or under its control, sufficient qualified and competent personnel to perform work promptly and in accordance with a schedule or work program. The crew foreman must be able to converse in English. Contractor shall employ only such workers as are skilled in the tasks to which they are assigned. Workers shall act appropriately and professionally at all times. The City may require the Contractor not to assign any employee the City deems incompetent, careless, insubordinate, or otherwise objectionable to work on City projects.
- i. Equipment.** Contractor, operators and all vendors shall wear reflective vests while in the right of way, and will provide, upon request, the City with a list of owned or leased equipment. Walk behind mowers may be used around obstacles and for steep slopes. Mowing equipment shall be kept in good, safe operating condition with sharp blades so that grass is cut properly and in such condition that oil and gasoline are not leaked onto turf areas. Mowers shall be rear discharge or have the grass chutes closed off to eliminate objects and grass from being thrown from mowers into traffic, roads and sewers.
- j. Fueling and Oiling.** Spilled gasoline and oil kills grass. Mowers will not be fueled or oiled in grass they shall be moved to paved areas for this function.
- k. Standards.** All materials and workmanship must be in accordance with generally accepted methods and standards of the industry and be consistent of the highest quality and the City's standards. The Contractor shall perform all duties in a timely and workmanlike manner. All regulations pertaining to traffic control for street construction and maintenance operations in the City of Waukesha shall be followed. All work is subject to inspection from the City.
- i. All contractor's supervision and staff must attend an annual safety briefing by the City and Waukesha County Highway Operation personnel.
 - ii. All persons mowing within the WisDOT right of way shall wear Class 2 safety vests.
 - iii. Mowing shall take place during non-peak travel times and in daylight hours only.
 - iv. Litter and other debris shall be removed prior to mowing. Applicants may keep cans and other recyclable items that may be turned in for cash.
 - v. **Chemical treatment of the median is prohibited.**
 - vi. Mowing shall take place with the chute facing away from traffic.
 - vii. Mowing clippings shall not plug drainage structures.
 - viii. Applicant shall have a copy of their permit nearby that is easily accessible.

- ix. Persons mowing within the median shall be responsible for any damages caused to WisDOT facilities, permitted utility facilities, etc. resulting from the mowing operation.
 - x. All persons mowing within the right of way shall be at least 16 years of age or older.
 - xi. Mower operators shall yield to vehicular traffic at all times during equipment crossing and mowing operations.
 - xii. No vehicles or equipment shall be parked or stored on highway right of way.
 - xiii. Where the median is a curb section, temporary ramping with a plank or two shall be allowed for a riding lawn mower. Any planking of the curb shall be only to gain access to and from the median being mowed and be removed once mowing is completed.
 - xiv. The applicant may use weed whips around light poles, sign posts, etc.
- I. **General Reporting of Damages and Communication.** Any vandalism, storm damage or Contractor damage to the subject areas needs to be reported as soon as possible by the Contractor to the City. The Contractor will respond to calls from the City with a response time not exceeding four (4) hours.
- m. **Regarding Property Damage and Personal Injury:**
- i. Wherever any existing material, equipment or facility is damaged by the Contractor, the cost of repair or replacement shall be charged to the Contractor. Items covered by this provision include, but are not limited to curbs, sidewalks, lawns (to include scalped areas ruts depressions), plantings, limbing or gouging of trees or shrubs, signs, light poles, vehicles etc.
 - ii. Injuries to any person, damage to any mowing site, the property of any employee at that site, customer or any property not belonging to the Contractor shall be reported immediately to the City. All such damages shall be the responsibility of the Contractor, and Contractor shall indemnify and hold the City harmless from all such damages.
 - iii. Repair work due to damages caused by the Contractor shall be coordinated through, and subject to the approval of the City. Repairs shall be made with like materials in a manner acceptable to the City and repaired to its original state at the Contractors expense.
 - iv. Contractor shall acquaint themselves with the location of utilities, which may be encountered or be affected by their work, and shall be responsible for damage caused by neglect to provide proper precautions or protection.
2. **Payment.** The City shall pay the Contractor the total fee shown on Schedule A, containing two sections, Section "A" City medians and Section "B" State/County Medians, in two installments. One half of the fee shall be paid within 30 day of the execution of this contract and the balance shall be paid upon Contractors completion of its obligations under this Contract, not later than November 30.
3. **Indemnification.** Contractor shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, penalties, losses, judgments, liabilities or other obligations of any kind arising out of, or connected in any way with, Contractor's performance of its obligations under this Contract.
4. **Insurance.** Contractor shall maintain insurance of the following kinds and for not less than the following limits, at Contractor's sole expense, at all times during the performance of its obligations under this Contract. Policies shall be occurrence, and not claims-made, policies. Contractor shall obtain an endorsement making the City

an additional insured, and Contractor's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Contractor shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Umbrella, \$5,000,000.
5. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
 6. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
 7. **Corporate Authorization.** The individuals executing this Contract on behalf of the Contractor represent that they are duly authorized to bind the Contractor contractually. Contractor represents that the execution of this Contract is not prohibited by the Contractor's articles of incorporation, by-laws or other internal operating orders, or by any applicable law, regulation or court order.
 8. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the review and execution of this Contract, or have voluntarily waived the opportunity to do so; that they have read and understand each of this Contract's terms, conditions and provisions, and their effects; and that they have executed this Contract freely, of their own volition, and not under conditions of duress.
 9. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
 10. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
 11. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
 12. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
 13. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.

14. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
15. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk-Treasurer
Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance
Date: _____

Kujawa Enterprises Inc.

By Judy Kujawa, Office Manager
Date: _____

Schedule A:

STREET MEDIAN MOWING & TRIMMING LOCATIONS

SECTION "A" – City Medians

1. Arcadian:.....Six Islands west from the 59/164 Bypass to just past Tesch Ct.
2. Big Island:.....Between E. North St. & E. St. Paul (HWY 18) From Moreland Blvd. to Albert Street
3. Les Paul Parkway.....Terrace from Blackhawk Trail south to sidewalk running to apartments
4. Main & Perkins:Corner property on Lincoln & Perkins intersection & E. Main and Cleveland island.
5. Main Street:Islands from Manhattan Drive east to Moreland Blvd.
6. Manchester:.....One island at Manchester and Madison Street
7. Oakridge Court:Cul-de-sac island on Oakridge Court
8. Silvernail:.....Islands from Grandview west to University Dr. (include terrace)
9. South East Ave.:.....Islands from Rivera Ave. south to Les Paul parkway.
10. Grand:Islands from Rivera Dr. north to Estberg Ave.
11. Springdale:Islands from Bluemound Rd (Hwy. JJ) to Moreland Blvd
12. E. Sunset & Guthrie:.....Island form Blackhawk Trail to Howlett Lane along Sunset and Guthrie Rd.
13. Sunset:Islands from Les Paul Parkway (164 bypass). west to Genesee Rd. (W. St. Paul Ave). Include Chapman island & terrace between the river and bank driveway
14. Tenny:Islands from south of E. Sunset Dr. north to Roberta Ave. Including the Islands north of Roberta

SECTION "B" – State/County Medians

1. HWY. 18 Manhattan-Wolf:.....Islands from Manhattan east to Wolf Rd. (1 map)
 2. Wolf to I 94:Islands from Wolf east to I94
 3. Les Paul parkwayIntersection of Moreland and Wolf Road, South to Genesee rd.
 4. St Paul Ave:.....St Paul Ave From Harris Highland to HWY 59
 5. Meadowbrook:.....From Summit north to I-94
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Schedule A (sections A + B) Total price \$ 83,025.00