

**Fertilization and Weed Control Services Contract
City of Waukesha – TruGreen**

Fertilization and Weed Control

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 TruGreen referred to as Contractor. Together the City and Contractor are referred to as the Parties.

Recitals

The City has opted to contract out Fertilization and weed control on various City Properties and has determined that the Contractor is qualified to perform the fertilization and weed control. Contractor is willing to perform the fertilizer and weed control on various City properties.

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

1. Contractor shall perform fertilization and weed control in the areas shown in Schedule 1, which is incorporated into this Contract by reference, and subject to the terms of this Contract.
2. Contractor shall inspect all parks and/or boulevard areas and be solely responsible for determining the amounts of materials and labor required.
3. Work is subject to inspection of the Parks, Recreation and Forestry Director or his duly authorized representative.
4. Any number of personnel may be assigned to one job but there shall be a sufficient number to handle the job. All regulations pertaining to traffic control for street construction and maintenance operations in the City of Waukesha shall be followed.
5. All Wisconsin Department of Agriculture Trade and Consumer Protection regulations, laws and provisions pertaining to pesticides must be adhered to. The contractor is responsible for complying with any and all recent applicable changes to Wisconsin Administrative Code Chapter Ag. 29, including prior notification requirements to surrounding residents.
6. Contractor shall not allow spray drift or overspray.
7. Once begun, all applications must be completed within 7 work days. Special consideration, per request, will be granted to compensate for inclement weather.
8. Spring applications to be started while the broadleaf weeds are actively growing, no earlier than one week prior to peak dandelion bloom, and completed within seven days. Fall applications to be started while the broadleaf weeds are actively growing beginning no earlier than September 15th, 2019 and completed no later than the fourth Saturday in October.
9. In order to coordinate WPRF mowing activities and accommodate scheduled events, the Parks Department Supervisor must be notified 1 week before application are to begin. (262) 534-3722.
10. Contractor must provide upon request proof of proper equipment calibration per Wisconsin Administrative Code Chapter NR 151 requirements in writing.
11. Fertilizer should be used a minimum of 1 pound nitrogen but no more than 1½ pounds per 1000 sq. ft. to be applied per application.

12. Applications in park areas are to be done in an expeditious manner during early morning hours. No treatments shall be done after 12:00 P.M. in park areas, Rotary Building, Schuetze Building, Youmans Plaza, River Crossing Park, and Cutler Park.
13. Park areas must be posted by contractor at the time of application meeting the requirements of Wisconsin Administrative Code Chapter Ag. 29 for "posting of treated areas".
14. Work is to be performed between the hours of 6:00 A.M. and 5:00 P.M. Monday through Friday. Note: Areas within 500 feet of a school may be done on weekends to avoid conflict. Contact the Grounds Supervisor to schedule these exceptions prior to each application. Additional school contact will be required prior to these applications.
15. Work will cease when temperatures exceed 80 degrees F or wind speeds exceed 7 mph, unless appropriate "No Drift" equipment is used in application.
16. Treatment will be repeated if precipitation occurs within eight (8) hours of application.
17. Amine formulation of 2,4-D and MCPP herbicides or equivalent combination to be used.
18. A non-phosphorus-based fertilizer is to be used with bidder supplying the analysis in writing upon request.
19. Formulation rates, application rates, quantity of material used, date and time applied and completed, will be provided in writing to the City for each individual site application that is made. This information shall be submitted at completion of spring and at completion of fall Applications and before payment is made.
20. All areas to be treated shall receive Broadleaf Weed Control and fertilization.
21. **Payment.** The contract fee to be paid to the Contractor shall be \$___. One half of the fee shall be paid within 30 days of the execution of this Contract and the balance shall be paid upon Contractor's completion of its obligations under this Contract, not later than November 30.
22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **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.

33. **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.
34. **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:_____

By Mark Turner contractor
Date:_____

Schedule 1
AREAS TO BE TREATED

A. BOULEVARD AREAS (2-time application)

- 1) Aviation Ave Island: Islands from Northview to Airport road.
- 2) University Ave Islands: Islands from Northview Rd north to Silvernail Rd and from Madison to Michigan Ave.
- 3) Tenny Ave. Islands: Islands from south of W. Sunset Dr (2), north to Roberta Ave Including one island North of Roberta
- 4) Springdale Islands: Islands from Bluemound Rd (hwy JJ) to Moreland Blvd.
- 5) S Grand islands: From Sunset south to Rivera Dr
- 6) Moreland Islands: South Moreland Blvd. From west St Paul to Madison St.
North Moreland Blvd. From Madison to North Summit Ave.
West Moreland Blvd.
From Summit Ave east to Delafield St.
From Delafield east to Pewaukee Rd.
From E. St. Paul Ave to White Rock.

B. OTHER AREAS (2-time application)

- 1) Fire Station #3: 1210 Sentry Drive
- 2) Fire Station #4: 1700 Northview Road
- 3) Fire Station #5: 3051 Summit Ave
- 4) Rotary Building: 1150 Baxter Street
- 5) Schuetze Building: 1120 Baxter Street: Includes area between south parking lot driveway and first north parking lot driveway, from street to front of building and area around playground inside of the fence

C. OTHER AREAS (3-time application)

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|-----------------------------|------------------------|
| 1) Youmans Plaza: | 200 W Broadway |
| 2) City Hall: | 201 Delafield Street |
| 3) Cutler Park: | 321 Wisconsin Ave |
| 4) Rivers crossing park: | 3703 River crossing Dr |
| 5) Aviation Admin building: | 1900 Aviation Drive |
| 6) Waukesha Police Dept | 1901 Delafield Street |

TOTAL \$ _____