



City of Waukesha
201 Delafield St. Waukesha, WI 53188
Tel: 262.542.3700
waukesha-wi.gov

Committee: Parks, Recreation & Forestry Board	Date: 5/16/2022
Common Council Item Number: ID#22-4159	Date: Click here to enter a date.
Submitted By: Ron Grall, Director of Parks, Recreation & Forestry Keith Johnson, Grounds Maintenance Supervisor	City Administrator Approval: Kevin Lahner, City Administrator KA
Finance Department Review: Denise Vandenbush-Kohlmann-Kohlmann DVK	City Attorney's Office Review: Brian Running, City Attorney BR
Subject: Approval of the proposed City Hall Shrub Bed Maintenance Agreement between Kujawa Enterprises inc and the City of Waukesha	

Details:

Our experience has demonstrated that by taking a “blended” (use of In-house & contracted services) approach to addressing new/additional maintenance responsibilities, it has been a cost-effective and efficient means of operation. In this case, PRF staff will continue to mow City Hall grounds and a contracted service will maintain the planter beds.

Options & Alternatives:

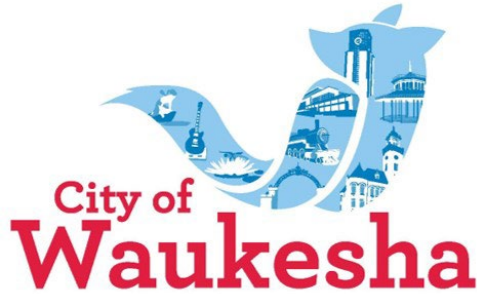
Absorbing the new planting beds with PRF staffing would “pull away” resources from fundamental park maintenance responsibilities.

Financial Remarks:

As part of the 2022 Parks Operating budget, monies were earmarked in 5520.52190, Other Professional Services, to cover the cost of contracting out the maintenance of the new City Hall landscape beds. The contract total sum amount is \$ 6,315.00.

Executive Recommendation:

Recommend approval of the City Hall Maintenance Contract agreement between Kujawa Enterprises inc. (KEI) and the City of Waukesha and authorize the Mayor to enter into this contact.



Request for Proposals
for
City Hall Landscaping Maintenance

Submission Deadline: 4:00 p.m., May 11th, 2022

Submit to kjohnson@waukesha-wi.gov

City of Waukesha
Parks, Recreation and Forestry Department
1900 Aviation Drive
Waukesha, Wisconsin 53188
Phone 262-524-3737
Equal Opportunity/Affirmative Action Employer

General Overview

Waukesha City Hall has a number of planting beds and other landscaping features on the property, and by this Request for Proposals (RFP) is seeking an independent contractor to maintain them during the growing season. All qualified contractors are invited to offer proposals for the work.

Description of the Work

The contract that the winning bidder will execute is attached to this RFP as Exhibit 1. It describes the work for which the City is seeking proposals. Please review it carefully before preparing a bid, and if you need any explanations or further information, contact Keith Johnson at (262) 524-3722 or kjohnson@waukesha-wi.gov.

Qualifications

The winning bidder must have a sufficient employees, physically capable and trained in the required work, and equipment, to enable the bidder to perform the contract fully. The City may require proof of any bidders' qualifications to perform the work in compliance with the contract.

Deadline and Format for Submission

Proposals may be submitted until 4:30 p.m. on April 4, 2022. The attached Cover Sheet must be filled out and stapled to the front of your proposal, other than that, bidders may use their own forms. Please include up to five references, who should be past customers. Proposals must be submitted as attachments to emails, in PDF format, to kjohnson@waukesha-wi.gov. The subject line must read, "Proposal – City Hall Landscaping."

Proposals must account for all work described in the contract, any proposals for only a portion of the work will be rejected. Proposals must include the prices of all labor and materials necessary for performance of the work, the proposed contract price must be all-inclusive. Bidders may also propose additional work. Any additional labor or materials not provided for in the proposals will be provided at the winning bidder's sole expense. **Please make sure your proposal addresses all required work and all required labor and materials, and that the price is all-inclusive.**

Selection Process

Proposals will first be reviewed after the submission deadline, and selection of the winning bidder by City staff will take place no later than May 11, 2022. It's anticipated that the winning bidder will be recommended for approval by the Waukesha Park Board on May 16, 2022 and the Common Council at its June 7, 2022 meeting, and a contract will be executed promptly after Council approval. The winning bidder will be expected to commence services beginning in June 2022.

Selection of a winning bidder will be based on the proposal submitted and City staff may also inquire into bidders' reputations, standing as businesses, and customer referrals, and other relevant factors. The Common Council is not bound by staff's selection of a winning bidder, and may not approve staff's selection or the terms of a proposed final contract. There is no contract until the Common Council authorizes it and it is executed by the winning Bidder and the City.

General Rules – Please Read Carefully

1. This RFP is only a solicitation for proposals. No contract will result from the submission of proposals until the City selects a winner, the Common Council approves, and a formal contract is executed.

2. Bidders must follow the procedures and rules stated in this RFP. Proposals must meet every requirement stated in this RFP, at a minimum. Proposals will be amended to conform with this RFP when necessary. The City may waive insubstantial errors or omissions in proposals, in its sole discretion.
3. Proposals may be withdrawn by bidders at any time by written request.
4. Neither the publishing of this RFP nor the selection of a winning bidder commits the City to execute a contract, and the City may reject any proposal at any time before a formal contract is executed, when it is in the City's best interest to do so. The City may reject any or all bids submitted, there is no guarantee that a winner will be chosen.
5. Bidders will not be reimbursed for expenses incurred in preparing or submitting a proposal.
6. The City is exempt from payment of federal and state excise and sales taxes, and those taxes should not be included in price proposals.
7. All materials submitted to the City in response to this RFP will become the property of the City, will not be returned to bidders, and will be subject to public disclosure under Wisconsin's Open Records Law.
8. The formal contract with the winning bidder will be substantially in the form of Exhibit 1, subject to final negotiation, and with the scope of work and price from the winning bidder's proposal incorporated.
9. Bidders are solely responsible for reading this RFP carefully, investigating the requirements of complying with the RFP's terms, and determining whether they have the capability of performing the requirements.
10. By submitting a bid to the City, Bidders represent to the City that they are presently engaged in the business of regularly providing the services required by this RFP, and have the capability of performing the services required by this RFP.
11. Bidders that contact any City official or employee in an attempt to influence the selection of proposals will be disqualified from consideration.
12. City officials and employees, and members of their immediate families, are prohibited from directly or indirectly responding to this RFP with a proposal.
13. By submitting a proposal in response to this RFP, a bidder certifies that no City officials or employees, and no persons acting on behalf of any City officials or employees, have any direct or indirect interest in the Bidder, the bidder's proposal, or any contract that may be awarded in connection with this RFP.
14. Bidders are limited to one proposal, and bidders that are related to one another by any degree of common ownership may not submit separate proposals.
15. The City will post this RFP in its usual manner. The City may send this RFP directly to potential bidders that it is aware of, but is not required to notify directly any potential bidders.
16. This RFP may be amended or withdrawn after it is first published. Bidders are required to comply with the requirements of an amended RFP. Bidders should check regularly at:

<https://waukesha-wi.gov/Bids.aspx>

for amendments and other information and announcements regarding this RFP.

Cover Sheet

Complete and attach to the front of your Proposal.

City of Waukesha RFP for City Hall Landscaping Maintenance

Bidder Identification

Bidder name: _____

Bidder address: _____

Bidder telephone: _____

Bidder email: _____

Authorized representative: _____

Representative title: _____

Representative telephone: _____

Representative email: _____

Bidder Certification

I, the undersigned, certify to the City of Waukesha that:

I am an authorized agent and representative of the above-described Bidder, and have authority to submit this Proposal on behalf of the Bidder and to bind the Bidder to contracts. This Proposal is submitted with the good-faith intent that it will result in a binding contract between the Bidder and the City of Waukesha for the services and goods described in the Proposal.

I have read the City of Waukesha's RFP, understand its content, and understand that I have had the opportunity to request explanation and further information from the City of Waukesha, if necessary.

The Bidder has the ability to perform the services and provide the materials described in the Bidder's proposal, and as of the date of this Proposal has the necessary qualifications, training, experience, and personnel to do so.

The Proposal is valid for 45 days after the City's due date for proposals, and any contract that the Bidder and the City enter into as a result of Bidder being selected by the City will contain prices no higher than those quoted in the Bidder's Proposal, and services and materials at least equal to those quoted in the Bidder's proposal.

Bidder representative signature

Date: _____

Exhibit 1

City Hall Bed Maintenance Contract City of Waukesha

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

Recitals

The City has opted to contract out City Hall planting bed maintenance and has determined that the Contractor is qualified to perform and is willing to perform the maintenance of the planting beds.

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

1) Contractor Obligations.

- a) **Maintenance Dates.** Upon contract approval through November 14th. The Contractor will provide to City a yearly maintenance schedule that allocates adequate personnel and equipment to complete the contract. 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 and debris from the entire property.
- c) **Planter Area and Mulch Bed Weed Control:** A pre-emergent herbicide shall be applied to all planter areas to prevent weed growth. Any weeds that occur thereafter shall be pulled by hand or sprayed with a post-emergent herbicide with each visit. A Minimum of 14 weeding's throughout the season. Including the hillside on the East side of the property. The expectation for weeding is twice (2 times) a month for the length of the contract.
- d) **Pruning:** Pruning of shrubs shall be done 4 times throughout the growing season to insure good health and appearance. Including the hillside on the East side of the property. This is not a formal garden; everything does not need to be sheared into a formal hedge row or round balls. The landscape is designed to grow together for uniformity and appearance.
- e) **Spring/Fall Cleanup:** In the spring, remove accumulation of trash leaves, etc. from landscape. Remove leaves, twigs, and dieback in the fall. If rejuvenation pruning is necessary, it should be completed in fall with the cleanup
- f) **Insect and Disease:** Monitor damaging insects and disease. Notify Parks and Recreation Department staff of any problems and submit proposals for treatments.

- g) **Shrub Maintenance.** Shrubs shall be visited and maintained 4 times during the year for removal of excess growth. Including the hillside on the East side of the property. This is not a formal garden; everything does not need to be sheared into a formal hedge row or round balls. The landscape is designed to grow together.
 - h) **Final Appearance.** A clean and neat appearance is expected. The cleanup of all leaves and pulled weeds shall be completed and removed off site.
 - i) **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.
 - j) **Equipment.** Contractor, operators, and all vendors shall wear appropriate personnel protective equipment and shall provide all necessary equipment or personnel to complete the scope of work.
 - k) **Fueling and Oiling.** Spilled gasoline and oil kills grass. Equipment will not be fueled or oiled in grass they shall be moved to paved areas for this function.
- 2) **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 from DATCP and the State of Wisconsin pertaining to chemical applications shall be followed.
- 3) **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.
- 4) **Regarding Property Damage and Personal Injury:**
- a) 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, railings, plantings, light poles, vehicles etc.
 - b) Injuries to any person, 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.
 - c) 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.
 - d) 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.
- 5) **Contract Price and Payment.** The City shall pay the Contractor the total fee of \$ 6,315.00 in four (4) installments of \$ 1,578.75. The first installment shall be paid within 30 day of the execution of this contract and the remaining payments shall occur as follows: second payment upon billing at the end of July, third payment upon billing at the end of September and the final payment shall be paid upon Contractors completion of its obligations

under this Contract, not later than November 30.

- 6) **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.
- 7) **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.
 - i) Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - ii) Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - iii) Umbrella, \$5,000,000.
- 8) **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.
- 9) **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.
- 10) **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.
- 11) **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.
- 12) **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.
- 13) **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.
- 14) **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.

- 15) **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.
- 16) **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.
- 17) **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.
- 18) **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: _____

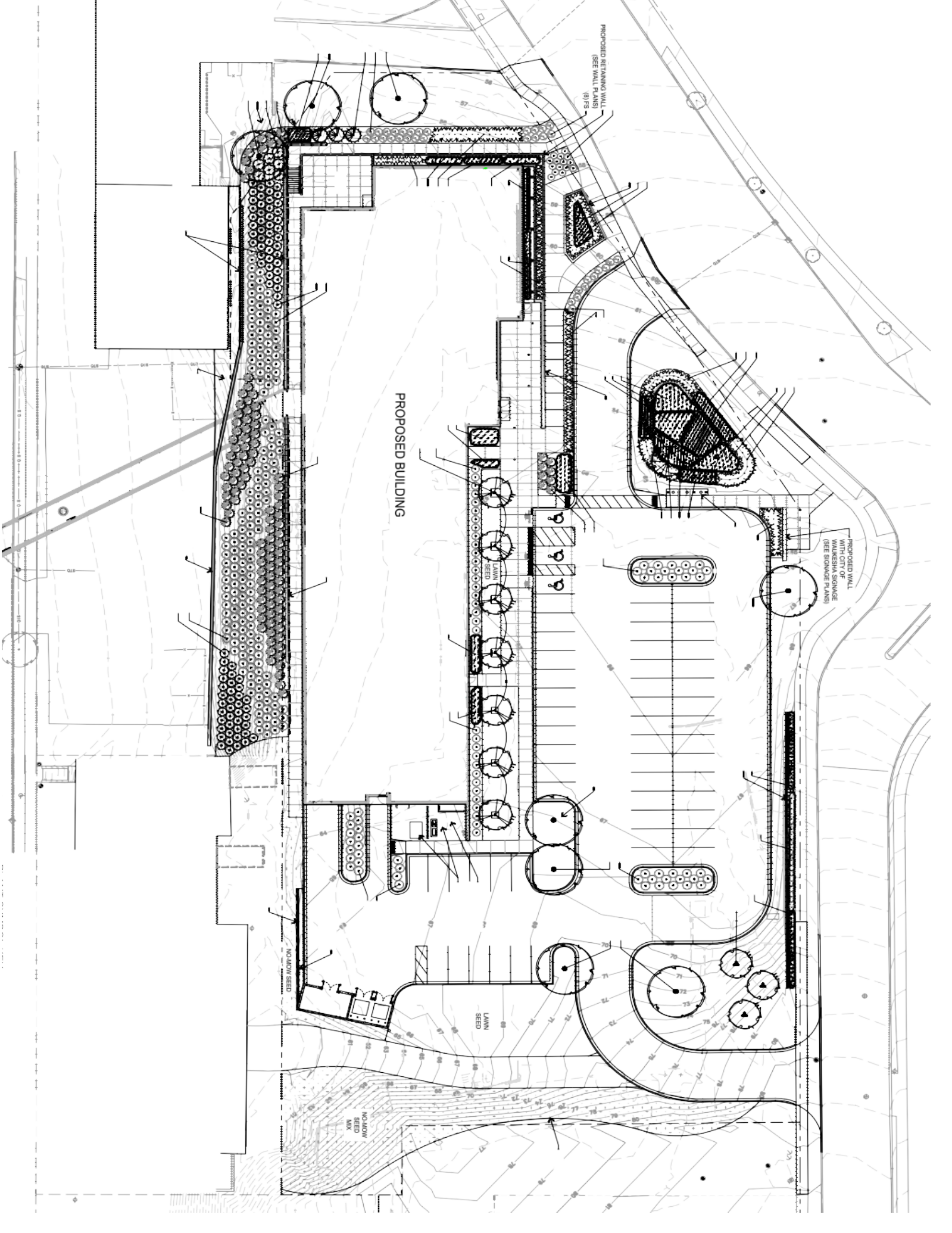
To certify that funds are provided for payment:

Denise Vandebush-Kohlmann, Director of Finance

Date: _____

By Contractor

Date: _____



PROPOSED REMAINING WALL
(SEE WALL PLANS)
(B) FS

PROPOSED WALL
WITH CITY OF
WALKERHSA SIGNAGE
(SEE SIGNAGE PLANS)

PROPOSED BUILDING

LAWN
SEED

NO MOW
SEED
MX



KUJAWA ENTERPRISES, INC.
LANDSCAPE | SNOW | INTERIOR | HOLIDAY

Proposal # 31639

Date: 5/11/2022

Customer:

Keith Johnson
City of Waukesha
1900 Aviation Dr.
Waukesha, WI 53188

Service Address:

Waukesha City Hall
201 Delafield St.
Waukesha, WI 53188

Exterior Maintenance Seasonal Contract 2022

Service Start Date: May 1, 2022

Service End Date: November 30, 2022

Note: KEI will be using one additional safety person to manage moving the safety equipment on the east side of the building to operate safely on the steep hillside for the weekly weeding and the annual spring clean up, hedging and fall clean up services.

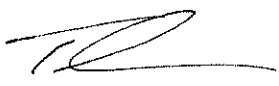
Included Services

Annual Maintenance Price \$6,315.00

*Prices do not include applicable tax.

PAYMENT SCHEDULE

SCHEDULE	PRICE
May	\$902.14
June	\$902.14
July	\$902.14
August	\$902.14
September	\$902.15
October	\$902.14
November	\$902.15
TOTAL	\$6,315.00

By  _____

Tom Jurasinski

Date May 11, 2022 _____

Kujawa Enterprises, Inc.

By _____

Date _____

City of Waukesha

Invoices:

☐ Please send invoices via email _____

☐ Please send invoices using US mail

Billing Address on Invoices:

Billing Contact:

Name: _____

Phone: _____

Email: _____

TERMS & CONDITIONS

SECTION 1 – GENERAL:

The following terms and conditions (the "Terms") apply to and govern all services ("Services") provided by Sperber Landscape Companies, LLC and its subsidiaries (collectively, "Contractor") for the benefit of client and its affiliates (collectively, "Customer") pursuant to any accepted statement of work, order, purchase order or proposal or any other agreement between the parties (each, a "SOW"). Any capitalized terms used herein have the same meanings as in the applicable SOW unless separately defined herein. These Terms shall be effective as of the date set forth on the first SOW. Notwithstanding anything to the contrary, Contractor shall have the right to reject any statement of work, order, purchase order, proposal or other document issued by Customer in Contractor's sole and absolute discretion.

SECTION 2 – TERMS OF PAYMENT:

Notwithstanding anything else to the contrary, all payments due hereunder shall be made to Contractor within thirty (30) days of Customer's receipt of an invoice from Contractor or as otherwise provided for in each applicable written SOW. If Customer fails to pay any amount due hereunder and such amounts remain due and outstanding for more than fifteen (15) days after such payments are due, Customer shall pay interest at the rate of 1.5% per month (or the maximum allowed by law if less) on such past due amount from the due date thereof until the payment date. If Customer's account is past due, Contractor may, with written notice, suspend its obligation to perform Services until payment has been satisfied. During the period of such suspension, Customer agrees and understands that Contractor will not be liable for any costs or damages incurred by Customer, including but not limited to consequential damages to Customer or any other party that may arise from or be related to such suspension of Services. Customer agrees to pay all reasonable attorney's fees and all other costs incurred by Contractor to collect any past due amounts and related interest.

At the end of the initial term set forth in this SOW, the contract pricing will automatically include a 3% increase for each succeeding one (1) year term, unless renegotiated in writing.

Lien Rights: Customer understands and acknowledges that persons or companies furnishing labor and materials for the improvement on Customer's real property may have lien rights on Customer's real property (including, for the avoidance of doubt, any buildings located thereon), if such persons or companies are not paid for furnishing such labor and materials (collectively, "Lien Claimants"). Lien Claimants may include Contractor, any other party who contracts directly with Customer, or any party who gives Customer notice within sixty (60) days after such party first furnishes labor or materials for the improvement of Customer's real property. Customer further acknowledges and agrees to provide any notices received from any Lien Claimants to Customer's mortgage lender (the "Lender"). In addition, Contractor agrees to cooperate with Customer and the Lender with respect to the timely payment of all potential Lien Claimants solely resulting from the Services.

SECTION 3 – SOW TERM AND TERMINATION:

The term of each SOW, as specified in such SOW, shall automatically renew for continuous succeeding one (1) month terms, unless terminated in accordance with these Terms or such SOW or if either party provides a written notice of non-renewal of such SOW at least thirty (30) days prior to the expiration of the then current term to the other party.

Contractor shall have the right to terminate any SOW by written notice to Customer at any time if Customer fails to comply with any material provision of these Terms or any SOW and Customer does not cure such breach (i) within fifteen (15) days of written notice from Contractor in the case of any failure to make any payment, or (ii) within sixty (60) days of written notice from Contractor in the case of any other failure to comply. To the extent the sixty (60)-day cure period only applies, Contractor cannot withhold or suspend services scheduled to be performed such sixty (60) day cure period.

Customer shall have the right to terminate any SOW by written notice to Contractor at any time if Contractor breaches any of its material obligations hereunder and does not cure such breach within sixty (60) days of written notice from Customer of such breach.

In the event of termination of an SOW, Customer shall pay Contractor (i) all amounts related to such SOW due through the effective date of the termination, (ii) any monies due for regular monthly scheduled maintenance related to such SOW, (iii) any monies due for Services related to such SOW performed on or prior to the effective date of the termination, and (iv) any other amounts or fees set forth in such SOW (including, but not limited to, any termination fees). Contractor shall not be

entitled to payment for any Services provided pursuant to such SOW that were not performed substantially in accordance with the specifications and provisions of such SOW.

SECTION 4 – RIGHT TO REMEDY:

In the event Customer becomes dissatisfied with the Services, Customer must notify Contractor of such deficiencies in writing. Within sixty (60) days of written notice from Customer of Customer's dissatisfaction, Contractor has the right to remedy all deficient Service to the satisfaction of Customer's reasonable expectations and within the parameters of the SOW deliverables and acceptable industry practices.

SECTION 5 – LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES:

Contractor shall not have any liability related to any of the following:

- (i) Death or decline in plant materials (a) due to Improper selection, placement, or planting, or (b) not provided by Contractor;
- (ii) Damage or disease due to (a) improper irrigation not under the control of Contractor, (b) lack of water, or (c) irrigation in accordance with irrigation restrictions;
- (iii) Exposed cables/wires or irrigation components/lines normally located below the surface;
- (iv) Flooding, storm, snow, wind, fire, lightning, cold, pandemic or other Act Of God or similar causes;
- (v) Damage caused by or to any item hidden in the landscape and not clearly guarded or marked; and
- (vi) Damage due to vandalism.

In no event shall either party be liable to the other for any special, incidental, indirect, consequential or contingent damages whatsoever, including, without limitation, loss of profits, injuries to property, whether or not such party has been advised of the possibility of such a loss, or whether the claim is for breach of contract, tort, breach of warranty, negligence or otherwise. The essential purpose of this section is to limit the potential liability of the parties arising out of these terms, the SOWs and the services provided thereunder. Customer acknowledges and agrees that its sole and exclusive remedy for any claim or damage arising from or otherwise related to these terms, any SOW or the services, whether in contract or in tort, shall be limited to the recovery of the lesser of: (A) The amount of actual direct monetary loss suffered by customer, or (B) The actual amount paid by customer to contractor for the specific services from which the customer's claim or damages allegedly arose during the shorter of (i) The term of the applicable SOW, or (ii) The three (3) month period prior to the date on which the subject breach allegedly occurred. Except for any warranties set forth in a written SOW, Contractor makes no representations or warranties, whether written, oral, express or implied, with respect to the Services, and each party hereby expressly disclaims any and all implied warranties, including the warranties of merchantability and fitness for a particular purpose. Customer acknowledges and agrees that Contractor would not enter into these Terms or any SOW for the consideration given by Customer but for the limitations of liability and damages contained in these Terms, and that the right to receive the Services in exchange for the limitations in these Terms and the other consideration given by Customer for the Services constitute a bargain that is fair and reasonable.

SECTION 6 – INDEMNIFICATION:

Customer shall protect, indemnify, defend and hold Contractor and its owners, members, managers, officers, independent contractors, employees, sub-contractors and agents (collectively, the "Contractor Parties") harmless from and against any and all claims, liabilities, demands, causes of action, losses or damages (including without limitation liability for personal injury, property damage or commercial loss) and all costs and expenses (including without limitation attorneys' fees) (collectively, "Losses") incurred in connection therewith that may be asserted against or incurred by any of the Contractor Parties in connection with (i) Contractor's provision of the Services, (ii) Customer's breach of any SOW or these Terms, or (iii) any act, omission or misrepresentation of Customer or Customer's employees or agents.

Notwithstanding the foregoing, the parties agree that the Contractor is an independent contractor and that the Owner/Customer shall have no liability due to injury to the Contractor or Contractor's agents or employees, unless such injury was caused in whole or in part by the Owner's/Customer's negligence.

SECTION 7 – PERMITS AND INSURANCE:

Contractor shall have any and all necessary permits, certificates and licenses required by the state and locality in which the property is located to perform the work set forth in each applicable SOW. Contractor shall produce and provide all such permits, certificates and licenses at the request of Customer to Customer or Customer's property manager. Furthermore, Contractor shall have all required Workman's Compensation Insurance coverage and Liability Insurance coverage (see below). Contractor also shall pay all local, state and federal taxes including sales and use taxes for the work set forth in each SOW. The parties agree that, at all times during the term of each SOW, Contractor will keep in force, with an insurance company licensed to do business in Florida, the following policies:

Workers' Compensation Insurance: Coverage shall be provided as required by the state in which the property is located, subject to statutory limits, and Employer's Liability Insurance with limits of no less than \$100,000 per accident for bodily injury or disease.

Commercial General Liability Insurance: Coverage shall be written on a form at least as broad as the Insurance Services Office (ISO) Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Customer shall be covered by this policy as an Additional Insured on a primary and non-contributory basis, utilizing endorsements at least as broad as the combination of ISO Form CG 20 10 04 13 for Ongoing Operations and ISO Form CG 20 37 04 13 for Products and Completed Operations.

Commercial Automobile Liability Insurance: Coverage shall be written on a form at least as broad as ISO Form CA 00 01, covering any automobile owned or hired by Contractor as well as non-owned automobile used in connection with any SOW, subject to combined single limit of no less than \$500,000. Customer shall be covered by this policy as an Additional Insured on a primary and non-contributory basis.

All policies shall include a waiver of subrogation in favor of Customer and shall provide that coverage will not be cancelled without thirty (30) days prior written notice to Customer. Coverage may be cancelled without thirty (30) days prior written notice to Customer only if such policy is cancelled due to Contractor's non-payment of policy premiums.

SECTION 8 – NOTICES:

Any notices or other communications required or permitted hereunder or in connection with any SOW shall be in writing, and shall be deemed effectively given on the date when personally delivered, sent by express courier, or deposited in the mail, registered or certified, postage prepaid, return receipt requested, addressed to the party to be served, to the applicable address set forth on the applicable SOW, unless such party has provided an updated address to the other party pursuant to the provisions of this section.

SECTION 9 – MATERIALS, TOOLS AND CLEAN-UP:

Contractor shall be responsible for the security and welfare of Contractor's tools, construction equipment, vehicles, machinery and materials (collectively, "Equipment") while on Customer's property. All Equipment shall be safely and properly used and stored while on Customer's property.

All debris and waste materials produced by Contractor in the performance of the Services ("Waste") will be removed at the end of each day before Contractor departs from the property, so long as the weather permits. Contractor shall keep Customer's and any adjoining property free from accumulation of any Waste. Additionally, during Contractor's course of engagement and solely with respect to the performance of its Services, Contractor shall maintain free, clear and unobstructed egress and ingress with respect to Customer's property.

At the completion of the applicable Service under each SOW, Contractor shall remove from Customer's property all Waste and Equipment, and return all affected areas of the property to a "broom clean" condition. If Contractor fails to diligently proceed with the clean-up set forth in the preceding sentence within three (3) business days after receipt of a properly delivered notice from Customer described herein, Customer may proceed with such clean-up and Contractor shall be responsible for the reasonable fees paid by Customer for such clean-up.

SECTION 10 – OTHER SERVICES:

Any Services not stated in a written SOW can be accomplished by Contractor at an additional charge to be negotiated by the parties before such Services are performed. Contractor shall obtain Customer's prior written approval before commencing any Services not stated in a written SOW or any Services which will result in any additional charge to Customer not contemplated in a written SOW.

SECTION 11 – PROFESSIONAL DEMEANOR:

All of Contractor's employees shall each wear identifying shirts, jackets or vests while on Customer's property. A foreman will be on the job supervising Contractor's employees at all times. No employee of Contractor shall directly or indirectly accept payment or compensation for any Services from any homeowner that is not a customer covered under any SOW from Customer.

SECTION 12 – CERTAIN COMMUNICATIONS:

The Terms of this section shall only apply when Customer is a property manager. Customer shall set up a procedure for comments by the residents which will then be properly transmitted to Contractor. All related communications from Contractor shall be submitted to the property manager.

SECTION 13 – EMERGENCIES:

Contractor agrees to respond to all emergency situations within twenty-four (24) hours, and all other situations within two (2) business days after notification thereof. Contractor will respond with either written or verbal acknowledgement of the situation and provide Contractor's "plan of action". In order to proceed with a "plan of action," Contractor must receive Customer's written approval to proceed on such basis.

SECTION 14 – MISCELLANEOUS:

These Terms and each SOW shall be governed by, and construed and enforced in accordance with, the laws of the state of Delaware, without regard to the conflict-of-laws provisions of such state. Any civil action or legal proceeding shall be brought in the courts of record in the county in which the property is located. Customer and Contractor consent to the jurisdiction of such court in any such civil action or legal proceeding and waive any objection to the laying of venue of any such civil action or legal proceeding in such court. Contractor is an independent contractor of Customer, and these Terms and the SOW(s) shall not be deemed to create a partnership, joint venture or employment relationship. Contractor's obligation to perform Services hereunder shall be excused without liability when prevented by any act or condition beyond its reasonable control (including pandemic). Failure by a party to require performance by the other party or to claim a breach shall not be construed as a waiver of any right. These Terms shall be binding upon, inure to the benefit of, and be enforceable by Customer, Contractor and Contractor's respective legal representatives, successors and permitted assigns. Unless otherwise provided by these Terms, Customer and Contractor may not change or modify these Terms except by a writing making specific reference to these Terms signed by both parties. Customer shall not assign these Terms and/or any SOW without the prior written consent of Contractor which shall not be unreasonably withheld or delayed. The SOW(s) and these Terms represent the entire agreement between Customer and Contractor with regard to the subject matter therein and hereof, and supersede and terminate all prior oral or written agreements, understandings and/or representations between the parties. If there is a conflict between the terms of these Terms and any SOW, these Terms shall control. The provisions of these Terms shall survive any termination of any SOW.

SERVICES

Spring Cleanup

Accumulated winter debris, leaf accumulations, matted grass, etc., will be cleaned up and removed. Minor and incidental gravel accumulations will be raked from turf. Minor and incidental sod scraps from snowplowing damage will either be put back in place or removed. All generated debris will be collected and hauled off site.

Weeding

All beds will be maintained for the control of weeds throughout the season. Regular attention will be paid to all beds and tree rings; hand weeding and spot spraying will be done as appropriate.

Fertilize Planting Beds

Shrub Prune

All formal shrubs and hedges will be shaped and hedged once during the season. Where needed to accommodate a safe clearance for driving, mowing, or walking, trees will have their branches lifted to a height of eight feet. Ornamental trees will regularly be pruned of sucker.

Fall Cleanup

A major and thorough Fall clean-up will be performed one-time. A leaf collection from all areas of the turf, stairwells, beds, curbs, walks, etc. will be performed. All perennials will be prepped for winter, including cutting back and removal, as necessary. All generated debris will be collected and hauled off site.

Leaves will be regularly blown from walks, entrances, etc., throughout the Fall maintenance season in conjunction with scheduled mowing visits.

City Hall Bed Maintenance Contract
City of Waukesha – Kujawa Enterprises Inc.

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 City Hall planting bed maintenance and has determined that the Contractor is qualified to perform and is willing to perform the maintenance of the planting beds.

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

1) Contractor Obligations.

- a) **Maintenance Dates.** April 4th through November 14th. The Contractor will provide to City a yearly maintenance schedule that allocates adequate personnel and equipment to complete the contract. 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 and debris from the entire property.
- c) **Planter Area and Mulch Bed Weed Control:** A pre-emergent herbicide shall be applied to all planter areas to prevent weed growth. Any weeds that occur thereafter shall be pulled by hand or sprayed with a post-emergent herbicide with each visit. A Minimum of 14 weeding's throughout the season. Including the hillside on the East side of the property. The expectation for weeding is twice (2 times) a month for the length of the contract.
- d) **Pruning:** Pruning of shrubs shall be done 4 times throughout the growing season to insure good health and appearance. Including the hillside on the East side of the property. This is not a formal garden; everything does not need to be sheared into a formal hedge row or round balls. The landscape is designed to grow together for uniformity and appearance.
- e) **Spring/Fall Cleanup:** In the spring, remove accumulation of trash leaves, etc. from landscape. Remove leaves, twigs, and dieback in the fall. If rejuvenation pruning is necessary, it should be completed in fall with the cleanup
- f) **Insect and Disease:** Monitor damaging insects and disease. Notify Parks and Recreation Department staff of any problems and submit proposals for treatments.
- g) **Shrub Maintenance.** Shrubs shall be visited and maintained 4 times during the year for removal of excess growth. Including the hillside on the East side of the property. This is not a formal garden; everything does not need to be sheared into a formal hedge row or round balls. The landscape is designed to grow together.
- h) **Final Appearance.** A clean and neat appearance is expected. The cleanup of all leaves and pulled weeds shall be completed and removed off site.
- i) **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.

- j) **Equipment.** Contractor, operators, and all vendors shall wear appropriate personnel protective equipment and shall provide all necessary equipment or personnel to complete the scope of work.
 - k) **Fueling and Oiling.** Spilled gasoline and oil kills grass. Equipment will not be fueled or oiled in grass they shall be moved to paved areas for this function.
- 2) **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 from DATCP and the State of Wisconsin pertaining to chemical applications shall be followed.
- 3) **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.
- 4) **Regarding Property Damage and Personal Injury:**
- a) 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, railings, plantings, light poles, vehicles etc.
 - b) Injuries to any person, 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.
 - c) 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.
 - d) 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.
- 5) **Contract Price and Payment.** The City shall pay the Contractor the total fee of \$ 6,315.00, in four (4) installments of \$ 1,578.75. The first installment shall be paid within 30 day of the execution of this contract and the remaining payments shall occur as follows: second payment upon billing at the end of July, third payment upon billing at the end of September and the final payment shall be paid upon Contractors completion of its obligations under this Contract, not later than November 30.
- 6) **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.
- 7) **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.

- i) Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - ii) Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - iii) Umbrella, \$5,000,000.
- 8) **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.
- 9) **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.
- 10) **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.
- 11) **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.
- 12) **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.
- 13) **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.
- 14) **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.
- 15) **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.
- 16) **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.
- 17) **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.

- 18) 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:

Denise Vandebush-Kohlmann, Director of Finance

Date: _____

Kujawa Enterprises Inc.

By Tom Jurasinski

Date: _____