

Landscape Maintenance Contract
City of Waukesha City Hall and Annex

This Contract is by and between City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as City; and BrightView Landscapes, LLC, 1579 South 38th Street, Suite 100, Milwaukee, Wisconsin 53215, referred to as Contractor. Together City and Contractor are referred to as the Parties.

Recitals

City has opted to Contract City Hall planting bed maintenance and has determined that Contractor is qualified and willing to perform the maintenance of the planting beds. Now, therefore, City and Contractor agree and Contract as follows:

1. Contractor Obligations.

- a. **Work Areas.** This Contract applies to all areas indicated on Exhibits A, B, and C, which are incorporated into this Contract by reference.
- b. **Maintenance Dates.** Upon Contract approval through November 30, 2024. Contractor shall provide to City a yearly maintenance schedule that allocates adequate personnel and equipment to complete this Contract. Contractor must maintain this schedule and use Saturdays when necessary to catch up on time lost due to weather or turf conditions. Contractor shall notify City of any changes to the schedule, and shall provide notice of cancelation no later than noon of the day preceding scheduled work.
- c. **Litter Cleanup and Mowing.** Contractor shall be responsible for the proper collection and disposal of trash and debris, including cigarette butts, from the entire properties shown in Exhibits B and C, before any mowing is done. Mowing over litter or placing litter or debris in the trees, landscape beds or street curb area is not acceptable. Grass shall be blown off all walkways, and parking areas and shall not be blown into the streets or curb lines or allowed to accumulate in the curb line or sewers.
- d. **Frequency of Mowing.** Mowing shall be completed once every week from approximately April 10th through November 14th. Cuttings may be reduced or adjusted based on weather conditions or growth rate, and must be coordinated with City's Grounds Maintenance Supervisor.
- e. **Trimming and Edging.** Contractor shall be responsible at **EVERY** mowing for trimming around permanent objects such as trees, shrubs, mulch, plant beds, signposts, fencing, retaining walls, near buildings, in curbs and gutters, and any other part of the lawn area where the lawn mowers cannot reach during routine mowing. Areas to be trimmed shall be brought to the same level as the mowing level of the lawn. Contractor must take care not to damage objects during mowing and trimming operation.
- f. **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 weedings throughout the season. Including the hillside on the east side of the property. The expectation for weeding is 2 times per month for the length of the Contract.
- g. **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. The hillside is not a formal garden and does not need to be sheared into a formal hedge row or round balls. The landscape is designed to grow together.

- h. **Spring and Fall Cleanup:** In the spring, all accumulation of trash, leaves and debris shall be removed. Leaves, twigs, and dieback shall be removed in the fall. If rejuvenation pruning is necessary, it should be completed in the fall with the cleanup.
 - i. **Insects and Disease:** Contractor shall monitor damaging insects and diseases, notify City staff of any problems, and submit proposals for treatments.
 - j. **Landscape Bed Mulching:** A top dress or touch-up mulching shall be completed in spring, no later than June 1st on all shrub beds and trees at City Hall and Annex properties, including the hillside bed on the East side of City Hall.
 - k. **Final Appearance.** A clean and neat overall appearance is expected. The cleanup of all leaves and pulled weeds shall be completed and removed off-site.
 - l. **Personnel.** 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. City may require the Contractor not to assign any employee City deems incompetent, careless, insubordinate, or otherwise objectionable to work on City projects.
 - m. **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.
 - n. **Fueling and Oiling.** Spilled gasoline and oil kill grass. Equipment shall not be fueled or oiled in the grass they shall be moved to paved areas for this function.
2. **Standards.** All materials and workmanship must be according to generally-accepted methods and standards of the industry, and as reasonably required by City. Contractor shall perform all duties in a timely and workmanlike manner. All applicable state and federal laws pertaining to chemical applications shall be followed.
3. **General Reporting of Damages and Communication.** Any vandalism, storm damage, or Contractor damage must be reported as soon as possible by Contractor to City. Contractor shall respond to calls from City with a response time not exceeding 4 hours.
4. **Property Damage and Personal Injury.**
- a. Wherever any existing City building, fixture, or improvement is damaged by Contractor, the cost of repair or replacement shall be paid by 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 and damage to any property not belonging to Contractor shall be reported immediately to City. All such damages shall be the responsibility of Contractor, and Contractor shall indemnify and hold City harmless from all such damages.
 - c. Repair work due to damages caused by Contractor shall be coordinated through, and subject to the approval of City. Repairs shall be made with like materials in a manner acceptable to City and repaired to its original state at Contractors' expense.
5. **Contract Price and Payment.** In 2024 City shall pay Contractor a total fee of \$12,772,00 in 8 installments of \$1,596.50. The first installment shall be paid within 30 days of the execution of this Contract and the remaining installments shall be paid monthly upon invoice by Contractor. A final payment of any remaining balance shall

be paid upon Contractor's completion of its obligations under this Contract, not later than November 30, 2024. In 2025 the total fee shall be \$13,149.00, in 8 \$1643.63, upon similar terms.

6. **Indemnification.** Contractor shall indemnify and hold City harmless from any 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 coverages 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 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.

Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.

Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

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 Contractor represent that they are duly authorized to bind Contractor Contractually. Contractor represents that the execution of this Contract is not prohibited by 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 shall 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 shall 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 shall be so severed, and the remainder of this Contract shall remain in effect and enforceable.
- 17. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition, or provision of this Contract shall 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 shall 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 shall 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: _____

 _____, City Clerk-Treasurer
 Date: _____

To certify that funds are provided for payment:

 Joseph Ciurro, Director of Finance
 Date: _____

BrightView Landscape, LLC

 By Scott Walters
 Title: _____
 Date: _____

Exhibit A
City Hall Shrub Bed Map

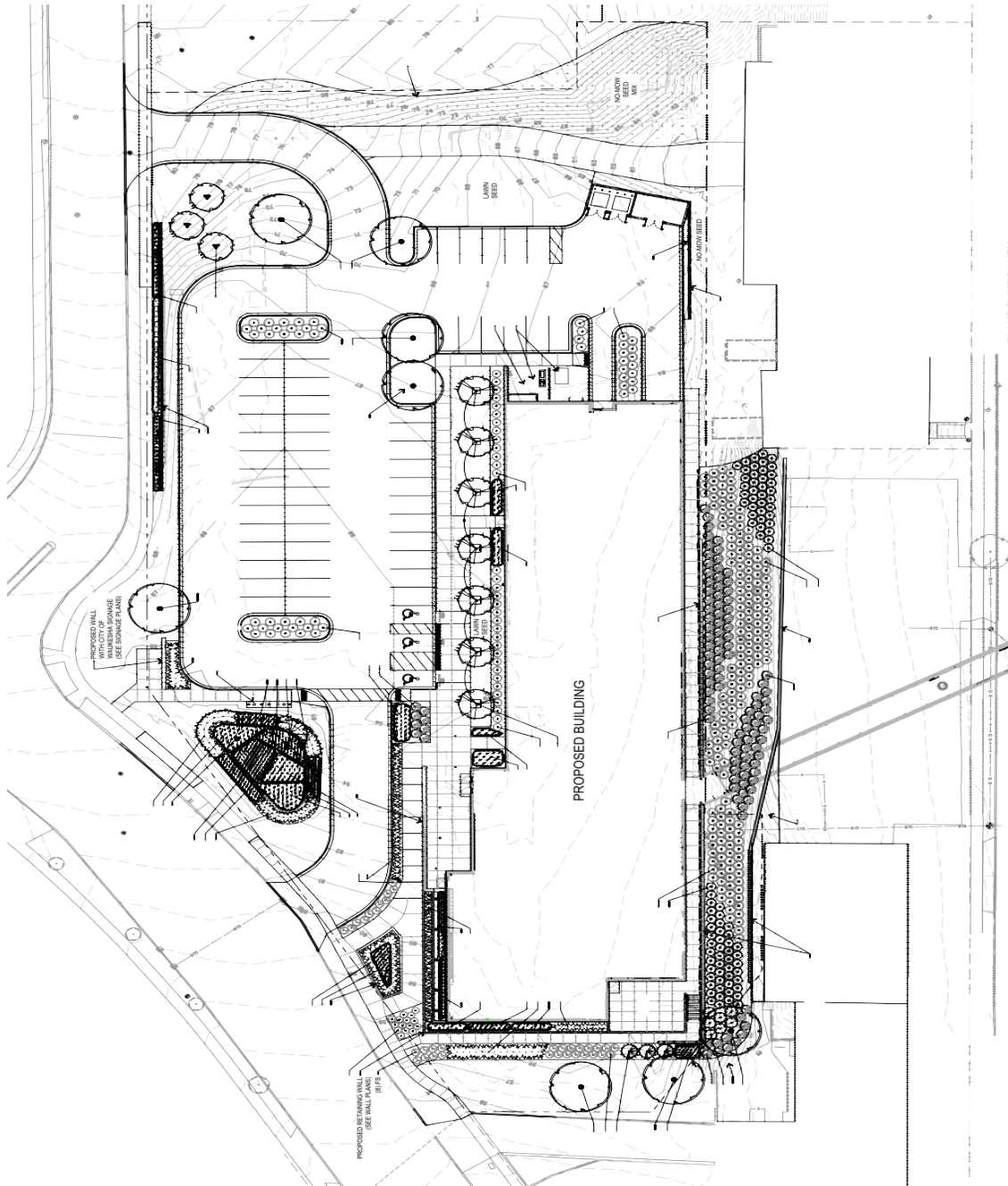


Exhibit B
City Hall Mowing Areas



Exhibit C
City Hall Annex Mowing Areas

