

**CITY OF FARGO**  
**Request for Qualifications**  
**for Construction Management at Risk Services**  
**Fargo Civic Plaza, Area 1 “Sodbuster Landscape”**  
June 19, 2019

Project Title: **Fargo Civic Plaza, Area 1**  
Contact: **Mark Williams, Assistant Planning Director**  
Department(s): **City of Fargo Planning & Development Department**  
**City of Fargo Engineering Department**

**PURPOSE**

The City of Fargo is soliciting a Construction Manager at Risk (CM) for the General Scope of Work outlined in this Request for Qualifications (RFQ). This RFQ is being publicly advertised. The City will use a qualification-based selection process (QBS) to negotiate and select a construction manager, which is outlined further in the section “Selection Process” on the page 6 of this RFQ. At this time, the project is nearing completion of the Conceptual Design Phase.

**BACKGROUND**

The Fargo Civic Plaza project evolved out of the *Downtown InFocus* planning process where the site was recommended to be developed as green open space and as a component of the proposed open space network for Downtown Fargo, due to its critical location adjacent to Fargo’s City Hall, the downtown core and the river. Fargo Civic Plaza consists of several contiguous development areas (see Appendix B: “Diagram 1 | Project Areas”): the civic plaza proper (Area 2) that transitions into and encompasses a bridge/road overpass (Area 2 C) to connect the plaza to the adjacent Red River shoreline, and ancillary outdoor spaces next to the proposed plaza that are envisioned to complement and complete the civic plaza landscape (Area 1 and 3).

The construction of the project is anticipated to be phased. The first part of the project, **Area 1** (see Appendix B: “Diagram 1 | Project Areas”), is on a “fast track” to be developed from Schematic Design (SD) through Construction Documents (CD) between mid-June and the end of July 2019. This RFQ process will be for the Area 1 landscape work. The procurement method for the other phases of work is yet to be determined.

The assumed construction cost for Area 1 is approximately \$1.5 million.

This QBS process is for construction of the project within the limits of “Area 1” (see Appendix B: “Diagram 1 | Project Areas”). The work will include installation of “Sodbuster”, a roughly 8-foot-wide and 24-foot-long, 1,300-pound heavy, and highly valuable sculpture by Luis Jimenez (the sculpture is approximately \$500,000.00 in value and currently being refurbished under the commission of the Plains Art Museum and scheduled to be installed by September 2019), and construction of a “prairie and riparian forest like” landscape that will provide the setting for the sculpture (see Appendix B: “Diagram 2 | Preliminary Concept”). The landscape will consist of hardscape (walkways, patios, and other paved areas), softscape (native trees, shrubs, groundcovers, lawn and other plant material), and all related grading, drainage, electrical, irrigation and other site work, as well as site amenities such as site lighting, seating, trash receptacles, etc. within the approximate limit of work for Area 1.

This project is the installation of the first part of the “Fargo Civic Plaza” project and will provide the appropriate setting for the Sodbuster sculpture. It will therefore require close coordination with the Plains Art Museum and the personnel contacted for the restoration, shipping and installation of the sculpture.

## PERMITTING

It is anticipated that the construction of Area 1 will require permitting. The permitting process will occur concurrently with the final design phase/pre-construction services efforts for this project (see also Appendix B: “Diagram 3 | Project Schedule”). Construction is expected to begin in mid-August to early September 2019 and shall be completed in September 2019. The construction process will require close coordination with the Sodbuster installation. The permitting process will include, but is not limited to the following:

- Permit for Site Drainage and Stormwater Management (assumed responsibility of the design team)
- Erosion and Sediment Control (assumed responsibility of the design team & contractor)
- Inspections & Building Permit (e.g. Foundations, Electrical). (assumed responsibility of the contractor)

## PROJECT LIMITS

The location for the project is within the parcel known as Civic Quad bound by 2<sup>nd</sup> Street North, 4<sup>th</sup> Street North, 1<sup>st</sup> Avenue North and 3<sup>rd</sup> Avenue North located between the new City Hall, Civic Center and Fargo Public Library. **Area 1 “Sodbuster Landscape”** is approximately 25,000 square feet and comprises an elongated rectangular space along the north side of the Fargo Public Library, extending from 4<sup>th</sup> Street North to 3<sup>rd</sup> Street North, and is approximately 85 feet wide and 300 feet long (see Appendix B: “Diagram 1 | Project Areas” and “Diagram 2 | Preliminary Concept”).

## RESOURCE DOCUMENTS

A list of resource documentation is provided with this RFQ as Appendix B. Additional information may be provided upon a formal Request for Information (RFI) by respondents; and, if the City grants such request, a formal response will be issued to all of the respondents.

## ROLES, RESPONSIBILITIES & CONTRACT STAGING

The CM will first perform pre-construction duties which will include, but are not limited to, reading, recommending, scheduling, construction budgeting, risk identifying, and logistical construction planning. The City will expect the CM to bid contracts via public process, commit to a Guaranteed Maximum Price (GMP) for the project, and construct the project. Details will be discussed during the negotiation period of the QBS process. Respondents shall outline critical success factors related to a GMP in their statement of qualifications submittal. CM is responsible for understanding, emphasizing, and maintaining design intent as transmitted through project documentation.

## STAKEHOLDERS AND PROJECT TEAM

The Fargo Civic Plaza project has funding resources from the City of Fargo. The CM will be required, as part of the project team, to present to the project stakeholders in discussing the construction budget and schedule. From time to time and at the City’s request, the CM will be required to, in collaboration with the design team, communicate aspects of this project with relevant working groups including, but not limited

to, Downtown working groups, city departments, stakeholders of other areas of future phases of the project for purposes of coordination.

Under previous action, the City of Fargo has retained Bishop Land Design, LLC. (BLD) to complete Contextual Planning, Analysis and Programming for the “Fargo Civic Plaza” project. BLD has recently submitted a Final Report for this phase of work to City of Fargo and is currently working on the Conceptual Design for the entire project area, as well as full design services for Area 1. BLD will be referred to as the design team for all matters regarding this RFQ and the resulting agreement for CM Services. The CM will be performing pre-construction services during BLD’s final design phase.

The selected CM shall publicly advertise and publicly open all bids submitted from subcontractors for the work items the CM chooses not to self-perform. The CM then shall evaluate the bids and determine which is the most responsible. The City reserves the right to influence the selection of the subcontractors based on past experience with a subcontractor or a current legal dispute with a subcontractor.

The CM shall bid out the project at the end of design development to secure subcontractors and equipment, in order to start construction as soon as final design is concluded.

## **GENERAL SCOPE OF WORK**

The following describes the general scope of work that shall be the basis for a firm’s Statement of Qualifications:

1. Pre-Construction Services. Establishment of a GMP and necessary subcontracting services to fulfill the requirements of the technical plans, specifications, and permit conditions.
2. Constructability. Review and provide recommendations on constructability of the technical plans and specifications.
3. Availability. Unique products might be specified for use throughout the project. There may be limitations, long lead-times, and products or materials that are simply unavailable to obtain. The CM shall be able to provide suggestions for alternatives where products or materials have limited purchase availability and identify/account for long lead-time items in the schedule and construction budget.
4. Construction Cost Budget. A well understood and confident construction budget is crucial to the project stakeholders. A baseline Level of Cost (LOC) cost has been developed by BLD in the amount of \$1.5 million. The project requires verification of this LOC, with special consideration given to the proposed and unique design, materials, and products and bearing in mind that certain products might require installer certification. The CM will be required to develop and maintain a construction budget at various stages of the final design development, compare it with BLD’s LOC, and work alongside BLD during the final design phase to work toward a reasonable and attainable construction budget, and ultimately provide the City with a GMP.
5. Value & Schedule Engineering. Provide recommendations toward achieving an acceptable project budget/GMP based on any construction estimate variance between the BLD’s LOC and the CM. The CM will be required to identify long lead-time items, provide alternative suggestions, and mitigate as such within the construction schedule.
6. Construction Schedule. Develop and submit a construction schedule. The CM must identify, coordinate, and incorporate all aspects, constraints, risks, and other complexities into the construction schedule and reflect the cost implications in the construction budget. The construction schedule must utilize and incorporate the permit conditions issued by the regulatory agency for the project.

7. Risks. The CM will be required to understand the risks involved with the project, who is likely to assume those risks, and provide quantification of the risk and recommendations to mitigate the risks within the construction schedule and budget. The CM will also need to identify where uncertainties exist and the appropriate amount of assumed contingency.
8. Enforcement. Ability to understand the terms and conditions of the issuing permits is critical for permit compliance. The CM will be required to enforce the permit conditions consistent with the final technical plans and specifications when preparing bid packages and managing its subcontractors.
9. Design Intent. The CM is responsible for understanding, upholding, and executing design intent as specified in the contract documents.
10. Critical Success Factors. The CM shall identify and list the critical success factors for construction of the project. This may include any pre-requisite work that may have an effect on construction.
11. Construction Access, Staging, and Material and Equipment Movement Patterns. The CM will need to coordinate, communicate, and be transparent to the project stakeholders in balancing logistics of access and staging and other construction considerations.
12. Special Events, Businesses and People. The project site is located adjacent to the Fargo Public Library. Regular access to library entrances should be accommodated during construction. The CM will be required to communicate with the project stakeholders and assist in developing traffic management and public notification protocols during construction.
13. Communication. Conveying concise and timely information through a single spokesperson that can work hand-in-hand with the City and the project stakeholders will be critical. The CM will be required to provide management of a variety of aspects of the construction process, including, but not limited to, the expectation of equipment, noise and light pollution, multi-modal traffic control and detours, emergency preparedness, stakeholder facility functional coordination, and participation in a project fact sheet or frequently asked questions (FAQ) sheet.
14. Project Management. The CM's team must include a well-seasoned project manager with strong project management skills; proof of project management certification is preferred. The project manager along with the design team (BLD), will be considered the "face of the project" and will be requested to attend various meetings including, but not limited to, Fargo City Commission, other City boards and authorities, external organizations, and other public audiences. Ability to assemble, prepare, and present individually or as a team.
15. The Sodbuster is to be placed in a location near northwest of existing public library (as shown approximately in attached Diagrams 1 & 2). McKay Lodge Art Conservation is commissioned by Plains Arts Museum to restore Sodbuster to its original condition. McKay Lodge Art Conservation shall oversee the installation of the piece. US Art shall be engaged to conduct the shipping of the sculpture. The CM is required to work with the City, BLD and Plains Art Museum to coordinate the exact location and timing for the installation of the piece within Area 1 BLD will engage Susan Jimenez, the sculptor's widow, in the process for the placement of Sodbuster.
16. Grading. The work for Area 1 shall include grade changes to existing conditions within area 1 to accommodate sculpture placement, pathways or other pavement areas in compliance with ADA requirements, and to meet the finished floor and/or elevation at entrance stairs and access ramps of the existing Fargo Public Library.
17. The Sodbuster. The placement of Sodbuster shall take into account logistics of maintenance and landscaping work needed to be done around the piece. The placement of Sodbuster shall prioritize accessibility for both visiting and maintaining the area in its proximity. The sculpture needs to be accessed "in the round" – and be both visible and accessible from all directions. The CM shall take appropriate measures to facilitate ADA access and/or access by groups, maintenance/future removal, etc. The site design will consider both pedestrian and vehicular

traffic relative to views, access and preservation of the piece and make sure the placement will facilitate views from both pedestrians and vehicles if possible, at an appropriate distance as to not subject the piece to vibration, or potential for damage from mechanical contact/strikes (e.g. past location and proximity to railroad tracks proved damaging to the sculpture). Depending on the result of shade/light study conducted by BLD, appropriate measures shall be taken into consideration in the site design to provide protection from the potential damaging effects of sunlight. The sculpture should be installed away from any water features to prevent from sustained exposure to moisture, water treatment chemicals, etc. Site design and construction staging shall accommodate space, regardless of final location or installation design, for museum staff to access the piece and perform regular preventive maintenance with hose, water, ladders, etc. Access to the site/sculpture also needs to be made accessible for future removal should that prove necessary (e.g. enough space to gain access to via adjacent crane, trucks, trailers, etc.). The CM shall be in coordination with museum staff to accommodate their need to access and service the sculpture and/or its future placement spot during construction period.

18. Landscape. Planting features proposed in the immediate proximity to the work are expected to both perform the pragmatic function of protection and provide context by fulfilling the artistic intent of the original tall prairie grass that were part and parcel to the original design.
19. Mount. The design of mount connection and location for the sculpture within the project site shall be coordinated with what McKay Lodge Conservation Lab designs and fabricates and needs to be both fully accessible and reversible. BLD will facilitate close coordination between the City of Fargo, fabricators of the mount/installation infrastructure and McKay Lodge to ensure the piece and mount mates are designed in a positive and reversible capacity. The mount/receiving infrastructure for the work needs to facilitate egress of water and shed water away from the work in all direction (e.g. no pooling). The work should not be in direct contact with the surface of whatever infrastructure is designed and fabricated. The design and fabrication of the mount shall ensure to adequately protect the sculpture from damage from snow/ice removal equipment and supplies/procedures. (e.g. not adjacent to or near proposed snow removal path including snow blowers, brushes, blades, not in contact with any ice/melt chemical applications, etc.). The CM is expected to coordinate closely with BLD, and all parties involved to take appropriate adequate measures for above considerations during construction.
20. Irrigation. Proposed irrigation system(s) adjacent/near the sculpture shall take into account the location of sculpture and ensure the surface of the sculpture is protected from over-spray and that any piping, fixtures, etc. are installed in such a way that should they need to be accessed for replacement or repair that the sculpture, and its mount, will not be disturbed.
21. Lighting. The work for Area 1 includes light fixtures and/or lighting solutions to both provide safe and secure usage of the site, as well as proper viewing and an appropriate level of security for the sculpture. The overall approach and design of the lighting will take into consideration both the high gloss surface and varying topographies present in the surface. The types of lights selected as well as their placement shall include both in-ground up-lighting as well as strategically placed over-head lights. Lights should be LED and provide high Color Rendering Index (CRI) and appropriate color temperature for outdoor applications. In addition to the specific operational functionality of the selected light and accessory family, durability should be a primary specification given the application.
22. Security. The site design shall accommodate for security cameras being installed for monitoring the sculpture. Closed-circuit Television (CCTV) should be maintained in adequate coverage to ensure that the piece and its adjacent surroundings are electronically monitored. Camera feed (and associated ability to record coverage via Digital Video Recorders (DVR)) should be housed in the museum or at least access to the feed should be facilitated. The CM is expected to coordinate with BLD and the City to accommodate for security requirements including but not

limited to installation of cameras in the period between installation of the sculpture and completing construction.

23. Signage. The work includes both permanent interpretive signage describing the sculpture and potential temporary signage describing the project and its process. The site design requires for any signage to be ADA accessible for a large variety of constituents (legibility, height and method of interaction to accommodate those that require assistance), be made of a material that is both durable and legible, be lit/illuminated, incorporate some measure of “updatibility” (If any sort of technology is involved, it should be incorporated in a didactic plan in a way that will facilitate complete replacement in the future.), and identify the piece as being from the Plains Art Museum’s permanent collection.

## **CONTRACT STAGING**

The City will enter into an agreement for Professional Construction Management at Risk Services with the successful respondent; a sample of this agreement can be found in Appendix C and is provided for information only. The City of Fargo must approve entering into such agreement with the recommendation from the Offices of the City Engineer and the Planning Department. The agreement will be with the City of Fargo and the CM and will ultimately be responsible to the City. The City will utilize resources within the project team in order to work with the CM. The City Engineer’s office and the Planning Department will jointly execute and oversee the CM agreement and will be the point of contact for the project and will approve payment invoices for such agreed upon scope of services. In accordance with the agreement, the CM will be required to submit insurance(s) in the amounts listed in the Appendix A.

## **SELECTION PROCESS**

Regarding the selection process, the City of Fargo as the governing body utilizing the construction management at-risk delivery process for the proposed public improvement, has created a selection committee for this project composed of:

- a. Nicole Crutchfield or Mark Williams of City of Fargo Planning Department, as administrative individual from the governing body.
- b. Scott Bishop of Bishop Land Design, as registered landscape architect of the project.
- c. Brenda Derring or Thomas Knakmuhs of City of Fargo, City Engineer and Assistant City Engineer
- d. John Gunkelman as licensed contractor.

The selection committee will evaluate each submission based on the evaluation criteria and include the three highest ranked respondents in a list of finalists for interviews. Based on the evaluation criteria score and team interviews, the selection committee will recommend the most qualified respondent to the City. The City will enter negotiations with the selected CM to reach an agreement with the CM on compensation and contract terms and enter a written contract with the CM for the services. After the City and the CM have finalized the contract, and the design phase has progressed sufficiently to provide the CM the necessary project details, the City and the CM shall enter negotiations for a Guaranteed Maximum Price (GMP) and contract terms for the general construction of the project. If the City is unable to negotiate a satisfactory contract with the highest qualified person on the list of finalists, the City reserves the right to terminate negotiations with that person and commence negotiations with the next most qualified person on the list in sequence until an agreement is reached, or a determination is made to reject all persons on the list. If the City reaches an agreement with a CM on a GMP and on contract terms, the City and CM shall enter a written contract for the general construction management at-risk construction services.

## EVALUATION CRITERIA

All Respondents determined to have met the minimum submission requirements outlined on page 8 (Submission) shall be evaluated in accordance with the following categories:

1. Respondent Team
  - Project manager's qualifications and experience
  - Project team's qualifications and experience
2. Approach to Process and Management
3. Content
4. Allocation of Resources and Schedule
5. Respondent Interview

For each of the evaluation criterion, a rating of highly advantageous, advantageous, or not advantageous will be assigned to each responsive and responsible respondent. The ratings for each evaluation criterion will be used to assign a composite score for each proposal.

## BOND REQUIRED

The CM, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills and claims on account of labor and materials, including suppliers used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid includes the requirement that interest of the amount authorized be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond. The City does not require each contractor performing services on the project to provide a separate bond for the contractor's portion of the project.

## ANTICIPATED SCHEDULE OF ACTIVITIES

- a. June 19, 2019: Request for Qualifications released
- b. July 1, 2019: Question Period Concludes
- c. July 3, 2019: Responses Issued
- d. July 9, 2019: Statement of Qualifications package due
- e. July 9, 2019: Review of qualification packages and develop shortlist of 3 firms selected for interviews
- f. July 10-11, 2019: Conduct Interviews
- g. July 10-11, 2019: Conduct negotiations with top-ranked firm relative to actual scope, services, fee payment, schedule and contract
- h. July 15, 2019: Recommendation to enter into a Construction Manager at Risk Agreement to City Commission for consideration
- i. July 15, 2019: Anticipated date for execution of agreement,
- j. July 16, 2019: Project kick-off meeting and commencement of work; dependent on City Commission approval and fulfillment of an executed agreement

\*If negotiations fail with top-ranked firm, then the recommendation dates to the City Commission may be revised. The City reserves the right to adjust this schedule as it sees fit.

## QUESTION PERIOD

All questions regarding the Statement of Qualifications may be submitted by email to Mark Williams, Project Manager ([planning@fargond.gov](mailto:planning@fargond.gov)). Questions must be submitted by **July 1, 2019 no later than 4:00 P.M. CDT**. Responses will be issued as an addendum to this RFQ no later than July 3, 2019. Questions received after the deadline for question will not be answered.

## SUBMISSION

The Statement of Qualification submission shall include:

- A cover letter and firm profile;
- The respondent's experience on any similar project;
- The respondent's current workload and available capacity;
- Key personnel and their experience on any similar project;
- The respondent's safety record;
- The respondent's familiarity with the location of the project
- The respondent's fees and expenses;
- Records/documents indicating the respondent's compliance with state and federal law.

Respondents are to submit five (5) hard copies of the Statement of Qualifications. The information included should be as concise as possible. Statement of Qualification packages should generally be printed on 8.5" x 11" paper. Securely sealed proposals must be labeled: **"Statement of Qualification for Construction Management at Risk Services for Fargo Civic Plaza, Area 1 "Sodbuster Landscape""** and must be submitted to:

City of Fargo Auditor's office,  
225 4th Street North,  
Fargo, ND 58102

**at or before 4:00 P.M., July 9, 2019** (Central Daylight Time). In addition, respondents must provide one (1) electronic version, in PDF format, uploaded to the City's digital file transfer site:

<http://transfer.fargond.gov/index.php/s/kTNwiMytRek5T6t>

by **July 9, 2019 no later than 4:00 P.M. CDT**. Proposals received later than the time and date specified will not be considered.

## COMMUNICATIONS

This RFQ is available to download at the City's website: [www.fargond.gov/bidpostings](http://www.fargond.gov/bidpostings). Any addendum made to this RFQ will be posted at the same website used for downloading the RFQ. All questions related to this RFQ must be submitted in writing by email to the project contact, Mark Williams, at [planning@fargond.gov](mailto:planning@fargond.gov) within the timeframe stated above.

## APPENDIX A

### INDEMNIFICATION AND INSURANCE

1. **Indemnity.** To the extent permitted by law, “COMPANY” shall indemnify and hold City harmless from and against all liabilities, claims, damages, losses and expense, including reasonable attorneys’ fees, to the extent caused by the negligent performance of the Services by “COMPANY”. To the extent that a claim arises out of the Professional Liability of “COMPANY”, liability is limited to those damages actually incurred as a result of negligence, and to amounts covered by the professional liability insurance policy carried by “COMPANY” and within the agreed insurance limits.

2. **Insurance.** “COMPANY” shall keep and maintain the following insurance coverages:

2.1 **Professional Liability Insurance.** “COMPANY” shall maintain in full force and effect until at least three years subsequent to completion of the Services professional liability insurance covering the performance of the Services. Such insurance shall be on a “claims made” basis and in the amount of at least \$1,000,000.

2.2 **Workers Compensation Insurance.** “COMPANY” shall maintain workers compensation insurance with following limits or with the minimum limits required by law, if greater:

Coverage A:	Statutory		
Coverage B:	\$1,000,000	Bodily Injury by accident	Each accident
	\$1,000,000	Bodily Injury by disease	Policy limit
	\$1,000,000	Bodily Injury by disease	Each employee

2.3 **General Liability Insurance.** “COMPANY” shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in paragraph 2.1 of this Agreement). Limits of coverage shall not be less than:

\$2,000,000	Per occurrence
\$5,000,000	Aggregate

2.4 **Automobile Insurance.** “COMPANY” shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired and non-owned vehicles. Limits of coverage shall not be less than:

\$2,000,000
Per occurrence

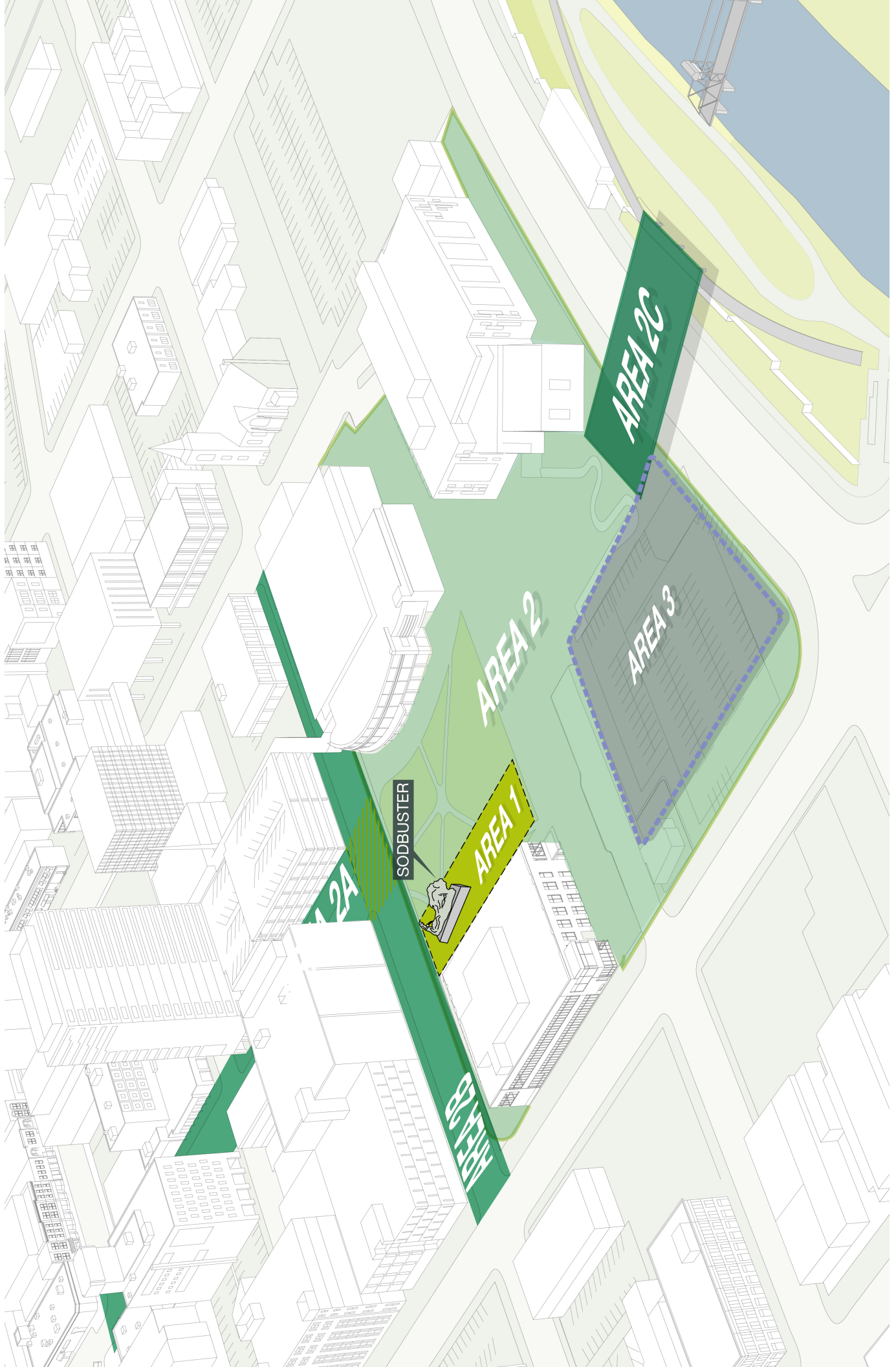
2.5 **Evidence of Insurance.** The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. “COMPANY” shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the city of Fargo as an additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to City.

2.6 **Health and Safety.** “COMPANY” will take all necessary precautions, meet all legal requirements for the health and safety of all its employees on the project and all other persons who may be affected by the Work, and comply with City’s safety rules. This requirement will apply continuously and is not limited to normal working hours. “COMPANY” shall have the right

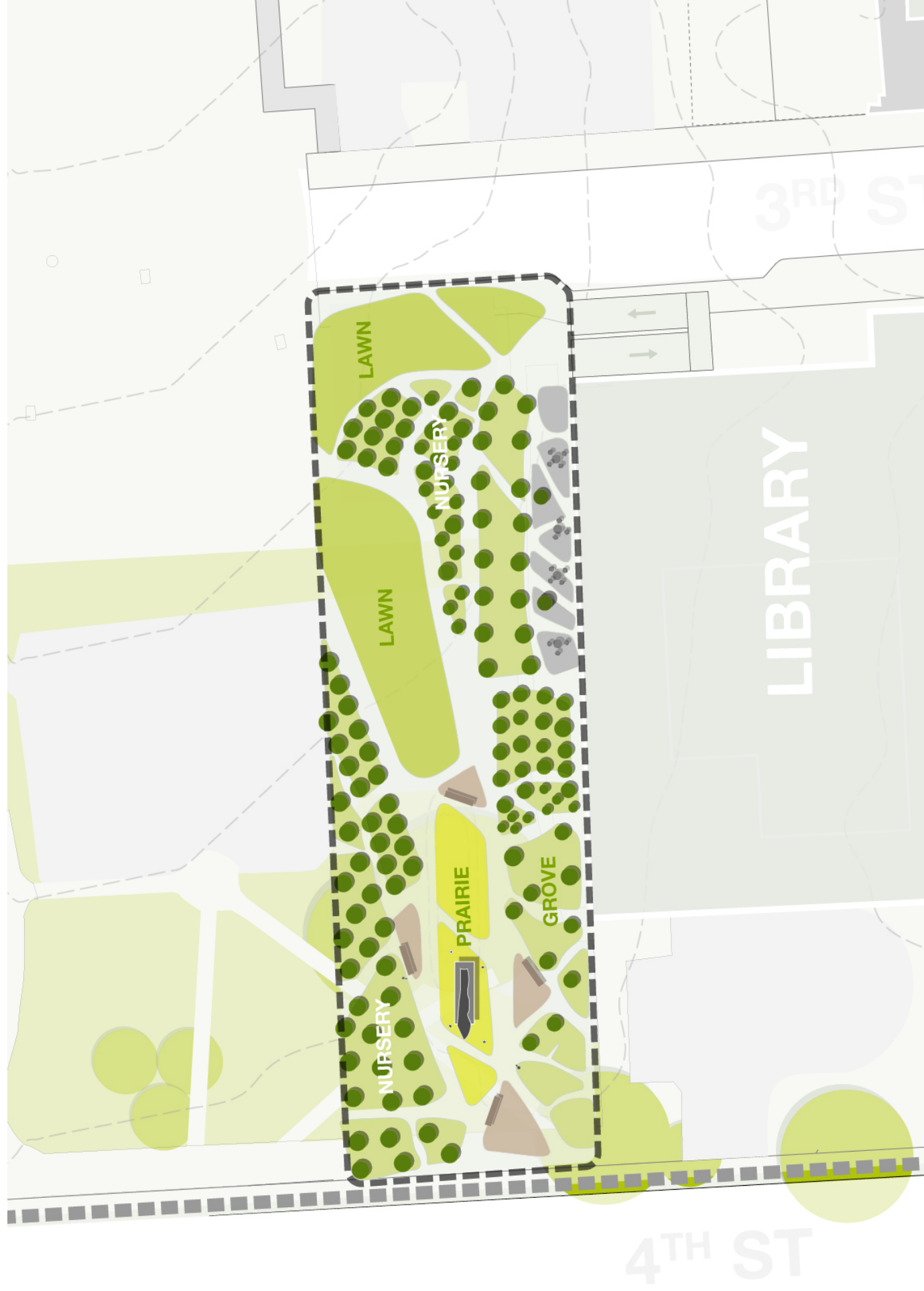
to restrict from the site any persons who do not comply with reasonable safety requirements of “COMPANY”.

2.7 **Excess/Umbrella Coverage.** “COMPANY” may meet the levels of insurance required by Sections 2.2.3 and 2.2.4 through a combination of Primary and Excess/Umbrella coverage.

## APPENDIX B

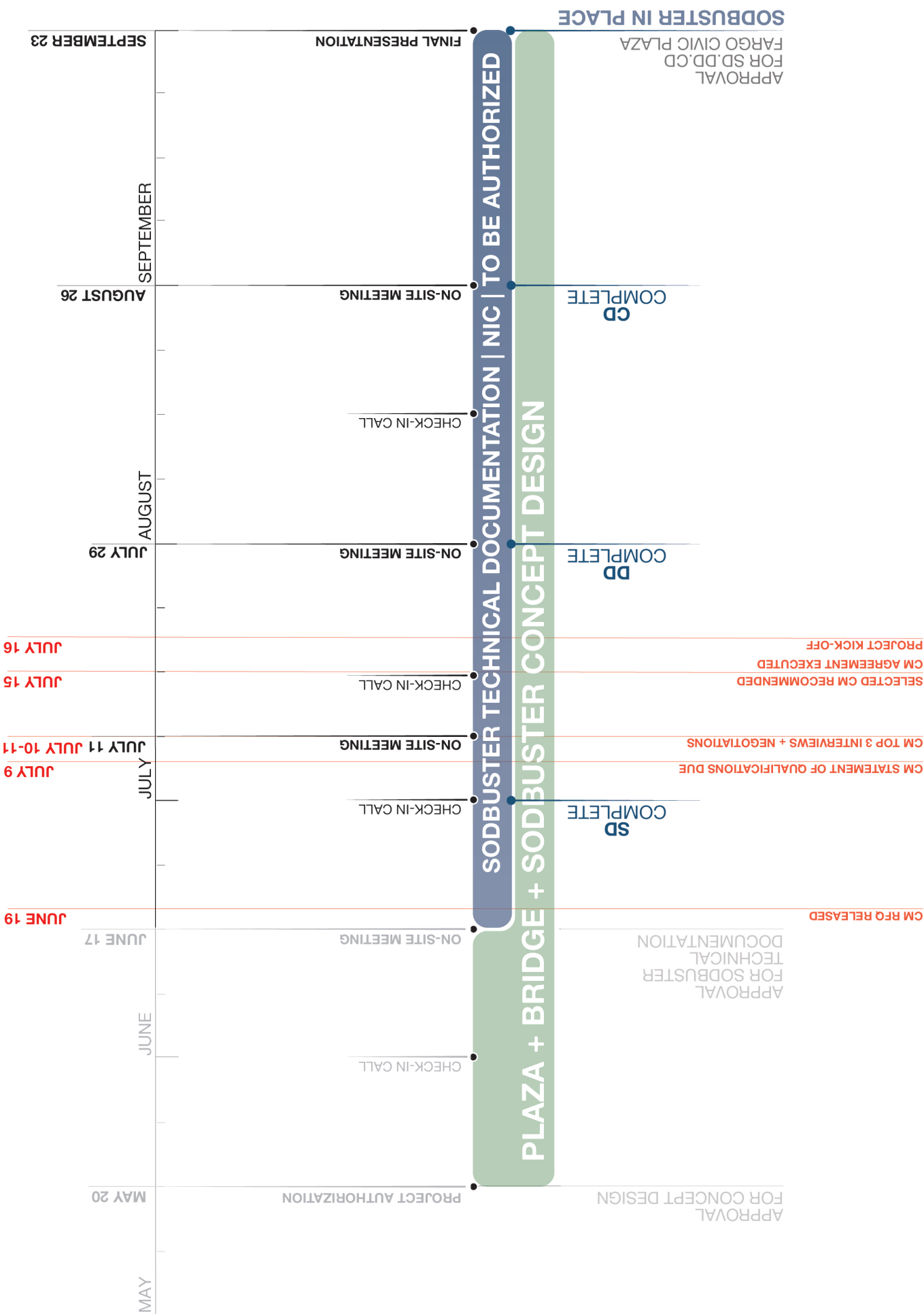


**DIAGRAM 1 | PROJECT AREAS**



**DIAGRAM 2 | PRELIMINARY CONCEPT**

DIAGRAM 3 | PROJECT SCHEDULE



## APPENDIX C

## CONTRACT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Fargo (a Municipal Corporation, under the laws of North Dakota) by the City Commission, hereinafter called the City, and Contractor.

Contractor is hereby awarded the Contract to construct **Project Name, Improvement District No. Improvement District Number** in accordance with the attached Proposal. Contractor agrees to undertake and execute all work in a good, substantial and workmanlike manner, and to furnish all the materials, tools and labor necessary to properly perform and complete the work ready for use, in strict accordance with the Special Instructions to Bidders and the plans mentioned therein and the City of Fargo Standard Specifications for Construction in effect at the time of the bid opening, and under penalty expressed in the attached bond, which are hereby declared and accepted as essential parts of the unit prices named in the Proposal.

### What the Contract Price Includes

The price in the Proposal is for the completed work, and includes the furnishing of all the materials, labor, tools and appliances, and all expenses, direct and indirect, connected with the proper execution of the work in accordance with the plans, profiles and specifications for the work, and maintaining the same until it is accepted by the City Commission.

### Extra Work Part of Contract

When directed in writing by the City Engineer or an authorized representative ("City Engineer" inclusively) to do so, the Contractor shall furnish material and do extra work connected with or necessary to the proper completion of the work. Prices for extra work will be agreed upon by the City Engineer or an authorized representative and the Contractor as specified in Section 9000 of the Standard Specifications for Construction.

### Bills for Extra Work

Within thirty (30) days of completion of the extra work authorized by "Contractors Order," as defined in the City of Fargo Standard Specifications for Construction, the Contractor shall present to the City Engineer or an authorized representative the "Contractor's Order," and a full and complete itemized statement of extra work, and the date the extra work was completed. City Engineer or an authorized representative shall certify the correctness of the amount and character of labor performed and materials furnished and add it to the estimate of the amount due the Contractor. A "Contractor's Order" for extra work not presented within 30 days of completion will not be paid.

### Inspection

All materials furnished by the Contractor are subject to the inspection and approval of the City Engineer or an authorized representative at all times during the progress of the work, and until the final completion of the same. Contractor shall allow sufficient time to enable the City Engineer or an authorized representative to make the proper tests and inspection. As soon as the materials are tested and inspected, the Contractor shall immediately remove all rejected materials from the work and to such a point distant there from as the City Engineer or authorized representative may require. No materials shall be used before being inspected and approved by the City Engineer or authorized representative. Failure of the City Engineer or authorized representative to condemn or reject inferior materials or work does not imply acceptance of the same should their inferiority become evident at any time.

The Contractor shall furnish at their own expense such labor as may be required to enable a thorough inspection and culling of all materials.

### Obstruction, Guard and Contractor's Liability

The Contractor shall follow Section 4100 of the Standard Specifications for Construction in all cases to maintain a safe passageway at all road crossings, crosswalks and street intersections, and shall do all other things necessary to prevent accidents or loss of any kind, and shall save the City harmless forever from any and all damages, costs, and expenses resulting from the neglect or failure of the Contractor in the performance of this Contract, to properly protect the public and employees from injury to person or property.

### Property Liable to Damages

The Contractor shall be liable for any and all damage to public and private utilities, including but not limited to, water, gas, steam or other pipes, flumes, poles or conduits or other property owned by any person or corporation. Contractor shall have ten (10) days following notice from the City to repair or replace the damaged property. After ten (10) days City may arrange for such repairs or replacements to be made as necessary and deduct from any sum or sums due or to become due Contractor under this Contract the cost thereof.

The Contractor will be responsible for all survey irons and monuments, and if disturbed they will be replaced by a Registered Land Surveyor of the State of North Dakota, at the Contractor's own expense.

Contractor is responsible for damage to any underground or overhead piping, wiring, or other utility property occurring during any excavation or construction by Contractor. The Contractor, before commencing any excavation or construction, shall locate the previously mentioned underground property by contacting the following:

ND One Call..... 1-800-795-0555

### Time of Commencement and Completion

The Contractor shall commence the work within thirty (30) days after written notice from the City, continue the work without interruption, and complete the entire Contract on or before **Completion Date**. Contractor's failure to satisfactorily and timely complete the Contract work shall result in a deduction by City, out of the money which may be due or become due Contractor liquidated damages in accordance with the agreed upon schedule attached hereto as Exhibit "A", fixed and determined by the parties to be liquidated damages.

Substantial completion shall consist of the following items unless otherwise noted in the Special Instructions to Bidders:

1. Projects with underground utilities: Substantial completion shall consist of the installation of all main line sewer, water, storm sewer pipe. Installation shall include testing of water main and sanitary sewer and installation of sewer and water services. All underground utilities shall be functional.
2. Projects with paving; Substantial completion requires that the curb and gutter and paving section be installed and functional. This includes driveways, sidewalks, finish grading, street lights, and signals.
3. In all other projects: Substantial completion shall mean that the specified improvement is operational and/or functional.

Final completion shall consist of completing remaining items and the repair of all punch list and clean up items.

At any time before expiration of the original or extended Contract time, a written request may be made to the City Engineer for additional time to complete the Contract. The request shall be supported by adequate documentation stating the reasons and basis for the request. The City Engineer's determination will consider to what extent the delays were caused by conditions beyond the Contractor's control that may be offset by time lost due to the failure to diligently prosecute the work or to other conditions within

the Contractor's control. A plea that insufficient time was specified is not a valid reason for a time extension. A time extension will not be considered for inclement weather or for the time period from November 15 to April 15.

Contractor must pay City liquidated damages for failure to timely complete the Contract work irrespective of whether there are monies due on the Contract.

#### Claim for Damages

Delay occasioned by any act or omission over which the Contractor has no control, or on the part of the City, may entitle the Contractor to an extension of time in which to complete the work. Contractor shall give notice in writing to the City Commission of the cause of such delay within thirty (30) days, yet in no case after the expiration of the original or extended Contract time.

#### Subletting

The Contractor shall not assign or sublet the whole or any portion of the Contract work (except for the supply of materials, equipment and tools) without first obtaining the written consent of the City Engineer. Consent given does not release the Contractor from responsibility. Contractor shall be held accountable the same as if no consent had been given. The Contractor will be required to give their personal attention to the work.

#### Specifications, Plans and Stakes

The work shall be done in strict conformity to the plans, profiles and specifications and to the exact lines and grades as defined by the City Engineer.

#### Cleaning Up

Immediately upon the completion of the work on each block, the Contractor shall at their cost and expense, clean up and remove all refuse materials of every kind resulting from the work. If Contractor fails to clean up and remove refuse within twenty-four (24) hours after having been notified by the City Engineer or authorized representative, the work may be done by the City and the cost thereof charged to the Contractor or deducted from the amount due the Contractor on their estimate.

#### Orders

Whenever the Contractor is not present on any part of the work where it may be necessary to give instructions, orders may be given by the City Engineer or authorized representative to the superintendent or foreman who may have charge of the particular work in question, and such orders shall be obeyed.

#### Defective Work

The Contractor, upon being so directed by the City Engineer or authorized representative, shall suspend, remove or reconstruct, or make good without charge any work which they may consider to be defectively executed.

#### Competent Workers to be Employed

The Contractor shall provide and have at all times a competent Superintendent in charge of the overall Project who will be personally available at the site of the work within 24 hours notice. This Superintendent may be either the Contractor himself or a responsible employee who has been authorized to act in the Contractor's behalf. This individual shall be fully authorized to:

- (a) Conduct all business with the subcontractors.
- (b) Negotiate and execute all Contract change orders or directly coordinate with the Contractor on such matters.
- (c) Execute the orders and directions of the Engineer or authorized representative without delay.
- (d) Promptly supply the materials, equipment, tools, labor, and incidentals necessary for prosecution of the work.

At all times while work is actually being performed, the Contractor shall have at the site of the work a competent individual who is:

- (a) Authorized and fully capable of managing, directing, and coordinating the work in progress.
- (b) Thoroughly experienced in the type of work being performed.
- (c) Capable of reading and thoroughly understanding the Plans and Specifications.
- (d) Authorized to receive instructions from the Engineer or authorized representative.

If this individual is an employee of someone other than the Contractor, the Contractor shall notify the Engineer or authorized representative as to who will act in the supervisory capacity stated above. This individual and the Superintendent having overall responsibility for the Project may be one and the same person if constantly available in person on the Project and fully qualified in all other respects.

If any person employed by the Contractor appears incompetent, disorderly, or disobedient to the City Engineer or authorized representative, they shall be discharged immediately upon request of the City Engineer or authorized representative and shall not again be employed upon the work without the consent of the City Engineer or authorized representative.

Contractor must give preference in accordance with N. D. Cent. Code section 43-07-20 to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work.

#### Order of Executing Work

The Contractor shall commence work at such point or points as the City Engineer or authorized representative may direct, and shall conform to their directions as to the order and time in which different parts of the work shall be done.

When a Contractor has more than one Contract with the City at the same time, they shall have sufficient workers, machinery, tools and material upon the work to complete each Contract in the manner and within the time specified in each separate Contract, and they shall not remove workers, machinery, tools or materials from one Contract job to another without the written consent of the City Engineer or authorized representative. Nor shall Contractor commence work on a new Contract job while in default on an existing Contract without the written permission of the City Engineer.

#### Failure to Pay for Labor and Materials

If Contractor fails to pay laborers, or for materials used, the City may make such payments from monies due the Contractor, at the City's discretion necessary to protect laborers and material suppliers.

#### Laws and Ordinances to be Observed

Contractor must abide by all applicable laws. Contractor shall indemnify the City against all claims, damages, suits, actions and expenses, including reasonable attorney's fees to the property of the City of any person, caused by the negligence of the Contractor or their servants or employees in carrying out or attempting to carry out this Contract, and from claims made by laborers or others for injury sustained by reason of the negligence of the Contractor, their servants or employees, in the performance or attempted performance of this Contract. Contractor further shall indemnify the City from damages sustained by depositing materials to public injury or to the injury of any person or corporation, or resulting from the use of any patented material, implement or process which may be employed in executing the work under this Contract, including costs and expense of defense. Contractor shall be notified of the bringing of suit in such cases, and be permitted to defend the same, and City may withhold final payment of this Contract for the indemnity of the City.

### Failure to Prosecute Work Vigorously

Contractor shall commence work under this Contract within thirty (30) days after being instructed to do so in a written notice from the City. Contractor's failure to commence work as directed may be deemed a Contract breach, and the Contractor and surety shall be liable for the full amount of the Contract.

If, at any time during the prosecution of the work, in the opinion of the City Engineer, Contractor is not employing the necessary resources to timely complete the Contract, or performing in an un-workmanlike manner, City shall give Contractor and their surety five (5) days written notice to comply. Failure to comply may be deemed a Contract breach and the Contractor and surety shall be liable on their bond for the full amount of the Contract price.

The notice provided for in this section may be served upon the Contractor by delivering the same to any person in charge of the work, or by leaving the same at the office of the Contractor in Fargo; and upon the surety of the Contractor by leaving the same at the office of such surety in Fargo.

Neither the abandonment of this Contract by the Contractor, as herein provided, nor the declaration by the City that the same is forfeited, nor the doing of the said work by the bidder, shall release the surety of the Contractor from liability under this Contract.

### Payments

The City may retain five percent (5%) of the amount due Contractor until the completion of the entire Contract work. In no case will the City Engineer make payment to a Contractor who is in default under the terms of the Contract unless expressly authorized by the Board of City Commissioners.

The Contractor shall be paid by the City according to the certified statement furnished by the City Engineer and approved by the City Commission, and the payment shall be made in warrants drawn on the Project Name, Improvement District No. Improvement District Number fund of said City, with interest at seven (7%) percent per annum or in cash as stated below. The City assumes and incurs no general liability under this Contract for any sum to be raised by general taxation and reserves the right, at its option, to sell such warrants for cash, and from the proceeds thereof pay the Contractor the amount due them under this Contract.

The retained amounts will be according to the following table:

<u>Percentage of Completion</u>	<u>Percent Retained</u>
0 – 90%	5%
91 – 100%	1 – 5%*

\*Reduction of retainage is at the discretion of the City Engineer based on the progress of the contract.

### Guarantee

Contractor guarantees the Contract work will remain in good condition for the period of one (1) year from the date of completion, ordinary wear excepted. Contractor is financially responsible for any repairs necessary to maintain the Contract work in good condition within one year from completion, ordinary wear excepted.

The determination of the necessity for repairs above mentioned rests entirely with the City Commission whose decision upon the matter shall be final and obligatory upon the Contractor.

If the termination of the said period of one (1) year after the completion and acceptance of the work done under this Contract shall fall within the months of November, December, January, February, March or April, then in that case said months shall not be included in the computation of the said period of one (1)

year, but said period shall be held and understood to terminate on the 15th day of May next thereafter, unless otherwise permitted by the City Commission. It is hereby expressly understood and agreed that the City shall not finally accept the work before the date specified by the City Commission, and that only in case the Contractor shall serve upon the City Commission in writing a notice that they desire the City to accept or reject the work within thirty (30) days after the service of such notice.

Miscellaneous

No work will be done on Sunday except in case of emergency. The City Commission can waive this provision if the Contractor sufficiently establishes an emergency exists.

This Contract with all its forms, plans, profiles, specifications and stipulations shall be binding upon the heirs, executors, administrators or assigns of the said Contractor, and upon the successors or assigns of the City as if each and all of them had been specifically mentioned.

IN WITNESS WHEREOF, the City Commission of the City of Fargo, by its Mayor, has made and executed this Contract on behalf of said City, and has caused the seal of said City to be hereto affixed and the Contractor has hereunto set their hand and seal the day and year first above written.

CITY OF FARGO (a Municipal Corporation)

by \_\_\_\_\_(CITY SEAL)  
Mayor of the City of Fargo

by \_\_\_\_\_(SEAL)  
Contractor

ATTEST:

\_\_\_\_\_  
City Auditor