



Boulevard Gardens Public Right-of-Way Application Terms and Conditions

I. PLACEMENT AND INSTALLATION OF BOULEVARD GARDENS

Agreement to these terms and conditions is part of the boulevard garden application process allowing residents to plant turf or native grasses, plants, cultivated flowers, wildflowers, fruits and vegetables on the boulevard until September 30, 2020. The following terms and conditions are to maintain the safety of the right-of-way.

A. Definitions and Specifications

Boulevard: The public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway. Sidewalk and pedestrian ramps adjacent to boulevard areas must be in compliance with all ADA standards prior to installation of any boulevard plantings.

No work may be initiated prior to the approval from the City of Fargo.

Boulevard Gardens: Plantings may not exceed 24 inches in height and must be maintained with no encroachment or overhang onto the adjacent sidewalk, curb, or street. Edge must be within one foot of outermost planting. All boulevard gardens must not disturb the “drip line” (branch tips and inward) from existing trees in order to minimize tree root damage. Shredded hardwood mulch must be used around plants to prevent soil erosion. The final mulch surface must be no higher than the adjacent curb, sidewalk, and/or ground. River rock or similar aggregate material is prohibited in areas of boulevard plantings. (Source: MPCA, EPA).

B. Application and Approval

The Boulevard Gardens program materials and application will be housed on the www.letseatlocal.org website administered through Fargo Cass Public Health. Approval of said permit will only be granted to the property owner.

The Boulevard Planting application shall include:

1. A completed application form which provides an inventory listing of proposed plantings and a design plan; and,
2. A signed agreement by property owner acknowledging boulevard plantings will be completed in accordance with the terms and conditions.

Planting activity may be subject to inspection if deemed necessary. APPLICANT will receive notification of approval via mail and/or email.

C. Damage by APPLICANT

It is the responsibility and duty of the APPLICANT to call North Dakota One Call @ 811 to locate utilities. Anyone that will be excavating in the state of ND is required to call the One Call center a minimum of two (2) business days before excavation of any portion of the boulevard. Any damage to the public right-of-way, City utilities or equipment, or any private utility thereon caused by APPLICANT's permitted installation or construction operations shall be repaired or replaced at the APPLICANT's expense. Repairs completed by the City or a private utility will be billed to the APPLICANT. Failure to compensate for damages and/or repairs will be grounds for revocation of the application.

II. MAINTENANCE OF BOULEVARD GARDENS

A. Public Use of Right-of-Way

The City reserves the right to take any action deemed necessary, in its sole and reasonable discretion, to repair, maintain, alter, or improve the public right-of-way in connection with City operations. The City retains the right to excavate, or to issue permits for excavation of, all boulevard plantings, without notice, in any and all cases of emergency.

The City reserves the right to issue permits to private utilities to install, operate, and maintain facilities in the right-of-way. Said permitted use shall take priority over permitted boulevard plantings.

In the event the city or permitted utility owners interfere with boulevard plantings in the course of such work, the city or utility owner shall be responsible only to restore the boulevard to a grassy state. In no event shall the city or utility owners be liable for any damage to, disruption of, or removal of boulevard plantings, either direct or indirect, as a result of the city or permitted private utilities performing any installation, maintenance, or repairs in the public right-of-way.

B. APPLICANT Responsibilities

1. Frequent maintenance is required for boulevard gardens. At a minimum, maintenance must address:

- a. Removal of weeds or invasive plants;
- b. Removal of accumulated sediment;
- c. Removal of trash, leaves, grass clippings, or other debris; and
- d. Repairing areas of bare soil or erosion.

2. If an approved boulevard garden is found to be in violation of any maintenance requirement or is found to be a nuisance, the APPLICANT shall immediately correct the violation. Failure to correct violations in a timely manner will result in the removal of the plantings, including restoration to turf, at the APPLICANT's cost. The necessary costs and expenses of such removal shall be chargeable and assessed against the property, and shall be a lien upon such premises. Assessment of costs and expenses shall be in accordance with Article 3-17 of the Fargo Municipal Code.

III. INDEMNIFICATION

APPLICANT shall, to the extent permitted by law, indemnify and hold the City harmless against any and all claims of liability or loss from personal injury or property damage resulting from, arising out of, or in any way related to the use and/or occupancy of the City's public right-of-way by the APPLICANT, its employees, contractors or agents, APPLICANT agrees to defend, indemnify and hold harmless the City and the City's employees, representatives and assigns from and against any and all liability, damages, penalties, judgments or claims of whatever nature arising from injury to person or property sustained by anyone arising out of APPLICANT'S use and/or occupancy, including its installation, operation, maintenance, repair, removal and presence of APPLICANT'S facilities, structures, equipment or other improvements, of or in the City's public right-of-way and will, at APPLICANT'S own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such above-mentioned matter, claim or claims. This indemnity and hold harmless agreement includes indemnity against all costs, expenses and liabilities incurred in or in connection with any such claims or proceedings brought thereof. This provision does not apply to such claims or damages which are due to or caused by the willful misconduct of the City, or its employees, contractors or agents. This indemnification provision will survive the termination of any right-of-way agreement.

IV. INSURANCE

APPLICANT must maintain general liability insurance at all times during the term of this agreement. Proof of insurance must be provided to the City with a Certificate of Liability Insurance describing the limits of coverage and naming the City of Fargo as an additional insured party. Proof of insurance must be received by the City before said permit is issued. By signing these Terms and Condition, APPLICANT certifies it will maintain the specified coverage during the entire term of the agreement. Any Cancellation Policy statement must read: "Should any of the above described policies be canceled or modified before the expiration date thereof, the issuing company will mail thirty (30) calendar days written notice to the certificate holder named as the additional insured, but shall impose no obligation or liability of any kind upon the company, its agents, or representatives."

V. LIMITATION OF LIABILITY

The City will not be liable to the APPLICANT, or any of its respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, right or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

VI. TERMINATION

APPLICANT agrees and acknowledges that any Boulevard Garden approval granted may be terminated for any number of reasons, including, but not limited to: (1) breach of any of the terms and conditions contained herein; (2) determination by the City that, it is in the best interest of the City to terminate the

agreement for the health, safety and welfare of the City. Any such termination requires thirty (30) day written notice from the City to APPLICANT; (3) APPLICANT may terminate this agreement at any time with written notice to the City.

The issued permit is only valid for the 2020 growing season and shall expire on September 30, 2020.

VII. ASSIGNMENT

The Boulevard Garden agreement may not be transferred or assigned without written consent of the City.

VIII. COMPLIANCE

APPLICANT agrees and acknowledges that APPLICANT is solely responsible for ensuring compliance with all local, State and Federal laws and regulations.

APPLICANT hereby acknowledges receipt of these Terms and Conditions and further acknowledges APPLICANT agrees to and understands the provisions contained herein.

APPLICANT/PROPERTY OWNER

Date: _____, 2020

_____ Print Name

_____ Signature

Boulevard Gardens

With approval from the City, planting is allowed in the boulevard. The boulevard is the public right-of-way lying between the property line and sidewalk, and between the sidewalk and the roadway, or where no sidewalk exists, between the property line and the roadway. To check if these features are feasible for your site please review the information below.

Feasibility

Check existing covenants to assure planting in the boulevard is allowed in your development

An application, signed Terms and Conditions agreement, and approval is required

Must contact ND One Call "811" for utility locations at least 48 hours before digging

Plantings must not interfere with utilities

Planting Requirements

Plants may not exceed 24 inches in height

Plants must be maintained with no overhang or encroachment onto the sidewalk, curb, or street.

Edge must be within one foot of outermost planting

Plants must not be installed within the drip line of an existing tree(s)

Choose the right location and mix of plants to ensure you have a full season of blooms

Use shredded hardwood mulch around plants to prevent soil erosion (river rock or similar aggregate is prohibited)

Final mulch surface shall be flush with the curb or sidewalk

Boulders and structures such as retaining walls, fences, and steps are prohibited.

Resources

NDSU Extension – Cass County is an excellent resource for horticulture and gardening questions:

<https://www.ag.ndsu.edu/casscountyextension/horticulture>

Contact Don Kinzler at: donald.kinzler@ndsu.edu

NDSU Soil Testing is a resource for residents wanting to analyze their soil.

https://www.ndsu.edu/fileadmin/snrs/Files/lawn_and_garden_.pdf

Visit www.letseatlocal.org for information, permit application form, and terms and conditions; or contact Kim Lipetzky at KLipetzky@FargoND.gov.