

# Boulevard Planting Public Right-of-Way Permit

## Terms and Conditions

### I. PLACEMENT AND INSTALLATION OF BOULEVARD PLANTINGS

#### A. Definitions

City Code allows plantings 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. 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 of a Boulevard Planting Permit.

**Boulevard Planting:** All boulevard landscaping covering an area greater than 20 square feet, excluding turf, that does not qualify as a rain garden shall be referred to as boulevard plantings. All plants must be maintained with no encroachment or overhang onto the adjacent sidewalk, curb, or street. Plantings may not exceed 24 inches in height. Double-shredded hardwood mulch must be used around plants to prevent soil erosion. The final mulch surface must be 1 inch below the adjacent curb, sidewalk, and/or ground. River rock or similar aggregate material is prohibited in areas of boulevard plantings. (Source: MPCA, EPA)

#### B. Permits

1. The Boulevard Planting Permit application shall include a completed permit application form, an inventory listing of all proposed plantings, and lawn grade permit fee of \$40.
2. Other permits: The APPLICANT is responsible for any other permit required by the City or other agency.
3. The APPLICANT is responsible for all permit fees and shall be bound by the requirements of said permits.

#### C. Inspection

All planting activity shall be subject to inspection and approval by the City. At a minimum, inspection will be performed during and at completion of planting.

#### D. Damage by APPLICANT

It is the responsibility and duty of the APPLICANT to call Gopher State One Call (“811”) and have all utilities located at least 48 hours prior to the 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 permit.

## **II. MAINTENANCE OF BOULEVARD PLANTINGS**

### **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 inspection and maintenance are required for the boulevard plantings. At a minimum, inspection and 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
  - d. Repairing areas of bare soil or erosion
2. If a permitted boulevard planting is found to be in violation of any maintenance requirement, the APPLICANT shall 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.

## **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 permit.

#### **IV. INSURANCE**

APPLICANT must maintain general liability insurance at all times during the term of this permit. 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 Moorhead as an additional insured party. By signing these Terms and Condition, APPLICANT certifies it will maintain the specified coverage during the entire term of the permit. 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 Planting Permit 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 permit 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 permit at any time with written notice to the City.

#### **VII. ASSIGNMENT**

The Boulevard Planting Permit 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.

Date: \_\_\_\_\_, 20\_\_

APPLICANT

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

## Boulevard Plantings

By permit, City Code allows plantings 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

- Edge must be within one foot of outermost planting
- Must not be installed within the drip line of an existing tree(s)
- A permit is required
- Must contact Gopher State One Call "811" for utility locations at least 48 hours before digging
- Plantings must not interfere with utilities



Source: Abby Hall, US EPA [www.epa.gov](http://www.epa.gov)

### Planting Requirements

- Plants must be maintained with no overhang or encroachment onto the sidewalk, curb, or street.
- Choose the right location and mix of plants to ensure you have a full season of blooms
- Plants must tolerate snow storage and salt
- Plants may not exceed 24 inches in height
- Plants near corners may not exceed 18 inches in height
- Use double-shredded hardwood mulch around plants to prevent soil erosion (river rock or similar aggregate is prohibited)
- Final mulch surface shall be one inch below the curb or sidewalk

### Maintenance Guide

Inspection	Yes	No	If yes
Weed or invasive plants present?			Pull weeds and invasive plants. Spot treat perennial weeds.
Sediment accumulation?			Remove sediment
Trash, leaves, grass clippings, or other debris?			Remove debris present
Areas of bare soil or erosion			Add mulch and plants where necessary



# City of Moorhead

## Boulevard Plantings Public Right-of-Way Permit Application

APPLICANT		APPLICANT PHONE (DIRECT)		APPLICANT FAX	
APPLICANT EMAIL					
COMPANY NAME		COMPANY PHONE		COMPANY FAX	
BILLING ADDRESS		CITY		STATE	ZIP
GOPHER STATE ONE-CALL REGISTRATION NUMBER				EMERGENCY CONTACT NUMBER	
BOULEVARD PLANTINGS LOCATION (Describe Specific Area)					
DESCRIPTION OF WORK:					
CONSTRUCTION START			COMPLETION DATE		
<p><b>ACKNOWLEDGEMENT</b></p> <p>By signing this application, I (the applicant/company) hereby acknowledge that I must adhere to all provisions, codes, and statutes of the City of Moorhead, in addition to the terms and conditions which are attached to this document. The applicant shall also comply with the regulations of all governmental agencies for the protection of the public.</p>					
PRINTED NAME: _____		DATE: _____			
SIGNATURE: _____					
TITLE: _____					

**REQUIRED DOCUMENTS FOR APPLICATION:**

- Permit Fee (\$40)
- Set of Plans with Detailed Inventory of Plantings
- Signed Copy of the Boulevard Plantings Terms and Conditions Checklist

FOR OFFICE USE ONLY	
APPLICATION AND PERMIT FEES RECEIVED:	PERMIT NO:
SIGNATURE:	PERMIT ISSUE DATE:
TITLE:	APPROVED   DENIED