



Engineering Department

DATE: March 17, 2020

FROM: Gabe Schell, City Engineer

ITEM: Seating Area Encroachment Agreement – 107 North Fifth Street

REQUEST

Request approval of a removable fence and seating area encroachment agreement and waiver.

Please place this item on the 3/24/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Gideon's Brewing located at 107 North Fifth Street, has requested an encroachment in the right of way for a removable seating area and barrier fence. The seating area would be adjacent to the west wall face of the building, see attachments. The encroachment committee reviewed and recommends approval of the attached agreement including a 5-year term.

The applicant has been notified that repairs to sidewalks in the vicinity of this proposed encroachment may require the seating area to be removed during construction.

RECOMMENDED CITY COMMISSION ACTION

Approve encroachment agreement with Gideon's Brewing Company, Inc..

STAFF CONTACT INFORMATION

Gabe Schell, PE | City Engineer, 355-1505 or gschell@bismarcknd.gov

AGREEMENT AND WAIVER

The City of Bismarck hereby grants Gideon's Brewing Company, Inc. (Grantee) the right to install and maintain a privately-owned removable fence and seating area (encroachments) on the public right-of-way, adjacent to 107 North Fifth Street, as shown on the attached Exhibits, subject to the following conditions:

1. The Grantee shall comply with all rules regarding the construction of the encroachments on the public right-of-way as set by the City Engineer.
2. The term of this grant shall be for five (5) years and shall continue thereafter from year to year. The City may cancel this grant at any time after the initial five-year term upon six (6) months' written notice to the Grantee.
3. The Grantee shall maintain a minimum of four (4) feet (48") of unobstructed walkway between any obstruction and the furthest outside edge of the seating area.
4. Upon the end of the term or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the encroachments and restore the public right-of-way to its original condition, if so required by the City.
5. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, in exchange for the City's permission to operate and maintain the encroachments in the right-of-way, Grantee agrees to release the City, its assigns, or other franchised utilities from and waive any and all claims relating to said encroachments including, but not limited to, damages arising from damage to the encroachments, loss of business, or other personal injury or property damage resulting from damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it is using the

public right-of-way at its own risk. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for any expense or damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the encroachments on the public right-of-way. Grantee agrees that after installation of the encroachments, Grantee will restore the City right-of-way or street to its original condition. In the event the City is required to perform street maintenance or construction on the right-of-way at the location of the encroachments, Grantee shall cooperate with the City in removing or temporarily protecting the encroachments and accommodating the City's project, at Grantee's sole expense.

DATED this _____ day of _____, 2020.

Print Name & Title
Gideon's Brewing Company, Inc.

Signature

Address

Gabe Schell, P.E.
City Engineer

Date

Keith Hunke
City Administrator
Bismarck

Steve Bakken, President
Bismarck City Commission





