



Engineering Department

DATE: July 20, 2021

FROM: Gabe Schell, City Engineer

ITEM: Encroachment Agreement – Sanford Bismarck – 715 E Broadway Ave

REQUEST:

Sanford Bismarck Outpatient Surgery Center located at 715 E Broadway Ave is requesting an encroachment agreement over City utilities.

Please place this item on the July 27, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

Sanford Bismarck Outpatient Surgery Center located at 715 E Broadway Ave is requesting an encroachment agreement over City utilities that include water, sewer and stormsewer. As part of the remodel the encroachments over the existing utilities include asphalt, concrete, fencing, mechanical equipment and associated piping as shown on the attached exhibit.

RECOMMENDED CITY COMMISSION ACTION:

Approve encroachment agreement for 715 E Broadway Ave.

STAFF CONTACT INFORMATION:

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

ENCROACHMENT AGREEMENT AND WAIVER

The City of Bismarck (City) hereby grants Sanford Bismarck (Grantee) the right to install and maintain concrete, asphalt, fencing, mechanical equipment and associated piping (Encroachments) above City Utilities located at 715 East Broadway Avenue in Lot 700B Block 42 AND Tract 715 of Blocks 40 & 42 of the Original Plat, City of Bismarck, Burleigh County, North Dakota, as shown on the attached exhibit. Exhibit will be stored with the original signed document in the Engineering Department, subject to the following conditions:

1. The Grantee shall comply with all rules regarding maintenance of the Encroachments in the public right of way as set by the City Engineer.
2. The term of this grant shall be for fifty (50) years and shall continue thereafter from year to year. The City may cancel this grant at any time after the initial fifty-year term upon six month's written notice to the Grantee.
3. Upon the end of the term or prior abandonment of the Encroachments by the Grantee, the Grantee shall, at its own expense, remove the Encroachments and restore the right of way to its original condition, if so required by the City.

4. 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, 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, 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.
5. Grantee agrees that it is using the 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 right of way. Grantee agrees that after installation of the Encroachments, Grantee will restore the right of way or street to its original condition.
6. 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 temporarily protecting the Encroachments and accommodating the City's project, at Grantee's sole expense.
7. This Encroachment Agreement and Waiver and the covenants, agreements and restrictions contained herein, shall run with the land benefitted and burdened hereunder.

Sanford Bismarck

By: _____

_____ Date

Print: _____

Title: _____

STATE OF _____)

) SS.

COUNTY OF _____)

On this _____ day of _____, 2021, before me personally appeared _____, and that executed the within instrument, and acknowledged to me that such entity executed the same.

Notary Public

My commission expires:

City of Bismarck

Gabe Schell, PE
City Engineer

Date

Keith Hunke
City Administrator

Date

Steve Bakken
President, Board of City Commissioners

Date