



## Engineering Department

**DATE:** January 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Encroachment Agreement and Waiver - Charity Lutheran Church

**REQUEST:**

Consider Approval of an encroachment agreement with Charity Lutheran Church.

**BACKGROUND INFORMATION:**

Charity Lutheran Church, 120 Aspen Avenue, on North Washington Street, currently has landscape items within the public right of way. During the 2023 construction season, it was discovered that these items were within the right of way when inspecting other work in the area. As there are no immediate plans to widen this section of North Washington Street, we have proposed an encroachment agreement for 3-years with Charity Lutheran Church, and they have concurred. If plans for widening Washington Street in this area were to occur, it would be the responsibility of Charity Lutheran Church to remove and/or relocate the items within the right of way. Staff has reviewed and approved the encroachment agreement.

**RECOMMENDED CITY COMMISSION ACTION:**

Approval of the Encroachment Agreement.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Encroachment Agreement and Waiver - Charity Lutheran Church
2. Photo Document

## ENCROACHMENT AGREEMENT AND WAIVER

The City of Bismarck (City) hereby grants Charity Lutheran Church (Grantee) the right to install and maintain a retaining wall, landscaping and signage (Encroachment) within the City right of way of North Washington Street addressed as 120 Aspen Avenue, more particularly described as; Lots 7, 8 & 9 Block 2 High Meadows Addition, City of Bismarck, Burleigh County, North Dakota, subject to the following conditions:

1. The Grantee shall comply with all rules regarding maintenance of the Encroachment in the public right of way as set by the City Engineer.
2. The term of this grant shall be for three (3) years and shall continue thereafter from year to year. The City may cancel this grant at any time after the initial three-year term upon six months' written notice to the Grantee.
3. Upon the end of the term or prior abandonment of the Encroachment by the Grantee, the Grantee shall, at its own expense, remove the Encroachment 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 Encroachment 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 Encroachment, but not limited to, damages arising from damage to the Encroachment, loss of business, or other personal injury or property damage resulting from damage to the Encroachment 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 Encroachment 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 Encroachment on the right of way.
6. In the event the City is required to perform street maintenance or construction on the right of way at the location of the Encroachment, Grantee shall cooperate with the City

in temporarily protecting, removing or relocating the Encroachment 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.

Charity Lutheran Church  
120 Aspen Avenue

By: \_\_\_\_\_ Date \_\_\_\_\_

Its: \_\_\_\_\_

Print: \_\_\_\_\_

City of Bismarck

\_\_\_\_\_  
Gabe Schell, PE Date \_\_\_\_\_  
City Engineer

\_\_\_\_\_  
Keith Hunke Date \_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Michael T. Schmitz Date \_\_\_\_\_  
President, Board of City Commissioners



Southeast corner of property, pin is approximately 4-inches south of the stake under the concrete, looking north.



Southeast corner of property, pin is located approximately 4-inches south of the stake under the concrete.



Northeast corner of property on the south side of Aspen Ave, south of the church property, looking south.



Northeast corner of property on the south side of Aspen Ave, south of the church property, looking west.



Northeast corner of property on the south side of Aspen Ave, south of the church property, looking north.



Northeast property corner of church property.



Northeast property corner of church property, looking south.



Southeast property corner of property on the north side of Brandon Drive, north of the church property, looking south.