



Engineering Department

DATE: March 12, 2024

FROM: Gabe Schell, City Engineer

ITEM: Private Drive and Private Utility Agreement

REQUEST:

Consider a request for approval of a Private Drive and Private Utility Agreement with J & D Construction, Inc.

BACKGROUND INFORMATION:

J & D Construction, Inc is currently developing a 5-unit townhome project located in northwest Bismarck in Sonnet Heights Subdivision Ninth Replat. These properties will utilize a private drive off Normandy Street for access and to bring utility services to each parcel.

The Private Drive and Private Utility Agreement outlines the responsibilities of the property owners, along with an agreement of services the city will provide. The agreement also provides the City and other applicable government authorities rights to enter said property to perform duties designated in the agreement. Receipt of this agreement was a requirement for the final approval of the Sonnet Heights Subdivision Ninth Replat minor plat. This agreement will be recorded with the plat.

A copy of the agreement is attached.

RECOMMENDED CITY COMMISSION ACTION:

Approve the Private Drive and Private Utility Agreement with J & D Construction, Inc.

STAFF CONTACT INFORMATION:

Gabe Schell, City Engineer, 701-355-1507, gschell@bismarcknd.gov

ATTACHMENTS:

1. Private Drive and Utility Agreement - J & D Construction Inc.

Above this line used for recordation purposes only.

PRIVATE DRIVE AND PRIVATE UTILITY AGREEMENT

The City of Bismarck (the "City") and J & D Construction Inc. (the "Owner") make this Development Agreement with regards to the development of the property located in Bismarck, North Dakota and with the property ("the Property") described as follows:

Block 1, Lots 1-5, Sonnet Heights Subdivision Ninth Replat to the City of Bismarck,
Burleigh County, North Dakota

The Owner desires to develop the Property for residential use and is requesting utilizing a private drive(s), road(s) or access easement(s) (the "Private Drive") to provide access and services to the parcels platted within the Property and identified above. The Property is located east side of Normandy Street between Flint Drive and Calvert Drive.

The City agrees to the proposed use of a Private Drive provided the utilities listed below ("Private Utilities") which serve the individual parcels within the Property are also privately owned, except where the City has agreed in writing to own Utilities.

The Private Drive and Private Utilities will include but not be limited to the following:

Private Drive: The paved roadway or access from the City right-of-way, including all curb and gutter, pavement surface, subgrade and drain tile, driveway approaches and all signage including the private drive name and no parking fire lane signage if required by emergency services.

Water: The water main from the city main, all curb stops between the City main and individual properties being served, water hydrants and valves and all equipment needed to operate the private water system in accordance with state and local requirements.

Sanitary Sewer: The sewer main from the city sewer main, including the Y-connection at the city main, the Y-connections and manholes between the city main and individual

properties and all equipment needed to operate the private sanitary sewer system in accordance with state and local requirements.

Street Lighting: Streetlight poles, streetlight fixtures, electrical conduit and conductor, equipment needed to power and control the streetlights and all equipment needed to operate the private streetlighting system.

Storm Water Facilities: Storm sewer from the City storm system, inlets, manholes, detention ponds, water quality control systems, pump stations and all other equipment and facilities needed to operate the private storm sewer system in compliance with federal, state and local storm water requirements.

The construction, maintenance, operation and replacement of the Private Drive and Private Utilities located with the Property, or located outside the Property but serving exclusively the Property, are all entirely the responsibility of the Owner and its assigns, and the City shall have no responsibility with regard thereto, except that the City will maintain and repair utilities owned by the City.

The installation and use of the Private Drive and Private Utilities does not relieve the Owner from participating in the construction, maintenance, operation and replacement of City facilities as it relates to City funding methods and policies to fund City improvements.

A non-exclusive easement in favor of the City and any other applicable government authority or agency who has jurisdiction over the Property, is granted by this document upon and across the Property for purposes of performing such duties related to law enforcement, fire protection, life safety, health, sanitation and other matters as shall be required from time to time for the purpose of performing their authorized duties.

The Owner has the authority to grant an Easement to the City for purposes of servicing the Private Utilities within the Property and has the authority to expand such grant as deemed appropriate by the Owner.

The City, and the Owner, for good and valuable consideration hereby acknowledged, agree to the following terms and conditions:

1. The Owner agrees to submit a site plan for approval which demonstrates the location and dimension of the Private Drive in relation to the intended structures. The site plan will also show the location, size and material of the Private Utilities along with the required storm water submittals.

2. The Owner agrees to grant the City access over, across and on the Property to permit the City to accomplish the purpose as stated in this agreement.
3. The Owner agrees and understands that the City has no obligation to perform any maintenance or repair of any of the Private Utilities on the Property.
4. The City agrees to provide the following services:
 - Scheduled yearly fire hydrant flushing.
 - Technical assistance in the event a water main break or sewer failure should it occur.
 - Locating and providing curb stop shut-offs such that the Owner can service the Private Utilities
5. The City agrees to provide solid waste collection service consistent with the zoning and use of the Property during the normal course and operation of this service within the City. The Owner agrees to hold the City harmless from any and all damages that may occur during the waste collection process.
6. The City agrees to exercise reasonable care when performing the maintenance described herein. Further, the City agrees to perform all services in a workmanlike manner, and to schedule the maintenance by the City Public Works Department in a manner which will provide efficiency and economy consistent with timeliness.

The Owner agrees to hold the City harmless from any and all damages that may occur due to the process and actions taken during or following any of services provided herein, except for any damages arising from any negligent act by the City, its officers, employees, representatives, agents, or contractors. The Owner will release, defend, indemnify, protect, and hold harmless the City and City officers, agents, representatives, employees, and contractors from and against any and all claims of personal injury, property damage or any other actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorney's fees, arising out of the services provided under this agreement, except for any claims arising from any negligent act by the City, its officers, employees, representatives, agents, or contractors.

The Agreement will run with the land as to the parcels within the Property and shall be recorded with the Burleigh County Recorder. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered the agreement.

 Pending Subdivisions
 Pending Lots



Sonnet Heights
Subdivision
Ninth Replat