



Engineering Department

DATE: April 9, 2024

FROM: Gabe Schell, City Engineer

ITEM: Encroachment Agreement & Waiver - 414 West Sweet Ave

REQUEST:

Consider approval of hanging banners on city-owned light poles adjacent to Bismarck Municipal Field.

BACKGROUND INFORMATION:

Bareknuckle Baseball, LLC dba Bismarck Larks requests to place brackets and banners on City-owned light poles around Municipal Field, see attachment. The brackets would be required to protect the poles from damage. The brackets and banners will need to be removed at the end of the 2024 baseball season. The Encroachment Committee has reviewed and recommends approval of the attached agreement with a term from April 26, 2024 to September 15, 2024 or prior abandonment.

The applicant has been notified that any damage resulting in the placement of the banners and hardware to the existing poles would be their responsibility to repair or replace.

RECOMMENDED CITY COMMISSION ACTION:

Approve Encroachment Agreement & Waiver with Bareknuckle Baseball, LLC, dba Bismarck Larks.

STAFF CONTACT INFORMATION:

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

ATTACHMENTS:

1. agreement 414 W Sweet Ave Municipal Field

ENCROACHMENT AGREEMENT AND WAIVER

The City of Bismarck (City) hereby grants Bareknuckle Baseball, LLC dba Larks Baseball (Grantee) the right to install and maintain privately-owned banners & hardware (Encroachments) attached to City owned light poles and overhanging the public right-of-way, adjacent to and around Bismarck Municipal Ballpark located at 414 W Sweet Avenue, streets include Memorial Highway, S Washington Street, West Sweet Ave and S Hannifin Street adjacent only to the ballpark as shown on the attached Exhibit 1 and only with the approved attached banner designs, subject to the following conditions:

1. The Grantee shall comply with all rules regarding the placement of encroachments overhanging the public right-of-way as set by the City Engineer.
2. The term of this grant shall be from April 26, 2024 until September 15, 2024.
3. The Grantee shall maintain a minimum of fifteen (15) feet of unobstructed space between the lowest point of the encroachments and the top of the highest point in the sidewalk below the encroachments area. The attached encroachment must protect the pole from damage. Any damage to the poles shall be repaired or replaced at the Grantee's expense.
4. Upon the end of the term or termination of this agreement, or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the encroachment and restore the public right-of-way to its original condition.
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 encroachments overhanging 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. 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 overhanging the public right-of-way. In the event the City is required to perform 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.

