



Engineering Department

DATE: February 18, 2020
FROM: Gabe Schell, City Engineer
ITEM: Banners on Light Poles Encroachment Agreement – 414 W Sweet Ave

REQUEST

Request approval of hanging banners on City owned light poles

Please place this item on the 2/25/2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Bareknuckle Baseball, LLC dba Bismarck Larks would like to place brackets and banners on City owned light poles around Municipal Field, see attachment. The brackets would need to protect the poles from damage. The brackets and banners would need to be removed and reinstalled for each season upon request from Bareknuckle Baseball, LLC dba Bismarck Larks.

As part of the agreement the Encroachment Committee has recommended that the City will only allow banners promoting special events and other local cultural, educational or sporting activities of specific benefit to the City. Banner shall not have a primary purpose of endorsing or promoting commercial interests, and shall not include campaign messages that endorse or oppose a candidate for election to public office. Business logos and sponsorship by commercial entities will not be permitted. The encroachment committee reviewed and recommends approval of the attached agreement with a term from April 1, 2020 to September 30, 2020 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 with Bareknuckle Baseball, LLC. dba Bismarck Larks.

STAFF CONTACT INFORMATION

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

ENCROACHMENT AGREEMENT AND WAIVER

The City of Bismarck hereby grants Bareknuckle Baseball, LLC dba Larks Baseball (Grantee) the right to install and maintain privately-owned banners & hardware 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 banners & hardware overhanging the public right-of-way as set by the City Engineer and City Ordinance 10-05.1-02 (1).
2. The term of this grant shall be from April 1, 2020 until September 30, 2020.
3. The Grantee shall maintain a minimum of fifteen (15) feet of unobstructed space between the lowest point of the banners & hardware and the top of the highest point in the sidewalk below the banners & hardware area. The attached hardware 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 banners & hardware 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 banners & hardware 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 banners & hardware, but not limited to, damages arising from damage to the banners & hardware, loss of business, or other personal injury or property damage resulting from damage to the banners & hardware 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 banners & hardware 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 banners & hardware 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

RECOMMENDED CITY COMMISSION ACTION

Approve encroachment agreement with Bareknuckle Baseball, LLC. dba Bismarck Larks.

STAFF CONTACT INFORMATION

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

location of the banners & hardware, Grantee shall cooperate with the City in temporarily protecting the banners & hardware and accommodating the City's project, at Grantee's sole expense.

6. In the event of the commission of any breach of the terms of this Agreement by a party, the non-breaching party may cause this Agreement to be terminated on ten (10) days written notice. All obligations contained in paragraphs 4 and 5 will survive the termination of this Agreement, including but not limited to, the restoration of the property to the original condition.

Print Name & Title
Bareknuckle Baseball, LLC dba Larks Baseball

Signature

Address

Date

Gabe Schell, P.E.
City Engineer

Date

Keith Hunke
City Administrator
Bismarck

Steve Bakken, President
Bismarck City Commission

Date



LARKS

FUN

... *for all.* ...

ALL

..... *for*
Fun!

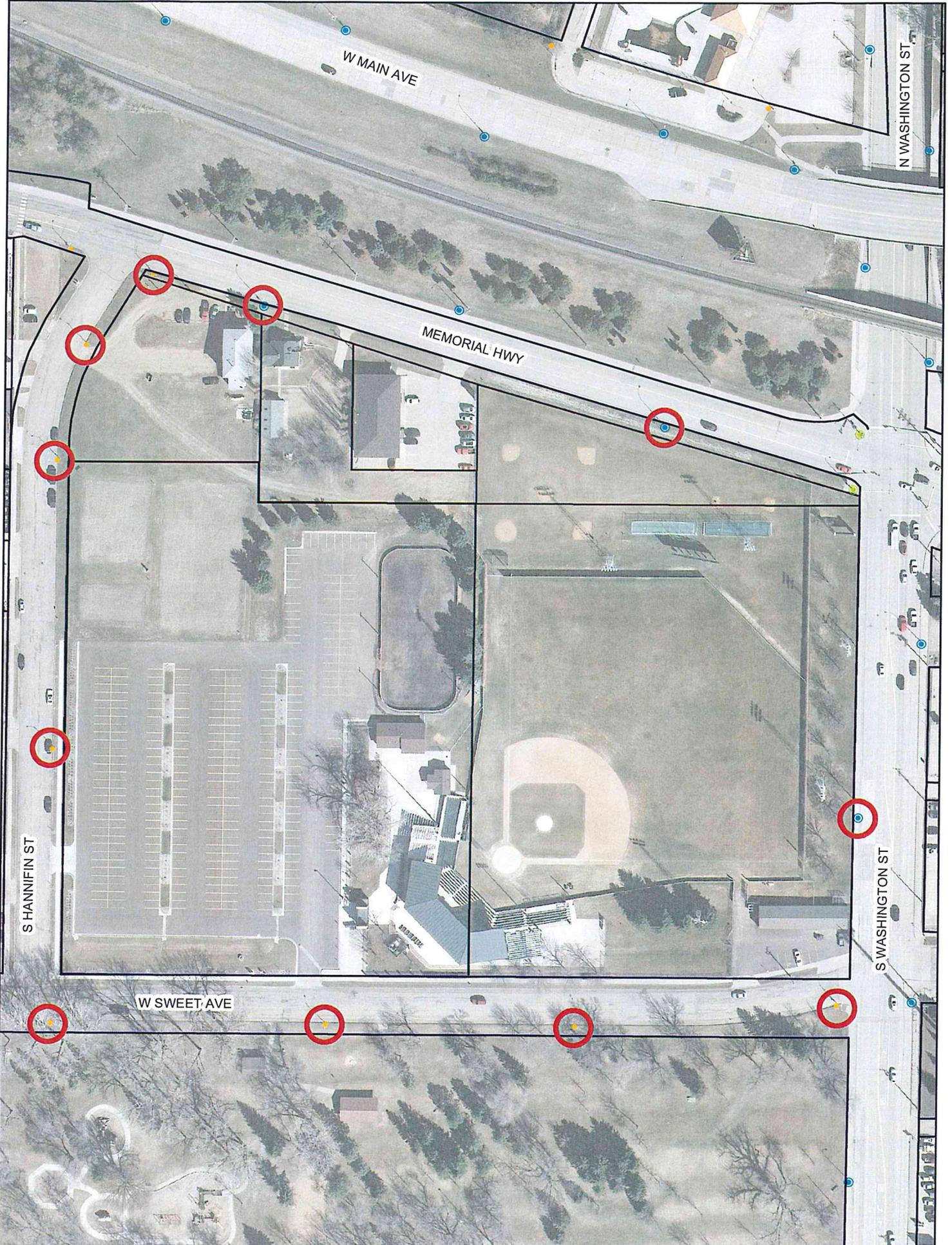


SEE

... **IT TO** ...

Believe
it!

LARKS



W MAIN AVE

N WASHINGTON ST

MEMORIAL HWY

S HANNIFIN ST

S WASHINGTON ST

W SWEET AVE