



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: RS2024-314, **Version:** 1

A resolution authorizing 901 MLK, LLC to construct and install an aerial encroachment at 901 Dr. Martin Luther King Jr. Blvd. (Proposal No. 2023M-018EN-001).

WHEREAS, 901 MLK, LLC, plans to construct, install, and maintain upper floors of a building overhang onto YMCA Way, encroaching into the public right-of-way at 901 Dr. Martin Luther King, Jr. Boulevard; and,

WHEREAS, as set forth in the License Agreement for Private Encroachments Into the Public Right of Way, attached hereto as "Exhibit A", and incorporated by reference herein, 901 MLK, LLC, has agreed to indemnify and hold the Metropolitan Government of Nashville and Davidson County harmless of any and all claims for damages of every nature and kind resulting from or arising from the installation of said encroachment; and,

WHEREAS, Metropolitan Code of Laws §13.16.030(A) allows the Council of the Metropolitan Government of Nashville and Davidson County to grant encroachments, permits, or privileges to construct, maintain and/or operate aerial cables, canopies, etc., over and/or across sidewalks and public rights-of-way by resolution adopted by twenty-one (21) affirmative votes.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That subject to the requirements, limitations and conditions contained herein, 901 MLK, LLC is hereby granted the privilege to construct and maintain an aerial encroachment as described in Proposal No. 2023M-018EN-001, in accordance with the plans which are on file in the office of the Director of the Nashville Department of Transportation and Multimodal Infrastructure ("NDOT"), and attached hereto as "Exhibit B".

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said encroachment under Proposal No. 2023M-018EN-001 shall not be construed as a surrender by the Metropolitan Government of its rights or power to pass resolutions or ordinances regulating the use of its streets, or the right of the Metropolitan Government through its legislative body, in the interest of public necessity and convenience to order the relocation of said facilities at the expense of 901 MLK, LLC.

Section 3. That construction and maintenance of said aerial encroachment under Proposal No. 2023M-018EN-001 shall be under the direction, supervision, and control of the Director of NDOT, and its installation, when completed, must be approved by said Director.

Section 4. That this Resolution confers upon 901 MLK, LLC a privilege and not a franchise, and the Mayor and the Metropolitan Council herein expressly reserve the right to repeal this Resolution, whenever, in their judgment, a repeal may be demanded by public welfare, and such repeal shall confer no liability on the Metropolitan Government of Nashville and Davidson County, its successors and assigns, by reason of said repeal. In the event of such repeal by said Metropolitan Government, 901 MLK, LLC, its successors and assigns, shall remove said encroachment at their own expense.

Section 5. 901 MLK, LLC shall pay all costs incident to the construction, installation, operation and maintenance of said encroachment under Proposal No. 2023M-018EN-001 and shall save and hold the Metropolitan Government of Nashville and Davidson County harmless from all suits, costs, claims, damages or judgments in any way connected with said construction, installation, operation and maintenance of said encroachment and shall not claim, set up or plead, as a defense, in the event of joint liability, with or without

suit, that it and the Metropolitan Government were joint wrongdoers. 901 MLK, LLC shall be responsible for the expense, if any, of repairing and returning the right-of-way to the condition which it was in prior to the installation of said aerial encroachment, and for any street closure.

Section 6. That the authority granted to 901 MLK, LLC, as herein described, shall not in any way interfere with the rights of the Metropolitan Government, its agents, servants, and/or contractors and utility companies, operating under franchise from the Metropolitan Government to enter, construct, operate, maintain, repair, rebuild, enlarge, and patrol its now existing or future utilities, including drainage facilities, together with their appurtenances, and to do any and all things necessary and incidental thereto.

Section 7. 901 MLK, LLC shall and is hereby required to furnish the Metropolitan Government of Nashville and Davidson County a certificate of public liability insurance, naming the Metropolitan Government as an insured party, of at least two million (\$2,000,000) dollars aggregate, for the payment of any judgment had on any claim, of whatever nature, made for actions or causes of action arising out of, or connected with, the construction or installation of said encroachment. Said certificate of insurance shall be filed with the Metropolitan Clerk and NDOT prior to the granting of a permit, and the insurance required herein shall not be canceled without the insurance company or companies first giving thirty (30) days written notice to the Metropolitan Government of Nashville and Davidson County.

Section 8. That said construction shall be carefully guarded and protected, and shall be completed promptly, so as to cause the least inconvenience to the public. The acceptance by 901 MLK, LLC of all provisions of this Resolution shall be determined by the beginning of work.

Section 9. The authority granted pursuant to this Resolution shall not become effective until the certificate of insurance, as required in Section 7, has been posted with the Metropolitan Clerk and NDOT.

Section 10. This Resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This resolution authorizes 901 MLK, LLC, to construct and install an aerial encroachment at 901 Dr. Martin Luther King, Jr. Boulevard.

The encroachment is for upper floors of a building overhang onto YMCA Way. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachment. Prior to receiving a permit, the applicant must file a certificate of public liability insurance in the amount of \$2,000,000 with the Metropolitan Clerk and the Nashville Department of Transportation and Multimodal Infrastructure naming the Metropolitan Government as an insured party. This resolution must be approved by 21 affirmative votes.