



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2024-338, **Version:** 1

An ordinance authorizing the granting of a permanent utility line easement to the Electric Power Board of the Metropolitan Government of Nashville and Davidson County (“NES”) and Fairgrounds Parcel C, LLC, on certain property owned by the Metropolitan Government, and authorizing Fairgrounds Parcel C, LLC to construct, install, and maintain a secondary electrical underground encroachment at 445 Benton Avenue. (Proposal No. 2024M-004EN-001).

WHEREAS, the Metropolitan Government owns a tract of land generally located at Benton Avenue (Parcel 331) (“the Property”), at The Fairgrounds Nashville; and,

WHEREAS, as described in the Easement Agreement attached hereto as Exhibit A, NES and Fairgrounds Parcel C, LLC have requested a permanent utility line easement across the Property, for the purpose of installing, operating, and maintaining electric power overhead and underground conductors and communications circuits; and,

WHEREAS, the Metropolitan Board of Fair Commissioners approved the proposed easement during its meeting on September 12, 2023; and,

WHEREAS, Fairgrounds Parcel C, LLC plans to construct, install, and maintain a secondary electrical underground encroachment at 445 Benton Avenue; and,

WHEREAS, as set forth in the License Agreement for Private Encroachments Into the Public Right of Way attached hereto as Exhibit B, Fairgrounds Parcel C, LLC has agreed to indemnify and hold the Metropolitan Government harmless from all claims or demands that may result to persons or property by reason of the construction, operations, or maintenance of said encroachment; and,

WHEREAS, Metropolitan Code of Laws Section 13.08.030 allows the Council of the Metropolitan Government to, by ordinance, grant encroachments, permits or privileges to construct, install, operate and/or maintain an encroachment in, on, over, or under any street, road, alley, sidewalk, or other public way.

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

Section 1. The granting of a permanent utility line easement to NES and Fairgrounds Parcel C, LLC, as described in the Easement Agreement attached hereto and incorporated herein as Exhibit A, is hereby approved.

Section 2. The Director of Public Property Administration or his designee is hereby authorized to grant said easement and execute and all necessary documents pertaining thereto on behalf of the Metropolitan Government.

Section 3. That subject to the requirements, limitations and conditions contained herein, Fairgrounds Parcel C, LLC is hereby granted the privilege to construct and maintain a secondary electrical underground encroachment under Proposal No. 2024M-004EN-001, in accordance with the plans on file in the office of the Director of the Nashville Department of Transportation and Multimodal Infrastructure (“NDOT”), attached hereto as Exhibit C.

Section 4. That the authority granted hereby for the construction, installation, operation, and maintenance

of said encroachment under Proposal No. 2024M-004EN-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 Fairgrounds Parcel C, LLC.

Section 5. That construction and maintenance of said encroachment under Proposal No. 2024M-004EN-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 6. That this Ordinance confers upon Fairgrounds Parcel C, LLC a privilege and not a franchise, and the Mayor and the Metropolitan Council herein expressly reserve the right to repeal this ordinance, 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, Fairgrounds Parcel C, LLC, its successors and assigns, shall remove said encroachment at their own expense.

Section 7. Fairgrounds Parcel C, LLC shall pay all costs incident to the construction, installation, operation and maintenance of said encroachment under Proposal No. 2024M-004EN-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. Fairgrounds Parcel C, 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 encroachment, and for any street closure.

Section 8. That the authority granted to Fairgrounds Parcel C, 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 9. Fairgrounds Parcel C, 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 \$4,000,000 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 10. 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 Fairgrounds Parcel C, LLC of all provisions of this ordinance shall be determined by the beginning of work.

Section 11. The authority granted pursuant to this ordinance with regard to said encroachment shall not become effective until the certificate of insurance, as required in Section 9, has been posted with the Metropolitan Clerk and NDOT.

Section 12. This ordinance shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance authorizes the granting of a permanent utility line easement to the Nashville Electric Service (“NES”) and Fairgrounds Parcel C, LLC. The ordinance also authorizes Fairgrounds Parcel C, LLC to construct, install, and maintain a secondary electrical underground encroachment at 445 Benton Avenue.

The Metropolitan Government agrees to grant a permanent utility line easement to NES and Fairgrounds Parcel C, LLC on a tract of land located at Benton Avenue (Parcel 331). The easement is for the purpose of installing, operating, and maintaining electric power overhead and underground conductors and communications circuits. The Director of Public Property Administration, or a designee, is authorized to execute all necessary documents pertaining to the grant of this easement.

In addition, the ordinance approves a license agreement which grants Fairgrounds Parcel C, LLC the privilege to install, construct, and maintain a secondary electrical underground encroachment at 445 Benton Avenue. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachments and is required to post a certificate of public liability insurance in the amount of \$4,000,000 with the Metropolitan Clerk naming the Metropolitan Government as an insured party.