

NASHVILLE AND DAVIDSON COUNTY:

Section 1. That subject to the requirements, limitations and conditions contained herein, Newco Arc, LLC is hereby granted the privilege to construct and maintain said underground encroachment under Proposal No. 2023M-010EN-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”) (formerly known as the “Metropolitan Department of Public Works”), and which are attached hereto as “Exhibit B” and incorporated by reference herein.

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said underground encroachment under Proposal No. 2023M-010EN-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 Newco Arc, LLC

Section 3. That plans and specifications for said underground encroachments under Proposal No. 2023M-010EN-001 shall be submitted to the Director of NDOT for approval before any work is begun; and all work, material, and other details of said installation shall be approved by the Director of NDOT prior to its use by Newco Arc, LLC.

Section 4. That construction and maintenance of said underground encroachments under Proposal No. 2023M-010EN-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 5. That this Ordinance confers upon Newco Arc, 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, Newco Arc, LLC its successors and assigns, shall remove said underground encroachment at their own expense.

Section 6. Newco Arc, LLC shall pay all costs incident to the construction, installation, operation and maintenance of said underground encroachment under Proposal No. 2023M-010EN-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 underground 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. Newco Arc, 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 underground encroachment, and for any street closure.

Section 7. That the authority granted to Newco Arc, 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 8. Newco Arc, 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 underground 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 9. 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 Newco Arc, LLC of all provisions of this Ordinance shall be determined by the beginning of work.

Section 10. The authority granted pursuant to this Ordinance shall not become effective until the certificate of insurance, as required in Section 8, has been posted with the Metropolitan Clerk and NDOT.

Section 11. 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 Newco Arc, LLC to construct, install, and maintain underground encroachments at 223 4th Avenue North. The encroach would consist of a grease interceptor vault and a related inlet and outlet lines under the western sidewalk of 4th Avenue North.

Metropolitan Code of Laws § 13.08.030 allows the Metropolitan Council to grant encroachments in, on, over, or under any street, road, alley, sidewalk, or other public way by ordinance. The construction and maintenance of this encroachment shall be directed, supervised, controlled, and approved by the Director of the Nashville Department of Transportation and Multimodal Infrastructure.

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, in aggregate, with the Metropolitan Clerk naming the Metropolitan Government as an insured party.