File #: BL2024-499, **Version:** 1

An ordinance authorizing Vanderbilt University to construct and install aboveground and underground encroachments into the public right-of-way at 25th Avenue, and a small portion of Highland Avenue. (Proposal No. 2024M-012EN-001).

WHEREAS, Vanderbilt University plans to construct, install and maintain private utilities encroaching into the public right-of-way at 25th Avenue, and a small portion of Highland Avenue; 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 Vanderbilt University 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 underground and aboveground encroachment; and,

WHEREAS, Metropolitan Code of Laws § 13.08.030 allows the Council of the Metropolitan Government of Nashville and Davidson County 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. That subject to the requirements, limitations and conditions contained herein, Vanderbilt University is hereby granted the privilege to construct and maintain above ground and underground encroachments as described in Proposal No. 2024M-012EN-001, in accordance with the plans 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 aboveground and underground encroachments under Proposal No. 2024M-012EN-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 Vanderbilt University.

Section 3. That construction and maintenance of said aboveground and underground encroachments under Proposal No. 2024M-012EN-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 Ordinance confers upon Vanderbilt University 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, Vanderbilt University, its successors and assigns, shall remove said aboveground and underground encroachment at their own expense.

Section 5. Vanderbilt University shall pay all costs incident to the construction, installation, operation and maintenance of said aboveground and underground encroachments under Proposal No. 2024M-012EN-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 aboveground and underground encroachments 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. Vanderbilt University 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 aboveground and underground encroachments, and for any street closure.

Section 6. That the authority granted to Vanderbilt University, 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. Vanderbilt University 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 aboveground and underground encroachments. 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 Vanderbilt University of all provisions of this Ordinance shall be determined by the beginning of work.

Section 9. The authority granted pursuant to this Ordinance 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 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 Vanderbilt University to construct, install, and maintain underground and aboveground encroachments into the public right-of-way at 25th Avenue and a small portion of Highland Avenue. The encroachments would consist of private utilities that would encroach into the public right of way.

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.

This ordinance has been approved by the Planning Commission.

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