

ORDINANCE NO. _____

An ordinance authorizing ECG East Bank, LP to construct and install aerial, aboveground, and underground encroachments at 501 South 2nd Street. (Proposal No. 2026M-010EN-001).

WHEREAS, ECG East Bank, LP plans to construct, install, and maintain an awning overhang, irrigation lines, private planters, bike racks and seating, encroaching into the public right-of-way at 501 South 2nd Street; 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 ECG East Bank, LP, 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 aerial and underground 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, ECG East Bank, LP is hereby granted the privilege to construct and maintain aerial, aboveground, and underground encroachments, as described in Proposal No. 2026M-010EN-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 aerial, aboveground, and underground encroachments under Proposal No. 2026M-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 ECG East Bank, LP.

Section 3. That construction and maintenance of said aerial, above-ground, and underground encroachments under Proposal number 2026M-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 4. That this Ordinance confers upon ECG East Bank, LP 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

{N0766742.1}

such repeal by said Metropolitan Government, ECG East Bank, LP, its successors and assigns, shall remove said aerial, aboveground, and underground encroachments at their own expense.

Section 5. ECG East Bank, LP shall pay all costs incident to the construction, installation, operation and maintenance of said aerial and underground encroachments under Proposal No. 2026M-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 aerial 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. ECG East Bank, LP 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, aboveground, and underground encroachments, and for any street closure.

Section 6. That the authority granted to ECG East Bank, LP, 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. ECG East Bank, LP 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 aerial, 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 ECG East Bank, LP 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.

RECOMMENDED BY:

DocuSigned by:
Phillip Jones

AD2052A55F9C45F...
Phillip Jones, Interim Director
Nashville Department of Transportation
and Multimodal Infrastructure

INTRODUCED BY:

APPROVED AS TO INSURANCE:

DocuSigned by:
Lora Barkenbus Fox

131CC80E30304AB...
Insurance and Claims Manager

Member(s) of Council

APPROVED AS TO FORM
AND LEGALITY:

DocuSigned by:
Erica Haber

D4F54A5815BD454...
Assistant Metropolitan Attorney

AGENCY CUSTOMER ID: 00031154

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ___ of ___

AGENCY Robins Insurance Agency, Inc		NAMED INSURED Elmington Capital Group, LLC	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

applies in the event of cancellation or non-renewal of coverage, except ten (10) days notice for non-payment of premium. Umbrella/Excess Liability follow form. All coverage is subject to policy terms, conditions and exclusions.

ACORD 101 (2008/01)

© 2008 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

{N0766742.1}