

ORDINANCE NO. BL2020-309

An Ordinance authorizing SMH Holdings, LLC to install, construct and maintain underground encroachments in the right-of-way located at 1708 Pearl Street. (Proposal No. 2020M-031EN-001).

WHEREAS, SMH Holdings, LLC, plans to install, construct and maintain underground encroachments in the right-of-way of 1708 Pearl Street, comprised of an inground irrigation system, under proposal No. 2020M-031EN-001; and,

WHEREAS, SMH Holdings, 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 encroachments under proposal No. 2020M-031EN-001.

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 and in the attached License Agreement, SMH Holdings, LLC is hereby granted the privilege to construct and maintain said encroachments under proposal No. 2020M-031EN-001, in accordance with the plans which are on file in the office of the Director of Public Works, and which are more particularly described by lines, words and figures on the attached sketches which are attached to and made a part of this Ordinance.

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said encroachments under proposal No. 2020M-031EN-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 SMH Holdings, LLC.

Section 3. That plans and specifications for said encroachments under proposal No. 2020M-031EN-001 shall be submitted to the Director of Public Works of The Metropolitan Government of Nashville and Davidson County for approval before any work is begun; and all work, material, and other details of said installation shall be approved by the Director of Public Works prior to its use by SMH Holdings, LLC.

Section 4. That construction and maintenance of said encroachments under proposal No. 2020M-031EN-001 shall be under the direction, supervision and control of the Director of Public Works, and their installation, when completed, must be approved by said Director.

Section 5. That this Ordinance confers upon SMH Holdings, 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 Metropolitan Government, SMH Holdings, LLC, its successors and assigns, shall remove said encroachments at their own expense.

Section 6. SMH Holdings, LLC, its successors and assigns, shall pay all cost incident to the construction, installation, operation and maintenance of said encroachments under proposal No. 2020M-031EN-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 the construction, installation, operation and maintenance of said 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. SMH Holdings, LLC, its successors and assigns, 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 encroachments, and for any street closure.

Section 7. That the authority granted to SMH Holdings, 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. SMH Holdings, 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 ten million (\$10,000,000) 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 the Department of Public Works 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 SMH Holdings, 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 Department of Public Works.

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.

RECOMMENDED BY:

Mark A. Sturtevant

Mark Sturtevant, Director
Department of Public Works

APPROVED AS TO FORM
AND LEGALITY:

P. J. Saha

Assistant Metropolitan Attorney

INTRODUCED BY:

Thomas J. Bond

Kathleen D. Murphy

Angie E. Henderson

LICENSE AGREEMENT FOR PRIVATE ENCROACHMENTS
INTO THE PUBLIC RIGHT OF WAY

I/We, SHM Holdings, LLC, in consideration of the Resolution No. BL2020-309, to construct, maintain, install and/or operate an encroachment into, onto, over, or under the public right of way located at in Nashville, Davidson County, Tennessee, do hereby, for myself, my agents, customers, and assigns, waive and release and hold harmless The Metropolitan Government of Nashville and Davidson County, its agents, employees, and assigns from any and all claims, rights, or demands for damages that may arise from my/our use, construction and/or maintenance of the encroachment, to wit: (SEE ATTACHED DESCRIPTION OF ENCROACHMENT). I/We hereby certify to the Metropolitan Government of Nashville and Davidson County that I/We have executed a bond or liability insurance policy in such amount as agreed upon by the Director of Public Works and the Metropolitan Attorney, and in the form approved by the Metropolitan Attorney (per Metropolitan Code Section 38-1-1), which operates to indemnify and save The Metropolitan Government of Nashville and Davidson County harmless from all claims or demands that may result to persons or property by reason of the construction, operations or maintenance of the encroachment. I/We further agree that my/our obligations hereunder may not be assigned except upon approval of the Director of Public Works and the Metropolitan Attorney. I/We further acknowledge that any action that results in a failure to maintain said bond or liability insurance for the protection of The Metropolitan Government of Nashville and Davidson County shall operate to the granting of a lien to The Metropolitan Government of Nashville and Davidson County in the amount of the last effective bond/insurance policy. Said insurance or bond may not be cancelable or expirable except on 30 days notice to the Director of Public Works.

I/We further recognize that the license granted hereby is revocable by The Metropolitan Government upon recommendation of the Director of Public Works and approval by resolution of the Metropolitan County Council if it is determined to be necessary to the public welfare and convenience. In the event the Metropolitan Government revokes this license as contemplated by this paragraph, licensee will not be entitled to any compensation of any kind. This license shall also be strictly subject to the right of way easement owned by The Metropolitan Government. I/We agree to maintain, construct and use the encroachment in such a way as will not interfere with the rights and duties of the Metropolitan Government

as owner of the right of way. Said interference shall be additional grounds for revocation of the license for encroachment. I/We agree to pay the cost of construction, maintenance, use, as well as relocations cost of said encroachment. Licensee's failure to complete construction of the contemplated encroachment within 36 months of the date of approval by the Metropolitan Council will cause this license to terminate automatically. In the event the encroachment contemplated by this license is substantially destroyed, this license shall terminate unless fully restored by licensee within 36 months from the date of such destruction. In the event this license is revoked or terminated for any reason, licensee shall restore all public property to the condition obtaining at the time the license became effective at licensee's sole cost and expense.

DATE: 4/3/20

Robert D. [Signature]
Pearl St Family Partners
1708 Pearl St
(Address of Property)
Nashville TN
(City and State)

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Sworn to and subscribed before

Me this 3 day of April, 2020

[Signature]
(NOTARY PUBLIC)



My Commission Expires: 7/9/2022

