



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119304

Record No.: CB 119304

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125655

In Control: City Clerk

File Created: 03/19/2018

Final Action: 08/24/2018

**Title:** AN ORDINANCE granting Swedish Health Services permission to continue operating and maintaining a pedestrian tunnel under and across Cherry Street, between Minor Avenue and Broadway for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Sponsors: O'Brien

Mayor's Signature:

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: amy.gray@seattle.gov

Filing Requirements/Dept Action:

### History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	06/12/2018	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	06/12/2018	sent for review	Council President's Office			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Council President's Office						
	<b>Notes:</b>						
1	Council President's Office	06/22/2018	sent for review	Sustainability and Transportation Committee			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Sustainability and Transportation Committee						
	<b>Notes:</b>						

Legislative Summary Continued (CB 119304)

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1	City Council	07/16/2018	referred	Sustainability and Transportation Committee	
	<b>Action Text:</b>	The Council Bill (CB) was referred. to the Sustainability and Transportation Committee			
	<b>Notes:</b>				
1	Sustainability and Transportation Committee	07/17/2018	held		
	<b>Action Text:</b>	The Council Bill (CB) was held.			
	<b>Notes:</b>				
1	Sustainability and Transportation Committee	08/07/2018	pass		Pass
	<b>Action Text:</b>	The Committee recommends that City Council pass the Council Bill (CB).			
	<b>Notes:</b>	In Favor: 2 Chair O'Brien, Vice Chair Johnson Opposed: 0			
1	City Council	08/13/2018	passed		Pass
	<b>Action Text:</b>	The Council Bill (CB) was passed by the following vote, and the President signed the Bill:			
		In Favor: 7 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien			
		Opposed: 0			
		Absent(NV): 1 Councilmember Sawant			
1	City Clerk	08/15/2018	submitted for Mayor's signature	Mayor	
1	Mayor	08/17/2018	Signed		
1	Mayor	08/24/2018	returned	City Clerk	
1	City Clerk	08/24/2018	attested by City Clerk		
	<b>Action Text:</b>	The Ordinance (Ord) was attested by City Clerk.			
	<b>Notes:</b>				

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CITY OF SEATTLE

ORDINANCE 125655

COUNCIL BILL 119304

AN ORDINANCE granting Swedish Health Services permission to continue operating and maintaining a pedestrian tunnel under and across Cherry Street, between Minor Avenue and Broadway for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 112375, the City of Seattle (“City”) granted permission to Swedish Hospital Medical Center to construct, maintain, and operate a pedestrian tunnel under and across Cherry Street, approximately one-hundred and eighty feet east of Minor Avenue;

and

WHEREAS, permission authorized by Ordinance 112375 was renewed by Resolution 29205 and amended by Resolution 30375 and Ordinance 121855; and

WHEREAS, the permission authorized by Ordinance 112375 ended on August 30, 2015; and

WHEREAS, Swedish Health Services applied to the Director of Transportation to continue operating the pedestrian tunnel and has satisfied all the terms of the original authorizing ordinance as amended; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the pedestrian tunnel to legally occupy a portion of the public right-of-way; NOW,

THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to Swedish Health Services, and its successors and assigns as approved by the Director of the Seattle

1 Department of Transportation (“Director”) according to Section 14 of this ordinance (the party  
2 named above and each such approved successor and assign is referred to as “Permittee”), to  
3 operate and maintain a pedestrian tunnel, including all related appurtenances, adjacent in whole  
4 or in part to the property legally described as:

5 PARCEL 12

6  
7 LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 95, TERRY’S ADDITION TO THE  
8 TOWN OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME  
9 1 OF PLATS, PAGE 87, RECORDS OF KING COUNTY, WASHINGTON.

10  
11 PARCEL 13

12  
13 LOTS 6 AND 7, BLOCK 95, TERRY’S ADDITION TO THE TOWN OF SEATTLE,  
14 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 87,  
15 RECORDS OF KING COUNTY, WASHINGTON.

16  
17 PARCEL 14

18  
19 LOT 8, BLOCK 95, TERRY’S ADDITION TO THE TOWN OF SEATTLE,  
20 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 87,  
21 RECORDS OF KING COUNTY, WASHINGTON.

22  
23 TOGETHER WITH:

24  
25 BLOCK 95, TERRY’S ADDITION TO THE TOWN OF SEATTLE, ACCORDING TO  
26 THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 87, RECORDS OF  
27 KING COUNTY, WASHINGTON; CONTAINING AN AREA OF 3,841 SQUARE FEET OR  
28 0882 ACRES, MORE OR LESS; SITUATE IN THE CITY OF SEATTLE, KING COUNTY,  
29 WASHINGTON.

30  
31 PARCEL 1

32  
33 LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 120, A.A. DENNY’S ADDITION TO  
34 THE CITY OF SEATTLE, ACORDING TO THE PLAT THEREOF RECORDED IN  
35 VOLUME 6 OF PLATS, PAGE 40, IN KING COUNTY, WASHINGTON.

36  
37 TOGETHER WITH VACATED ALLEY IN SAID BLOCK 120, AS DESCRIBED AND  
38 VACATED UNDER ORDINANCE NUMBER 53208 IN THE CITY OF SEATTLE;

39  
40 AND TOGETHER WITH THE SOUTHWESTERLY HALF OF VACATED SUMMIT  
41 AVE ADJACENT TO SAID BLOCK, LYING SOUTHEASTERLY OF THE SOUTHEAST

1 LINE OF COLUMBIA STREET, AS DESCRIBED AND VACATED UNDER ORDINANCE  
2 89570 OF THE CITY OF SEATTLE;

3  
4 AND THAT PORTION OF COLUMBIA STREET AND OF SUMMIT AVENUE AS  
5 VACATED UNDER ORDINANCE NUMBER 101585 OF THE CITY OF SEATTLE, AND  
6 DESCRIBED AS FOLLOWS:

7  
8 BEGINNING AT THE MOST SOUTHERLY CORNER OF BLOCK 8, BLOCK 131,  
9 A.A. DENNY'S BROADWAY ADDITION, AS RECORDED IN VOLUME 6 OF PLATS,  
10 PAGE 40, RECORDS OF KING COUNTY, WASHINGTON; THENCE SOUTH 59°22'43"  
11 WEST ALONG THE NORTHWESTERLY LINE OF COLUMBIA STREET TO THE MOST  
12 SOUTHERLY CORNER OF LOT 8, BLOCK 120, SAID ADDITION; THENCE SOUTH  
13 30°35'29" EAST ALONG THE PRODUCTION OF THE SOUTHWESTERLY LINE OF SAID  
14 LOT, 66 FEET TO THE MOST WESTERLY CORNER OF BLOCK 101, TERRY'S SECOND  
15 ADDITION, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 87, RECORDS OF KING  
16 COUNTY, WASHINGTON; THENCE NORTH 59°22'43" EAST ALONG THE  
17 NORTHWESTERLY LINE OF SAID BLOCK TO THE MOST NORTHERLY CORNER  
18 THEREOF; THENCE NORTH 30°37'02" WEST ALONG THE PRODUCTION OF THE  
19 NORTHEASTERLY LINE OF SAID BLOCK, 0.012 FEET TO A POINT OF CURVATURE;  
20 THENCE NORTHWESTERLY, NORTHERLY, AND NORTHEASTERLY ALONG A  
21 CURVE TO THE RIGHT, HAVING A RADIUS OF 66 FEET, A DISTANCE OF 103.66 FEET  
22 TO A POINT OF TANGENCY ON THE NORTHWESTERLY LINE OF COLUMBIA  
23 STREET, SAID POINT BEING THE BEGINNING;

24  
25 LOTS 1, 2, 3, AND 4, BLOCK 101, TERRY'S SECOND ADDITION TO THE TOWN  
26 OF SEATTLE ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
27 PLATS, PAGE 87, IN KING COUNTY, WASHINGTON;

28  
29 TOGETHER WITH VACATED ALLEY LYING BETWEEN SAID LOTS IN BLOCK  
30 101, AS DESCRIBED AND VACATED UNDER ORDINANCE NUMBER 5956 OF THE  
31 CITY OF SEATTLE;

32  
33 EXCEPT THAT PORTION OF SAID LOTS 3 AND 4 AND VACATED ALLEY  
34 CONVEYED TO THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING  
35 NUMBER 7211170618;

36  
37 TOGETHER WITH THE NORTHWESTERLY HALF OF VACATED PUBLIC  
38 WALKWAY IN SAID BLOCK 101, AS DESCRIBED AND VACATED UNDER  
39 ORDINANCE NUMBER 110712 OF THE CITY OF SEATTLE;

40  
41 for the purposes of providing a pedestrian connection between Swedish Hospital and the  
42 Swedish Orthopedic Institute to transport sterile hospital materials, including equipment and

1 surgical supplies, as well as staff from Swedish Hospital and the Swedish Orthopedic Institute,  
2 including clinical support services.

3       Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting  
4 on August 31, 2015 and ending at 11:59 p.m. on August 30, 2025. Upon written application  
5 made by the Permittee at least 180 days before expiration of the term, the Director or the City  
6 Council may renew the permit twice, each time for a successive ten-year term, subject to the  
7 right of the City to require the removal of the pedestrian tunnel or to revise by ordinance any of  
8 the terms and conditions of the permission granted by this ordinance. The total term of the  
9 permission, including renewals, shall not exceed 30 years. The Permittee shall submit any  
10 application for a new permission no later than 180 days prior to the expiration of the then-  
11 existing term.

12       Section 3. **Protection of utilities.** The permission granted is subject to the Permittee  
13 bearing the expense of any protection, support, or relocation of existing utilities deemed  
14 necessary by the owners of the utilities, and the Permittee being responsible for any damage to  
15 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of  
16 pedestrian tunnel and for any consequential damages that may result from any damage to utilities  
17 or interruption in service caused by any of the foregoing.

18       Section 4. **Removal for public use or for cause.** The permission granted is subject to use  
19 of the street right-of-way or other public place (collectively, public place) by the City and the  
20 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves  
21 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial  
22 term or any renewal term, and require the Permittee to remove the pedestrian tunnel, or any part

1 thereof or installation on the public place, at the Permittee's sole cost and expense in the event  
2 that:

3 (a) the City Council determines by ordinance that the space occupied by the pedestrian  
4 tunnel is necessary for any public use or benefit or that the pedestrian tunnel interferes with any  
5 public use or benefit; or

6 (b) the Director determines that use of the pedestrian tunnel has been abandoned; or

7 (c) the Director determines that any term or condition of this ordinance has been violated,  
8 and the violation has not been corrected by the Permittee by the compliance date after a written  
9 request by the City to correct the violation (unless a notice to correct is not required due to an  
10 immediate threat to the health or safety of the public).

11 A City Council determination that the space is needed for, or the pedestrian tunnel interferes  
12 with, a public use or benefit is conclusive and final without any right of the Permittee to resort to  
13 the courts to adjudicate the matter.

14 Section 5. **Permittee's obligation to remove and restore.** If the permission granted is  
15 not renewed at the expiration of a term, or if the permission expires without an application for a  
16 new permission being granted, or if the City terminates the permission, then within 90 days after  
17 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance  
18 or order requiring removal of the pedestrian tunnel, the Permittee shall, at its own expense,  
19 remove the pedestrian tunnel and all of the Permittee's equipment and property from the public  
20 place and replace and restore all portions of the public place that may have been disturbed for  
21 any part of the pedestrian tunnel in as good condition for public use as existed prior to  
22 construction of the pedestrian tunnel and in at least as good condition in all respects as the

1 abutting portions of the public place as required by Seattle Department of Transportation  
2 (SDOT) right-of-way restoration standards.

3 Failure to remove the pedestrian tunnel as required by this section is a violation of  
4 Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however,  
5 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this  
6 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this  
7 section, the City may in its sole discretion remove the pedestrian tunnel and restore the public  
8 place at the Permittee's expense, and collect such expense in any manner provided by law.

9 Upon the Permittee's completion of removal and restoration in accordance with this  
10 section, or upon the City's completion of the removal and restoration and the Permittee's  
11 payment to the City for the City's removal and restoration costs, the Director shall then issue a  
12 certification that the Permittee has fulfilled its removal and restoration obligations under this  
13 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public  
14 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the  
15 Permittee from compliance with all or any of the Permittee's obligations under this section.

16 Section 6. **Repair or reconstruction.** The pedestrian tunnel shall remain the exclusive  
17 responsibility of the Permittee and the Permittee shall maintain the pedestrian tunnel in good and  
18 safe condition for the protection of the public. The Permittee shall not reconstruct or repair the  
19 pedestrian tunnel except in strict accordance with plans and specifications approved by the  
20 Director. The Director may, in the Director's judgment, order the pedestrian tunnel reconstructed  
21 or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition  
22 of the pedestrian tunnel; the installation, construction, reconstruction, maintenance, operation, or  
23 repair of any municipally-owned public utilities; or for any other cause.



1           Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and  
2 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
3 Director may order the pedestrian tunnel be removed at the Permittee's expense if the Director  
4 deems that the pedestrian tunnel has become unsafe or creates a risk of injury to the public. If  
5 there is an immediate threat to the health or safety of the public, a notice to correct is not  
6 required.

7           Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the  
8 permission granted, or closure or removal of the pedestrian tunnel, the Permittee shall remain  
9 bound by all of its obligations under this ordinance until the Director has issued a certification  
10 that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this  
11 ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be  
12 bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid  
13 fees assessed under Section 17 of this ordinance.

14           Section 9. **Release, hold harmless, indemnification, and duty to defend.** The  
15 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,  
16 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,  
17 attorneys' fees, or damages of every kind and description arising out of or by reason of the  
18 pedestrian tunnel or this ordinance, including but not limited to claims resulting from injury,  
19 damage, or loss to the Permittee or the Permittee's property.

20           The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its  
21 officials, officers, employees, and agents from and against all claims, actions, suits, liability,  
22 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only  
23 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,

1 or be suffered by any person or property including, without limitation, damage, death, or injury  
2 to members of the public or to the Permittee's officers, agents, employees, contractors, invitees,  
3 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

4 (a) the existence, condition, construction, reconstruction, modification, maintenance,  
5 operation, use, or removal of the pedestrian tunnel or any portion thereof, or the use, occupation,  
6 or restoration of the public place or any portion thereof by the Permittee or any other person or  
7 entity;

8 (b) anything that has been done or may at any time be done by the Permittee by reason of  
9 this ordinance; or

10 (c) the Permittee failing or refusing to strictly comply with every provision of this  
11 ordinance; or arising out of or by reason of the pedestrian tunnel or this ordinance in any other  
12 way.

13 If any suit, action, or claim of the nature described above is filed, instituted, or begun  
14 against the City, the Permittee shall upon notice from the City defend the City, with counsel  
15 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is  
16 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment  
17 within 90 days after the action or suit has been finally determined, if determined adversely to the  
18 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington  
19 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or  
20 result from the concurrent negligence of the City, its agents, contractors, or employees, and the  
21 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and  
22 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,  
23 contractors, or employees.

1 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by  
2 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
3 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain  
4 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that  
5 protects the Permittee and the City from claims and risks of loss from perils that can be insured  
6 against under commercial general liability (CGL) insurance policies in conjunction with:

7 (a) construction, reconstruction, modification, operation, maintenance, use, existence, or  
8 removal of the pedestrian tunnel or any portion thereof, as well as restoration of any  
9 disturbed areas of the public place in connection with removal of the pedestrian  
10 tunnel;

11 (b) the Permittee's activity upon or the use or occupation of the public place described in  
12 Section 1 of this ordinance; and

13 (c) claims and risks in connection with activities performed by the Permittee by virtue of  
14 the permission granted by this ordinance.

15 Minimum insurance requirements are CGL insurance written on an occurrence form at least as  
16 broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to  
17 be placed with an insurer admitted and licensed to conduct business in Washington State or with  
18 a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other  
19 insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to  
20 approval by the City's Risk Manager.

21 Minimal limits of liability shall be: General Liability: \$2,000,000 combined single limit  
22 per occurrence for bodily injury, personal injury, and property damage, and \$4,000,000  
23 aggregate limit. CG 00 01 current edition, including Products and Completed Operations

1 covering Commercial General Liability. Coverage shall name the "City of Seattle, its elected and  
2 appointed officers, officials, employees and agents" as additional insureds for primary and non-  
3 contributory limits of liability subject to a Separation of Insureds clause.

4         Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
5 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
6 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
7 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
8 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall  
9 provide a certified complete copy of the insurance policy to the City promptly upon request.

10         If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager  
11 may be submitted in lieu of the insurance coverage certification required by this ordinance, if  
12 approved in writing by the City's Risk Manager. The letter of certification must provide all  
13 information required by the City's Risk Manager and document, to the satisfaction of the City's  
14 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in  
15 force. After a self-insurance certification is approved, the City may from time to time  
16 subsequently require updated or additional information. The approved self-insured Permittee  
17 must provide 30 days' prior notice of any cancellation or material adverse financial condition of  
18 its self-insurance program. The City may at any time revoke approval of self-insurance and  
19 require the Permittee to obtain and maintain insurance as specified in this ordinance.

20         In the event that the Permittee assigns or transfers the permission granted by this  
21 ordinance, the Permittee shall maintain in effect the insurance required under this section until  
22 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

1           Section 11. **Contractor insurance.** The Permittee shall contractually require that any  
2 and all of its contractors performing work on any premises contemplated by this permit name the  
3 “City of Seattle, its officers, officials, employees and agents” as additional insureds for primary  
4 and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance  
5 and/or self-insurance. The Permittee shall also include in all contract documents with its  
6 contractors a third-party beneficiary provision extending to the City construction indemnities and  
7 warranties granted to the Permittee.

8           Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,  
9 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond  
10 executed by a surety company authorized and qualified to do business in the State of Washington  
11 that is: in the amount of \$130,000 and conditioned with a requirement that the Permittee shall  
12 comply with every provision of this ordinance and with every order the Director issues under this  
13 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued  
14 a certification that the Permittee has fulfilled its removal and restoration obligations under  
15 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in  
16 consultation with the City Attorney’s Office may be substituted for the bond. In the event that  
17 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall  
18 maintain in effect the bond or letter of credit required under this section until the Director has  
19 approved the assignment or transfer pursuant to Section 14 of this ordinance.

20           Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust  
21 minimum liability insurance levels and surety bond requirements during the term of this  
22 permission. If the Director determines that an adjustment is necessary to fully protect the  
23 interests of the City, the Director shall notify the Permittee of the new requirements in writing.

1 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted  
2 insurance and surety bond levels to the Director.

3       Section 14. **Consent for and conditions of assignment or transfer.** When the Property  
4 is transferred, the permission granted by this ordinance shall be assignable and transferable by  
5 operation of law pursuant to Section 20 of this ordinance. Prior to transfer, the successor owner  
6 of the Property shall accept in writing all of the terms and conditions of the permission granted  
7 by this ordinance, and the new owner of the Property shall be conferred with the rights and  
8 obligations of Permittee by this ordinance. Other than a transfer to a new owner of the Property,  
9 Permittee shall not transfer, assign, mortgage, pledge, or encumber the same without the  
10 Director's consent. The Director may approve assignment or transfer of the permission granted  
11 by this ordinance to a successor entity only if the successor or assignee has accepted in writing  
12 all of the terms and conditions of the permission granted by this ordinance; has provided, at the  
13 time of acceptance, the bond and certification of insurance coverage required under this  
14 ordinance; and has paid any fees due under Section 15 and Section 17 of this ordinance. Upon  
15 the Director's approval of an assignment or transfer, the rights and obligations conferred on the  
16 Permittee by this ordinance shall be conferred on the successors and assigns from and after the  
17 effective date of the assignment or transfer. Upon assignment or transfer, the Permittee shall be  
18 released from all obligations conferred on the Permittee by this ordinance that arise after the  
19 assignment or transfer. The release shall have no effect on the Permittee's obligations conferred  
20 by this ordinance during the period the Permittee was subject to this ordinance. Any person or  
21 entity seeking approval for an assignment or transfer of the permission granted by this ordinance  
22 shall provide the Director with a description of the current and anticipated use of the pedestrian  
23 tunnels.

1           Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
2 successor provision, pay the City the amounts charged by the City to inspect the pedestrian  
3 tunnel during construction, reconstruction, repair, annual safety inspections, and at other times  
4 deemed necessary by the City. An inspection or approval of the pedestrian tunnel by the City shall  
5 not be construed as a representation, warranty, or assurance to the Permittee or any other person as  
6 to the safety, soundness, or condition of the pedestrian tunnel. Any failure by the City to require  
7 correction of any defect or condition shall not in any way limit the responsibility or liability of the  
8 Permittee.

9           Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT  
10 at an address specified by the Director, an inspection report every two years that:

- 11           (a) describes the physical dimensions and condition of all load-bearing elements;
- 12           (b) describes any damages or possible repairs to any element of the pedestrian tunnel;
- 13           (c) prioritizes all repairs and establishes a timeframe for making repairs; and
- 14           (d) is stamped by a professional structural engineer licensed in the State of  
15           Washington.

16 In the event of a natural disaster or other event that may have damaged the pedestrian tunnel, the  
17 Director may require that additional reports be submitted by a date established by the Director.  
18 The Permittee has the duty of inspecting and maintaining the pedestrian tunnel. The  
19 responsibility to submit structural inspection reports periodically or as required by the Director  
20 does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt  
21 of any reports by the Director shall not create any duties on the part of the Director. Any failure  
22 by the Director to require a report, or to require action after receipt of any report, shall not waive  
23 or limit the obligations of the Permittee.

1           Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually  
2 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the  
3 Director, an annual fee of \$1,934.06 or as adjusted annually thereafter, for the privileges granted  
4 by this ordinance.

5           Adjustments to the annual fee shall be made in accordance with a term permit fee  
6 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
7 the Director may only increase or decrease the previous year's fee to reflect any inflationary  
8 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
9 adjusting the previous year's fee by the percentage change between the two most recent year-end  
10 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
11 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
12 City Finance Director for credit to the Transportation Fund.

13           Section 18. **Compliance with other laws.** Permittee shall maintain and operate the  
14 pedestrian skybridge in compliance with all applicable federal, state, County and City laws and  
15 regulations. Without limitation, in all matters pertaining to the pedestrian skybridge, the  
16 Permittee shall comply with the City's laws prohibiting discrimination in employment and  
17 contracting including the Seattle Fair Employment Practices Ordinance, SMC Chapter 14.04, and  
18 the Fair Contracting Practices code, SMC Chapter 14.10 (or successor provisions).

19           Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the  
20 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
21 effective date of this ordinance. The Director shall file the written acceptance with the City  
22 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by  
23 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed



1 and forfeited and the Permittee shall, at its own expense, remove the pedestrian skybridge and all  
2 of the Permittee's equipment and property and replace and restore all portions of the public place  
3 as provided in Section 5 of this ordinance.

4           Section 20. **Obligations run with the Property.** The obligations and conditions  
5 imposed on the Permittee by and through this ordinance are covenants that run with the land and  
6 bind subsequent owners of the property adjacent to the public art installation and legally  
7 described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has  
8 approved assignment or transfer of the permission granted herein to such subsequent owner(s).  
9 At the request of the Director, Permittee shall provide to the Director a current title report  
10 showing the identity of all owner(s) of the Property and all encumbrances on the Property. The  
11 Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any  
12 interest in the Property, deliver to the Director upon a form to be supplied by the Director, a  
13 covenant agreement imposing the obligations and conditions set forth in this ordinance, signed  
14 and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the  
15 King County Recorder's Office. The Director shall file the recorded covenant agreement with the  
16 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At  
17 the request of the Director, Permittee shall cause encumbrances on the Property to be  
18 subordinated to the covenant agreement.

19           Section 21. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to  
20 the authority and in compliance with the conditions of this ordinance but prior to the effective  
21 date of the ordinance is ratified and confirmed.

22           Section 22. **Section titles.** Section titles are for convenient reference only and do not  
23 modify or limit the text of a section.

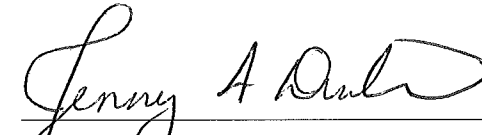
1 Section 23. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 13<sup>th</sup> day of August, 2018,  
5 and signed by me in open session in authentication of its passage this 13<sup>th</sup> day of  
6 August, 2018.

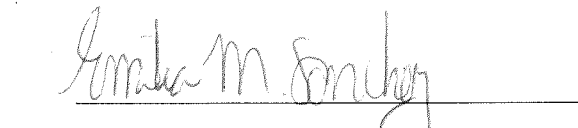
7 

8 President \_\_\_\_\_ of the City Council

9 Approved by me this 17<sup>th</sup> day of August, 2018.

10   
11 Jenny A. Durkan, Mayor

12 Filed by me this 24<sup>th</sup> day of AUGUST, 2018.

13   
14 for Monica Martinez Simmons, City Clerk

15 (Seal)