File #: CB 119520, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting KR Westlake, LLC, permission to maintain and operate a pedestrian skybridge over the alley in the block bordered by Westlake Avenue North, Terry Avenue North, Thomas Street, and Harrison Street, 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; amending Ordinance 122239; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 122239, The City of Seattle ("City") granted permission to Westlake Terry LLC to construct, maintain, and operate a pedestrian skybridge over the alley in the block bounded by Westlake Avenue North, Terry Avenue North, Thomas Street, and Harrison Street; and

WHEREAS, ownership of the skybridge was transferred from Westlake Terry LLC to KR Westlake, LLC in January 2013; and

WHEREAS, KR Westlake, LLC, has applied for permission to maintain and operate a pedestrian skybridge over the alley in the block bordered by Westlake Avenue North, Terry Avenue North, Thomas Street, and Harrison Street; and

WHEREAS, the permission granted by Ordinance 122239 expired on October 24, 2016;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The permission initially granted to Westlake Terry LLC, by Ordinance 122239, and subsequently transferred to KR Westlake Terry, LLC, to maintain and operate a pedestrian skybridge over the alley in the block bordered by Westlake Avenue North, Terry Avenue North, Thomas Street, and Harrison

Street, is renewed for a ten-year period starting October 25, 2016, and ending at 11:59 p.m. on October 24, 2026, upon the terms and conditions set forth in Ordinance 122239, and as further amended by this ordinance.

Section 2. Ordinance 122239 is amended as follows:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle ("City") grants permission ((~~is hereby granted~~)) (also referred to in this ordinance as a permit) to ((~~Westlake Terry LLC~~)) KR Westlake, LLC ("Permittee"), and its successors and assigns as approved by the Director of the Seattle Department of Transportation ("Director") according to Section 14 of this ordinance (the party named above and each such approved successor and assign is referred to as "Permittee"), to maintain and operate a pedestrian skybridge, including all related appurtenances ("pedestrian skybridge") over ((~~and across~~)) the alley in the block bordered by Westlake Avenue North, Terry Avenue North, Thomas Street, and Harrison Street ((~~, for a ten (10) year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted, and providing for acceptance of the permit and conditions~~)), adjacent in whole or in part to the property legally described as:

PARCEL A:

LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 96, D.T. DENNY'S FIFTH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 202, IN KING COUNTY WASHINGTON; EXCEPT THE EAST 5 FEET THEREOF CONVEYED TO THE CITY OF SEATTLE FOR STREET PURPOSES BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 7109090363.

PARCEL B:

LOTS 7, 8 AND THE SOUTH OF LOT 9, BLOCK 96, D.T. DENNY'S FIFTH ADDITION TO NORTH SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 202, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 47549 FOR WESTLAKE AVENUE.

PARCEL C:

LOTS 10, 11 AND 12, BLOCK 96, D.T. DENNY'S FIFTH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PALTS,

PAGE(S) 202, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 12 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 47549 FOR WIDENING OF WESTLAKE AVENUE.

PARCEL D:

THE NORTH HALF OF LOT 9, BLOCK 96, D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 202, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 12 FEET THEREOF HERETOFORE CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 47549, FOR WIDENING OF WESTLAKE AVENUE.

Section 2. **Public benefit.** The permission for the skybridge is conditioned upon the applicant providing a ((~~five-foot~~)) 5-foot setback of the buildings ((~~being~~)) developed ((~~by the current owners, Westlake Terry LLC,~~)) from the property line on Thomas Street and installing art work, landscaping, and a sidewalk within the setback and on the Thomas Street right-of-way, continuing around the corner onto Terry Avenue North, ((~~all~~)) as approved by the Seattle Design Commission. The installation of the art work, landscaping, and sidewalk shall be completed no later than August 31, 2007, and if not ((~~so~~)) completed and maintained for the term of the permit, the Director may order removal of the skybridge in accordance with Section 6 of this ordinance.

Section 3. **Term.** The permission ((~~herein~~)) granted to ((~~the~~)) Permittee ((~~, its successors and assigns, shall be~~)) is for a term of ten (((~~10~~))) years ((~~commencing 30 days after the Mayor's signature,~~)) starting on October 25, 2006 and ((~~terminating~~)) ending at 11:59 p.m. ((~~ten years thereafter; provided however, that upon~~)) on October 24, 2016. Upon written application ((~~of~~)) made by the Permittee at least ((~~thirty (30)~~)) 180 days before expiration of the term, the Director or the City Council may renew the permit ((~~for two (2)~~)) twice, each time for a successive ((~~ten (10)~~)) ten-year term((~~s, provided further that the total term of the permission as originally granted and thus extended~~)) subject to the right of the City to require the removal of the pedestrian skybridge or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The total term of the permission, including renewals, shall not exceed ((~~thirty (30)~~)) 30 years ((~~, subject to the right of The City of Seattle ("City")~~

~~by ordinance to then revise any of the terms and conditions contained herein~~)). The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

Section 4. **Protection of utilities.** The permission granted is ((~~hereby~~)) subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the ((~~utility~~)) utilities, and ((~~shall be done at Permittee's expense with~~)) the Permittee being responsible for any ((~~subsequent~~)) damage to the utilities due to the construction, repair, reconstruction, maintenance, ((~~or~~)) operation, or removal of ((~~said~~)) the pedestrian ((~~bridge~~)) skybridge and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 5. **Removal for public use or for cause.** The permission granted ((~~hereby~~)) is subject to ((~~primary and secondary~~)) use ((~~by the public~~)) of the street right-of-way or other public place (collectively, public place) ((~~for travel and utility purposes, and~~)) by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term, and require the Permittee to remove ((~~said~~)) the pedestrian skybridge, or any part thereof or installation on the public place, at the Permittee's sole cost and expense ((~~in the event that~~)) if:

(a) The City Council determines((~~,~~)) by ordinance((~~,~~)) that the space occupied by the pedestrian skybridge is necessary for any ((~~primary or secondary~~)) public use or benefit((~~,~~)) or that ((~~said~~)) the pedestrian skybridge interferes with any ((~~primary or secondary~~)) public use or benefit; or

(b) The Director determines that use of the pedestrian skybridge has been abandoned; or

(c) The Director determines that any term or condition of this ordinance has been violated, and ((~~such~~)) the violation ((~~is~~)) has not been corrected by the Permittee by the compliance date after ((~~notice of violation has been given by the City~~)) a written request by the City to correct the

violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public).

A City Council determination that the space is ((~~necessary for a primary or secondary~~)) needed for, or the pedestrian skybridge interferes with a public use or benefit ((~~shall be~~)) is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 6. **Permittee's obligation to remove and restore.** ((~~In the event that~~)) If the permission ((~~hereby~~)) granted ((~~extends to its termination in thirty (30) years, or the City orders removal of said pedestrian skybridge pursuant to the terms of this ordinance,~~)) is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within ((~~ninety (90)~~)) 90 days after ((~~such~~)) the expiration((~~,~~)) or termination of the permission, or ((~~order of removal, or~~)) prior to ((~~the~~)) any earlier date stated in an ((~~"Order to Remove", as the case may be,~~)) ordinance or order requiring removal of the pedestrian skybridge, the Permittee shall, at its own expense, remove ((~~said~~)) the pedestrian ((~~bridge~~)) skybridge and ((~~shall~~)) all of the Permittee's equipment and property from the public place and replace and restore all portions of the ((~~street~~)) public place that may have been disturbed for any part of ((~~said~~)) the pedestrian skybridge((~~,~~)) in as good condition for public use as ((~~it was~~)) existed prior to construction of ((~~said~~)) the pedestrian ((~~bridge~~)) skybridge((~~,~~)) and in at least as good condition in all respects as the abutting portions ((~~thereof.~~)) of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

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

collect such expense in any manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the ((~~The~~)) Director shall then issue a ((~~certificate discharging~~)) certification that the Permittee ((~~from responsibility under this ordinance for occurrence after the date of such discharge~~)) has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 7. **Repair or reconstruction.** The pedestrian skybridge shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pedestrian skybridge in good and safe condition for the protection of the public. The Permittee shall not ((~~commence reconstruction, readjustment or repair of said~~)) reconstruct or repair the pedestrian ((~~bridge~~)) skybridge except ((~~under the supervision of, and~~)) in strict accordance with((~~,~~)) plans and specifications approved by the Director. The Director may, in ((~~his/her~~)) the Director's judgment, ((~~may~~)) order ((~~such reconstruction, relocation, readjustment or repair of said~~)) the pedestrian skybridge reconstructed or repaired at the Permittee's ((~~own~~)) cost and expense because of: the deterioration or unsafe condition of ((~~said~~)) the pedestrian skybridge((~~, grade separations, or~~)); the installation, construction, reconstruction, maintenance, operation, or repair of any ((~~and all~~)) municipally-owned public utilities((~~,~~)); or ((~~for~~)) any other cause.

Section 8. **Failure to correct unsafe condition.** After written notice to the Permittee((~~,~~)) and failure of the Permittee to correct ((~~said~~)) an unsafe ((~~or risk prone~~)) condition within the time stated in ((~~such~~)) the notice, the Director may order ((~~said~~)) the pedestrian skybridge be closed or removed at the Permittee's expense if the Director deems that ((~~it~~)) the pedestrian skybridge has become unsafe or

creates a risk of injury to the public. ((~~In a situation in which~~)) If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 9. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of ((~~said~~)) the pedestrian skybridge, the Permittee shall remain bound by all of its obligations under this ordinance until((~~:~~

~~a) said pedestrian skybridge and all of its equipment and property are removed from the street;~~

~~b) the area is cleared and restored in a manner and to a condition satisfactory to the Director; and~~

~~c) The Director certifies that the Permittee has discharged its obligations herein.~~

~~Provided that upon prior notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in his/her sole discretion, excuse the Permittee, conditionally or absolutely, from compliance with all or any of the Permittee's obligations to remove said pedestrian skybridge and its property, and restore disturbed areas.~~)) the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 5 of this ordinance and shall remain liable for any unpaid fees assessed under Section 15 of this ordinance.

Section 10. **Release, hold harmless, indemnification, and duty to defend.** ((~~Said pedestrian skybridge shall remain the exclusive responsibility of the Permittee. The Permittee, by acceptance of the terms set forth in this ordinance and the permission hereby granted, releases the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, with the City, to at all times protect and save harmless the City from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only~~

~~such damages that may result from the negligence of the City), which may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, licensees or its successors and assigns, by reason of the maintenance, operation or use of said pedestrian skybridge, or any portion thereof, or by reason of anything that has been done, or may at any time be done, by the Permittee, its successors or assigns, by reason of this ordinance, or by reason of the Permittee, its successors or assigns, failing or refusing to strictly comply with each and every provision of this ordinance; and if any such suit, action or claim be filed, instituted or begun against the City, the Permittee, its successors or assigns, shall, upon notice thereof from the City, defend the same at its or their sole cost and expense, and in case judgment shall be rendered against the City in any suit or action, the Permittee, its successors or assigns, shall fully satisfy said judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to the City. Provided that if it is determined by a court of competent jurisdiction that RCW 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from concurrent negligence of:~~

~~a) the City, its agents, contractors or employees; and~~

~~b) The Permittee, its agents, contractors, employees or its successors or assigns, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, employees or its successors or assigns.~~)) The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the pedestrian skybridge or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials,

officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

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

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

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

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

Section 11. **Insurance.** For as long as the Permittee((~~, its successors and assigns, shall exercise~~))

exercises any permission granted by this ordinance and until ((~~said pedestrian skybridge is entirely removed from its location as described in Section 1 or until discharged by order of~~)) the Director ((~~as provided in Section 6 of this ordinance,~~)) has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance ((~~policies which fully protect~~)) and/or self-insurance that protects the Permittee and the City from ((~~any and all~~)) claims and risks of any loss from perils ((~~which~~)) that can be insured against under commercial general liability (CGL) insurance ((~~contracts and fire insurance contracts, including any extended coverage endorsements thereto which are customarily available from time to time,~~)) policies in conjunction with:

(a) ((~~construction~~)) Construction, reconstruction, modification, operation, maintenance, use, ((~~or~~)) existence, or removal of ((~~said~~)) the pedestrian skybridge ((~~permitted by this ordinance and of~~)) or any and all portions thereof, as well as restoration of any disturbed areas of the public place in connection with removal of ((~~said~~)) the pedestrian skybridge;

(b) The Permittee's activity upon((~~,~~)) or the use or occupation of((~~,~~)) the ((~~area~~)) public place described in Section 1 of this ordinance((~~,~~)) ; and

(c) ((~~any and all claims~~)) Claims and risks in connection with ((~~and activity~~)) activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements ((~~shall be a policy of comprehensive commercial general liability of a form acceptable to the City~~)) are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City ((~~will require~~)) requires insurance coverage to be placed with ((~~a company~~)) an insurer admitted and licensed to conduct business in Washington State((~~, except that if it is infeasible to obtain such a policy, the City may approve an alternative company~~)) or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is

subject to approval by the City's Risk Manager.

Minimum ((~~policy~~)) limits of liability shall be ((~~Two Million Dollars (~~))$2,000,000((~~)~~)) per ((~~O~~))occurrence; ((~~and Four Million Dollars(~~))$4,000,000((~~) annual aggregate each period~~)) General Aggregate; $2,000,000 Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall ((~~specifically name said pedestrian skybridge exposure. Liability coverage shall add by endorsement~~)) include the "City of Seattle, its ((~~elected and appointed~~)) officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause. ((~~Coverage shall contain a Separation of Insured's clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned this coverage part of the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought". They City will not accept a certificate of insurance as evidence of current coverage.~~

~~Evidence of current coverage shall be submitted to the City in the form of a photocopy of the insurance policy declaration page, indicating all endorsements attached hereto, and is a condition of the validity of this permit.~~

~~Whenever in the judgment of the Risk Manager of the City of Seattle, such insurance filed pursuant to the provisions hereof shall be deemed insufficient to fully protect the City of Seattle, the Permittee shall, upon demand by the Risk Manager, furnish additional insurance in such amount as may be specified by the Risk Manager.~~))

Within 60 days after the effective date of the ordinance introduced as Council Bill _____, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to

the Director or to SDOT at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

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

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

Section 12. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing ((~~construction~~)) work on ((~~the~~)) any premises ((~~as~~)) contemplated by this permit((~~,~~)) name the "City of Seattle, its officers, officials, employees and agents" as ((~~an~~)) additional insureds ((~~on all policies of public liability insurance, and~~)) for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents ((~~a~~)) with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee ((~~to the City as well~~)).

Section 13.

A. **Performance bond.** Within ((~~sixty (60(()~~)) 60 days after the effective date of ((~~this~~)) the ordinance introduced as Council Bill _____, the Permittee shall deliver to the Director for filing with the City Clerk a ((~~good and~~)) sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the ((~~sum~~)) amount of ((~~Five Hundred Thousand Dollars ($500,000.00)~~)) $30,000, ((~~executed by a surety company authorized and qualified to do business in the State of Washington~~)) and conditioned with a requirement that the Permittee ((~~will~~)) shall comply with ((~~each and~~)) every provision of this ordinance and with ((~~each and~~)) every order ((~~of~~)) the Director ((~~pursuant thereto; provided, that if the Mayor of the City in his/her judgment shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be necessary to fully protect the City. Said bond shall remain in effect until such time as said pedestrian skybridge is entirely removed from its location as described in Section 1, or until discharged by order of the Director as provided in Section 6 of this ordinance~~)) issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in consultation with the City Attorney's Office may be substituted for the bond. If the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

B. **Adjustment of insurance and bond requirements.** The Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the

date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 14. **Consent for and conditions of assignment or transfer.** When the Property is transferred, ((~~T~~))the permission granted by this ordinance shall be assignable and/or transferable by operation of law pursuant to this section. Prior to transfer, the successor owner of the Property shall accept in writing all of the terms and conditions of the permission granted by this ordinance and the new owner of the Property shall be conferred with the rights and obligations of Permittee by this ordinance. Other than a transfer to a new owner of the Property, Permittee((~~, its successors and assigns,~~)) shall not ((~~assign or~~)) transfer, assign, mortgage, pledge, or encumber the same ((~~any privileges conferred by this ordinance~~)) without the Director's consent ((~~of the City Council by resolution. Notwithstanding anything contained herein to the contrary, consent of the City Council shall not be required for any transfer or assignment of the privileges conferred by this ordinance by way of mortgage, pledge or encumbrance or by way of foreclosure or deed in lieu of foreclosure of any mortgage, pledge or encumbrance. If permission is granted, the assignee or transferee shall be bound by all terms and conditions of this ordinance~~)) , which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee: has accepted in writing all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 15 of this ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the pedestrian skybridge.

Section 15.

A. **Inspection fees.** The Permittee((~~, its successors and assigns,~~)) shall, as provided by SMC Chapter 15.76 or successor provision, pay ((~~to~~)) the City ((~~such~~)) the amounts ((~~as may be justly chargeable~~)) charged by the City ((~~as costs of inspection of said~~)) to inspect the pedestrian skybridge during construction, reconstruction, repair, annual ((~~structural~~)) safety inspections, and at other times deemed necessary ((~~to ensure the safety of said pedestrian skybridge, under the direction of the Director, as provided by Municipal Code Section 15.76~~)) by the City. An inspection or approval of the pedestrian skybridge by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the pedestrian skybridge. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

B. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

(a) describes the physical dimensions and condition of all load-bearing elements;

(b) describes any damages or possible repairs to any element of the pedestrian skybridge;

(c) prioritizes all repairs and establishes a timeframe for making repairs; and

(d) is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of the ordinance introduced as Council Bill 119520. In the event of a natural disaster or other event that may have damaged the pedestrian skybridge, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the pedestrian skybridge. The responsibility to submit structural inspection reports required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive

or limit the obligations of the Permittee.

C. **Annual fee.** Beginning on October 25, 2016, and annually thereafter, the Permittee shall ((~~also~~)) promptly pay to the City ((~~in advance~~)) , upon statements ((~~rendered~~)) or invoices issued by the Director, an annual fee ((~~for the privileges granted and exercised hereunder of Six Thousand Five Hundred Ninety-Three Dollars($6,593.00) beginning the effective date of this ordinance and annually thereafter~~)) of $13,440 or as adjusted annually thereafter, for the privileges granted by this ordinance.

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

Section 16. **Compliance with other laws.** ((~~The Permittee shall not discriminate against any (1) employee, (2) applicant for employment, or (3) person with respect to the award or referral of a contract or with respect to the conditions, terms, price or performance standards, or other provisions of a contract in connection with the design, architectural or structural engineering work or the construction, repair, or maintenance of said pedestrian skybridge permitted to be erected and/or operated pursuant to this ordinance, on the basis of race, religion, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, age, national origin, or the presence of any sensory, mental or physical handicap unless based upon bona fide occupational qualification. The Permittee shall:~~

~~a) post in conspicuous places available to such employees and applicants for such~~

powered by Legistar™

~~employment, notices setting forth the provisions of this non discrimination clause; and~~

~~b) insert in any contract for work undertaken in connection with the design, architectural or structural engineering work or the repair, construction, maintenance or operation of said pedestrian skybridge referenced in this ordinance language substantially similar to the language contained in this Section 16 and which requires any person or entity entering into such contract to comply with the non discrimination provisions of this Section.~~)) Permittee shall construct, maintain, and operate the pedestrian skybridge in compliance with all applicable federal, state, County, and City laws and regulations. Without limitation, in all matters pertaining to the pedestrian skybridge, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including the Seattle Fair Employment Practices Ordinance, SMC Chapter 14.04, and the Fair Contracting Practices code, SMC Chapter 14.10 (or successor provisions).

Section 17.

A. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the ((~~permission conferred by~~)) terms of this ordinance ((~~and its terms and conditions to the Director~~)) within ((~~sixty (60)~~)) 60 days after the effective date of ((~~this~~)) the ordinance introduced as Council Bill 119520. The ((~~acceptance~~)) Director shall ((~~be filed~~)) file the written acceptance with the City Clerk. If no such acceptance is received ((~~by then~~)) within that 60-day period, the privileges ((~~provided~~)) conferred by this ordinance shall be deemed declined or abandoned((~~;~~)) and the permission ((~~extended, contingent upon its acceptance,~~)) granted deemed lapsed and forfeited, and the Permittee shall, at its own expense, remove the pedestrian skybridge and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 5 of this ordinance.

B. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by this ordinance are covenants that bind the Permittee's heirs, successors, and assigns

regardless of whether the Director has approved an assignment or transfer of the permission granted by this ordinance. The Permittee shall, within 60 days of the effective date of the ordinance introduced as Council Bill 119520, and prior to conveying any interest in the encroachments or improvements that are the subject of this ordinance, deliver to the Director on a form supplied by the Director, a covenant agreement imposing the obligations and conditions in this ordinance, signed and acknowledged by the Permittee, and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number.

Section 17.1. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

* * *

Section 3. **Ratify and confirm.** Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

_____
President _____ of the City Council

Approved by me this _____ day of _____, 2019.

_____
Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

_____
Monica Martinez Simmons, City Clerk

(Seal)