

CITY OF SEATTLE
ORDINANCE 126591
COUNCIL BILL 120301

AN ORDINANCE granting King County permission to continue maintaining and operating two pedestrian tunnels under and across 9th Avenue, between Alder Street and Jefferson Street; repealing Section 8 of Ordinance 123842; and providing for acceptance of the permit and conditions.

WHEREAS, by Ordinance 123842, The City of Seattle granted King County permission to continue maintaining and operating two pedestrian tunnels under and across 9th Avenue, between Alder Street and Jefferson Street, for a 10-year term, renewable for two successive 10-year terms; and

WHEREAS, the permission authorized by Ordinance 123842 was due for renewal on April 19, 2021; and

WHEREAS, since the adoption of Ordinance 123842, the City of Seattle has established a practice for the length of permit to one 15-year term, renewable for one successive 15-year term; and

WHEREAS, reflective of this change King County submitted an application to the Director of Transportation to renew the permission granted by Ordinance 123842 for a 15-year term; and

WHEREAS, the obligations of Ordinance 123842 remain in effect after the ordinance term expires until the encroachment is removed, or King County is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a new ordinance to renew the permission granted; and

1 WHEREAS, King County satisfied all the terms of the original authorizing ordinance and the
2 Director of Transportation recommends that the term permit be renewed for 15 years
3 subject to the terms identified in this ordinance; NOW, THEREFORE,

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

5 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of
6 Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to King County,
7 and its successors and assigns as approved by the Director of the Seattle Department of
8 Transportation (“Director”) according to Section 14 of this ordinance (the party named above
9 and each such approved successor and assign are referred to as “Permittee”), to continue
10 maintaining and operating two existing pedestrian tunnels under and across 9th Avenue, between
11 Alder Street and Jefferson Street. The two pedestrian tunnels are adjacent in whole or in part to
12 the properties legally described as:

13 Lots 2, 3, 6, and 7, Block 66, together with vacated Terrace Street per Vacation
14 Ordinance No. 58470, Terry's First Addition to the City of Seattle; and Lots 1, 4, 5, and
15 8, Block 83, together with vacated Terrace Street per Vacation Ordinance No. 58470,
16 Terry's Second Addition to the City of Seattle.
17

18 Section 2. **Term.** The permission granted to the Permittee is for a second and final
19 renewed term of 15 years starting on the effective date of this ordinance and ending at 11:59 p.m.
20 on the fifteenth year. The total term of the permission, including renewals, shall not exceed 30
21 years. The Permittee shall submit any application for a new permission no later than one year
22 prior to the expiration of the then-existing term.

23 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
24 bearing the expense of any protection, support, or relocation of existing utilities deemed
25 necessary by the owners of the utilities, and the Permittee being responsible for any damage to
26 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of

1 the existing pedestrian tunnels and for any consequential damages that may result from any
2 damage to utilities or interruption in service caused by any of the foregoing.

3 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
4 of the street right-of-way or other public place (collectively, “public place”) by the City and the
5 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves
6 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial
7 term or any renewal term, and require the Permittee to remove the existing pedestrian tunnels, or
8 any part thereof or installation on the public place, at the Permittee’s sole cost and expense in the
9 event that:

10 A. The City Council determines by ordinance that the space occupied by the existing
11 pedestrian tunnels is necessary for any public use or benefit or that the existing pedestrian
12 tunnels interferes with any public use or benefit; or

13 B. The Director determines that use of the existing pedestrian tunnels has been
14 abandoned; or

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

19 A City Council determination that the space is needed for, or the existing pedestrian tunnels
20 interferes with, a public use or benefit is conclusive and final without any right of the Permittee
21 to resort to the courts to adjudicate the matter.

22 Section 5. **Permittee’s obligation to remove and restore.** If the permission granted is
23 not renewed at the expiration of a term, or if the permission expires without an application for a

1 new permission being granted, or if the City terminates the permission, then within 90 days after
2 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance
3 or order requiring removal of the existing pedestrian tunnels, the Permittee shall, at its own
4 expense, remove the existing pedestrian tunnels and all of the Permittee's equipment and
5 property from the public place and replace and restore all portions of the public place that may
6 have been disturbed for any part of the existing pedestrian tunnels in as good condition for public
7 use as existed prior to construction of the existing pedestrian tunnels and in at least as good
8 condition in all respects as the abutting portions of the public place as required by Seattle
9 Department of Transportation (SDOT) right-of-way restoration standards.

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

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

1 Section 6. **Repair or reconstruction.** The existing pedestrian tunnels shall remain the
2 exclusive responsibility of the Permittee and the Permittee shall maintain the existing pedestrian
3 tunnels in good and safe condition for the protection of the public. The Permittee shall not
4 reconstruct or repair the existing pedestrian tunnels except in strict accordance with plans and
5 specifications approved by the Director. The Director may, in the Director’s judgment, order the
6 existing pedestrian tunnels reconstructed or repaired at the Permittee’s cost and expense: because
7 of the deterioration of the existing pedestrian tunnels; because of the installation, construction,
8 reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or
9 for any other cause.

10 Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and
11 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the
12 Director may order the existing pedestrian tunnels be removed at the Permittee’s expense if the
13 Director deems that the existing pedestrian tunnels create a risk of injury to the public. If there is
14 an immediate threat to the health or safety of the public, a notice to correct is not required.

15 Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the
16 permission granted, or removal of the existing pedestrian tunnels, the Permittee shall remain
17 bound by all of its obligations under this ordinance until the Director has issued a certification
18 that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this
19 ordinance, or the Seattle City Council passes a new ordinance to renew the permission granted
20 and/or establish a new term. Notwithstanding the issuance of that certification, the Permittee
21 shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain
22 liable for any unpaid fees assessed under Section 15 and Section 17 of this ordinance.

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

7 The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its
8 officials, officers, employees, and agents from and against all claims, actions, suits, liability,
9 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only
10 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,
11 or be suffered by any person or property including, without limitation, damage, death or injury to
12 members of the public or to the Permittee's officers, agents, employees, contractors, invitees,
13 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

14 A. The existence, condition, construction, reconstruction, modification, maintenance,
15 operation, use, or removal of the existing pedestrian tunnels;

16 B. Anything that has been done or may at any time be done by the Permittee by reason of
17 this ordinance; or

18 C. The Permittee failing or refusing to strictly comply with every provision of this
19 ordinance; or arising out of or by reason of the existing pedestrian tunnels or this ordinance in
20 any other way.

21 If any suit, action, or claim of the nature described above is filed, instituted, or begun
22 against the City, the Permittee shall upon notice from the City defend the City, with counsel
23 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is

1 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment
2 within 90 days after the action or suit has been finally determined, if determined adversely to the
3 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington
4 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
5 result from the concurrent negligence of the City, its agents, contractors, or employees, and the
6 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and
7 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,
8 contractors, or employees.

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

15 A. Construction, reconstruction, modification, operation, maintenance, use, existence, or
16 removal of the existing pedestrian tunnels, as well as restoration of any disturbed areas of the
17 public place in connection with removal of the existing pedestrian tunnels;

18 B. The Permittee's activity upon or the use or occupation of the public place described in
19 Section 1 of this ordinance; and

20 C. Claims and risks in connection with activities performed by the Permittee by virtue of
21 the permission granted by this ordinance.

22 Minimum insurance requirements are CGL insurance written on an occurrence form at
23 least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance

1 coverage to be placed with an insurer admitted and licensed to conduct business in Washington
2 State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with
3 any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject
4 to approval by the City’s Risk Manager.

5 Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General
6 Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises
7 Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the “City
8 of Seattle, its officers, officials, employees and agents” as additional insureds for primary and
9 non-contributory limits of liability subject to a Separation of Insureds clause.

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

16 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
17 may be submitted in lieu of the insurance coverage certification required by this ordinance, if
18 approved in writing by the City’s Risk Manager. The letter of certification must provide all
19 information required by the City’s Risk Manager and document, to the satisfaction of the City’s
20 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in
21 force. After a self-insurance certification is approved, the City may from time to time
22 subsequently require updated or additional information. The approved self-insured Permittee
23 must provide 30 days’ prior notice of any cancellation or material adverse financial condition of

1 its self-insurance program. The City may at any time revoke approval of self-insurance and
2 require the Permittee to obtain and maintain insurance as specified in this ordinance.

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

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

13 Section 12. **Performance bond.** In the event that the Permittee seeks to assign or transfer
14 the permission granted by this ordinance, the Director in consultation with the City Attorney’s
15 Office, may determine that a performance bond is necessary to adequately protect the City’s
16 interests, in which case the successor entity shall deliver to the Director for filing with the City
17 Clerk, as a condition of approval of the assignment or transfer within 60 days of notification of
18 such determination, a sufficient bond executed by a surety company authorized and qualified to
19 do business in the State of Washington that is in the amount determined by the Director in
20 consultation with the City Attorney’s Office, and conditioned with a requirement that the
21 successor entity shall comply with every provision of this ordinance and with every order the
22 Director issues under this ordinance. The successor entity shall ensure that the bond remains in
23 effect until the Director has issued a certification that the successor entity has fulfilled its

1 removal and restoration obligations under Section 5. An irrevocable letter of credit approved by
2 the SDOT Director in consultation with the City Attorney’s Office may be substituted for the
3 bond.

4 Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust
5 minimum liability insurance levels and surety bond requirements during the term of this
6 permission. If the Director determines that an adjustment is necessary to fully protect the
7 interests of the City, the Director shall notify the Permittee of the new requirements in writing.
8 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted
9 insurance and surety bond levels to the Director.

10 Section 14. **Consent for and conditions of assignment or transfer.** When the Property
11 is transferred, the permission granted by this ordinance shall be assignable and transferable by
12 operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-
13 way constitutes the Permittee’s acceptance of the terms of this ordinance, and the new owner
14 shall be conferred with the rights and obligations of the Permittee by this ordinance. Other than a
15 transfer to a new owner of the Property, the Permittee shall not transfer, assign, mortgage, pledge
16 or encumber the same without the Director’s consent, which the Director shall not unreasonably
17 refuse. The Director may approve assignment or transfer of the permission granted by this
18 ordinance to a successor entity only if the successor or assignee has provided, at the time of the
19 assignment or transfer, the bond and certification of insurance coverage required under this
20 ordinance; and has paid any fees due under Section 15 and Section 17 of this ordinance. Upon
21 the Director’s approval of an assignment or transfer, the rights and obligations conferred on the
22 Permittee by this ordinance shall be conferred on the successors and assigns. Any person or
23 entity seeking approval for an assignment or transfer of the permission granted by this ordinance

1 shall provide the Director with a description of the current and anticipated use of the existing
2 pedestrian tunnels.

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

11 Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT
12 at an address specified by the Director, an inspection report that:

- 13 A. Describes the physical dimensions and condition of all load-bearing elements;
14 B. Describes any damages or possible repairs to any element of the existing pedestrian
15 tunnels;
16 C. Prioritizes all repairs and establishes a timeframe for making repairs; and
17 D. Is stamped by a professional structural engineer licensed in the State of Washington.

18 A report meeting the foregoing requirements shall be submitted within 60 days after the
19 effective date of this ordinance; subsequent reports shall be submitted every two years, provided
20 that, in the event of a natural disaster or other event that may have damaged the existing
21 pedestrian tunnels, the Director may require that additional reports be submitted by a date
22 established by the Director. The Permittee has the duty of inspecting and maintaining the
23 existing pedestrian tunnels. The responsibility to submit structural inspection reports periodically

1 or as required by the Director does not waive or alter any of the Permittee's other obligations
2 under this ordinance. The receipt of any reports by the Director shall not create any duties on the
3 part of the Director. Any failure by the Director to require a report, or to require action after
4 receipt of any report, shall not waive or limit the obligations of the Permittee.

5 Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee
6 shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City,
7 upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use
8 and Occupation fee of \$7,508, or as adjusted annually thereafter, for the privileges granted by
9 this ordinance.

10 Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a
11 term permit fee schedule adopted by the City Council and may be made every year. In the
12 absence of a schedule, the Director may only increase or decrease the previous year's fee to
13 reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment
14 will be calculated by adjusting the previous year's fee by the percentage change between the two
15 most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-
16 Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall
17 pay any other applicable fees, including fees for reviewing applications to renew the permit after
18 expiration of the first term. All payments shall be made to the City Finance Director for credit to
19 the Transportation Fund.

20 Section 18. **Compliance with other laws.** The Permittee shall construct, maintain, and
21 operate the existing pedestrian tunnels in compliance with all applicable federal, state, County,
22 and City laws and regulations. Without limitation, in all matters pertaining to the existing
23 pedestrian tunnel, the Permittee shall comply with the City's laws prohibiting discrimination in

1 employment and contracting including Seattle’s Fair Employment Practices Ordinance, Chapter
2 14.04, and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

3 **Section 19. Acceptance of terms and conditions.** The Permittee shall provide evidence
4 of insurance coverage required by Section 10 of this ordinance, the bond as required by Section
5 12 of this ordinance, and the covenant agreement required by Section 20 of this ordinance within
6 60 days after the effective date of this ordinance. Continued occupation of the right-of-way
7 constitutes the Permittee’s acceptance of the terms of this ordinance.

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


1 Section 21. **Section titles.** Section titles are for convenient reference only and do not
2 modify or limit the text of a section.

3 Section 22. **Repeal of Section 8 of Ordinance 123842.** Section 8 of Ordinance 123842 is
4 repealed.


5

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 24th day of May, 2022,
5 and signed by me in open session in authentication of its passage this 24th day of
6 May, 2022.

7 
8 _____
President _____ of the City Council

9 Approved / returned unsigned / vetoed this 26th day of May, 2022.

10 
11 _____
Bruce A. Harrell, Mayor

12 Filed by me this 26th day of May, 2022.

13 
14 _____
Monica Martinez Simmons, City Clerk

15 (Seal)

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Attachments: