Legislation Details (With Text)

File #:	CB 120290 **Version:** 1	**Name:**	CB 120290
Type:	Ordinance (Ord)	**Status:**	Passed
		In control:	City Clerk
On agenda:	4/19/2022		
Final Action:	5/2/2022	**Ord. No.**	Ord 126566
Title:	AN ORDINANCE granting The Boeing Company permission to continue maintaining and operating two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South; repealing Section 8 of Ordinance 123540; and providing for acceptance of the permit and conditions.		
Sponsors:	Alex Pedersen		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Summary Att A - Boeing Tunnels Area Map, 3. Summary Att B - Boeing Tunnels Photos, 4. Summary Att C - Annual Fee Assessment, 5. Central Staff Memo, 6. Presentation, 7. Signed Ordinance 126566, 8. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
5/2/2022	1	City Clerk	attested by City Clerk	
5/2/2022	1	Mayor	returned	
5/2/2022	1	Mayor	Signed	
4/21/2022	1	City Clerk	submitted for Mayor's signature	
4/19/2022	1	City Council	passed	Pass
4/5/2022	1	Transportation and Seattle Public Utilities	pass	Pass
3/29/2022	1	City Council	referred	
3/21/2022	1	Council President's Office	sent for review	
3/16/2022	1	City Clerk	sent for review	
3/16/2022	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting The Boeing Company permission to continue maintaining and operating two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South; repealing Section 8 of Ordinance 123540; and providing for acceptance of the permit and conditions.

WHEREAS, by Ordinance 123540, the City of Seattle granted The Boeing Company permission to maintain and operate two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal

Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South, for a 10-year term, renewable for two successive 10-year terms; and

WHEREAS, the permission authorized by Ordinance 123540 was due for renewal on November 11, 2020; and

WHEREAS, since the adoption of Ordinance 123540, 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, The Boeing Company submitted an application to the Director of Transportation to renew the permission granted by Ordinance 123540 for a 15-year term; and

WHEREAS, the obligations of Ordinance 123540 remain in effect after the ordinance term expires until the encroachment is removed, or The Boeing Company 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

WHEREAS, The Boeing Company satisfied all the terms of the original authorizing ordinance and the Director of Transportation recommends that the term permit be renewed for 15 years subject to the terms identified in this ordinance; 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 The Boeing Company, 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 are referred to as "Permittee"), to continue maintaining and operating two existing pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South. The pedestrian tunnels are adjacent in whole or in part to the properties legally described as:

A TRACT OF LAND BETWEEN THE DUWAMISH WATERWAY AS ESTABLISHED BY COMMERCIAL WATERWAY DISTRICT NO. 1 OF KING COUNTY, WASHINGTON AND EAST MARGINAL WAY SOUTH IN SECTIONS 28, 29, 32 AND 33, TOWNSHIP 24 NORTH, RANGE 4

EAST, W.M., DESCRIBED AS FOLLOWS; BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF SOUTH WEBSTER STREET, BEING 12 FEET SOUTH OF THE CENTERLINE THEREOF, AND THE SOUTHWESTERLY MARGIN AT EAST MARGINAL WAY SOUTH, BEING 65 FEET SOUTHWESTERLY OF THE CENTERLINE THEREOF; THENCE SOUTH 47°52'17" EAST, ALONG THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH, 221.97 FEET, TO THE WEST MARGIN OF 14TH AVENUE SOUTH; THENCE SOUTH 00°58'43" WEST, ALONG THE WEST MARGIN OF 14TH AVENUE SOUTH BEING 60 FEET IN WIDTH, 543.66 FEET, TO A POINT THAT IS 637.11 FEET NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 13 IN SAID SECTION 29; THENCE SOUTH 88°05'51" EAST; PARALLEL WITH SAID SOUTH LINE, 60.01 FEET TO THE EAST MARGIN OF 14TH AVENUE SOUTH; THENCE NORTH 00°58'43" EAST, ALONG SAID EAST MARGIN, 131.35 FEET; THENCE SOUTH 89°12'41" EAST, A DISTANCE OF 182.89 FEET; THENCE NORTH 00°47'19" EAST, A DISTANCE OF 45.88 FEET; THENCE SOUTH 89°12'41" EAST, A DISTANCE OF 137.92 FEET TO THE WEST MARGIN OF 16TH AVENUE SOUTH; THENCE SOUTH 01°57'52" WEST, ALONG THE SAID WEST MARGIN OF 16TH AVENUE SOUTH, 585.85 FEET, TO A POINT OF CURVE; THENCE CONTINUING ALONG SAID WEST MARGIN ON A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1860.08 FEET, THROUGH A CENTRAL ANGLE OF 11°02'53" AN ARC LENGTH OF 358.67 FEET, TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID WEST MARGIN, SOUTH 13°00'45" WEST 282.75 FEET, TO THE NORTHEAST CORNER OF A PORTION OF 16TH AVENUE SOUTH, AS VACATED BY KING COUNTY ORDINANCE NO. 858 AND FILED IN KING COUNTY RECORDS UNDER RECORDING NO. 7111090468; THENCE SOUTH 76°59'15" EAST, TO THE SOUTHEAST CORNER THEREOF A DISTANCE OF 89.03 FEET; THENCE NORTH 13°00'45 EAST, A DISTANCE OF 121.86 FEET; THENCE NORTH 14°06'06" EAST; A DISTANCE OF 303.66 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 28, WHENCE THE SOUTHWEST SECTION CORNER BEARS SOUTH 88°09'49 EAST, A DISTANCE OF 35.92 FEET; SAID POINT BEING ON A CURVE ON THE EASTERLY MARGIN OF 16TH AVENUE SOUTH FROM WHENCE THE CENTER BEARS NORTH 81°09'46" WEST 1960.08 FEET; THENCE NORTHERLY ALONG SAID EASTERLY MARGIN AND SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'22" AN ARC LENGTH OF 235.12 FEET TO THE PONT OF TANGENCY; THENCE CONTINUING ALONG SAID EASTERLY MARGIN NORTH 01°57'52" EAST 534.65 FEET TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY MARGIN OF SAID EAST MARGINAL WAY SOUTH, BEING 65 FEET DISTANT FROM, AS MEASURED AT RIGHT ANGLES TO, THE CENTERLINE OF SAID EAST MARGINAL WAY SOUTH;

CONTINUED THENCE ALONG SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH ON THE FOLLOWING COURSES: SOUTH 47°52'17" EAST 1189.40 FEET TO THE SOUTH LINE OF SAID SECTION 28; THENCE SOUTH 88°09'49" EAST ALONG SAID SOUTH LINE 23.20 FEET; THENCE SOUTH 47°52'17" EAST 761.80 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2814.67 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°20'43" AN ARC LENGTH 1245.10 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 22°32'06" EAST 165.28 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 825 FEET SOUTHERLY OF, MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE JOHN BUCKLEY DONATION LAND CLAIM NO. 42; THENCE LEAVING SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH AND PROCEEDING ALONG SAID PARALLEL LINE NORTH 89°12'23" WEST 1385.87 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID DUWAMISH WATERWAY, SAID POINT BEING ON A CURVE FROM WHENCE THE CENTER BEARS SOUTH 53°50'05" WEST 1969.12 FEET; THENCE

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NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°41'41" AN ARC LENGTH OF 401.92 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47°51'36" WEST ALONG SAID RIGHT OF WAY LINE 1068.05 FEET TO A POINT ON THE EASTERLY LINE OF THAT 11 FOOT VACATION OF 16TH AVENUE SOUTH AS RECORDED IN VOLUME 38 PAGE 455 OF KING COUNTY COUNCIL RECORDS DATED JUNE 24, 1940; THENCE CONTINUING NORTH 47°51'36" WEST, ALONG SAID EASTERLY LINE OF THE WATERWAY 101.91 FEET, TO THE WESTERLY LINE OF SAID VACATED 16TH AVENUE SOUTH; THENCE CONTINUING NORTH 47°51'36" WEST, ALONG SAID EASTERLY LINE OF SAID WATERWAY 2380.00 FEET TO THE MEDIAN LINE OF SLIP NO. 4 AS DEFINED IN AN AGREEMENT RECORDED UNDER RECORDING NO. 4477307 IN KING COUNTY RECORDS;

CONTINUED THENCE NORTH 56°29'43" EAST, ALONG SAID MEDIAN LINE, 290.45 FEET TO AN ANGLE POINT IN SAID MEDIAN LINE; THENCE NORTH 43°08'07" EAST, ALONG SAID MEDIAN LINE, 293.08 FEET; THENCE SOUTH 51°08'00" EAST, PERPENDICULAR TO VACATED RIVERSIDE AVENUE, 107.50 FEET, TO THE INTERSECTION WITH THE EXTENSION OF THE SOUTH LINE OF LOT 7 BLOCK 43 OF RIVERPARK AS FILED IN KING COUNTY RECORDS, IN VOLUME 7 OF PLATS PAGE 41; THENCE SOUTH 88°14'56" EAST, ALONG SAID SOUTH LINE EXTENDED, 199.95 FEET, TO THE WEST LINE OF ABRAMS ADDITION AS FILED IN KING COUNTY RECORDS, IN VOLUME 11 OF PLATS PAGE 30; THENCE NORTH 01°51'19" EAST, ALONG SAID WEST LINE, 68.25 FEET, TO THE NORTHWEST CORNER OF BLOCK 5 OF ABRAMS ADDITION AS PLATTED; THENCE SOUTH 88°14'51" EAST, ALONG THE NORTH LINE OF SAID BLOCK 5, 367.67 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 01°40'39" WEST, ALONG THE EAST LINE OF SAID BLOCK 5, 236.00 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE CONTINUING SOUTH 01°40'39" WEST, 24.00 FEET, TO THE NORTHEAST CORNER OF BLOCK 4 OF SAID ABRAMS ADDITION; THENCE SOUTH 88°14'51" EAST, PARALLEL WITH SOUTH AUSTIN STREET 3.55 FEET; TO A PARCEL OF LAND DEEDED TO THE CITY OF SEATTLE, FILED UNDER RECORDING NO. 8802190331, RECORDS OF KING COUNTY; THENCE SOUTH 48°16'50" EAST, 89.36 FEET; THENCE NORTH 42°25'28" EAST, 45.24 FEET; THENCE NORTH 02°22'56" EAST, 23.09 FEET TO THE SOUTH MARGIN OF SOUTH AUSTIN STREET; THENCE SOUTH 88°14'51 EAST, ALONG THE SOUTH MARGIN OF SOUTH AUSTIN STREET 14.20 FEET TO THE WEST LINE OF CITY OF SEATTLE VACATION ORDINANCE 114027; THENCE NORTH 01°45'09" EAST, ALONG THE WEST LINE, 24.00 FEET TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 6 OF SAID ABRAMS ADDITION; THENCE NORTH 88°14'51" WEST, ALONG THE SOUTH LINE OF LOT 1, 92.01 FEET TO THE SOUTHWEST CORNER LOT 1 BLOCK 6; THENCE NORTH 01°40'39" EAST ALONG THE WEST LINE OF BLOCK 6, 236.00 FEET TO THE NORTHWEST CORNER OF LOT 8, BLOCK 6 AND THE SOUTH MARGIN OF SOUTH WEBSTER STREET; THENCE SOUTH 88°14'51" EAST, ALONG THE SOUTH MARGIN OF SOUTH WEBSTER STREET, 284.45 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 4,777,635 SQUARE FEET, OR +/- 109.679 ACRES MORE OR LESS.

Section 2. **Term.** The permission granted to the Permittee is for a second and final renewed term of 15 years starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the fifteenth year. This second and final term shall not exceed 30 years total from the term authorized in Ordinance 123540,

subject to the right of the City to require the removal of the pedestrian tunnels or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The Permittee shall submit any application for a new permission no later than one year prior to the expiration of the then-existing term.

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

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively, "public place") 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 the pedestrian tunnels, or any part thereof or installation on the public place, at the Permittee's sole cost and expense in the event that:

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

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

C. The Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after 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 needed for, or the pedestrian tunnels interfere with, a public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 5. **Permittee's obligation to remove and restore.** If the permission granted 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 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the pedestrian tunnels, the Permittee shall, at its own expense, remove the pedestrian tunnels and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the pedestrian tunnels in as good condition for public use as existed prior to construction of the pedestrian tunnels and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

Failure to remove the pedestrian tunnels 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 tunnels 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 Director shall then issue a certification that the Permittee 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 6. **Repair or reconstruction.** The pedestrian tunnels shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pedestrian tunnels in good and safe condition for the

protection of the public. The Permittee shall not reconstruct or repair the pedestrian tunnels except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the pedestrian tunnels reconstructed or repaired at the Permittee's cost and expense: because of the deterioration of the pedestrian tunnels; because of the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

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

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

Section 9. **Release, hold harmless, indemnification, and duty to defend.** 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 tunnels 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 tunnels;

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 tunnels or this ordinance in any other way.

If any suit, action, or claim of the nature described above 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 in the event 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 10. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director 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 and/or self-insurance that protects the Permittee and the City from claims and risks

of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

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

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

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

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State 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 limits of liability shall be $5,000,000 per Occurrence; $10,000,000 General Aggregate; $5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, 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.

In the event that 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 11. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name "The City of Seattle, its officers, officials, employees and agents" as additional insureds 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 with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington, in the amount of $410,000 and conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director 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. In the event that 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.

Section 13. **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, the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance, and the new owner shall be conferred with the rights and obligations of the Permittee by this ordinance. Other than a transfer to a new owner of the Property, the Permittee shall not transfer, assign, mortgage, pledge or encumber the same without the Director's consent, 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 provided, at the time of the assignment or transfer, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 15 and Section 17 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 tunnels.

Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the pedestrian tunnels during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the pedestrian tunnels 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 tunnels. 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.

Section 16. **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 tunnels;

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 this ordinance; subsequent reports shall be submitted every two years, provided that, in the event of a natural disaster or other event that may have damaged the pedestrian tunnels, 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 tunnels. The responsibility to submit structural inspection reports periodically or as 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.

Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee shall pay an

Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee of $4,503.29, or as adjusted annually thereafter, for the privileges granted by this ordinance.

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

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

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

Section 20. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the pedestrian tunnels and legally described in Section 1 of this ordinance (the "Property"),

regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, the Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property 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. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

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

Section 22. **Repeal of Section 8 of Ordinance 123540.** Section 8 of Ordinance 123540 is repealed.

Section 23. 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 _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

_____

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2022.

_____

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

_____

Monica Martinez Simmons, City Clerk

(Seal)