File #: CB 120139, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting Seattle Arena Company, LLC a permit to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, for the life of the Climate Pledge Arena building lease; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, on January 17, 2017, The City of Seattle ("City") released a Request for Proposal ("RFP") for the redevelopment of the arena at Seattle Center; and

WHEREAS, on April 12, 2017, Oak View Group, LLC ("OVG") submitted to the City a proposal in response to the RFP that included removing the then-existing at-grade loading dock on the south side of the then-existing arena and constructing a new loading dock below grade, accessible by a subterranean vehicle tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North; and

WHEREAS, on June 7, 2017, the City selected OVG for the redevelopment of the arena ("Climate Pledge Arena"); and

WHEREAS, the City and OVG entered into a Memorandum of Understanding establishing the process for negotiating the definitive agreements between the parties, including the lease agreement ("Lease"), the development agreement ("Development Agreement"), and the integration agreement ("Integration Agreement"), and on September 24, 2018, these agreements were approved by the City Council in Ordinance 125669 and subsequently signed by the Mayor and OVG; and

WHEREAS, on November 2, 2018, OVG and Seattle Arena Company, LLC ("ArenaCo") entered into an Assignment and Assumption Agreement by which ArenaCo was assigned and assumed OVG's rights

and obligations related to OVG's application for a Significant Structure Term Permit; and

WHEREAS, ArenaCo applied for permission to construct a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, in the Uptown neighborhood; and

WHEREAS, the Seattle City Council adopted Resolution 31857 and conceptually approved the vehicle tunnel, and adopted Resolution 31888 amending the conceptual approval to include installing the permanently tensioned tie-backs in Thomas Street; and

WHEREAS, ArenaCo has met the obligations described in those resolutions; and

WHEREAS, the vehicle tunnel will provide an off-street loading dock area for large event trucks and typical event services to serve back-of-house operations, removing those activities from surface streets and reducing associated traffic impacts to the surrounding neighborhood, and avoiding impacts to pedestrian travel adjacent to the arena; and

WHEREAS, the permanently tensioned tie-backs ensure the structural integrity of Climate Pledge Arena; and

WHEREAS, the obligations of this ordinance remain in effect until: the ordinance term expires, or the structures are removed, or ArenaCo 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, adopting this ordinance is the culmination of the approval process for the tunnel and the permanently tensioned tie-backs to legally occupy a portion of the public right-of-way, and the adopted ordinance is considered to be the permit; 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 grants permission (also referred to in this ordinance as a "permit") to ArenaCo and its successors and assigns as approved by the

Director of the Seattle Department of Transportation ("Director") according to Section 11 of this ordinance (the party named above and each such approved successor and assign is referred to as the "Permittee"), to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North (collectively referred to as "tunnel and permanently tensioned tie-backs"), adjacent in whole or in part to the property legally described below and referred to in this ordinance as the "Property":

LOT 12, BLOCK 30, D.T. DENNY'S PLAN OF NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF ALLEY VACATED BY CITY OF SEATTLE ORDINANCE NO. 117474 WHICH ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

AND PARCELS L, M, JJ AND KK OF THE CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032466-LU, RECORDED UNDER RECORDING NO. 20181011900001 AND CORRECTED UNDER RECORDING NO. 20181030900005, RECORDS OF KING COUNTY, WASHINGTON;

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

Section 2. **Term.** The permission granted to the Permittee is for a term that begins on the effective date of this ordinance and terminates at 11:59 p.m. on the later date of the last day of the Initial Term, or if applicable, at the end of any Extension Term, as those terms are defined in the Lease.

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 tunnel and permanently tensioned tie-backs, 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 before expiration of the initial term or any renewal term, and require the Permittee to remove the tunnel and permanently tensioned tie-backs, or any part thereof or installation on the public place, at the Permittee's sole cost and expense if:

(a) The City Council determines by ordinance that the space occupied by the tunnel and permanently tensioned tie-backs is necessary for any public use or benefit or that the tunnel and permanently tensioned tie-backs interfere with any public use or benefit; or

(b) The Director determines that use of the tunnel and permanently tensioned tie-backs 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 tunnel and permanently tensioned tie-backs 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 City terminates the permission, the Permittee shall, at its own expense, remove the tunnel and permanently tensioned tie-backs 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 tunnel and permanently tensioned tie-backs in as good condition for public use as existed prior to constructing the tunnel and permanently tensioned tie-backs 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 tunnel and permanently tensioned tie-backs 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 preclude 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 tunnel and permanently tensioned tie-backs and restore the public place at the Permittee's expense and collect such expense in any manner provided by law.

Upon the Permittee completing 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 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 tunnel and permanently tensioned tie-backs shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the tunnel and permanently tensioned tie-backs in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the tunnel and permanently tensioned tie-backs except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the tunnel or permanently tensioned tie-backs reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition of the tunnel or permanently tensioned tie-backs; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

Section 7. **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 tunnel and permanently tensioned tie-backs 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 tunnel and permanently tensioned tie-backs 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 under 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 tunnel and permanently tensioned tie-backs, 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 against or settle suit, action, or claim, 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 and all appeals resolved, if determined adversely to the City; provided, that if Permittee's ability to defend the suit, action, or claim is precluded by the City's delay in providing Permittee with notice, then Permittee shall be relieved of its obligations under this Section 7. 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 8. **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, and Permittee shall ensure that its contractors and subcontractors of all tiers shall maintain in full force and effect, 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 tunnel and permanently tensioned tie-backs or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the tunnel and permanently tensioned tie-backs;

(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, and may be in any combination of primary and umbrella/excess liability policies. 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.

If the construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the tunnel and permanently tensioned tie-backs is contracted, applicable minimum coverages and limits of liability may be evidenced by any contractor or subcontractor provided that such insurance fully meets the applicable requirements set forth herein.

Notwithstanding, Permittee shall have authority to determine and adjust insurance coverage and limits for contractor or subcontractors provided that any adjustment or modification to subcontractor insurance requirements shall not reduce or modify Permittee's obligations under this Agreement.

A. Commercial General Liability (CGL) insurance. CGL insurance must include coverage for:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Stop Gap (unless insured as Employers Liability under Part B of a Workers Compensation Insurance Policy)
7. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
8. Blasting (if explosives are used in the performance of the Project)

Such insurance must provide a minimum limit of liability of $5,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except $1,000,000 each Offense

Personal/Advertising Injury and $1,000,000 each Accident/Disease - Policy Limit/Disease - each Employee Stop Gap or Employers Liability, $5,000,000 Products/Completed Operations and $10,000,000 General Aggregate and includes the following:

a. Products and Completed Operations Additional Insured. Permittee's, its contractor's or subcontractor's CGL insurance must include the City as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for the City must remain in effect for not less than three years following the Physical Completion Date or Final Acceptance of the Project (as applicable) by the City.

b. XCU and Subsidence Perils Not Excluded. Permittee's, its contractor's or subcontractor's CGL insurance must not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

B. Automobile Liability Insurance. Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of $1,000,000 CSL. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

C. State of Washington Statutory Workers' Compensation Insurance. Permittee, its contractors or subcontractors must comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance).

D. Contractor's Pollution Liability Insurance. Permittee, its contractors or subcontractors shall provide a Pollution Liability policy for pollutants that are or may be remediated on- or off-site covering claims, including investigation, defense, or settlement costs and expenses that involve bodily injury and property damage (including natural resources damages and loss of use of tangible property that has not been physically

injured) covering:

1. Pollution conditions caused or made worse by Permittee, its contractors or subcontractors, including clean-up costs for a newly caused condition or a historical condition that is made worse.

2. In-Transit Pollution Liability.

3. The vicarious liability of contractors or subcontractors of any tier.

Such Pollution Liability insurance shall provide a minimum limit of liability of $5,000,000 each claim with a minimum aggregate limit of 200% of each claim limit. There shall be no requirement for a dedicated project aggregate limit provided that Permittee, its contractors or subcontractors shall (1) cause to be submitted to the City prior to the Notice to Proceed date with its insurance certification a written statement from its authorized insurance representative that the full minimum aggregate limit is available and has not been impaired by any claims reserved on another project, and (2) thereafter, until the completion of the Project, Permittee, its contractors or subcontractors shall provide notice in writing to the City within ten days of Permittee's, contractor's or subcontractor's constructive knowledge of any pending or actual impairment of the aggregate limit. If In-Transit Pollution Liability is required but it is not provided under the Automobile Liability, then Permittee, its contractors or subcontractors must provide evidence of In-Transit Pollution Liability transportation coverage under Permittee's, its contractor's or subcontractor's Pollution Liability policy.

E. Umbrella or Excess Liability Insurance. Permittee, its contractors or subcontractors shall provide minimum Excess or Umbrella Liability coverage limits of $5,000,000 each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in this Section 8. The minimum total limits requirement of $5,000,000 may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

F. Prior to mobilization on-site of its contractor or any subcontractor of any tier, Permittee shall

maintain, or cause to be maintained by its contractor, not at City's expense, Builder's Risk Property insurance, and Permittee shall ensure that such insurance shall be in effect at all times during new construction or structural alteration and not be terminated until the physical completion thereof. Such insurance shall:

1. Cover all portions of the Property, including all new structures and existing structures that are to be structurally altered (but excluding existing structures to be demolished) and all materials, equipment, supplies and temporary structures being built or stored at or near the construction site, or while in transit;

2. Provide "All Risk" coverage in an amount equal to the current 100% completed value replacement cost of all property required to be covered, including the value of existing structures that have been structurally altered (including allowance for "soft costs") against loss from the perils of fire and other risks of direct physical loss not less broad than provided by the insurance industry standard Causes of Loss - Special Form CP 10 30;

3. Include Delay of Opening (loss of income) Endorsement equal to 100% of projected gross annual rents, Soft Cost Endorsement (indemnification of finance charges) and Permission to Occupy Endorsement (permission is automatically granted for occupancy of the insured project for the purpose it was intended);

4. If so required in writing by the City, include earth movement including earthquake and flood perils and such other endorsements and coverages as the City may from time to time reasonably require and any other insurance required by law or by the terms of this ordinance; and

5. Remain in force until coverage for Permittee's Permanent Property Insurance complying with this Section 8 is bound.

6. Payment of deductibles are the responsibility of Permittee, its contractor or subcontractors except for (i) earth movement including earthquake or flood claims, or (ii) all risks claims to the extent damage is not caused by the negligent acts of Permittee, its contractor or any subcontractor.

7. Include The City of Seattle as loss payee as its interest may appear.

8. Endorsed to cover the interests, as they may appear, of contractors and subcontractors of all tiers.

General Conditions (Not Applicable to Washington State Workers Compensation)

(a) Failure on the part of Permittee, its contractors or subcontractors to maintain the insurance as required constitutes a material breach of ordinance, on which the City may, after giving five business days' notice to Permittee, its contractor or subcontractor to correct the breach, may immediately terminate the ordinance or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

(b) Any deductible in excess of $50,000 or self-insured retention (SIR) in excess of $50,000 that is not fronted by an insurer must be disclosed and is subject to the City's approval. Upon request by the City, Permittee, its contractors or subcontractors must furnish financial information that the City may reasonably require to assess Permittee's, its contractor's or subcontractor's risk bearing capacity, and must provide a written statement that Permittee, its contractors or subcontractors will defend and indemnify the City against any claim within Permittee's, its contractor's or subcontractor's SIR and is responsible for the cost of any payments for defense and indemnity falling within the SIR at least to the same extent that coverage would be afforded to the City under the relevant insurance policy meeting the requirements stated herein.

(c) Security of Insurers. Insurers shall be licensed to do business in the State of Washington and shall maintain not less than an A- VII A.M. Best's rating unless coverage is procured as surplus lines under chapter 48.15 RCW ("Unauthorized Insurers").

(d) Cancellation. Coverage shall not be cancellable without at least 30 days' advance written notice of cancellation, except ten days' notice with respect to cancellation for non-payment of premium.

(e) Waiver of Subrogation. CGL, Auto, and Employer's Liability insurance required to be maintained by Permittee hereunder shall contain a waiver of subrogation in favor of the City.

(f) CGL Insurance Additional Insured. CGL insurance maintained by Permittee shall include "The City, its officers, elected officials, employees, agents, and volunteers" as additional insureds for primary and non-contributory limits of liability per the ISO CG 20 26 11 85 designated additional insured endorsement or its equivalent with products-completed operations additional insured status for not less than six years following physical completion.

(g) Certificates of Insurance. The Permittee shall each deliver to the City Certificates of Liability Insurance issued in conformance with prevailing established market practice evidencing compliance with the minimum levels of coverages and limits of liability and meeting general conditions stated herein, including but not limited to provision for notice of cancellation as specified herein.

(h) At any time upon the City's request, Permittee, its contractors or subcontractors must forward to the City a true and certified copy of any insurance policy(s).

(i) No Limitation of Liability. The limits of insurance coverage specified herein in Section 8, Insurance, are minimum limits of insurance coverage only and shall not be deemed to limit the liability of Permittee's insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, The City of Seattle shall be so for the full limits of insurance coverage required by the City, whether such limits are primary, excess, contingent or otherwise. Any limitations of insurance liability shall have no effect on Permittee's obligation to indemnify the City.

(j) This Section 8 must survive the expiration or earlier termination of this ordinance.

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 11 of this ordinance.

Section 9. **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 10. **Satisfaction of insurance and bond requirements.** The insurance requirements of Section 8 and Section 9 of this ordinance may be satisfied by Permittee's compliance with the requirements of Exhibit G of the Lease; provided, that if the policy limits in Exhibit G of the Lease are different than those required by this ordinance, the policy limits described in this ordinance shall control. The Director may adjust minimum liability insurance levels and require 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 11. **Conditions of assignment or transfer.** Upon the satisfaction of the Transfer Conditions (defined below), Permittee may, without obtaining the consent of the Director, assign, sublease, or transfer all or part of its leasehold interest in the Property and the rights conferred in this ordinance (a "Permitted Transfer") to an affiliate or third-party transferee (each a "Transferee"). "Transfer Conditions" means that (a) the Transferee has accepted in writing all of the terms and conditions of the permission granted by this ordinance together with an acknowledgement that the use of the tunnel and permanently tensioned tie-backs shall not be modified by the Transferee (the "Acknowledgement") and (b) the Acknowledgement has been delivered to the Director before the Permitted Transfer. From and after satisfaction of the Transfer Conditions, the Transferee shall be conferred with the rights and obligations originally granted to Permittee by this ordinance. The Permittee shall not mortgage, pledge, or encumber the Permittee's rights granted by this ordinance (an "Encumbrance") without obtaining the Director's consent, which consent shall not be unreasonably withheld or conditioned. The Director may approve an Encumbrance by a third-party beneficiary ("Beneficiary") if: the Beneficiary has delivered to the Director a subordination and non-disturbance agreement acknowledging this ordinance; that Beneficiary's interest with respect to the Property and related Encumbrance are junior, inferior, subordinate, and subject in right, title, interest, lien, encumbrance, priority and all other respects to this ordinance; Permittee has provided the bond and certification of insurance coverage required under this ordinance; and Permittee has paid any fees due under Sections 12 and 14 of this ordinance.

Section 12. **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 tunnel and permanently tensioned tie-backs during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the tunnel and permanently tensioned tie-backs 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 tunnel and permanently tensioned tie-backs. 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 13. **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 tunnel and permanently tensioned tie-backs;

(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; 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 tunnel or permanently tensioned tie-backs, 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 tunnel and permanently tensioned tie-backs. 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 Permittee's obligations.

Section 14. **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. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

In consideration of the Memorandum of Understanding between OVG and the City, and the Lease

Agreement, the Development Agreement, and the Integration Agreement, as approved by the City Council by Ordinance 125669, the City will not charge ArenaCo the Annual Use and Occupation Fee for the tunnel and permanently tensioned tie-backs for the term of this permit.

Section 15. **Compliance with other laws.** The Permittee shall construct, maintain, and operate the tunnel and permanently tensioned tie-backs in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the tunnel and permanently tensioned tie-backs, 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 16. **Acceptance of terms and conditions.** The Permittee shall provide evidence of insurance coverage required by Section 8 of this ordinance and the covenant agreement required by Section 17 of this ordinance.

Section 17. **Obligations run with the Property and the leasehold estate.** The obligations and conditions imposed on the Permittee by this ordinance are covenants that bind Permittee and any Transferee. The Permittee shall, within 60 days of the effective date of this ordinance, and before any Permitted Transfer, deliver to the Director the Covenant Agreement. The "Covenant Agreement" shall be based on a form to be supplied by the Director, reference this ordinance by its ordinance number, reflect and memorialize Permittee's agreement with the obligations and conditions set forth in this ordinance, be signed and acknowledged by the Permittee, and recorded with the King County Recorder's Office and filed with the City Clerk.

Section 18. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 19. 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 _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

_____

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

_____

Monica Martinez Simmons, City Clerk

(Seal)