

Ordinance No. 121970

Council Bill No. 115429

AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

CF No. _____

Date Introduced:		
Date 1st Referred: <u>10/17/05</u>	To: (committee) <u>Full Council</u>	
Date Re - Referred: <u>10/17/05</u>	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>10-24-05</u>	Full Council Vote: <u>9-0</u>	
Date Presented to Mayor: <u>10-25-05</u>	Date Approved: <u>10/31/05</u>	
Date Returned to City Clerk: <u>10/31/05</u>	Date Published: <u>10/31/05</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Drago
walk-on Councilmember

Committee Action:

10-24-05 Passed AS Amended 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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ORDINANCE 121970

AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

WHEREAS, the Seattle Art Museum ("SAM") proposes to develop the Olympic Sculpture Park ("OSP") on the two city blocks bounded by Bay Street, Western Avenue, Broad Street and Alaskan Way, and on the waterfront parcel owned by the City of Seattle ("City") to the west of Alaskan Way next to Myrtle Edwards Park; and

WHEREAS, by Resolution 30760 the City Council, with the Mayor concurring, approved the design of the OSP; and

WHEREAS, by Resolution 30771 the City Council, with the Mayor concurring, granted conceptual approval of two pedestrian skybridges, one crossing over Elliott Avenue between Bay and Broad Streets and the other crossing over Alaskan Way between Bay and Broad Streets, as proposed by SAM as part of its development of the OSP; and

WHEREAS, pursuant to Seattle Municipal Code ("SMC") Chapter 15.64, SAM has submitted the information required for the Director of Transportation ("Director") to make a recommendation to the Council on whether to grant or deny conceptual approval, and the Director has circulated the information to the Seattle Design Commission, and to the City departments and public and private utilities interested in or affected by the proposed skybridges, and compiled the responses (C.F. 307255); and

WHEREAS, the departments and utilities have no objections to the conceptual design of the skybridges, and the Design Commission supports the two proposed skybridges as a core element of the OSP design and recommends that the Council approve the final application; and

WHEREAS, in making her recommendation, the Director considered the 12 elements set forth at SMC 15.64.050.B, and recommended that conceptual approval be granted; and



1 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the
2 skybridges and will allow SAM to move forward with construction of the skybridges;
3 NOW, THEREFORE,

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

5 Section 1. Permit. Subject to the terms and conditions of this ordinance (otherwise
6 known as the "Permit"), permission is hereby granted to the Seattle Art Museum ("SAM")
7 (referred to, together with any transferee allowed by the City pursuant to this ordinance, as
8 "Permittee") to construct, maintain and operate, in conjunction with the Olympic Sculpture Park
9 ("OSP" or "Park") a skybridge over and across Elliott Avenue between Bay Street and Broad
10 Street ("Elliott Avenue Bridge"), and a skybridge over and across a portion of Alaskan Way
11 between Bay Street and Broad Street, including the Burlington Northern Santa Fe Railway
12 franchise area ("Alaskan Way Bridge") (together the "skybridges"). The Elliott Avenue Bridge
13 will support the Park's central pathway, seating areas, sculpture and landscaping on a vee-shaped
14 structure with an average width of 72 feet, located approximately 20 feet above street grade, and
15 will connect Western Avenue and Broad Street and the eastern-most OSP parcel, lying between
16 Western Avenue and Elliott Avenue, with the parcel lying between Elliott Avenue and Alaskan
17 Way, as shown on Exhibit 2 to Attachment A hereto. The Alaskan Way Bridge will also support
18 the central pathway, seating areas, sculpture and landscaping on a structure with an average
19 width of 75 feet, located approximately 24 feet above the surface of the right-of-way, and will
20 connect the eastern OSP parcels with that portion of Alaskan Way designated as a park boulevard
21 by Ordinance 121721 ("the Boulevard") and provide access to SAM's tideland parcel and Myrtle
22 Edwards Park's southern entrance, as shown on Exhibit 2 to Attachment A hereto. The Alaskan
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Way Bridge also includes the ramp, stairs and abutment where it connects with the Boulevard.

SAM's use of the Boulevard as part of the OSP is to be governed by a separate Operation and Maintenance Agreement, to be approved by ordinance, between the City and SAM.

Section 2. Use of Skybridges; Duration and Renewal of Permit. For as long as the Permit remains in effect as to at least one skybridge and that skybridge remains in place, the property described on Attachment B hereto shall be used by SAM or its assignee of this Permit as a sculpture park that is open and free to the public, subject to the terms of any operations and management agreement approved by ordinance, which park may include accessory uses such as exhibition, special events and retail uses in the pavilion and underground parking. The Permit hereby granted is for a term of twenty-five (25) years, commencing when the conditions in Sections 1 and 16 have been met and terminating at 11:59 p.m. on the last day of the twenty-fifth year; provided, however, that upon written application of the Permittee at least thirty (30) days before the expiration of the term, the Director may renew the Permit for one additional term, for a total term of fifty (50) years. The Permit is granted subject to the right of the City by ordinance to revise any of the terms and conditions contained herein. Notwithstanding the foregoing, in the event that the Permittee has made timely application for renewal of the Permit in accordance with this section, or for a new permit if and when this Permit expires in 50 years, and the City has not taken the necessary action to renew or grant, or to deny the renewal or grant of, a permit prior to the expiration of the term or the renewal term, the Permit shall be deemed extended until such time as the City takes action on such permit application, and in the case of an appeal to the Mayor or Director as described in Section 4 of this ordinance, shall be deemed extended until the



1 Mayor or Director makes a decision and for any further period in which the City has the option to
2 revise permit conditions in light of such decision as described in Section 4 of this ordinance.

3 Section 3. Termination of Permit; Removal of Skybridges. The Permit hereby granted to
4 use portions of Elliott Avenue and Alaskan Way for skybridges is subordinate to the public's use
5 for transportation purposes, and the City expressly reserves the right to terminate this Permit as
6 to one or both skybridges and/or to require the Permittee to remove the skybridges or any portion
7 thereof at the Permittee's sole cost and expense if one more of the following occur:
8

- 9 (a) The City Council determines, by ordinance, that the space occupied by a
10 skybridge is necessary for any non-pedestrian public travel or transportation use,
11 or that a skybridge interferes with any public transportation use. Such a City
12 Council determination shall be conclusive and final.
13
14 (b) The Director determines that any term or condition of this Permit has been
15 violated, and the Permittee does not correct such violation within thirty (30) days
16 of written notification from the City, or within such longer period of time that the
17 Director determines is necessary for Permittee to correct the violation.
18
19 (c) The Permittee does not apply for a renewal of this Permit in a timely manner or its
20 renewal application is denied.
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22 (d) The Permittee does not apply for a new permit, if this Permit is renewed and
23 expires in fifty (50) years, before such expiration, or its new permit application is
24 denied.
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1 Subject to the City's right to assume ownership and operation of a skybridge under Section
2 4 of this ordinance, the Permittee shall, within ninety (90) days after the expiration of this Permit,
3 its termination (including any termination resulting from failure of the Permittee to accept renewal
4 or satisfy the conditions of renewal), or the date of a City order of removal, or prior to the date
5 stated in an "Order to Remove," as the case may be, the Permittee shall remove the skybridge(s)
6 and shall place all portions of Elliott Avenue and/or Alaskan Way that may have been disturbed for
7 any part of a skybridge in as good condition for public use as they were prior to construction, and in
8 at least as good condition in all respects as the abutting portions thereof at the time of such removal.
9
10 If the Permittee becomes obligated to remove a skybridge, then the Permittee shall remove all
11 sculpture and other art installations from the Boulevard and the skybridges. Upon removal of the
12 skybridges and completion by the Permittee of all required restoration, the Director shall issue a
13 certificate discharging the Permittee from responsibility under this ordinance for occurrences after
14 the date of such discharge.
15

16 Section 4. City Ownership and Operation of Skybridges. Because the skybridges will
17 constitute a transportation use and benefit to the public by providing a pedestrian walkway above
18 the Burlington Northern Santa Fe Railway and Elliott Avenue connecting the Boulevard to the OSP
19 and adjacent public streets, upon termination of the permission granted by this ordinance as to such
20 skybridge(s) the City may elect to assume ownership and operation of one or both of the skybridges
21 as a City facility, for a period ending fifty (50) years after the commencement of the term of this
22 Permit, but only in any of the following cases:
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1 (A) if the Permittee does not seek renewal of the Permit at least thirty (30) days before the
2 expiration of the initial term;

3 (B) if the City terminates the Permit as to such skybridge(s) pursuant to Section 3(b) of this
4 ordinance or the permit terminates in the circumstances set forth in Section 3(c) of this
5 ordinance; or

6 (C) if the Permittee seeks renewal of the Permit in a timely manner but does not accept in a
7 timely manner, or does not comply in a timely manner with, the conditions of such renewal,
8 but if SAM is the Permittee and is operating the property described in Attachment B as the
9 OSP at the time renewal is timely sought and SAM contends any new Permit provision or
10 any new condition established by the City for renewal of the Permit is unduly burdensome
11 on SAM, then SAM within 20 days notice of the conditions for renewal may appeal in
12 writing to the Director and to the Mayor, and if either of those officers determines the new
13 provision(s) or condition(s) to be unduly burdensome he or she shall, within 20 days of
14 receiving the appeal, state in writing in what respect it is so, and the City shall thereafter
15 have an additional 60 days to revise the provision(s) or condition(s) for renewal; and if the
16 City does not within such period revise the provision(s) or condition(s) so as to eliminate all
17 aspects the Director or Mayor determined to be unduly burdensome, the City shall thereby
18 forfeit its option to assume ownership and operation under this Subsection 4(C) for SAM's
19 failure to accept or to timely comply with a provision or condition so determined to be
20 unduly burdensome. Both parties retain their rights to seek judicial review of the rights and
21 obligations created by this Permit, including whether a permit provision or condition
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1 included a future renewal is unduly burdensome, in addition to the administrative and
2 executive appeal remedies stated in this subsection.

3 Upon the City's election to assume ownership and operation, ownership of the skybridge
4 structure(s) shall vest in the City, subject to reversion, at the end of such fifty (50) year period, to
5 SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge. Upon such
6 reversion, SAM and any such other owners each shall be obligated promptly and at their own
7 expense to remove such skybridge(s) and restore the right of way as described in Section 3,
8 provided that if the then owner(s) of such parcels shall apply to the City for a new permit to
9 maintain such skybridge(s) within fifteen (15) days after such reversion, the obligation to remove
10 shall be deferred until thirty (30) days after denial of such application, or if such application shall be
11 granted, until such time as the skybridge(s) must be removed pursuant to the terms of the new
12 permit. At the City's election, at the time when the City shall assume ownership of a skybridge, all
13 additions, fixtures and improvements made to or constructed upon the skybridges shall remain
14 without compensation to the Permittee, except that the Permittee may elect to remove, within
15 fifteen (15) days after the City shall assume ownership, any sculptures and other art installations, on
16 the following conditions: (i) that if any sculpture or installation serves as a structural or safety
17 feature of the skybridge or as a feature required by any applicable law or regulation, the Permittee
18 shall cause a replacement feature to be installed satisfactory to the Director immediately after such
19 removal; and (ii) that the Permittee forthwith repair any damage to the skybridge caused in the
20 course of any removals. In the discretion of the Director, the Permittee may be required to post a
21 bond for the costs of replacement or restoration prior to undertaking any removals. While the City
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owns a skybridge, the City may at its own expense repair, maintain, alter, reconstruct, replace, or remove that skybridge as it determines appropriate from time to time, and the reversionary rights of SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge pertain only to whatever structure, if any, is in place at the end of the 50-year period.

Section 5. Grant of Access and Maintenance Rights. As a precondition to the grant of this Permit, SAM shall deliver to the City a document ("Grant") granting to the City rights of public access along the central vee-shaped pathway that originates on Western Avenue at the intersection of Western Avenue and Broad Street and extends across both skybridges to the waterfront parcel and Myrtle Edwards Park, and with public access to Broad Street across SAM land and Museum Development Authority land per Section 5C of the Grant, all as described in the form of the required Grant. The form of the required Grant, including the maps and other exhibits to the Grant, is Attachment A hereto. At the time the Grant required herein is delivered to the City, the property described in Attachment B hereto shall not be encumbered in any way other than what is shown in Attachment C. The Museum Development Authority must join in the Grant as provided in Section 16, both as lessee/sublessor and to provide public access according to subsection 5C of the Grant. The Director is authorized to accept the Grant, and to enforce and administer the rights of the City thereunder. The Superintendent of Parks and Recreation is authorized to participate in dispute resolution proceedings regarding the respective rights and obligations of the parties to the Grant, and their agents and successors, as specified in the form of the Grant.

1 Section 6. Reconstruction, Relocation, Readjustment and Repair. The Permittee shall not
2 commence reconstruction, relocation, readjustment or repair, other than routine repair and
3 maintenance, of the skybridges except under the supervision of, and in strict accordance with plans
4 and specifications approved by the Director. After notice to and consultation with Permittee, the
5 Director in his/her judgment may order reconstruction, relocation, readjustment or repair of the
6 skybridges at the Permittee's own cost and expense because of the deterioration or unsafe condition
7 of the skybridges.
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9 Section 7. Closure. After notice to the Permittee, and failure of the Permittee to correct any
10 condition that is inconsistent with the Permit or the Grant within the time stated in such notice, the
11 Director may order a skybridge closed if the Director deems that it has become unsafe or creates a
12 risk of injury to the public. In a situation in which there is an immediate threat to the health or
13 safety of the public, notice is not required.
14

15 Section 8. Discharge of Permittee's Obligations. Notwithstanding termination or
16 expiration of the permission granted, or removal of the skybridges, the Permittee shall remain
17 bound by its obligations under this ordinance until:
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19 (a) The bridges and all related equipment and property are removed from the streets, the
20 Boulevard or any other boulevard;

21 (b) The area is cleared and restored in a manner and to a condition satisfactory to the
22 Director; and
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24 (c) The Director certifies that the Permittee has discharged its obligations herein.
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Section 9. Release; Indemnification; Duty to Defend. Except as otherwise provided herein, the skybridges shall remain the exclusive responsibility of the Permittee. The Permittee, by acceptance of this ordinance and the Permit hereby granted, does release the City from any and all claims resulting from damage or loss to Permittee's own property, and covenants and agrees with the City, to at all times indemnify, defend and save harmless the City from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), that may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, or licensees, by reason of the Permittee's maintenance, operation or use of said skybridges, or any portion thereof, or by reason of anything that has been done or omitted, or may at any time be done or omitted, by the Permittee by reason of this ordinance, or by reason of the Permittee's failure or refusal to strictly comply with each and every provision of this ordinance (collectively "Indemnified Actions"); and if any such suit, action or claim be filed, instituted or begun against the City for an Indemnified Action, the Permittee shall, upon notice thereof from the City, defend the Indemnified Action at its sole cost and expense with counsel acceptable to the City, and in case judgment shall be rendered against the City in any suit or action for an Indemnified Action, the Permittee shall fully satisfy said judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to the City. Provided that if it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other concurrent negligence has occurred for which the City is liable to a third party other than in regard

1 to any condition caused by the failure of the Permittee to comply with any obligation under this
2 Permit, the Grant or another agreement with the City, then in the event claims or damages are
3 caused by or result from the concurrent negligence of:

4 (a) The City, its agents, contractors or employees; and

5 (b) The Permittee, its agents, contractors, or employees,
6

7 then the Permittee's obligation shall be limited to the extent of the Permittee's negligence and, to
8 the extent consistent with applicable law, the negligence of the Permittee's agents, contractors or
9 employees.

10 The City shall indemnify SAM for any claims for loss or damage by third parties to the
11 extent they result from the negligent or otherwise wrongful act of the City or its employees,
12 agents or contractors in the exercise of rights under this Permit on the SAM Property, MDA
13 Property or the skybridges, but only if and to the extent that all of the following apply: (a) the
14 claim is one for which the City would be liable under applicable law, if brought directly against
15 the City by the third party; and (b) the claim is not one for which the City would have a right to
16 indemnity from the Permittee under this Section; and (c) the claim is not covered by insurance
17 maintained by the Permittee; and (d) the claim was not required to have been covered by
18 insurance maintained by the Permittee under the terms of this Permit or by SAM under any
19 contract between SAM and the City.
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22 Section 10. Environmental Agreement. The parties acknowledge the existing
23 Environmental Agreement between the City and SAM dated December 7, 1999 ("Environmental
24 Agreement"), deals with the parties' respective obligations relating to contamination and
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1 environmental conditions in the City rights-of-way. No change of rights, obligations, or
2 responsibilities under the existing Environmental Agreement shall occur as a result of this
3 Ordinance or Permit, except as expressly provided in this section. Permittee shall be responsible
4 for any and all costs that arise from or are related to soil removal, if required, and recapping of
5 soil, if required, to the extent required to complete Permittee's construction of the skybridges.
6 Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is
7 removed during construction, replacement of material that is capping contaminated soil and is
8 disturbed during construction, mitigation measures required by permitting authorities, and
9 worker safety measures required for construction on a contaminated site.
10

11 Section 11. Insurance. For as long as the Permittee shall exercise any permission granted
12 by this ordinance or until the skybridges are entirely removed from their location as described in
13 Section 3, whichever is longer, but not including any period during which both skybridges or the
14 sole remaining skybridge shall be owned by the City pursuant to the terms of this ordinance, and
15 unless discharged by order of the Director as provided in Section 8 of this ordinance, the Permittee
16 shall obtain and maintain in full force and effect, at its own expense, insurance policies that protect
17 the City from any and all loss, damages, suits, liability, claims, demands or costs resulting from
18 injury or harm to persons or property.
19

20 Minimum insurance requirements shall be an occurrence form policy of commercial general
21 liability, placed with a company admitted and licensed to conduct business in Washington State.
22 Minimum policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage
23 shall specifically name the skybridge exposure. Coverage shall add by endorsement The City of
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1 Seattle, its elected and appointed officers, officials, employees and agents as additional insured.
2 Coverage shall contain a Separation of Insured's Clause indicating essentially that "except with
3 respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part
4 to the first named insured, this insurance applies as if each named insured were the only named
5 insured, and separately to each insured against whom claim is made or suit is brought." Evidence
6 of current coverage shall be submitted to the City in the form of a copy of the full insurance policy
7 with all endorsements attached thereto, and is a condition to the validity of this Permit.
8

9 Whenever in the judgment of the City's Risk Manager, such insurance filed pursuant to the
10 provisions hereof shall be deemed insufficient to fully protect the City, the Permittee shall, upon
11 demand by the Risk Manager, furnish additional insurance in such amount as may be specified by
12 the Risk Manager.
13

14 Section 12. Additional Insured. The Permittee shall require that all of its contractors
15 performing construction work on the premises as contemplated by this Permit, name the City as an
16 additional insured on all policies of public liability insurance, and shall include in all pertinent
17 contract documents a provision extending construction indemnities and warranties granted to SAM
18 to the City as well.
19

20 Section 13. Bond. Within sixty (60) days after the effective date of this ordinance the
21 Permittee shall deliver to the Director for filing with the City Clerk a good and sufficient bond in
22 the sum of Fifty Thousand Dollars (\$50,000.00) for each skybridge executed by a surety company
23 authorized and qualified to do business in the State of Washington conditioned that the Permittee
24 will comply with each and every provision of this ordinance and with each and every order of the
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1 Director pursuant thereto; provided, that if the Mayor of the City in his/her judgment shall deem
2 any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall
3 furnish a new or additional bond in such amount as the Director may specify to be necessary to fully
4 protect the City. Said bond shall remain in effect until such time as the skybridges are entirely
5 removed as described in Section 3, or until discharged by order of the Director as provided in
6 Section 8 of this ordinance.
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8 Section 14. Transfers. Permittee shall not assign, transfer, mortgage, pledge or encumber
9 any privileges conferred by this ordinance without the consent of the City Council by resolution,
10 except that after the Grant described in Section 5 above has been granted to the City, SAM may
11 grant a security interest to Allied Irish Banks, p.l.c., New York Branch pursuant to that springing
12 deed of trust dated as of October 6, 2005. If consent is granted, the assignee or transferee shall be
13 bound by all terms and conditions of this ordinance. The Permit conferred by this ordinance shall
14 not be assignable or transferable by operation of law.
15

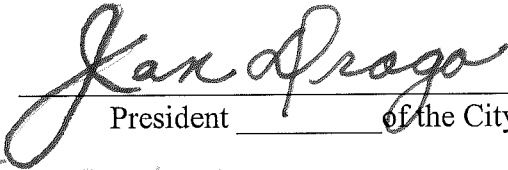
16 Section 15. Inspections/Payments. The Permittee shall pay to the City such amounts as
17 may be justly chargeable by said City as costs of inspection of the subject skybridges during
18 construction, reconstruction, or repair, and at other times deemed necessary by the Director. In
19 recognition of the public benefits of the OSP, including the Grant, no annual fee is charged for this
20 Permit. All payments shall be made to the City Director of Executive Administration or his
21 successor as custodian of the City Treasury for credit to the Seattle Department of Transportation
22 subfund for Street Use. No inspection or approval by the City shall be construed as a
23 representation, warranty or assurance to the Permittee or any other person as to the safety or
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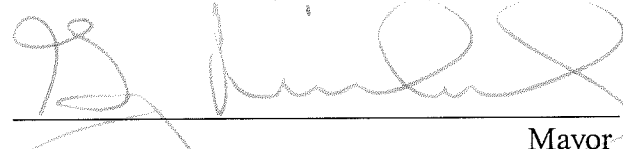
1 soundness of any structure or condition, nor as to compliance with the Permit or any agreement or
2 standard. Any failure by the City to require correction of any defect or condition shall not in any
3 way limit the responsibility or liability of the Permittee.

4 Section 16. Acceptance. The Permittee shall deliver its written acceptance of the Permit
5 conferred by this ordinance and the Permittee's agreement to its terms and conditions, and the Grant
6 required in Section 5 above, to the Director within thirty (30) days after the effective date of this
7 ordinance. The Director shall record the Grant with the King County Recorder's Office and file the
8 recorded Grant and the Permittee's acceptance with the City Clerk. If the Grant and acceptance are
9 not timely received, the privileges provided by this ordinance shall be deemed declined or
10 abandoned; and the Permit deemed lapsed and forfeited.
11

12 Section 17. Effective Date. This ordinance shall take effect and be in force thirty (30)
13 days from and after its approval by the Mayor, but if not approved and returned by the Mayor
14 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section
15 1.04.020.
16

17 PASSED by the City Council of the City of Seattle the 24th day of October, and signed by
18 me in open session in authentication of its passage this 24th day of October.
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20
21 
22 President _____ of the City Council
23 Approved by me this 31st day of October, 2005

24
25 
26 Mayor
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Filed by me this 31st day of October 2005

Joan E. Rippin
City Clerk

(Seal)

Attachment A: Form of Grant of Access and Maintenance Rights including exhibits:

Exhibit 1 Legal description of SAM Property

Exhibit 2 Schematic design showing Skybridges and "Vee"

Exhibit 3 Legal description of MDA Property

Exhibit 4 Schematic design showing Broad Street Access

Attachment B: Legal description of SAM's two upland blocks.

Attachment C: Permitted Encumbrances

ORDINANCE ATTACHMENT A

FORM OF GRANT

[Version 10/24/05]

After Recording Return to:

Seattle Transportation Dept.

[insert]

GRANT OF ACCESS AND MAINTENANCE RIGHTS

THIS GRANT OF ACCESS AND MAINTENANCE RIGHTS ("Grant") is made effective as of the _____ day of _____, 2005 by the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM") and the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA") (collectively, SAM and MDA are "Grantor") to the CITY OF SEATTLE, a Washington municipal corporation ("City").

RECITALS

- A. SAM is the owner of two parcels of real property legally described on Exhibit 1, attached hereto and incorporated herein (referred to as "Parcel A" and "Parcel B" or collectively as "SAM Property"). For general reference only, those parcels are indicated with corresponding letters on Exhibit 2, attached hereto and incorporated herein.
- B. MDA is the owner of the real property legally described on Exhibit 3, attached hereto and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM.
- C. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.



D. The OSP design will provide a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way, as generally indicated on Exhibit 2.

E. Pursuant to Ordinance _____ (the "Permit," which term shall include any modification thereof or replacement therefor), the City has granted to SAM a permit to construct, operate and maintain two skybridge structures over public rights of way in conjunction with the OSP: one over and across a portion of Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge") and one over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern and Santa Fe Railway franchise area, and including the ramp, stairs and abutment where the skybridge structure connects with the Boulevard ("Alaskan Way Bridge"). They are collectively referred to as the "Skybridges." Capitalized terms used and not defined herein shall have the meanings set forth in the Permit unless the context otherwise requires.

F. The City's grant of the Permit is subject to certain terms and conditions, including, without limitation, the grant of the rights set forth in this Grant.

GRANT OF RIGHTS AND COVENANTS

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAM and MDA grant and agree as follows:

1. Grant and Purpose.

A. Public Access Rights. SAM hereby grants and conveys to the City with respect to the Skybridges and Parcels A and B, rights to public access limited to pedestrian and wheelchair travel (for purposes of this Grant, "wheelchair" shall include any device for mobility of persons with disabilities that is allowed from time to time on public sidewalks in the City of Seattle) on, across and over the Skybridges and the pathways and elevated structures located and to be located on Parcels A and B, throughout the entire "Vee" shown by hatch marks on Exhibit 2. Such rights are referred to as the "Public Access Rights." SAM may locate and relocate from time to time obstructions to pedestrian or wheelchair travel or both (for example, artwork, planters, and other amenities or items related to the OSP) in the Vee but shall always provide an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The portions of the "Vee" that are not at a given time obstructed to both pedestrian and wheelchair travel as allowed by the preceding sentence are referred to as the "Public Access Area." The Public Access Area must always extend



continuously from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The public shall have free, open and continuous pedestrian and wheelchair access to and through the Public Access Area free of charge every day of the year, except that so long as the SAM Property is operated by SAM as the OSP, SAM may close the Public Access Area for up to five calendar days per calendar year when the OSP is closed to the public consistent with the terms of an Operation and Maintenance Agreement between SAM and the City. Except on days when SAM has closed the Public Access Area to the public pursuant to the preceding sentence, the public shall have access to the entire Public Access Area at least during the period beginning at 9:00 AM and ending at 5:00 PM local time seven days a week and during all additional hours as the OSP is open to the public, but at all times subject to compliance with rules of conduct pursuant to paragraph 4 below, and subject to the right of the City to close the Skybridges or any part of the Public Access Area, or to impose further restrictions on use and access from time to time, consistent with the following sentence. So long as the SAM Property is operated by SAM as the OSP, the City shall not close a Skybridge for which a Permit remains in effect, or that the City owns and has not elected to remove, nor restrict access to and from the OSP over such a Skybridge or the Public Access Area during the period from 9:00 AM to 5:00 PM each day and during all additional hours as the OSP is open to the public, without the consent of SAM, except as the City may deem necessary temporarily for reasons of public safety. In addition, City employees in the performance of their official duties related to public safety shall be entitled to use the Public Access Area at all times. SAM reserves the right to undertake measures to prevent public access onto SAM's property outside of the Public Access Area.

B. Structure and Pathway Maintenance Rights.

The provisions of this Subsection 1B for inspection and monitoring, and for emergencies, shall apply to each Parcel of the SAM Property so long as the Public Access Rights remain in effect as to any portion of that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1B shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1B shall apply to the Parcel or Parcels of the SAM Property for which SAM has no obligation to maintain the Public Access Area pursuant to Section 5, and, if the portion of the Public Access Area on Parcel B shall be replaced by the 7-foot wide path described in Subsection 5C of this Grant, then this Subsection 1B shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.



(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of the Public Access Area located on a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Public Access Area, this Subsection 1B shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

SAM hereby grants and conveys to the City the non-exclusive rights to access on, across, over, under and through such portions of the SAM Property as are reasonably necessary, for all purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of the elevated and grade level pathways (including the entire area shown on Exhibit 2 as the "Vee," less the Skybridges) that connect the Alaskan Way Bridge and the Elliott Avenue Bridge, and that connect the Elliott Avenue Bridge with Western Avenue ("Structure and Pathway Maintenance Rights"). If a "fixed specific Public Access Area" is designated under Subsection 5B, then thereafter the Structure and Pathway Maintenance Rights shall be only for purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of that fixed and specific Public Access Area. The City shall not modify the design or location of the pathways without SAM's consent. Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the elevated pathway are expressly included in the foregoing grant. Such grant also includes the right of the City to install measures to prevent use or access during any times when public access is not permitted. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any applicable notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1B in any way.

C. Skybridge Maintenance Rights.

The provisions of this Subsection 1C for inspection and monitoring, and for emergencies, shall apply to each Skybridge and to each Parcel of the SAM Property so long as there is a Skybridge abutting that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1C shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1C shall apply to the Parcel or Parcels of the SAM Property abutting a City-owned Skybridge and, if the City owns the Alaskan Way Bridge, then this Subsection 1C shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.

(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of a Skybridge abutting a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct or alter the Skybridge, this Subsection 1C shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

(3) If the City is entitled to replace or remove a Skybridge, then this Subsection 1C shall apply to the SAM Property and MDA Property to the extent that the City requires access thereto in order to do so.

SAM hereby grants and conveys to the City with respect to each Skybridge and to Parcels A and B, rights on, across, over, under and through such portions of the Skybridges and Parcels A and B as are reasonably necessary, for access to the Skybridges and for construction, operation, repair, replacement, alteration, inspection, monitoring, maintenance, and removal of the Skybridges ("Skybridge Maintenance Rights"). Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the Skybridges are expressly included in the foregoing grant. The Skybridges are depicted on Exhibit 2 attached hereto. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the Skybridges and the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-



motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1C in any way.

D. MDA Joinder; Grant of Rights in Broad Street Access

To the extent of any interest the MDA may have as lessee or otherwise in Parcel A or B, the MDA joins in the grants and conveyances in this Grant. To the extent that the Public Access Area shall hereafter include a portion of MDA Property pursuant to Subsection 5C, SAM and the MDA hereby grant the City over the portions of Parcels B and D that become part of the Public Access Area, and the MDA hereby grants the City over Parcel D, all the rights described in this Grant, as though those portions of Parcels B and D had been included in Subsections 1A, 1B, and 1C.

2. **Rights and Remedies.** The City shall have the right without prior institution of any suit or proceeding of law, at such times as may be necessary, to exercise the rights at such times and to the extent provided in this Grant. In addition, the City shall have all remedies that may be available at law or in equity. This instrument is not intended to confer any right of action or remedies on any member of the general public or any other person that is not a party hereto. The rights granted to the City are not obligations of the City and may be exercised at the City's discretion. The City shall not be liable or responsible for any injury, loss or damage caused by members of the public in the exercise of the rights of access granted hereunder, except to the extent, if any, that such injury, loss or damage is caused by the negligence of the City for which it has liability under applicable law, not including any City negligence in regard to any condition that SAM or MDA shall have caused or permitted contrary to the terms of this Grant, the Permit or any agreement with the City. The City shall not be subject to any obligation pursuant to any security instrument or other agreement executed by SAM or MDA with respect to any part of the SAM Property. The rights of the City and obligations of the Grantor herein are in addition to, and not in substitution for, the rights and obligations under the Permit or any other agreement.

3. **Grantor to Construct and Maintain.** Grantor, at its sole expense, shall construct the pathways in the "Vee" as shown in Exhibit 2, consistent with plans approved by the City and in full compliance with all applicable laws, codes and regulations as they apply to public facilities, including without limitation standards under the Americans with

Disabilities Act ("ADA"). For so long as the Permit is in effect, Grantor, at its sole expense, shall maintain the Skybridges and the Public Access Area in safe, clean, and sanitary condition; shall promptly make any necessary repairs; shall not allow obstructions or debris to remain in the Public Access Area; and shall not cause or permit any structure or condition adjacent to the Public Access Area that could be hazardous to persons using the Public Access Area. If Grantor shall default in its obligations under this paragraph, the City shall have the right, but not the obligation, after at least thirty (30) days' notice to SAM and SAM's failure to cure such default or to commence cure (except that notice and opportunity to cure shall not be required in case of emergency), or after SAM's failure diligently to prosecute cure of default after commencing cure, to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Skybridges or Public Access Area, all at the expense of the Grantor, and Grantor shall reimburse the City promptly on demand for the costs of such actions. So long as SAM is the Permittee under the Permit, SAM may contest the City's notice of default under this Section 3 or contest the City's decision that SAM has not diligently prosecuted cure of default by appealing in writing, within 10 days after notice of default or within 5 business days after being informed of the City's decision that SAM has failed diligently to prosecute cure, to the Superintendent of Parks and Recreation and to the Mayor, and the notice shall be withdrawn or more time allowed for cure, as applicable, if either of those officers so determines. Upon request by SAM, the Superintendent of Parks and Recreation shall provide an opportunity for the Executive Director of SAM to meet by phone or in person with the Superintendent to attempt to resolve any disagreement as to notices or decisions appealable under this Section 3. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Section 3 in any way.

4. Rules of Conduct.

A. Grantor shall adopt and enforce reasonable rules of conduct in the Public Access Area for the safety and convenience of pedestrian and wheelchair travel through the Public Access Area. Such rules shall be consistent with applicable law. To the extent that such rules are the same as rules applicable in City of Seattle parks, Grantor may adopt them without City approval, but shall provide written notice to the City before they take effect.

(1) So long as SAM owns Parcels A and B of the SAM Property and operates those Parcels as the OSP, SAM (but not SAM's successors or assigns) may



adopt additional rules without City approval, but shall provide written notice to the City before they take effect.

(2) If SAM no longer owns Parcels A and B of the SAM Property or no longer operates those Parcels as the OSP, Grantor may adopt additional rules only with the advance written consent of the City.

Grantor shall have the right to require any person who does not comply with rules that are in effect in accordance with this Section 4 to leave the Public Access Area.

B. If the obligation of the Grantor to maintain and control any portion of the Public Access Area shall terminate under Section 5 below, then for so long as the right of public access hereunder continues as to such portion, the City shall have the sole right to make, modify, and enforce rules and regulations for the portion of the Public Access Area that is serving the Skybridge(s) owned by the City, provided that so long as the parcel adjacent to such portion remains in use by SAM as the OSP, the City shall provide SAM with thirty (30) days notice and opportunity to comment on changes in rules and regulations, and shall not adopt changes that would materially impair the use by pedestrians for access to the OSP during hours when the OSP is open to the general public, or for access to allowed special events sponsored by SAM.

C. The parties acknowledge that the Public Access Area is not being dedicated as a public street or sidewalk, and that the nature of the OSP and limited purpose of the Public Access Rights are such that various activities traditionally permitted in public streets and sidewalks would not be appropriate for the Public Access Area. Compliance with rules that are in effect in accordance with this Section 4 is a condition of the right of any person to use the Public Access Area, except City employees and agents in the performance of their activities related to public safety.

5. Duration; Termination in Whole or in Part on Certain Events; City Ownership of Skybridges.

A. The Public Access Rights, the Structure and Pathway Maintenance Rights, and the Skybridge Maintenance Rights, and the covenants and servitudes contained in this Grant, shall inure to the benefit of the City, shall be binding upon SAM and MDA and each of their successors, transferees and assigns, including, without limitation, tenants, and shall run with the land described in Exhibits 1 and 3, but the benefit thereof shall not run with any land owned by the City. All such rights, covenants and servitudes shall extend for so long as SAM or any successor in interest or assignee shall hold the Permit to maintain one or both of the Skybridges, and, except to the extent otherwise provided below, shall also remain in effect:



(1) if SAM, or its successor in interest or assignee as holder of the Permit, shall not seek renewal of the Permit for an additional term, or if the Permit shall be terminated as to one or both Skybridges based on the City's determination that there has been default by the Permittee under the Permit, then in each case for so long as the Skybridges, or either of them, remain in place, but not to exceed fifty (50) years from the effective date of the original Permit plus the time until both Skybridges are removed by the Permittee as required by the terms of the Permit ; or

(2) if the Permit shall be renewed and shall then terminate after 50 years, at the expiration of its renewal term, then for so long thereafter as one or both Skybridges remains in place pending City action on an application for a new permit or pending removal of both Skybridges by the Permittee as required by the terms of the Permit. If the City issues a new permit after the Permit terminates after 50 years, at the expiration of its renewal term, then public access rights, if any, shall be according to the terms of that new permit.

Consistent with the foregoing, this Grant shall terminate automatically if the City
(a) denies SAM's application to renew the Permit after the initial 25-year term or
(b) terminates the Permit for both Skybridges under Subsection 3(a) of the Permit for another transportation use.

B. If the Permit shall be terminated or expire as to either or both Skybridges, and the City shall elect to assume full ownership and control of one or both Skybridge(s) pursuant to the terms of the Permit, then upon the City's acceptance of a quitclaim deed for the Skybridge structure from the Grantor, (i) all obligations of Grantor with respect to the maintenance and operation of such Skybridge(s) hereunder shall terminate, (ii) at either the City's or SAM's option, all obligations of the Grantor to maintain, control and repair the part of the Public Access Area on any Parcel adjacent to a Skybridge so accepted by the City, shall terminate, (iii) if either the City or SAM does elect to terminate the Grantor's obligations to maintain, control and repair part or all of the Public Access Area pursuant to (ii) above, then Grantor will within 60 days after notice of that election designate in writing a fixed and specific Public Access Area across the affected Parcel or Parcels of SAM Property, within the Vee, satisfactory to the Director that will be an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points on the affected Parcel or Parcels of SAM Property from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park, and that designated Public Access Area will thereafter be subject to all the Public Access Rights; but if Grantor fails timely to make such a designation the City may do so with like effect, and (iv) SAM (but not any successors or assigns) shall be entitled to the non-exclusive use of the City-owned Skybridge(s) and the Public Access Area for temporary access to



move sculptures and artwork between Parcel A and Parcel B so long as such activity leaves accessible for public access a minimum 11-foot wide travel area. However, nothing herein shall relieve the Grantor of the obligation to remove such Skybridge(s) at the end of the period of City ownership pursuant to the Permit. Further, if at the end of the period of the City's ownership of one or both Skybridge(s) Grantor shall obtain a new permit to maintain one or both such Skybridge(s), then for so long as such permit remains in effect the Grantor shall have the same obligations as were in effect prior to the City's ownership of such Skybridge(s). For so long as the City has ownership of one or both Skybridges, the rights of the City to maintain and repair the Skybridges and such portions of the Public Access Area, and the public's access thereto, shall remain in full force and effect to the extent provided under the terms of this Grant, except that if the Elliott Avenue Bridge shall have been removed, other than for reconstruction thereof, then such City rights shall not continue with respect to the portion of the SAM Property East of Elliott Avenue. For so long as the Grantor shall not have the obligation to maintain a portion of the Public Access Area, the City shall have the right to install in such portion any directional signage that the City deems appropriate for the convenience of the public using the same, with thirty (30) days advance notice to SAM.

C. Not later than the sooner of the day the OSP opens to the public or 450 days after the acceptance of the Permit, Grantor shall construct and shall thereafter maintain open for free public passage a pedestrian and wheelchair access to the east end of the Alaskan Way Bridge from Broad Street (the "Broad Street Access"), on a route no less than seven (7) feet wide in the location shown on Exhibit 4, and in accordance with the City-approved design. If the Elliott Avenue Bridge shall be removed and either a permit then remains in effect for the Alaskan Way Bridge or the City is entitled to and elects to assume ownership of the Alaskan Way Bridge pursuant to the Permit, then Grantor shall ensure that the Broad Street Access meets all then applicable access and other legal requirements and the Broad Street Access shall become part of the Public Access Area, and shall be subject to all Public Access Rights, replacing the portion of the Vee located on Parcel B that is not part of the Broad Street Access. Upon the Grantor's failure to perform construction or other work necessary to provide the Broad Street Access in compliance with the terms of this Subsection 5C in a timely manner, the City shall have the right, but not the obligation, to construct or perform other necessary work on the Broad Street Access at the expense of the Grantor, in the location shown on Exhibit 4; if the City does so, the Broad Street Access shall become part of the Public Access Area and be subject to all Public Access Rights only under the same circumstances as it would if Grantor had performed the construction or other work.

D. If both Skybridges shall be removed as required or permitted in accordance with the terms of the Permit, other than for reconstruction thereof, then this Grant shall terminate. If only the Elliott Avenue Bridge shall be removed, other than for reconstruction thereof, then the Grant shall terminate with respect to the portion of the



SAM Property located east of Elliott Avenue and, conditioned upon provision of the Broad Street Access if required under Subsection 5C above, the Grant shall also then terminate as to the portion of the Vee located on Parcel B that is not part of the Broad Street Access.

6. Modification or Release. The terms herein may be modified by a written instrument signed by an authorized officer of the City and by SAM and MDA, or their respective successors and assigns, and not otherwise, provided that if the interests of either SAM or MDA, or its respective successors or assigns, are not affected, then the signature of such party shall not be required. The City shall have the right to release in whole or in part the rights granted herein by recording an instrument executed by an authorized officer of the City.

7. Representations and Warranties of Grantor. SAM represents and warrants that it holds fee simple title to the SAM Property, and holds a subleasehold interest therein from the MDA pursuant to the sublease dated October 1, 2002, which is in full force and effect, in each case subject to no liens, encumbrances, defects, leases, options or other interests except as expressly set forth in Exhibit C to the Permit ("Permitted Encumbrances"), and that the rights granted hereunder are not and shall not be subject to any lien, encumbrance, defect, lease, option or other interest except for the Permitted Encumbrances. MDA represents and warrants that it holds fee simple title to the MDA Property, subject only to a ground lease to SAM, to the reversionary rights of the City, and to Permitted Encumbrances (to the extent applicable), and that MDA holds a leasehold interest in the SAM Property under a lease dated October 1, 2002, from SAM, which is in full force and effect, and such leasehold interest is subject to no liens, encumbrances, defects, leases, options or other interests except the Permitted Encumbrances and the interests of SAM.

8. Limited Purpose of Execution by MDA. Any other provision herein notwithstanding:

The MDA does not claim or warrant any title or interest in the SAM Property except to the extent of the leasehold interest described herein. MDA is executing this instrument solely in order to ensure that (a) this Grant encumbers such leasehold and any other interest that the MDA may have now or hereafter in the SAM Property; and (b) in the limited circumstances set forth in Subsection 5.C above, alternate access shall be provided from Broad Street to the Alaskan Way Bridge. So long as the MDA has no right to possession of the SAM Property, all obligations of "Grantor" for any performance hereunder shall be the sole obligations of SAM, and its successors in interest (not including MDA as such lessee), except that if at any time the Broad Street Access is required pursuant to Subsection 5C and if SAM shall not then be the ground lessee of the MDA Property, any obligations of "Grantor" with respect to the MDA Property then shall be those of the MDA.



SEATTLE ART MUSEUM,
a Washington nonprofit corporation

By: _____
Print Name: _____
Print Title: _____

MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,
a public corporation chartered by the City of Seattle

By: _____
Print Name: _____
Print Title: _____

NOTICE: MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE is organized pursuant to Seattle Municipal Code (SMC) Chapter 3.110 and RCW 35.21.730-.755. RCW 35.21.750 provides as follows:

“All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such public corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority.”

Accepted:
THE CITY OF SEATTLE

By: _____ Date: _____
Name: _____
Title: _____

EXHIBITS:

- Exhibit 1 Legal description of SAM Property
- Exhibit 2 Schematic design showing Skybridges and “Vee”
- Exhibit 3 Legal description of MDA Property
- Exhibit 4 Schematic design showing location of Broad Street Access



STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE SEATTLE ART MUSEUM, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____



GRANT EXHIBIT 1

LEGAL DESCRIPTION of SAM Property

PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



PARCEL B:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE NUMBER 12502;

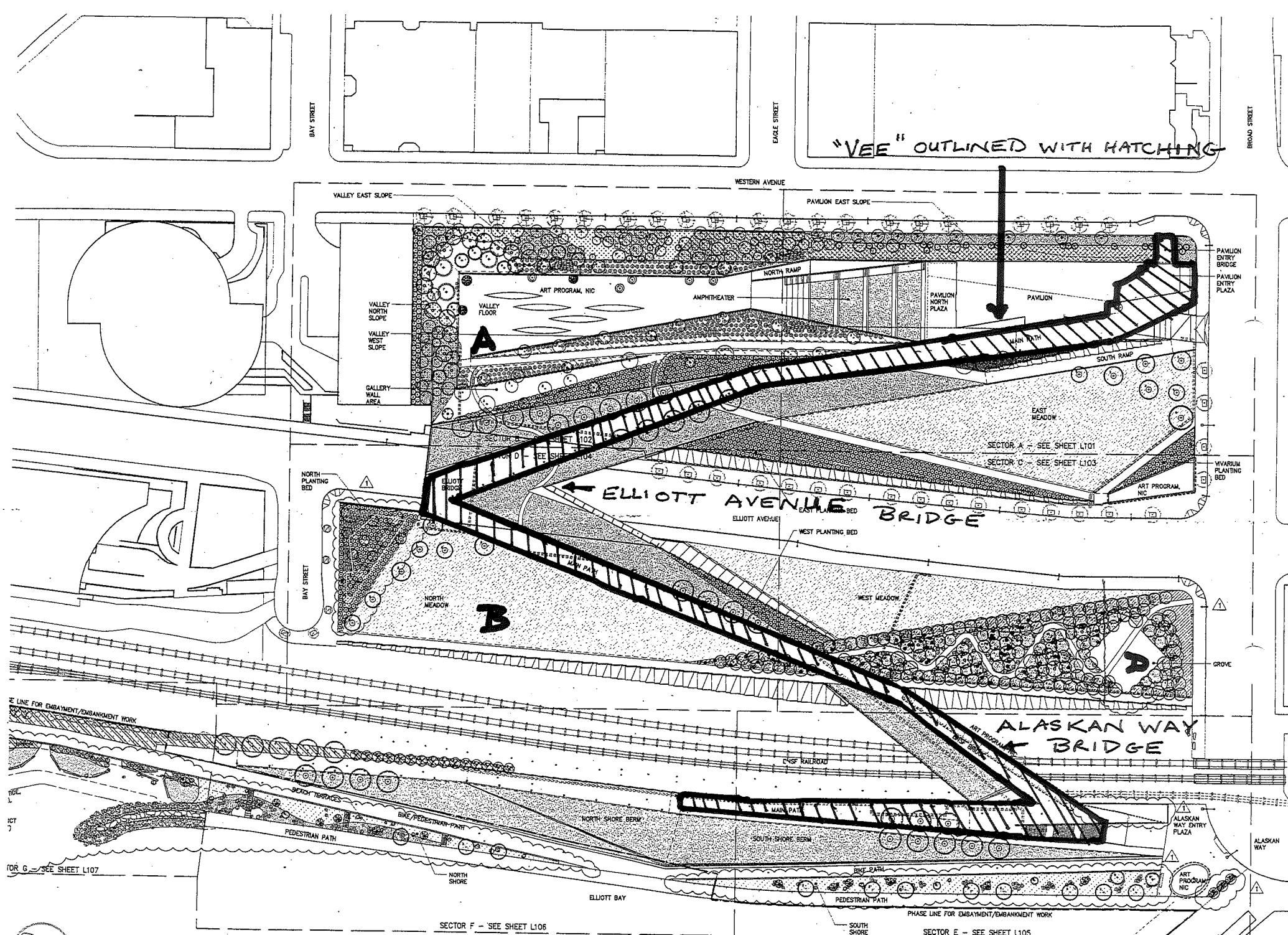
THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE POINT OF BEGINNING.



GRANT EXHIBIT 2

[Please see next page for schematic design showing Skybridges and "Vee"]





"VEE" OUTLINED WITH HATCHING

GRANT EXHIBIT 2



GRANT EXHIBIT 3

LEGAL DESCRIPTION OF MDA Property

PARCEL D:

LOTS 3 AND 4, BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 82, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPTING THEREFROM THAT PORTION PLATTED AS SEATTLE TIDELANDS;

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 3, DISTANT 14.408 FEET SOUTHWESTERLY OF THE MOST EASTERLY CORNER OF SAID LOT;

THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 24

FEET, AN ARC DISTANCE OF 27.83 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 3, DISTANT 22

FEET NORTHWESTERLY OF SAID MOST EASTERLY CORNER;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO SAID MOST EASTERLY CORNER;

THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT TO THE POINT OF BEGINNING.

TOGETHER WITH

LOTS 5 AND 6, BLOCK 168-B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS, AS SHOWN ON THE OFFICIAL MAPS

OF SEATTLE TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, IN

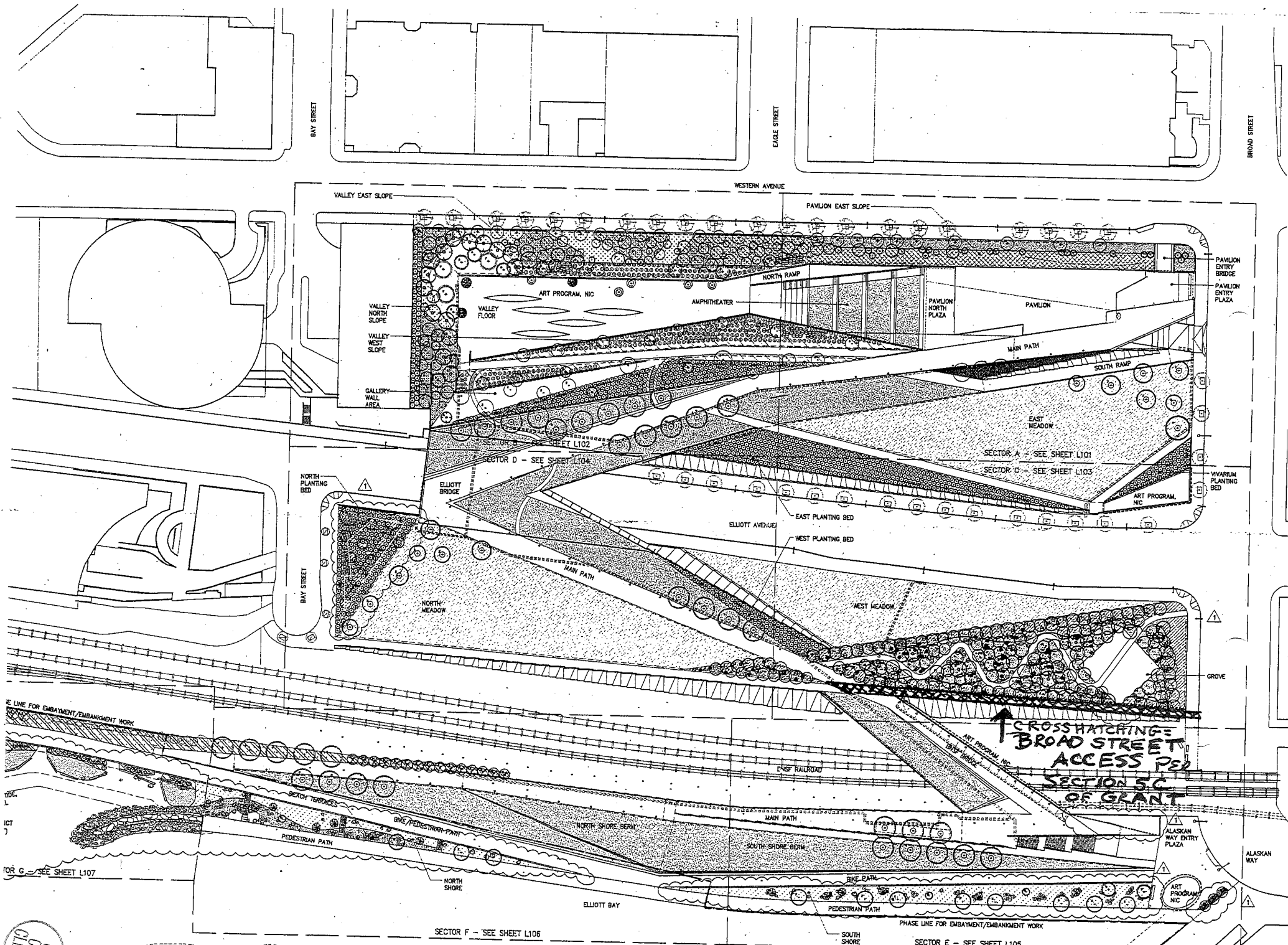
WASHINGTON.



GRANT EXHIBIT 4

[Please see next page for schematic design showing Broad Street Access]





GRANT EXHIBIT 4



ORDINANCE ATTACHMENT B

LEGAL DESCRIPTION of SAM's Two Upland Blocks

PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



PARCEL B:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE POINT OF BEGINNING.



ORDINANCE ATTACHMENT C

PERMITTED ENCUMBRANCES

1. RIGHT TO MAKE SLOPES FOR CUTS OR FILLS UPON PROPERTY HEREIN DESCRIBED AS PROVIDED FOR IN CITY OF SEATTLE ORDINANCE NOS. 18109 AND 28000.

2. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF.

BETWEEN: UNION OIL COMPANY OF CALIFORNIA
AND: CITY OF SEATTLE
RECORDED: NOVEMBER 20, 1980
RECORDING NUMBER: 8011200455
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290676.

3. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

BETWEEN: UNION OIL COMPANY OF CALIFORNIA
AND: CITY OF SEATTLE
RECORDED: NOVEMBER 20, 1980
RECORDING NUMBER: 8011200456
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290677.

4. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NO. 40057 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A CONDUIT OR SUBWAY UNDERNEATH AND ACROSS ELLIOTT AVENUE BETWEEN PARCELS A AND B, NOT EXCEEDING 14 FEET IN WIDTH, THE NORTHERLY MARGIN OF WHICH IS TO BE 86 FEET SOUTHERLY OF AND PARALLEL WITH THE SOUTHERLY MARGIN OF BAY STREET.
5. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NOS. 98301 AND 118042 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A SYSTEM OF PIPELINES AND APPURTENANCES IN, UNDER, ALONG AND ACROSS ALASKAN WAY BETWEEN PARCELS B AND C WITHIN A STRIP OF LAND 30 FEET IN WIDTH, APPROXIMATELY 40 FEET SOUTHERLY OF BAY STREET.
6. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY,



BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

RECORDED: DECEMBER 7, 1999
RECORDING NUMBER: 19991207001745

7. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

RECORDED: DECEMBER 7, 1999
RECORDING NUMBER: 19991207001746

8. PROPERTY USE AND DEVELOPMENT AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: FEBRUARY 21, 2003
RECORDING NUMBER: 20030221002536

9. MEMORANDUM OF DRAINAGE CONTROL, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: JULY 12, 2004
RECORDING NUMBER: 20040712001525

10. COVENANT GEOLOGIC HAZARD AREA, INCLUDING THE TERMS AND PROVISIONS THEREOF:

RECORDED: JULY 18, 2005
RECORDING NUMBER: 20050718002400

11. NON-DELINQUENT TAXES AND ASSESSMENTS.

12. GROUND LEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER, AS GROUND LESSOR, AND THE MUSEUM DEVELOPMENT AUTHORITY; AS TENANT.

13. SUBLEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER AS SUBTENANT AND THE MUSEUM DEVELOPMENT AUTHORITY AS SUBLANDLORD.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Keith Miller, 684-5275	Aaron Bert, 684-5176

Legislation Title: AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

- **Summary of the Legislation:** This legislation gives permission to the Seattle Art Museum (SAM) to build two skybridges (referred to as the Elliott Avenue Bridge and the Alaskan Way Bridge) in connection with the Olympic Sculpture Park (OSP). It states the terms and conditions under which those skybridges can be built, and establishes the term for the permit as twenty five years initially, renewable upon SAM's application to the Director of Transportation for one additional 25 year term, for a total of fifty years. The City Council may modify conditions at or before the time for renewal. The skybridges will cross arterial streets and railroad tracks within the OSP and will provide uninterrupted, safe pedestrian access across Elliott Avenue and the Burlington Northern Santa Fe (BNSF) Railway Company tracks through the OSP to the waterfront.

Granted to the City are rights to public access on, across and over the skybridges and the pathways and the elevated structures, from Western Avenue downhill to the Alaskan Way Park Boulevard. SAM may place art or tents or other items in the public access area but must leave available an access pathway suitable for pedestrian and wheelchair travel that is at least 11 feet wide.

So long as the Permit for the skybridges remains in effect, the public will have free and open access through the public access area from 9:00 AM to 5:00 PM seven days a week, plus whatever additional hours the Olympic Sculpture Park is open to the public. SAM may close the public access area for up to 5 days per calendar year, when the Olympic Sculpture Park is closed to the public, consistent with the terms of the Operation and Maintenance Agreement between the City and SAM.

So long as at least one skybridge exists under the Permit, SAM commits to maintain the two blocks on either side of Elliott Avenue as a sculpture park that is open and free to the public.

In most cases if the Permit terminates or SAM does not renew, the City may take ownership of one or both skybridges, with public access continuing for 50 years from the beginning of the Permit.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):* The existing grades along the Broad Street sidewalk exceed the federal standards for accessibility. This geography is a result of the significant regrading activities that occurred in this vicinity in the early part of the 20th century. The main path through the OSP across the proposed new skybridges will allow pedestrian access through to the waterfront on an ADA-compliant pathway. In 2000, a design agreement between the City of Seattle and SAM was executed to guide the design and development of the future park property. The concept design was approved by the City Council with the adoption of Ordinance 119982 in 2000. In April, 2005, City Council passed Resolution 30760 approving the design of the OSP and in May, 2005, the Council passed Resolution 30771 granting conceptual approval of the two pedestrian skybridges.

- *Please check one of the following:*

X **This legislation does not have any financial implications.** In recognition of the public benefits of the OSP, including the Grant, no annual fee is charged for this Permit.

ORDINANCE _____

AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

WHEREAS, the Seattle Art Museum ("SAM") proposes to develop the Olympic Sculpture Park ("OSP") on the two city blocks bounded by Bay Street, Western Avenue, Broad Street and Alaskan Way, and on the waterfront parcel owned by the City of Seattle ("City") to the west of Alaskan Way next to Myrtle Edwards Park; and

WHEREAS, by Resolution 30760 the City Council, with the Mayor concurring approved the design of the OSP; and

WHEREAS, by Resolution 30771 the City Council, with the Mayor concurring granted conceptual approval of two pedestrian skybridges, one crossing over Elliott Avenue between Bay and Broad Streets and the other crossing over Alaskan Way between Bay and Broad Streets, as proposed by SAM as part of its development of the OSP; and

WHEREAS, pursuant to Seattle Municipal Code ("SMC") Chapter 15.64, SAM has submitted the information required for the Director of Transportation ("Director") to make a recommendation to the Council on whether to grant or deny conceptual approval, and the Director has circulated the information to the Seattle Design Commission, and to the City departments and public and private utilities interested in or affected by the proposed skybridges, and compiled the responses (C.F. 307255); and

WHEREAS, the departments and utilities have no objections to the conceptual design of the skybridges, and the Design Commission supports the two proposed skybridges as a core element of the OSP design and recommends that the Council approve the final application; and

WHEREAS, in making her recommendation, the Director considered the 12 elements set forth at SMC 15.64.050.B, and recommended that conceptual approval be granted; and



WHEREAS, the adoption of this ordinance is the culmination of the approval process for the skybridges and will allow SAM to move forward with construction of the skybridges;
NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Permit. Subject to terms and conditions of this ordinance (otherwise known as the "Permit"), permission is hereby granted to the Seattle Art Museum ("SAM") (referred to, together with any transferee allowed by the City pursuant to this ordinance, as "Permittee") to construct, maintain and operate, in conjunction with the Olympic Sculpture Park ("OSP" or "Park") a skybridge over and across Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge"), and a skybridge over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern Santa Fe Railway franchise area ("Alaskan Way Bridge") (together the "skybridges"). The Elliott Avenue Bridge will support the Park's central pathway, seating areas, sculpture and landscaping on a vee-shaped structure with an average width of 72 feet, located approximately 20 feet above street grade, and will connect Western Avenue and Broad Street and the eastern-most OSP parcel, lying between Western Avenue and Elliott Avenue, with the parcel lying between Elliott Avenue and Alaskan Way, as shown on Exhibit 2 to Attachment A hereto. The Alaskan Way Bridge will also support the central pathway, seating areas, sculpture and landscaping on a structure with an average width of 75 feet, located approximately 24 feet above the surface of the right-of-way, and will connect the eastern OSP parcels with that portion of Alaskan Way designated as a park boulevard by Ordinance 121721 ("the Boulevard") and provide access to SAM's tideland parcel and Myrtle Edwards Park's southern entrance, as shown on Exhibit 2 to Attachment A hereto. The Alaskan

Way Bridge also includes the ramp, stairs and abutment where it connects with the Boulevard.

SAM's use of the Boulevard as part of the OSP is to be governed by a separate Operation and Maintenance Agreement ("O and M Agreement"), to be approved by ordinance, between the City and SAM.

Section 2. Use of Skybridges; Duration and Renewal of Permit. For as long as the Permit remains in effect as to at least one skybridge and that skybridge remains in place, the property described on Attachment B hereto shall be used by SAM or its assignee of this Permit as a sculpture park that is open and free to the public, subject to the terms of any operations and management agreement approved by ordinance, which park may include accessory uses such as exhibition, special events and retail uses in the pavilion and underground parking. The Permit hereby granted is for a term of twenty-five (25) years, commencing when the conditions in Sections 1 and 16 have been met and terminating at 11:59 p.m. on the last day of the twenty-fifth year; provided, however, that upon written application of the Permittee at least thirty (30) days before the expiration of the term, the Director may renew the Permit for one additional term, for a total term of fifty (50) years. The Permit is granted subject to the right of the City by ordinance to revise any of the terms and conditions contained herein. Notwithstanding the foregoing, in the event that the Permittee has made timely application for renewal of the Permit in accordance with this section, or for a new permit if and when this Permit expires in 50 years, and the City has not taken the necessary action to renew or grant, or to deny the renewal or grant of, a permit prior to the expiration of the term or the renewal term, the Permit shall be deemed extended until such time as the City takes action on such permit application.



1 Section 3. Termination of Permit; Removal of Skybridges. The Permit hereby granted
2 to use portions of Elliott Avenue and Alaskan Way for skybridges is subordinate to the public's
3 use for transportation purposes, and the City expressly reserves the right to terminate this Permit
4 as to one or both skybridges and/or to require the Permittee to remove the skybridges or any
5 portion thereof at the Permittee's sole cost and expense if one more of the following occur:

- 6
- 7 (a) The City Council determines, by ordinance, that the space occupied by a
8 skybridge is necessary for any non-pedestrian public travel or transportation use,
9 or that a skybridge interferes with any public transportation use. A City Council
10 determination that the space is necessary for a public transportation use shall be
11 conclusive and final.
- 12
- 13 (b) The Director determines that any term or condition of this Permit has been
14 violated, and the Permittee does not correct such violation within thirty (30) days
15 of written notification from the City, or within such longer period of time that the
16 Director determines is necessary for Permittee to correct the violation.
- 17
- 18 (c) The Permittee does not apply for a renewal of this Permit in twenty-five (25) years
19 or its renewal application is denied.
- 20 (d) The Permittee does not apply for a new permit if and when this renewed Permit
21 expires in fifty (50) years, or its new permit application is denied.
- 22

23 Subject to the City's s right to assume ownership and operation of a skybridge under
24 Section 4 of this ordinance, the Permittee shall, within ninety (90) days after the expiration of this
25 Permit, its termination, or the date of a City order of removal, or prior to the date stated in an
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“Order to Remove,” as the case may be, the Permittee shall remove the skybridge(s) and shall place all portions of Elliott Avenue and/or Alaskan Way that may have been disturbed for any part of a skybridge in as good condition for public use as they were prior to construction, and in at least as good condition in all respects as the abutting portions thereof at the time of such removal. In the event that the City determines that the skybridges must be removed upon termination of permission to maintain and operate them, the Permittee shall remove all sculpture and other art installations from the Boulevard and the skybridges. Upon removal of the skybridges and completion by the Permittee of all required restoration, the Director shall issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge.

Section 4. City Ownership and Operation of Skybridges. Because the skybridges will constitute a transportation use and benefit to the public by providing a pedestrian walkway above the Burlington Northern Santa Fe Railway and Elliott Avenue connecting the Boulevard to the OSP and adjacent public streets, upon termination of the permission granted by this ordinance as to such skybridge(s) the City may elect to assume ownership and operation of one or both of the skybridges as a City facility, for a period ending fifty (50) years after the commencement of the term of this Permit, but only in any of the following cases:

(A) if the Permittee does not seek renewal of the Permit at least thirty (30) days before the expiration of the initial term;

(B) if the City terminates the Permit as to such skybridge(s) pursuant to Sections 3(b) or 3(c) of this ordinance; or

1 (C) if the Permittee seeks renewal of the Permit in a timely manner but does not accept in a
2 timely manner, or does not comply in a timely manner with, the conditions of such renewal.

3 Upon the City's election to assume ownership and operation, ownership of the skybridge
4 structure(s) shall vest in the City, subject to reversion, at the end of such fifty (50) year period, to
5 SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge. Upon such
6 reversion, SAM and any such other owners each shall be obligated promptly and at their own
7 expense to remove such skybridge(s) and restore the right of way as described in Section 3,
8 provided that if the then owner(s) of such parcels shall apply to the City for a new permit to
9 maintain such skybridge(s) within fifteen (15) days after such reversion, the obligation to remove
10 shall be deferred until thirty (30) days after denial of such application, or if such application shall be
11 granted, until such time as the skybridge(s) must be removed pursuant to the terms of the new
12 permit. At the City's election, at the time when the City shall assume ownership of a skybridge, all
13 additions, fixtures and improvements made to or constructed upon the skybridges shall remain
14 without compensation to the Permittee, except that the Permittee may elect to remove, within
15 fifteen (15) days after the City shall assume ownership, any sculptures and other art installations, on
16 the following conditions: (i) that if any sculpture or installation serves as a structural or safety
17 feature of the skybridge or as a feature required by any applicable law or regulation, the Permittee
18 shall cause a replacement feature to be installed satisfactory to the Director immediately after such
19 removal; and (ii) that the Permittee forthwith repair any damage to the skybridge caused in the
20 course of any removals. In the discretion of the Director, the Permittee may be required to post a
21 bond for the costs of replacement or restoration prior to undertaking any removals.
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1 Section 5. Grant of Access and Maintenance Rights. As a precondition to the grant of
2 this Permit, SAM shall deliver to the City a document ("Grant") granting to the City rights of
3 public access along the central vee-shaped pathway that originates on Western Avenue at the
4 intersection of Western Avenue and Broad Street and extends across both skybridges to the
5 waterfront parcel and Myrtle Edwards Park, and with public access to Broad Street across SAM
6 land and Museum Development Authority land per Section 5C of the Grant, all as shown on the
7 maps attached as Exhibits 2 and 4 to the form of the required Grant. The form of the required
8 Grant, including the maps and other exhibits to the Grant, are Attachment A hereto. At the time
9 the Grant required herein is delivered to the City, the property described in Attachment B hereto
10 shall not be encumbered in any way other than what is shown in Attachment C. The Museum
11 Development Authority must join in the Grant as provided in Section 16, both as lessee/sublessor
12 and to provide public access according to subsection 5C of the Grant. The Director is authorized
13 to accept the Grant, and to enforce and administer the rights of the City thereunder, including
14 without limitation passing upon rules and restrictions proposed by SAM for the public use of the
15 access areas described therein consistent with the terms of any operations and management
16 agreement approved by ordinance.

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20 Section 6. Reconstruction, Relocation, Readjustment and Repair. The Permittee shall not
21 commence reconstruction, relocation, readjustment or repair, other than routine repair and
22 maintenance, of the skybridges except under the supervision of, and in strict accordance with plans
23 and specifications approved by the Director. After notice to and consultation with Permittee, the
24 Director in his/her judgment may order reconstruction, relocation, readjustment or repair of the
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1 skybridges at the Permittee's own cost and expense because of the deterioration or unsafe condition
2 of the skybridges.

3 Section 7. Closure. After notice to the Permittee, and failure of the Permittee to correct any
4 condition that is inconsistent with the Permit or the Grant within the time stated in such notice, the
5 Director may order a skybridge closed if the Director deems that it has become unsafe or creates a
6 risk of injury to the public. In a situation in which there is an immediate threat to the health or
7 safety of the public, notice is not required.

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9 Section 8. Discharge of Permittee's Obligations. Notwithstanding termination or
10 expiration of the permission granted, or removal of the skybridges, the Permittee shall remain
11 bound by its obligations under this ordinance until:
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13 (a) The bridges and all related equipment and property are removed from the streets, the
14 Boulevard or any other boulevard;

15 (b) The area is cleared and restored in a manner and to a condition satisfactory to the
16 Director; and
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18 (c) The Director certifies that the Permittee has discharged its obligations herein.

19 Section 9. Release; Indemnification; Duty to Defend. Except as otherwise provided herein,
20 the skybridges shall remain the exclusive responsibility of the Permittee. The Permittee, by
21 acceptance of this ordinance and the Permit hereby granted, does release the City from any and all
22 claims resulting from damage or loss to Permittee's own property, and covenants and agrees with
23 the City, to at all times indemnify, defend and save harmless the City from all claims, actions, suits,
24 liability, loss, costs, expense or damages of every kind and description (excepting only such
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1 damages that may result from the sole negligence of the City), which may accrue to, or be suffered
2 by, any person or persons and/or property or properties, including without limitation, damage or
3 injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants'
4 invitees, or licensees, by reason of the Permittee's maintenance, operation or use of said
5 skybridges, or any portion thereof, or by reason of anything that has been done or omitted, or may at
6 any time be done or omitted, by the Permittee by reason of this ordinance, or by reason of the
7 Permittee's failure or refusal to strictly comply with each and every provision of this ordinance
8 (collectively "Indemnified Actions"); and if any such suit, action or claim be filed, instituted or
9 begun against the City for an Indemnified Action, the Permittee shall, upon notice thereof from the
10 City, defend the Indemnified Action at its sole cost and expense with counsel acceptable to the
11 City, and in case judgment shall be rendered against the City in any suit or action for an
12 Indemnified Action, the Permittee shall fully satisfy said judgment within ninety (90) days after
13 such action or suit shall have been finally determined, if determined adversely to the City. Provided
14 that if it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this
15 ordinance or that other concurrent negligence has occurred for which the City is liable to a third
16 party other than in regard to any condition caused by the failure of the Permittee to comply with any
17 obligation under this Permit, the Grant or another agreement with the City, then in the event claims
18 or damages are caused by or result from the concurrent negligence of:

- 19 (a) The City, its agents, contractors or employees; and
- 20 (b) The Permittee, its agents, contractors, or employees,



1 then the Permittee's obligation shall be limited to the extent of the Permittee's negligence and, to
2 the extent consistent with applicable law, the negligence of the Permittee's agents, contractors or
3 employees.

4 Section 10. Environmental Agreement. The parties acknowledge the existing
5 Environmental Agreement between the City and SAM dated December 7, 1999 ("Environmental
6 Agreement"), deals with the parties' respective obligations relating to contamination and
7 environmental conditions in the City rights-of-way. No change of rights, obligations, or
8 responsibilities under the existing Environmental Agreement shall occur as a result of this
9 Ordinance or Permit, except as expressly provided in this section. Permittee shall be responsible
10 for any and all costs that arise from or are related to soil removal, if required, and recapping of
11 soil, if required, to the extent required to complete Permittee's construction of the skybridges.
12 Such costs include, but are not limited to, disposal of contaminated soil or groundwater that is
13 removed during construction, replacement of material that is capping contaminated soil and is
14 disturbed during construction, mitigation measures required by permitting authorities, and
15 worker safety measures required for construction on a contaminated site.

16 Section 11. Insurance. For as long as the Permittee shall exercise any permission granted
17 by this ordinance or until the skybridges are entirely removed from their location as described in
18 Section 3, whichever is longer, but not including any period during which both skybridges or the
19 sole remaining skybridge shall be owned by the City pursuant to the terms of this ordinance, and
20 unless discharged by order of the Director as provided in Section 8 of this ordinance, the Permittee
21 shall obtain and maintain in full force and effect, at its own expense, insurance policies that protect
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1 the City from any and all loss, damages, suits, liability, claims, demands or costs resulting from
2 injury or harm to persons or property.

3 Minimum insurance requirements shall be an occurrence form policy of commercial general
4 liability, placed with a company admitted and licensed to conduct business in Washington State.
5 Minimum policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage
6 shall specifically name the skybridge exposure. Coverage shall add by endorsement The City of
7 Seattle, its elected and appointed officers, officials, employees and agents as additional insured.
8 Coverage shall contain a Separation of Insured's Clause indicating essentially that "except with
9 respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part
10 to the first named insured, this insurance applies as if each named insured were the only named
11 insured, and separately to each insured against whom claim is made or suit is brought." Evidence
12 of current coverage shall be submitted to the City in the form of a copy of the full insurance policy
13 with all endorsements attached thereto, and is a condition to the validity of this Permit.
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16 Whenever in the judgment of the City's Risk Manager, such insurance filed pursuant to the
17 provisions hereof shall be deemed insufficient to fully protect the City, the Permittee shall, upon
18 demand by the Risk Manager, furnish additional insurance in such amount as may be specified by
19 the Risk Manager.
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21 Section 12. Additional Insured. The Permittee shall require that all of its contractors
22 performing construction work on the premises as contemplated by this Permit, name the City as an
23 additional insured on all policies of public liability insurance, and shall include in all pertinent
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1 contract documents a provision extending construction indemnities and warranties granted to SAM
2 to the City as well.

3 Section 13. Bond. Within sixty (60) days after the effective date of this ordinance the
4 Permittee shall deliver to the Director for filing with the City Clerk a good and sufficient bond in
5 the sum of Fifty Thousand Dollars (\$50,000.00) for each skybridge executed by a surety company
6 authorized and qualified to do business in the State of Washington conditioned that the Permittee
7 will comply with each and every provision of this ordinance and with each and every order of the
8 Director pursuant thereto; provided, that if the Mayor of the City in his/her judgment shall deem
9 any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall
10 furnish a new or additional bond in such amount as the Director may specify to be necessary to fully
11 protect the City. Said bond shall remain in effect until such time as the skybridges are entirely
12 removed as described in Section 3, or until discharged by order of the Director as provided in
13 Section 8 of this ordinance.

14 Section 14. Transfers. Permittee shall not assign, transfer, mortgage, pledge or encumber
15 any privileges conferred by this ordinance without the consent of the City Council by resolution,
16 except that after the Grant described in Section 5 above has been granted to the City, SAM may
17 grant a security interest to Allied Irish Banks, p.l.c., New York Branch pursuant to that springing
18 deed of trust dated as of October 6, 2005. If consent is granted, the assignee or transferee shall be
19 bound by all terms and conditions of this ordinance. The Permit conferred by this ordinance shall
20 not be assignable or transferable by operation of law.
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1 Section 15. Inspections/Payments. The Permittee shall pay to the City such amounts as
2 may be justly chargeable by said City as costs of inspection of the subject skybridges during
3 construction, reconstruction, or repair, and at other times deemed necessary by the Director, and in
4 addition Permittee shall promptly pay to the City in advance upon statements rendered by the
5 Director an annual fee for the privileges granted and exercised hereunder for each year of the
6 Permit. The annual fee shall be \$7,451.66, except that no more frequently than every five (5) years
7 the fee may be evaluated by the City and a new fee may be established by resolution of the City
8 Council for each year of the Permit commencing after the passage of such resolution. All payments
9 shall be made to the City Director of Executive Administration or his successor as custodian of the
10 City Treasury for credit to the Seattle Department of Transportation subfund for Street Use. No
11 inspection or approval by the City shall be construed as a representation, warranty or assurance to
12 the Permittee or any other person as to the safety or soundness of any structure or condition, nor as
13 to compliance with the Permit or any agreement or standard. Any failure by the City to require
14 correction of any defect or condition shall not in any way limit the responsibility or liability of the
15 Permittee.
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19 Section 16. Acceptance. The Permittee shall deliver its written acceptance of the Permit
20 conferred by this ordinance and the Permittee's agreement to its terms and conditions, and the Grant
21 required in Section 5 above, to the Director within thirty (30) days after the effective date of this
22 ordinance. The Director shall record the Grant with the King County Recorder's Office and file the
23 recorded Grant and the Permittee's acceptance with the City Clerk. If the Grant and acceptance are
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not timely received, the privileges provided by this ordinance shall be deemed declined or abandoned; and the Permit deemed lapsed and forfeited.

Section 17. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

PASSED by the City Council of the City of Seattle the 24th day of October, and signed by me in open session in authentication of its passage this 24th day of October.

President _____ of the City Council

Approved by me this _____ day of _____.

Mayor

Filed by me this _____ day of _____.

City Clerk

(Seal)

Attachment A: Form of Grant of Access and Maintenance Rights including exhibits:
Exhibit 1 Legal description of SAM's two upland blocks
Exhibit 2 Schematic design showing skybridges and location of Public Access Area on "vee"
Exhibit 3 Legal description of MDA parcel

LAW
CC OSP Skybridge ord
October 17, 2005
version #10

Exhibit 4 Schematic design showing location of Public Access Area to Broad
Street

Attachment B: Legal description of SAM's two upland blocks.

Attachment C: Permitted Encumbrances



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CC OSP Skybridge ord
October 17, 2005
version #10

ORDINANCE ATTACHMENT A
FORM OF GRANT

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[Version 10/24/05]

After Recording Return to:

Seattle Transportation Dept.

[insert]

GRANT OF ACCESS AND MAINTENANCE RIGHTS

THIS GRANT OF ACCESS AND MAINTENANCE RIGHTS ("Grant") is made effective as of the _____ day of _____, 2005 by the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM") and the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA") (collectively, SAM and MDA are "Grantor") to the CITY OF SEATTLE, a Washington municipal corporation ("City").

RECITALS

- A. SAM is the owner of two parcels of real property legally described on Exhibit 1, attached hereto and incorporated herein (referred to as "Parcel A" and "Parcel B" or collectively as "SAM Property"). For general reference only, those parcels are indicated with corresponding letters on Exhibit 2, attached hereto and incorporated herein.
- B. MDA is the owner of the real property legally described on Exhibit 3, attached hereto and incorporated herein ("Parcel D" or "MDA Property"). For general reference only, that parcel is indicated with the letter D on Exhibit 2. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM.
- C. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.

D. The OSP design will provide a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way, as generally indicated on Exhibit 2.

E. Pursuant to Ordinance _____ (the "Permit," which term shall include any modification thereof or replacement therefor), the City has granted to SAM a permit to construct, operate and maintain two skybridge structures over public rights of way in conjunction with the OSP: one over and across a portion of Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge") and one over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern and Santa Fe Railway franchise area, and including the ramp, stairs and abutment where the skybridge structure connects with the Boulevard ("Alaskan Way Bridge"). They are collectively referred to as the "Skybridges." Capitalized terms used and not defined herein shall have the meanings set forth in the Permit unless the context otherwise requires.

F. The City's grant of the Permit is subject to certain terms and conditions, including, without limitation, the grant of the rights set forth in this Grant.

GRANT OF RIGHTS AND COVENANTS

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAM and MDA grant and agree as follows:

1. **Grant and Purpose.**

A. **Public Access Rights.** SAM hereby grants and conveys to the City with respect to the Skybridges and Parcels A and B, rights to public access limited to pedestrian and wheelchair travel (for purposes of this Grant, "wheelchair" shall include any device for mobility of persons with disabilities that is allowed from time to time on public sidewalks in the City of Seattle) on, across and over the Skybridges and the pathways and elevated structures located and to be located on Parcels A and B, throughout the entire "Vee" shown by hatch marks on Exhibit 2. Such rights are referred to as the "Public Access Rights." SAM may locate and relocate from time to time obstructions to pedestrian or wheelchair travel or both (for example, artwork, planters, and other amenities or items related to the OSP) in the Vee but shall always provide an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The portions of the "Vee" that are not at a given time obstructed to both pedestrian and wheelchair travel as allowed by the preceding sentence are referred to as the "Public Access Area." The Public Access Area must always extend

continuously from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park Boulevard. The public shall have free, open and continuous pedestrian and wheelchair access to and through the Public Access Area free of charge every day of the year, except that so long as the SAM Property is operated by SAM as the OSP, SAM may close the Public Access Area for up to five calendar days per calendar year when the OSP is closed to the public consistent with the terms of an Operation and Maintenance Agreement between SAM and the City. Except on days when SAM has closed the Public Access Area to the public pursuant to the preceding sentence, the public shall have access to the entire Public Access Area at least during the period beginning at 9:00 AM and ending at 5:00 PM local time seven days a week and during all additional hours as the OSP is open to the public, but at all times subject to compliance with rules of conduct pursuant to paragraph 4 below, and subject to the right of the City to close the Skybridges or any part of the Public Access Area, or to impose further restrictions on use and access from time to time, consistent with the following sentence. So long as the SAM Property is operated by SAM as the OSP, the City shall not close a Skybridge for which a Permit remains in effect, or that the City owns and has not elected to remove, nor restrict access to and from the OSP over such a Skybridge or the Public Access Area during the period from 9:00 AM to 5:00 PM each day and during all additional hours as the OSP is open to the public, without the consent of SAM, except as the City may deem necessary temporarily for reasons of public safety. In addition, City employees in the performance of their official duties related to public safety shall be entitled to use the Public Access Area at all times. SAM reserves the right to undertake measures to prevent public access onto SAM's property outside of the Public Access Area.

B. Structure and Pathway Maintenance Rights.

The provisions of this Subsection 1B for inspection and monitoring, and for emergencies, shall apply to each Parcel of the SAM Property so long as the Public Access Rights remain in effect as to any portion of that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1B shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1B shall apply to the Parcel or Parcels of the SAM Property for which SAM has no obligation to maintain the Public Access Area pursuant to Section 5, and, if the portion of the Public Access Area on Parcel B shall be replaced by the 7-foot wide path described in Subsection 5C of this Grant, then this Subsection 1B shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.

(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of the Public Access Area located on a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Public Access Area, this Subsection 1B shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

SAM hereby grants and conveys to the City the non-exclusive rights to access on, across, over, under and through such portions of the SAM Property as are reasonably necessary, for all purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of the elevated and grade level pathways (including the entire area shown on Exhibit 2 as the "Vee," less the Skybridges) that connect the Alaskan Way Bridge and the Elliott Avenue Bridge, and that connect the Elliott Avenue Bridge with Western Avenue ("Structure and Pathway Maintenance Rights"). The City shall not modify the design or location of the pathways without SAM's consent. Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the elevated pathway are expressly included in the foregoing grant. Such grant also includes the right of the City to install measures to prevent use or access during any times when public access is not permitted. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any applicable notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1B in any way.

C. Skybridge Maintenance Rights.

The provisions of this Subsection 1C for inspection and monitoring, and for emergencies, shall apply to each Skybridge and to each Parcel of the SAM Property so

long as there is a Skybridge abutting that Parcel. Except with respect to inspection, monitoring and emergencies, this Subsection 1C shall apply only in each of the following circumstances:

(1) If the City is entitled to and elects to assume ownership and operation of one or both Skybridges under Section 4 of the Permit, then for so long as a Skybridge remains in place and is owned by the City, this Subsection 1C shall apply to the Parcel or Parcels of the SAM Property abutting a City-owned Skybridge and, if the City owns the Alaskan Way Bridge, then this Subsection 1C shall also apply to the MDA Property during the City's ownership of the Alaskan Way Bridge.

(2) If SAM shall fail to comply in a timely manner with its obligation to maintain any portion of a Skybridge abutting a Parcel of the SAM Property, then if and when the City shall have the right under the terms of Section 3 of this Grant to take such actions as the City deems necessary to maintain, repair, reconstruct or alter the Skybridge, this Subsection 1C shall apply to such Parcel for the period, and to the extent, that the City requires access thereto in order to exercise its rights under Section 3.

(3) If the City is entitled to replace or remove a Skybridge, then this Subsection 1C shall apply to the SAM Property and MDA Property to the extent that the City requires access thereto in order to do so.

SAM hereby grants and conveys to the City with respect to each Skybridge and to Parcels A and B, rights on, across, over, under and through such portions of the Skybridges and Parcels A and B as are reasonably necessary, for access to the Skybridges and for construction, operation, repair, replacement, alteration, inspection, monitoring, maintenance, and removal of the Skybridges ("Skybridge Maintenance Rights"). Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the Skybridges are expressly included in the foregoing grant. The Skybridges are depicted on Exhibit 2 attached hereto. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection and thirty (30) days advance notice to SAM for other activities (except that for inspections or other activities notice shall not be required in the event of emergency), which notice period may run concurrently with the period of any notice of default and opportunity for cure and appeal period provided in Section 3 of this Grant, shall have free, open and continuous access on, across, over, under and through such portions of the Skybridges and the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or

damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Subsection 1C in any way.

D. MDA Joinder; Grant of Rights in Broad Street Access

To the extent of any interest the MDA may have as lessee or otherwise in Parcel A or B, the MDA joins in the grants and conveyances in this Grant. To the extent that the Public Access Area shall hereafter include a portion of MDA Property pursuant to Subsection 5C, SAM and the MDA hereby grant the City over the portions of Parcels B and D that become part of the Public Access Area, and the MDA hereby grants the City over Parcel D, all the rights described in this Grant, as though those portions of Parcels B and D had been included in Subsections 1A, 1B, and 1C.

2. **Rights and Remedies.** The City shall have the right without prior institution of any suit or proceeding of law, at such times as may be necessary, to exercise the rights at such times and to the extent provided in this Grant. In addition, the City shall have all remedies that may be available at law or in equity. This instrument is not intended to confer any right of action or remedies on any member of the general public or any other person that is not a party hereto. The rights granted to the City are not obligations of the City and may be exercised at the City's discretion. The City shall not be liable or responsible for any injury, loss or damage caused by members of the public in the exercise of the rights of access granted hereunder, except to the extent, if any, that such injury, loss or damage is caused by the negligence of the City for which it has liability under applicable law, not including any City negligence in regard to any condition that SAM or MDA shall have caused or permitted contrary to the terms of this Grant, the Permit or any agreement with the City. The City shall not be subject to any obligation pursuant to any security instrument or other agreement executed by SAM or MDA with respect to any part of the SAM Property. The rights of the City and obligations of the Grantor herein are in addition to, and not in substitution for, the rights and obligations under the Permit or any other agreement.

3. **Grantor to Construct and Maintain.** Grantor, at its sole expense, shall construct the pathways in the "Vee" as shown in Exhibit 2, consistent with plans approved by the City and in full compliance with all applicable laws, codes and regulations as they apply to public facilities, including without limitation standards under the Americans with Disabilities Act ("ADA"). For so long as the Permit is in effect, Grantor, at its sole expense, shall maintain the Skybridges and the Public Access Area in safe, clean, and sanitary condition; shall promptly make any necessary repairs; shall not allow obstructions or debris to remain in the Public Access Area; and shall not cause or permit

any structure or condition adjacent to the Public Access Area that could be hazardous to persons using the Public Access Area. If Grantor shall default in its obligations under this paragraph, the City shall have the right, but not the obligation, after at least thirty (30) days' notice to SAM and SAM's failure to cure such default or to commence cure (except that notice and opportunity to cure shall not be required in case of emergency), or after SAM's failure diligently to prosecute cure of default after commencing cure, to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Skybridges or Public Access Area, all at the expense of the Grantor, and Grantor shall reimburse the City promptly on demand for the costs of such actions. So long as SAM is the Permittee under the Permit, SAM may contest the City's notice of default under this Section 3 or contest the City's decision that SAM has not diligently prosecuted cure of default by appealing in writing, within 10 days after notice of default or within 5 business days after being informed of the City's decision that SAM has failed diligently to prosecute cure, to the Superintendent of Parks and Recreation and to the Mayor, and the notice shall be withdrawn or more time allowed for cure, as applicable, if either of those officers so determines. Upon request by SAM, the Superintendent of Parks and Recreation shall provide an opportunity for the Executive Director of SAM to meet by phone or in person with the Superintendent to attempt to resolve any disagreement as to notices or decisions appealable under this Section 3. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage, consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost. SAM shall ensure that neither it nor its contractors impair the rights granted in this Section 3 in any way.

4. Rules of Conduct.

A. Grantor shall adopt and enforce reasonable rules of conduct in the Public Access Area for the safety and convenience of pedestrian and wheelchair travel through the Public Access Area. Such rules shall be consistent with applicable law. To the extent that such rules are the same as rules applicable in City of Seattle parks, Grantor may adopt them without City approval, but shall provide written notice to the City before they take effect.

(1) So long as SAM owns Parcels A and B of the SAM Property and operates those Parcels as the OSP, SAM (but not SAM's successors or assigns) may adopt additional rules without City approval, but shall provide written notice to the City before they take effect.

(2) If SAM no longer owns Parcels A and B of the SAM Property or no longer operates those Parcels as the OSP, Grantor may adopt additional rules only with the advance written consent of the City.

Grantor shall have the right to require any person who does not comply with rules that are in effect in accordance with this Section 4 to leave the Public Access Area.

B. If the obligation of the Grantor to maintain and control any portion of the Public Access Area shall terminate under Section 5 below, then for so long as the right of public access hereunder continues as to such portion, the City shall have the sole right to make, modify, and enforce rules and regulations for the portion of the Public Access Area that is serving the Skybridge(s) owned by the City, provided that so long as the parcel adjacent to such portion remains in use by SAM as the OSP, the City shall provide SAM with thirty (30) days notice and opportunity to comment on changes in rules and regulations, and shall not adopt changes that would materially impair the use by pedestrians for access to the OSP during hours when the OSP is open to the general public, or for access to allowed special events sponsored by SAM.

C. The parties acknowledge that the Public Access Area is not being dedicated as a public street or sidewalk, and that the nature of the OSP and limited purpose of the Public Access Rights are such that various activities traditionally permitted in public streets and sidewalks would not be appropriate for the Public Access Area. Compliance with rules that are in effect in accordance with this Section 4 is a condition of the right of any person to use the Public Access Area, except City employees and agents in the performance of their activities related to public safety.

5. Duration; Termination in Whole or in Part on Certain Events; City Ownership of Skybridges.

A. The Public Access Rights, the Structure and Pathway Maintenance Rights, and the Skybridge Maintenance Rights, and the covenants and servitudes contained in this Grant, shall inure to the benefit of the City, shall be binding upon SAM and MDA and each of their successors, transferees and assigns, including, without limitation, tenants, and shall run with the land described in Exhibits 1 and 3, but the benefit thereof shall not run with any land owned by the City. All such rights, covenants and servitudes shall extend for so long as SAM or any successor in interest or assignee shall hold the Permit to maintain one or both of the Skybridges, and, except to the extent otherwise provided below, shall also remain in effect:

- (1) if SAM, or its successor in interest or assignee as holder of the Permit, shall not seek renewal of the Permit for an additional term, or if the Permit shall be terminated as to one or both Skybridges based on the City's determination that there has been default by the Permittee under the Permit, then in each case for so long as the Skybridges, or either of them, remain in place, but not to exceed fifty (50) years from the effective date of the original Permit plus the time until both

Skybridges are removed by the Permittee as required by the terms of the Permit ;
or

(2) if the Permit shall be renewed and shall then terminate after 50 years, at the expiration of its renewal term, then for so long thereafter as one or both Skybridges remains in place pending City action on an application for a new permit or pending removal of both Skybridges by the Permittee as required by the terms of the Permit. If the City issues a new permit after the Permit terminates after 50 years, at the expiration of its renewal term, then public access rights, if any, shall be according to the terms of that new permit.

Consistent with the foregoing, this Grant shall terminate automatically if the City
(a) denies SAM's application to renew the Permit after the initial 25-year term or
(b) terminates the Permit for both Skybridges under Subsection 3(a) of the Permit for another transportation use.

B. If the Permit shall be terminated or expire as to either or both Skybridges, and the City shall elect to assume full ownership and control of one or both Skybridge(s) pursuant to the terms of the Permit, then upon the City's acceptance of a quitclaim deed for the Skybridge structure from the Grantor, (i) all obligations of Grantor with respect to the maintenance and operation of such Skybridge(s) hereunder shall terminate, (ii) at either the City's or SAM's option, all obligations of the Grantor to maintain, control and repair the part of the Public Access Area on any Parcel adjacent to a Skybridge so accepted by the City, shall terminate, (iii) if either the City or SAM does elect to terminate the Grantor's obligations to maintain, control and repair part or all of the Public Access Area pursuant to (ii) above, then Grantor will within 60 days after notice of that election designate in writing a fixed and specific Public Access Area across the affected Parcel or Parcels of SAM Property, within the Vee, satisfactory to the Director that will be an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width, measured perpendicular to the centerline of the path of travel, at all points on the affected Parcel or Parcels of SAM Property from Western Avenue to the western touch-downs of the Alaskan Way Bridge in the Park, and that designated Public Access Area will thereafter be subject to all the Public Access Rights; but if Grantor fails timely to make such a designation the City may do so with like effect, and (iv) SAM (but not any successors or assigns) shall be entitled to the non-exclusive use of the City-owned Skybridge(s) and the Public Access Area for temporary access to move sculptures and artwork between Parcel A and Parcel B so long as such activity leaves accessible for public access a minimum 11-foot wide travel area. However, nothing herein shall relieve the Grantor of the obligation to remove such Skybridge(s) at the end of the period of City ownership pursuant to the Permit. Further, if at the end of the period of the City's ownership of one or both Skybridge(s) Grantor shall obtain a new permit to maintain one or both such Skybridge(s), then for so long as such permit remains

in effect the Grantor shall have the same obligations as were in effect prior to the City's ownership of such Skybridge(s). For so long as the City has ownership of one or both Skybridges, the rights of the City to maintain and repair the Skybridges and such portions of the Public Access Area, and the public's access thereto, shall remain in full force and effect to the extent provided under the terms of this Grant, except that if the Elliott Avenue Bridge shall have been removed, other than for reconstruction thereof, then such City rights shall not continue with respect to the portion of the SAM Property East of Elliott Avenue. For so long as the Grantor shall not have the obligation to maintain a portion of the Public Access Area, the City shall have the right to install in such portion any directional signage that the City deems appropriate for the convenience of the public using the same, with thirty (30) days advance notice to SAM.

C. Not later than 180 days after the acceptance of the Permit, Grantor shall construct and shall thereafter maintain open for free public passage the pedestrian and wheelchair access to the east end of the Alaskan Way Bridge from Broad Street (the "Broad Street Access"), on a route no less than seven (7) feet wide in the location shown on Exhibit 4, and in compliance with all then applicable accessibility and other legal requirements. If the Elliott Avenue Bridge shall be removed and either a permit then remains in effect for the Alaskan Way Bridge or the City is entitled to and elects to assume ownership of the Alaskan Way Bridge pursuant to the Permit, then Grantor shall ensure that the Broad Street Access meets all then applicable access and other legal requirements and the Broad Street Access shall become part of the Public Access Area, and shall be subject to all Public Access Rights, replacing the portion of the Vee located on Parcel B that is not part of the Broad Street Access. Upon the Grantor's failure to perform construction or other work necessary to provide the Broad Street Access in compliance with the terms of this Subsection 5C in a timely manner, the City shall have the right, but not the obligation, to construct or perform other necessary work on the Broad Street Access at the expense of the Grantor, in the location shown on Exhibit 4; if the City does so, the Broad Street Access shall become part of the Public Access Area and be subject to all Public Access Rights only under the same circumstances as it would if Grantor had performed the construction or other work.

D. If both Skybridges shall be removed as required or permitted in accordance with the terms of the Permit, other than for reconstruction thereof, then this Grant shall terminate. If only the Elliott Avenue Bridge shall be removed, other than for reconstruction thereof, then the Grant shall terminate with respect to the portion of the SAM Property located east of Elliott Avenue and, conditioned upon provision of the Broad Street Access if required under Subsection 5C above, the Grant shall also then terminate as to the portion of the Vee located on Parcel B that is not part of the Broad Street Access.

6. **Modification or Release.** The terms herein may be modified by a written instrument signed by an authorized officer of the City and by SAM and MDA, or their respective successors and assigns, and not otherwise, provided that if the interests of either SAM or MDA, or its respective successors or assigns, are not affected, then the signature of such party shall not be required. The City shall have the right to release in whole or in part the rights granted herein by recording an instrument executed by an authorized officer of the City.

7. **Representations and Warranties of Grantor.** SAM represents and warrants that it holds fee simple title to the SAM Property, and holds a subleasehold interest therein from the MDA pursuant to the sublease dated October 1, 2002, which is in full force and effect, in each case subject to no liens, encumbrances, defects, leases, options or other interests except as expressly set forth in Exhibit C to the Permit ("Permitted Encumbrances"), and that the rights granted hereunder are not and shall not be subject to any lien, encumbrance, defect, lease, option or other interest except for the Permitted Encumbrances. MDA represents and warrants that it holds fee simple title to the MDA Property, subject only to a ground lease to SAM, to the reversionary rights of the City, and to Permitted Encumbrances (to the extent applicable), and that MDA holds a leasehold interest in the SAM Property under a lease dated October 1, 2002, from SAM, which is in full force and effect, and such leasehold interest is subject to no liens, encumbrances, defects, leases, options or other interests except the Permitted Encumbrances and the interests of SAM.

8. **Limited Purpose of Execution by MDA.** Any other provision herein notwithstanding:

The MDA does not claim or warrant any title or interest in the SAM Property except to the extent of the leasehold interest described herein. MDA is executing this instrument solely in order to ensure that (a) this Grant encumbers such leasehold and any other interest that the MDA may have now or hereafter in the SAM Property; and (b) in the limited circumstances set forth in Subsection 5.C above, alternate access shall be provided from Broad Street to the Alaskan Way Bridge. So long as the MDA has no right to possession of the SAM Property, all obligations of "Grantor" for any performance hereunder shall be the sole obligations of SAM, and its successors in interest (not including MDA as such lessee), except that if at any time the Broad Street Access is required pursuant to Subsection 5C and if SAM shall not then be the ground lessee of the MDA Property, any obligations of "Grantor" with respect to the MDA Property then shall be those of the MDA.

SEATTLE ART MUSEUM,
a Washington nonprofit corporation

By: _____
Print Name: _____
Print Title: _____

MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,
a public corporation chartered by the City of Seattle

By: _____
Print Name: _____
Print Title: _____

NOTICE: MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE is organized pursuant to Seattle Municipal Code (SMC) Chapter 3.110 and RCW 35.21.730-.755. RCW 35.21.750 provides as follows:

“All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such public corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority.”

Accepted:
THE CITY OF SEATTLE

By: _____
Name: _____
Title: _____

Date: _____

EXHIBITS:

- Exhibit 1 Legal description of SAM Property
- Exhibit 2 Schematic design showing Skybridges and “Vee”
- Exhibit 3 Legal description of MDA Property
- Exhibit 4 Schematic design showing location of Broad Street Access

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE SEATTLE ART MUSEUM, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____

GRANT EXHIBIT 1

LEGAL DESCRIPTION
Seattle Art Museum Olympic Sculpture Park's
Parcels A and B

PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



PARCEL B:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE POINT OF BEGINNING.



GRANT EXHIBIT 2

[Please see next page for sketch of skybridges and access over the "vee"]



GRANT EXHIBIT 3

LEGAL DESCRIPTION OF MUSEUM DEVELOPMENT AUTHORITY PARCEL

PARCEL D:

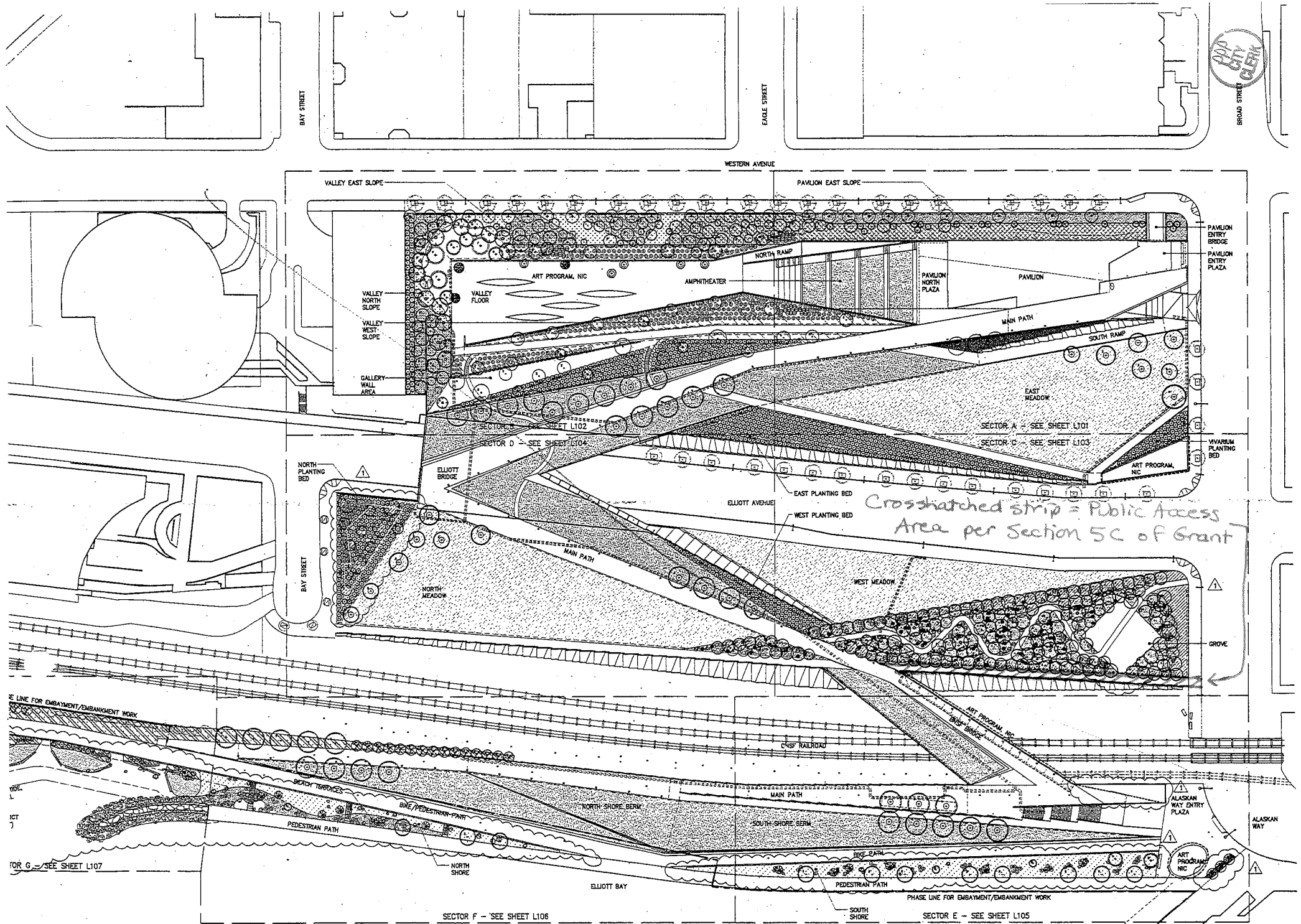
LOTS 3 AND 4, BLOCK 5, WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE
PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 82, RECORDS OF KING COUNTY, WASHINGTON;
EXCEPTING THEREFROM THAT PORTION PLATTED AS SEATTLE TIDELANDS;
ALSO EXCEPTION THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 3, DISTANT 14.408 FEET SOUTHWESTERLY
OF THE MOST EASTERLY CORNER OF SAID LOT;
THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 24
FEET, AN ARC DISTANCE OF 27.83 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 3, DISTANT 22
FEET NORTHWESTERLY OF SAID MOST EASTERLY CORNER;
THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO SAID MOST EASTERLY CORNER;
THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT TO THE POINT OF BEGINNING.
TOGETHER WITH
LOTS 5 AND 6, BLOCK 168-B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS, AS SHOWN ON THE OFFICIAL MAPS
OF SEATTLE TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, IN
KING COUNTY, WASHINGTON.



GRANT EXHIBIT 4

[Please see next page for sketch of access to Broad Street]

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GRANT EXHIBIT 4

EXTENT OF IN WATER WORK

ORDINANCE ATTACHMENT B

LEGAL DESCRIPTION

Seattle Art Museum Olympic Sculpture Park's Parcels A and B

PARCEL A:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF WILLIAM N. BELL'S SEVENTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON; AND OF THE VACATED ALLEY THEREIN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF BLOCK 4 IN SAID ADDITION;

THENCE NORTH 48 DEGREES 54'05" WEST ALONG THE SOUTHWEST MARGIN OF WESTERN AVENUE 720.68 FEET TO THE NORTHWEST LINE OF THAT PARCEL CONVEYED TO UNION OIL BY DEED FROM IGNATZ STEINHART, DATED DECEMBER 4, 1909;

THENCE SOUTH 41 DEGREES 05'55" WEST ALONG SAID NORTHWEST LINE 193.88 FEET TO THE NORTHEAST MARGIN OF ELLIOTT AVENUE, AS ESTABLISHED BY THE CITY OF SEATTLE ORDINANCE NUMBER 12502;

THENCE SOUTH 42 DEGREES 59'09" EAST ALONG SAID NORTHEAST MARGIN 603.76 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 4;

THENCE SOUTH 48 DEGREES 54'59" EAST ALONG THE SOUTHWEST LINE THEREOF 120 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 4;

THENCE NORTH 41 DEGREES 07'49" EAST ALONG THE SOUTHEAST LINE THEREOF 256.08 FEET TO THE POINT OF BEGINNING.



PARCEL B:

1 THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 25 NORTH, RANGE 3
2 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF SECTION 31, TOWNSHIP 25
3 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; OF BLOCKS
4 168A AND 168B, SUPPLEMENTAL PLAT OF SEATTLE TIDELANDS AND OF VACATED EAGLE
5 STREET, DESCRIBED AS FOLLOWS:

6 BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 5, WILLIAM N. BELL'S SEVENTH
7 ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN
8 VOLUME 2 OF PLATS, PAGE 82, IN KING COUNTY, WASHINGTON;

9 THENCE SOUTH 41 DEGREES 07'49" WEST ALONG THE NORTHWEST LINE THEREOF, 27.58 FEET
10 TO THE MOST EASTERLY CORNER OF LOT 4 IN SAID BLOCK 168B, SEATTLE TIDELANDS;

11 THENCE SOUTH 41 DEGREES 10'09" WEST ALONG THE SOUTHEAST LINE OF SAID LOT 4, A
12 DISTANCE OF 91.78 FEET TO THE SOUTHWEST LINE OF SAID BLOCK 168B;

13 THENCE NORTH 48 DEGREES 49'51" WEST ALONG SAID SOUTHWEST LINE AND ITS EXTENSION
14 280.55 FEET TO ITS INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE
15 SOUTHWEST LINE OF SAID BLOCK 168A, SEATTLE TIDELANDS;

16 THENCE NORTH 41 DEGREES 10'23" WEST ALONG SAID EXTENSION AND SOUTHWEST LINE
17 389.58 FEET TO THE SOUTHEAST MARGIN OF BAY STREET;

18 THENCE NORTH 41 DEGREES 10'09" EAST ALONG SAID SOUTHEAST MARGIN 135.36 FEET TO THE
19 SOUTHWEST MARGIN OF ELLIOTT AVENUE AS ESTABLISHED BY CITY OF SEATTLE ORDINANCE
20 NUMBER 12502;

21 THENCE SOUTH 43 DEGREES 00'51" EAST ALONG SAID SOUTHWEST MARGIN 670.08 FEET TO THE
22 POINT OF BEGINNING.
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ORDINANCE ATTACHMENT C

PERMITTED ENCUMBRANCES

1. RIGHT TO MAKE SLOPES FOR CUTS OR FILLS UPON PROPERTY HEREIN DESCRIBED AS PROVIDED FOR IN CITY OF SEATTLE ORDINANCE NOS. 18109 AND 28000.

2. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF.

BETWEEN: UNION OIL COMPANY OF CALIFORNIA
AND: CITY OF SEATTLE
RECORDED: NOVEMBER 20, 1980
RECORDING NUMBER: 8011200455
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290676.

3. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

BETWEEN: UNION OIL COMPANY OF CALIFORNIA
AND: CITY OF SEATTLE
RECORDED: NOVEMBER 20, 1980
RECORDING NUMBER: 8011200456
REGARDING: PROPERTY USE AND DEVELOPMENT

SAID AGREEMENT IS A RE-RECORDING OF INSTRUMENT RECORDED UNDER RECORDING NUMBER 8010290677.

4. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NO. 40057 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A CONDUIT OR SUBWAY UNDERNEATH AND ACROSS ELLIOTT AVENUE BETWEEN PARCELS A AND B, NOT EXCEEDING 14 FEET IN WIDTH, THE NORTHERLY MARGIN OF WHICH IS TO BE 86 FEET SOUTHERLY OF AND PARALLEL WITH THE SOUTHERLY MARGIN OF BAY STREET.

5. TERMS AND PROVISIONS OF CITY OF SEATTLE ORDINANCE NOS. 98301 AND 118042 RELATING TO CONSTRUCTION, MAINTENANCE AND OPERATION OF A SYSTEM OF PIPELINES AND APPURTENANCES IN, UNDER, ALONG AND ACROSS ALASKAN WAY BETWEEN PARCELS B AND C WITHIN A STRIP OF



1 LAND 30 FEET IN WIDTH, APPROXIMATELY 40 FEET SOUTHERLY OF BAY
2 STREET.

- 3 6. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN
4 INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY,
5 BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION,
6 FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL
7 ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE
8 STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT
9 OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

10 RECORDED: DECEMBER 7, 1999
11 RECORDING NUMBER: 19991207001745

- 12 7. COVENANTS, CONDITIONS AND RESTRICTIONS CONTAINED IN
13 INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY,
14 BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION,
15 FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL
16 ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE
17 STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT
18 OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

19 RECORDED: DECEMBER 7, 1999
20 RECORDING NUMBER: 19991207001746

- 21 8. PROPERTY USE AND DEVELOPMENT AGREEMENT, INCLUDING THE TERMS
22 AND PROVISIONS THEREOF:

23 RECORDED: FEBRUARY 21, 2003
24 RECORDING NUMBER: 20030221002536

- 25 9. MEMORANDUM OF DRAINAGE CONTROL, INCLUDING THE TERMS AND
26 PROVISIONS THEREOF:

27 RECORDED: JULY 12, 2004
28 RECORDING NUMBER: 20040712001525

- 29 10. COVENANT GEOLOGIC HAZARD AREA, INCLUDING THE TERMS AND
30 PROVISIONS THEREOF:

31 RECORDED: JULY 18, 2005
32 RECORDING NUMBER: 20050718002400

- 33 11. NON-DELINQUENT TAXES AND ASSESSMENTS.



12. GROUND LEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER, AS
GROUND LESSOR, AND THE MUSEUM DEVELOPMENT AUTHORITY; AS
TENANT.

13. SUBLEASE DATED OCTOBER 1, 2002, BETWEEN BORROWER AS SUBTENANT
AND THE MUSEUM DEVELOPMENT AUTHORITY AS SUBLANDLORD.

DRAFT 10/17/05 –After Recording Return to:
Seattle Transportation Dept.
[insert]

GRANT OF ACCESS AND MAINTENANCE RIGHTS

THIS GRANT OF ACCESS AND MAINTENANCE RIGHTS ("Grant") is made effective as of the _____ day of _____, 2005 by the SEATTLE ART MUSEUM, a Washington nonprofit corporation ("SAM") and the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle ("MDA") (collectively, SAM and MDA are "Grantor") to the CITY OF SEATTLE, a Washington municipal corporation ("City").

RECITALS

- A. SAM is the owner of two parcels of real property legally described on Exhibit 1, attached hereto and incorporated herein (referred to as "Parcel A" and "Parcel B" or collectively as "SAM Property") and depicted on the schematic attached hereto as Exhibit 2.
- B. MDA is the owner of the real property legally described on Exhibit 3, attached hereto and incorporated herein ("Parcel D" or "MDA Property") and depicted on the schematic attached hereto as Exhibit 2. MDA acquired the MDA Property from the City subject to use and development restrictions, including the requirement that the MDA Property be used and developed only as a sculpture garden, park or other open space as part of the SAM Olympic Sculpture Park ("OSP"), with public access free of charge in perpetuity. MDA also is lessee of the SAM Property under a lease from SAM for the purpose of conducting certain environmental work, subject to a sublease and operating agreement back to SAM.
- C. SAM is developing the OSP on the SAM Property and, pursuant to a ground lease from MDA, the MDA Property.



D. The OSP design will provide a public connection from Belltown to Elliott Bay via pedestrian pathways (at grade and above grade) and skybridges over public rights of way, as depicted on Exhibit 2.

E. Pursuant to Ordinance _____ (the "Permit," which term shall include any modification thereof or replacement therefor), the City has granted to SAM a permit to construct, operate and maintain two skybridge structures over public rights of way in conjunction with the OSP: one over and across a portion of Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge") and one over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern and Santa Fe Railway franchise area ("Alaskan Way Bridge"). They are collectively referred to as the "Skybridges." Capitalized terms used and not defined herein shall have the meanings set forth in the Permit unless the context otherwise requires.

F. The City's grant of the Permit is subject to certain terms and conditions, including, without limitation, the grant of the rights set forth in this Grant.

GRANT OF RIGHTS AND COVENANTS

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAM and MDA grant and agree as follows:

1. Grant and Purpose.

A. Public Access Rights. SAM hereby grants, conveys and warrants to the City with respect to the Skybridges and Parcels A and B, rights to public access on, across and over the Skybridges and the pathways and elevated structures located and to be located on Parcels A and B, as depicted on Exhibit 2, and including at all points an unobstructed and improved pathway suitable for pedestrian and wheelchair travel at least eleven (11) feet in width (the area subject to such rights is the "Public Access Area" and such rights are referred to as the "Public Access Rights"). To the extent of any interest the MDA may have as lessee or otherwise in Parcel A or B, the MDA joins in the foregoing grant and conveyance. The public shall have free, open and continuous access to and through the Public Access Area free of charge every day of the year, except that so long as the SAM Property is operated by SAM as the OSP, SAM may close the Public Access Area up to five days per calendar year when the OSP is closed to the public consistent with the terms of an Operation and Maintenance Agreement between SAM and the City. Except on days when SAM may close the Public Access Area to the public pursuant to the preceding sentence, the public shall have access to the entire Public Access Area at least during the period beginning at the earlier of dawn or 9:00 AM and ending at the later of dusk or 5:00 PM, but subject to compliance with rules of conduct pursuant to paragraph 4 below, and subject to the right of the City to close the Skybridges or any part of the Public Access Area, or to impose further restrictions on use and access from time to time,



consistent with the following sentence. So long as the SAM Property is operated by SAM as the OSP, the City shall not close a Skybridge or restrict access to and from the OSP over the Skybridges or Public Access Area during the period set forth above without the consent of SAM, except as the City may deem necessary for public safety. In addition, City employees in the performance of their official duties related to public safety shall be entitled to use the Public Access Area at all times.

B. Structure and Pathway Maintenance Rights.

SAM hereby grants, conveys and warrants to the City the non-exclusive rights to access on, across, over, under and through such portions of the SAM Property as are reasonably necessary, for all purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of the elevated and grade level pathways that connect the Alaskan Way Bridge and the Elliott Avenue Bridge, and that connect the Elliott Avenue Bridge with Western Avenue ("Structure and Pathway Maintenance Rights"). Each pathway is depicted on Exhibit 2 attached hereto and incorporated herein. Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements supporting the elevated pathway are expressly included in the foregoing grant. Such grant also includes the right of the City to install signage in a portion of the Public Access Area during any period when the Grantor does not have obligations for the maintenance and control thereof, pursuant to Section 5 below, and the right to install measures to prevent use or access during any times when public access is not permitted. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection, and thirty (30) days' advance notice to SAM for other activities (except that notice shall not be required in the event of emergency), shall have free, open and continuous access on, across, over, under and through such portions of the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost.

C. Skybridge Maintenance Rights.

SAM hereby grants, conveys and warrants to the City with respect to Parcels A and B, rights on, across, over, under and through such portions of Parcels A and B as are reasonably necessary, for access to the Skybridges and for construction, operation, repair, replacement, alteration, inspection, monitoring, maintenance, and removal of the Skybridges ("Skybridge Maintenance Rights"). Air rights, and the right to maintain,

repair and replace all necessary supports, foundations and structural elements supporting the Skybridges are expressly included in the foregoing grant. The Skybridges are depicted on Exhibit 2 attached hereto. The City, its contractors, agents, officers and employees, after 24 hours advance notice to SAM for inspection, and thirty (30) days' advance notice to SAM for other activities (except that notice shall not be required in the event of emergency), shall have free, open and continuous access on, across, over, under and through such portions of the SAM Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost.

2. **Rights and Remedies.** The City shall have the right without prior institution of any suit or proceeding of law, at such times as may be necessary, to exercise the rights provided in this Grant. In addition, the City shall have all remedies that may be available at law or in equity. This instrument is not intended to confer any right of action or remedies on any member of the general public or any other person that is not a party hereto. The rights granted to the City are not obligations of the City and may be exercised at the City's discretion. The City shall not be liable or responsible for any injury, loss or damage caused by members of the public in the exercise of the rights of access granted hereunder, except to the extent, if any, that such injury, loss or damage is caused by the negligence of the City for which it has liability under applicable law, not including any City negligence in regard to any condition that SAM or MDA shall have caused or permitted contrary to the terms of this Grant, the Permit or any agreement with the City. The City shall not be subject to any obligation pursuant to any security instrument or other agreement executed by SAM or MDA with respect to any part of the SAM Property. The rights of the City and obligations of the Grantor herein are in addition to, and not in substitution for, the rights and obligations under the Permit or any other agreement.

3. **Grantor to Construct and Maintain.** Grantor, at its sole expense, shall construct the pathways in the Public Access Area as shown in Exhibit 2, consistent with plans approved by the City and in full compliance with all applicable laws, codes and regulations as they apply to public facilities, including without limitation standards under the Americans with Disabilities Act ("ADA"). For so long as the Permit is in effect, Grantor, at its sole expense, shall maintain the Skybridges and the Public Access Area in safe, clean, and sanitary condition; shall provide adequate lighting and security as necessary during hours when the public has access; shall promptly make any necessary repairs; shall not allow obstructions or debris to remain in the Public Access Area; and



shall not cause or permit any structure or condition adjacent to the Public Access Area that could be hazardous to persons using the Public Access Area, whether as an attractive nuisance or otherwise. If Grantor shall default in its obligations under this paragraph, the City shall have the right, but not the obligation, after at least thirty (30) days' notice to SAM and SAM's failure to cure such default or to commence cure (except that notice and opportunity to cure shall not be required in case of emergency), or after SAM's failure diligently to prosecute cure of default after commencing cure, to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Skybridges or Public Access Area, all at the expense of the Grantor, and Grantor shall reimburse the City promptly on demand for the costs of such actions. The City shall cause any portion of the SAM Property that is disturbed by activities of the City, its contractors, agents, officers and employees pursuant to the previous sentence to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided consistent with accomplishment of the purposes for which the City exercised its rights thereunder without undue delay or cost.

4. Rules of Conduct.

A. Grantor shall adopt and enforce reasonable rules of conduct in the Public Access Area, with the written consent of the City, for the safety and convenience of pedestrian and wheelchair travel through the Public Access Area. Such rules shall be consistent with applicable law. Compliance with such rules is a condition of the right of any person to use the Public Access Area. Grantor shall have the right to require any person who does not comply with such rules to leave the Public Access Area.

B. If the obligation of the Grantor to maintain and control any portion of the Public Access Area shall terminate under Section 5 below, then for so long as the right of public access hereunder continues as to such portion, the City shall have the sole right to make and enforce rules and regulations for such portion of the Public Access Area, provided that so long as the parcel adjacent to such portion remains in use by SAM as the OSP, the City shall provide SAM with thirty (30) days notice and opportunity to comment on changes in rules and regulations, and shall not adopt changes that would materially impair the use by pedestrians for access to the OSP during hours when the OSP is open to the general public, or for access to lawful special events sponsored by SAM.

C. The parties acknowledge that the Public Access Area is not being dedicated as a public street or sidewalk, and that the nature of the OSP and limited purpose of the Public Access Rights are such that various activities traditionally permitted in public streets and sidewalks would not be appropriate for the Public Access Area.



5. Duration; Termination in Whole or in Part on Certain Events; City Ownership of Skybridges.

A. The Public Access Rights, the Structure and Pathway Maintenance Rights, and the Skybridge Maintenance Rights and the covenants and servitudes contained in this Grant shall inure to the benefit of the City and the public, shall be binding upon SAM and MDA and each of their successors, transferees and assigns, including, without limitation, tenants, and shall run with the land described in Exhibit 1, but the benefit thereof shall not run with any land owned by the City. All such rights, covenants and servitudes shall extend for so long as SAM or any successor in interest or assignee shall hold a permit to maintain one or both of the Skybridges, and except to the extent otherwise provided below shall also remain in effect after termination of all such permits, as follows:

(1) If SAM, or its successor in interest or assignee as holder of the Permit, shall not seek renewal of the Permit for an additional term, or if the Permit shall be terminated as to one or both Skybridges based on the City's determination that there has been default by the Permittee under the Permit, then for so long as the Skybridges, or either of them, remain in place, but not to exceed fifty (50) years from the effective date of the original Permit;

(2) If the Permit shall be renewed and shall then terminate at the expiration of its renewal term, then for so long thereafter as one or both Skybridges remains in place, whether pursuant to a new permit, or pending action on an application for a new permit, or pending removal by the Permittee as required by the terms of the Permit.

B. If the Permit shall be terminated or expire as to either or both Skybridges, and the City shall elect to assume full ownership and control of one or both Skybridge(s) pursuant to the terms of the Permit, then upon the City's acceptance of a deed for the Skybridge structure thereto from the Grantor, (i) all obligations of Grantor with respect to the maintenance and operation of such Skybridge(s) hereunder shall terminate, and (ii) all rights and obligations of the Grantor to maintain, control and repair the part of the Public Access Area on any Parcel adjacent to a Skybridge so accepted by the City, shall terminate. However, nothing herein shall relieve the Grantor of the obligation to remove such Skybridge(s) as the end of the period of City ownership pursuant to the Permit. Further, if at the end of the period of the City's ownership of one or both Skybridge(s) Grantor shall obtain a new permit to maintain one or both such Skybridge(s), then for so long as such permit remains in effect the Grantor shall have the same obligations as were in effect prior to the City's ownership of such Skybridge(s). For so long as the City has ownership of one or both Skybridges, the rights of the City to maintain and repair the Skybridges and such portions of the Public Access Area, and the public's access thereto, shall remain in full force and effect under the terms of this Grant, except that if the Elliott Avenue Bridge shall have been removed, other than for reconstruction thereof, then such



City rights shall not continue with respect to the portion of the SAM Property East of Elliott Avenue. For so long as the Grantor shall not have the obligation to maintain a portion of the Public Access Area, the City shall have the right to install in such portion any signage that the City deems appropriate for the convenience of the public using the same, with thirty (30) days' advance notice to SAM.

C. If the Elliott Avenue Bridge shall be removed and either a permit then remains in effect for the Alaskan Way Bridge or the City assumes ownership of the Alaskan Way Bridge pursuant to the Permit, then the Grantor shall provide access to the Public Access Area connected to the Alaskan Way Bridge from Broad Street, on a route no less than seven (7) feet wide in the location and with the design shown on Exhibit 4, and in compliance with all then applicable accessibility and other legal requirements. If the preceding sentence applies, then Grantor within ninety (90) days after the Elliott Avenue Bridge is closed for purposes of removal, shall at its own expense complete any construction necessary in order to provide safe and convenient pedestrian access from Broad Street to the Alaskan Way Bridge. The route provided under this subsection shall be part of the Public Access Area hereunder. Upon the Grantor's failure to perform construction necessary to provide such new route of access in compliance with the terms of this subsection in a timely manner, the City shall have the right, but not the obligation, to construct such route at the expense of the Grantor, in such location as the City shall deem in the public interest, and thereafter the route so constructed shall be part of the Public Access Area hereunder.

D. If both Skybridges shall be removed as required or permitted in accordance with the terms of the Permit, other than for reconstruction thereof, then this Grant shall terminate. If only the Elliott Avenue Bridge shall be removed, other than for reconstruction thereof, then the Grant shall terminate with respect to the portion of the SAM Property located east of Elliott Avenue and, conditioned upon provision of the alternate access from Broad Street if required under subsection C above, the Grant shall also then terminate as to the portion of the Public Access Area to the Northeast of the connection of such alternate access to the previously existing Public Access Area.

6. Modification or Release. The terms herein may be modified by a written instrument signed by an authorized officer of the City and by SAM and MDA, or their respective successors and assigns, and not otherwise, provided that if the interests of either SAM or MDA, or its respective successors or assigns, are not affected, then the signature of such party shall not be required. The City shall have the right to release in whole or in part the rights granted herein by recording an instrument executed by an authorized officer of the City.

7. Limited Purpose of Execution by MDA. Any other provision herein notwithstanding:



The MDA does not claim or warrant any title or interest in the SAM Property except to the extent of the leasehold interest described herein. MDA is executing this instrument solely in order to ensure that (a) this Grant encumbers such leasehold and any other interest that the MDA may have now or hereafter in the SAM Property; and (b) in the limited circumstances set forth in Section 5.C above, alternate access shall be provided from Broad Street to the Alaskan Way Bridge. So long as the MDA has no right to possession of the SAM Property, all obligations of "Grantor" for any performance hereunder shall be the sole obligations of SAM, and its successors in interest (not including MDA as such lessee), except that if at any time any portion of the Public Access Area shall be on the MDA Property pursuant to Section 5C and if SAM shall not then be the ground lessee of the MDA Property, any obligations of "Grantor" with respect to the MDA Property then shall be those of the MDA.

SEATTLE ART MUSEUM,
a Washington nonprofit corporation

By: _____
Print Name: _____
Print Title: _____

MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE,
a public corporation chartered by the City of Seattle

By: _____
Print Name: _____
Print Title: _____

NOTICE: MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE is organized pursuant to Seattle Municipal Code (SMC) Chapter 3.110 and RCW 35.21.730-.755. RCW 35.21.750 provides as follows:

"All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such public corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority."

Accepted:
THE CITY OF SEATTLE



By: _____
Name: _____
Title: _____

Date: _____

EXHIBITS:

Exhibit 1 Legal description of SAM's two upland blocks

Exhibit 2 Schematic design showing skybridges and location of Public Access

Area on “vee”

Exhibit 3 Legal description of MDA parcel

Exhibit 4 Schematic design showing location of Public Access Area to Broad Street

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE SEATTLE ART MUSEUM, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of THE MUSEUM DEVELOPMENT



AUTHORITY OF SEATTLE, a public corporation chartered by the City of Seattle Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Printed Name)

Notary Public

My appointment expires _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Keith Miller, 684-5275	Aaron Bert, 684-5176

Legislation Title: AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five -year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

- **Summary of the Legislation:** This legislation is the final Ordinance that gives permission to the Seattle Art Museum (SAM) to build two skybridges (referred to as the Elliott Avenue Bridge and the Alaskan Way Bridge) in connection with the Olympic Sculpture Park. It states the terms and conditions under which those skybridges can be built, and establishes the term for the permit as twenty five years initially with a possibility a second twenty five year term for a total of fifty years. The skybridges will cross arterial streets and railroad tracks within the Olympic Sculpture Park and will provide uninterrupted, safe pedestrian access across Elliott Avenue and the Burlington Northern Santa Fe (BNSF) Railway Company tracks through the Sculpture Park to the waterfront.
- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):* The existing grades along the Broad Street sidewalk exceed the federal standards for accessibility. This geography is a result of the significant regrading activities that occurred in this vicinity in the early part of the 20th century. The main path through the Sculpture Park across the proposed new skybridges will allow pedestrian access through to the waterfront on an ADA-compliant pathway. In 2000, a design agreement between the City of Seattle and SAM was executed to guide the design and development of the future park property. The concept design was approved by the City Council with the adoption of Ordinance 119982 in 2000. In April, 2005, City Council passed Resolution 30760 approving the design of the Olympic Sculpture Park and in May, 2005, the Council passed Resolution 30771 granting conceptual approval of the two pedestrian skybridges.

- Please check one of the following:

 This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

 X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2005 Appropriation	2006 Anticipated Appropriation
N/A	N/A	N/A	N/A	N/A
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2005 Revenue	2006 Revenue
10310	Seattle Department of Transportation	Permit Fees	0	\$7451.65
TOTAL			0	\$7451.65

Notes: See attached calculation for determining the annual fees for the Elliott Avenue Skybridge (\$4449.80) and the BNSF Skybridge (\$3001.85)

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2005 Positions	2005 FTE	2006 Positions**	2006 FTE**
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL							

* List each position separately

** 2006 positions and FTE are total 2006 position changes resulting from this legislation, not incremental changes. Therefore, under 2006, please be sure to include any continuing positions from 2005

Notes:

- **Do positions sunset in the future?** (If yes, identify sunset date): N/A

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name and Number	Department	Budget Control Level*	2005 Expenditures	2006 Anticipated Expenditures
N/A	N/A	N/A	N/A	N/A
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

Not implementing the legislation would have no financial cost, but it would result in a project without skybridges.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

The only alternative to this legislation would be to grant no-fee skybridge permits, but this is not consistent with City policy.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No public hearing is required.

- **Other Issues** *(including long-term implications of the legislation):*

N/A

Please list attachments to the fiscal note below:

OSP Skybridge Fee Calculations

STATE OF WASHINGTON – KING COUNTY

--SS.

191473
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121970 ORD IN FULL


was published on

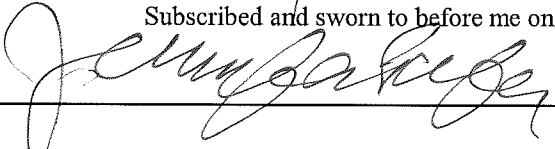
11/02/05

The amount of the fee charged for the foregoing publication is the sum of \$ 808.25, which amount has been paid in full.



Affidavit of Publication



Subscribed and sworn to before me on
11/02/05 

Notary public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 121970

AN ORDINANCE relating to the Olympic Sculpture Park, granting to the Seattle Art Museum permission to construct, maintain and operate two (2) skybridges for pedestrian access over and across: 1) Elliott Avenue between Bay Street and Broad Street, and 2) Alaskan Way between Bay Street and Broad Street, for a twenty-five year term, renewable for one additional twenty-five-year term, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and authorizing acceptance of a Grant of Access and Maintenance Rights over the skybridges and adjacent property.

WHEREAS, the Seattle Art Museum ("SAM") proposes to develop the Olympic Sculpture Park ("OSP") on the two city blocks bounded by Bay Street, Western Avenue, Broad Street and Alaskan Way, and on the waterfront parcel owned by the City of Seattle ("City") to the west of Alaskan Way next to Myrtle Edwards Park; and

WHEREAS, by Resolution 30760 the City Council, with the Mayor concurring, approved the design of the OSP; and

WHEREAS, by Resolution 30771 the City Council, with the Mayor concurring, granted conceptual approval of two pedestrian skybridges, one crossing over Elliott Avenue between Bay and Broad Streets and the other crossing over Alaskan Way between Bay and Broad Streets, as proposed by SAM as part of its development of the OSP; and

WHEREAS, pursuant to Seattle Municipal Code ("SMC") Chapter 15.64, SAM has submitted the information required for the Director of Transportation ("Director") to make a recommendation to the Council on whether to grant or deny conceptual approval, and the Director has circulated the information to the Seattle Design Commission, and to the City departments and public and private utilities interested in or affected by the proposed skybridges, and compiled the responses (C.F. 307255); and

WHEREAS, the departments and utilities have no objections to the conceptual design of the skybridges, and the Design Commission supports the two proposed skybridges as a core element of the OSP design and recommends that the Council approve the final application; and

WHEREAS, in making her recommendation, the Director considered the 12 elements set forth at SMC 15.64.050.B, and recommended that conceptual approval be granted; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the skybridges and will allow SAM to move forward with construction of the skybridges; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Permit. Subject to the terms and conditions of this ordinance (otherwise known as the "Permit"), permission is hereby granted to the Seattle Art Museum ("SAM") (referred to, together with any transferee allowed by the City pursuant to this ordinance, as "Permittee") to construct, maintain and operate, in conjunction with the Olympic Sculpture Park ("OSP" or "Park") a skybridge over and across Elliott Avenue between Bay Street and Broad Street ("Elliott Avenue Bridge"), and a skybridge over and across a portion of Alaskan Way between Bay Street and Broad Street, including the Burlington Northern Santa Fe Railway franchise area ("Alaskan Way Bridge") (together the "skybridges"). The Elliott Avenue Bridge will support the Park's central pathway, seating areas, sculpture and landscaping on a vee-shaped structure with an average width of 72 feet, located approximately 20 feet above street grade, and will connect Western

Avenue and Broad Street and the easternmost OSP parcel, lying between Western Avenue and Elliott Avenue, with the parcel lying between Elliott Avenue and Alaskan Way, as shown on Exhibit 2 to Attachment A hereto. The Alaskan Way Bridge will also support the central pathway, seating areas, sculpture and landscaping on a structure with an average width of 75 feet, located approximately 24 feet above the surface of the right-of-way, and will connect the eastern OSP parcels with that portion of Alaskan Way designated as a park boulevard by Ordinance 121721 ("the Boulevard") and provide access to SAM's tideland parcel and Myrtle Edwards Park's southern entrance, as shown on Exhibit 2 to Attachment A hereto. The Alaskan Way Bridge also includes the ramp, stairs and abutment where it connects with the Boulevard. SAM's use of the Boulevard as part of the OSP is to be governed by a separate Operation and Maintenance Agreement, to be approved by ordinance, between the City and SAM.

State of Washington, King County

Section 2. Use of Skybridges; Duration and Renewal of Permit. For as long as the Permit remains in effect as to at least one skybridge and that skybridge remains in place, the property described on Attachment B hereto shall be used by SAM or its assignee of this Permit as a sculpture park that is open and free to the public, subject to the terms of any operations and management agreement approved by ordinance, which park may include accessory uses such as exhibition, special events and retail uses in the pavilion and underground parking. The Permit hereby granted is for a term of twenty-five (25) years, commencing when the conditions in Sections 1 and 16 have been met and terminating at 11:59 p.m. on the last day of the twenty-fifth year; provided, however, that upon written application of the Permittee at least thirty (30) days before the expiration of the term, the Director may renew the Permit for one additional term, for a total term of fifty (50) years. The Permit is granted subject to the right of the City by ordinance to revise any of the terms and conditions contained herein. Notwithstanding the foregoing, in the event that the Permittee has made timely application for renewal of the Permit in accordance with this section, or for a new permit if and when this Permit expires in 50 years, and the City has not taken the necessary action to renew or grant, or to deny the renewal or grant, of a permit prior to the expiration of the term or the renewal term, the Permit shall be deemed extended until such time as the City takes action on such permit application, and in the case of an appeal to the Mayor or Director as described in Section 4 of this ordinance, shall be deemed extended until the Mayor or Director makes a decision and for any further period in which the City has the option to revise permit conditions in light of such decision as described in Section 4 of this ordinance.

Section 3. Termination of Permit; Removal of Skybridges. The Permit hereby granted to use portions of Elliott Avenue and Alaskan Way for skybridges is subordinate to the public's use for transportation purposes, and the City expressly reserves the right to terminate this Permit as to one or both skybridges and/or to require the Permittee to remove the skybridges or any portion thereof at the Permittee's sole cost and expense if one more of the following occur:

(a) The City Council determines, by ordinance, that the space occupied by a skybridge is necessary for any non-pedestrian public travel or transportation use, or that a skybridge interferes with any public transportation use. Such a City Council determination shall be conclusive and final.

(b) The Director determines that any term or condition of this Permit has been violated, and the Permittee does not correct such violation within thirty (30) days of written notification from the City, or within such longer period of time that the Director determines is necessary for Permittee to correct the violation.

(c) The Permittee does not apply for a renewal of this Permit in a timely manner or its renewal application is denied.

(d) The Permittee does not apply for a new permit, if this Permit is renewed and expires in fifty (50) years, before such expiration, or its new permit application is denied.

Subject to the City's right to assume ownership and operation of a skybridge under Section 4 of this ordinance, the Permittee shall, within ninety (90) days after the expiration of this Permit, its termination (including any termination resulting from failure of the Permittee to accept renewal or satisfy the conditions of renewal), or the date of a City order of removal, or prior to the date stated in an "Order to Remove," as the case may be, the Permittee shall remove the skybridge(s) and shall place all portions of Elliott Avenue and/or Alaskan Way that may have been disturbed for any part of a skybridge in as good condition for public use as they were prior to construction, and in at least as good condition in all respects as the abutting portions thereof at the time of such removal. If the Permittee becomes obligated to remove a skybridge, then the Permittee shall remove all sculpture and other art installations from the Boulevard and the skybridges. Upon removal of the skybridges and completion by the Permittee of all required restoration, the Director shall issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge.

Section 4. City Ownership and Operation of Skybridges. Because the skybridges will constitute a transportation use and benefit to the public by providing a pedestrian walkway above the Burlington Northern Santa Fe Railway and Elliott Avenue connecting the Boulevard to the OSP and adjacent public streets, upon termination of the permission granted by this ordinance as to such skybridge(s) the City may elect to assume ownership and operation of one or both of the skybridges as a City facility, for a period ending fifty (50) years after the commencement of the term of this Permit, but only in any of the following cases:

(A) if the Permittee does not seek renewal of the Permit at least thirty (30) days before the expiration of the initial term;

(B) if the City terminates the Permit as to such skybridge(s) pursuant to Section 3(b) of this ordinance or the permit terminates in the circumstances set forth in Section 3(c) of this ordinance; or

(C) if the Permittee seeks renewal of the Permit in a timely manner but does not accept in a timely manner, or does not comply in a timely manner with, the conditions of such renewal, but if SAM is the Permittee and is operating the property described in Attachment B as the OSP at the time renewal is timely sought and SAM contends any new Permit provision or any new condition established by the City for renewal of the Permit is unduly burdensome on SAM, then SAM within 20 days notice of the conditions for renewal may appeal in writing to the Director and to the Mayor, and if either of those officers determines the new provision(s) or condition(s) to be unduly burdensome he or she shall, within 20 days of receiving the appeal, state in writing in what respect it is so, and the City shall thereafter have an additional 60 days to revise the provision(s) or condition(s) for renewal; and if the City does not within such period revise the provision(s) or condition(s) so as to eliminate all aspects the Director or Mayor determined to be unduly burdensome, the City shall thereby forfeit its option to assume ownership and operation under this Subsection 4(C) for SAM's failure to accept or to timely comply with a provision or condition so determined to be unduly burdensome. Both parties retain their rights to seek judicial review of the rights and obligations created by this Permit, including whether a permit provision or condition included a future renewal is unduly burdensome, in addition to the administrative and executive appeal remedies stated in this subsection.

Upon the City's election to assume ownership and operation, ownership of the skybridge structure(s) shall vest in the City, subject to reversion, at the end of such fifty (50) year period, to SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge. Upon such reversion, SAM and any such other owners each shall be obligated promptly and at their own expense to remove such skybridge(s) and restore the right of way as described in Section 3, provided that if the then owner(s) of such parcels shall apply to the City for a new permit to maintain such skybridge(s) within fifteen (15) days after such reversion, the obligation to remove shall be deferred until thirty (30) days after denial of such application, or if such application shall be granted, until such time as the skybridge(s) must be removed pursuant to the terms of the new permit. At the City's election, at the time when the City shall assume ownership of a skybridge, all additions, fixtures and improvements made to or constructed upon the skybridges shall remain without compensation to the Permittee, except that the Permittee may elect to remove, within fifteen (15) days after the City shall assume ownership, any sculptures and other art installations, on the following conditions: (i) that if any sculpture or installation serves as a structural or safety feature of the skybridge or as a feature required by any applicable law or regulation, the Permittee shall cause a replacement feature to be installed satisfactory to the Director immediately after such removal; and (ii) that the Permittee forthwith repair any damage to the skybridge caused in the course of any removals. In the discretion of the Director, the Permittee may be required to post a bond for the costs of replacement or restoration prior to undertaking any removals. While the City owns a skybridge, the City may at its own expense repair, maintain, alter, reconstruct, replace, or remove that skybridge as it determines appropriate from time to time, and the reversionary rights of SAM or its successors and assigns as owners of the parcel(s) abutting the skybridge pertain only to whatever structure, if any, is in place at the end of the 50-year period.

Section 5. Grant of Access and Maintenance Rights. As a precondition to the grant of this Permit, SAM shall deliver

to the City a document ("Grant") granting to the City rights of public access along the central vee-shaped pathway that originates on Western Avenue at the intersection of Western Avenue and Broad Street and extends across both skybridges to the waterfront parcel and Myrtle Edwards Park, and with public access to Broad Street across SAM land and Museum Development Authority land per Section 5C of the Grant, all as described in the form of the required Grant. The form of the required Grant, including the maps and other exhibits to the Grant, is Attachment A hereto. At the time the Grant required herein is delivered to the City, the property described in Attachment B hereto shall not be encumbered in any way other than what is shown in Attachment C. The Museum Development Authority must join in the Grant as provided in Section 16, both as lessee/sublessor and to provide public access according to subsection 5C of the Grant. The Director is authorized to accept the Grant, and to enforce and administer the rights of the City thereunder. The Superintendent of Parks and Recreation is authorized to participate in dispute resolution proceedings regarding the respective rights and obligations of the parties to the Grant, and their agents and successors, as specified in the form of the Grant.

Section 6. Reconstruction, Relocation, Readjustment and Repair. The Permittee shall not commence reconstruction, relocation, readjustment or repair, other than routine repair and maintenance, of the skybridges except under the supervision of, and in strict accordance with plans and specifications approved by the Director. After notice to and consultation with Permittee, the Director in his/her judgment may order reconstruction, relocation, readjustment or repair of the skybridges at the Permittee's own cost and expense because of the deterioration or unsafe condition of the skybridges.

Section 7. Closure. After notice to the Permittee, and failure of the Permittee to correct any condition that is inconsistent with the Permit or the Grant within the time stated in such notice, the Director may order a skybridge closed if the Director deems that it has become unsafe or creates a risk of injury to the public. In a situation in which there is an immediate threat to the health or safety of the public, notice is not required.

Section 8. Discharge of Permittee Obligations. Notwithstanding termination or expiration of the permission granted, removal of the skybridges, the Permittee shall remain bound by its obligations under this ordinance until:

(a) The bridges and all related equipment and property are removed from the street and Boulevard or any other boulevard;

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

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

Section 9. Release: Indemnification: Duty to Defend. Except as otherwise provided herein, the skybridges shall remain the exclusive responsibility of the Permittee. The Permittee, by acceptance of this ordinance and the Permit hereby granted, does release the City from any and all claims resulting from damage or loss to Permittee's own property, and covenants and agrees with the City, to at all times indemnify, defend and save harmless the City from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), that may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, or licensees, by reason of the Permittee's maintenance, operation or use of said skybridges, or any portion thereof, or by reason of anything that has been done or omitted, or may at any time be done or omitted, by the Permittee by reason of this ordinance, or by reason of the Permittee's failure or refusal to strictly comply with each and every provision of this ordinance (collectively "Indemnified Actions"); and if any such suit, action or claim be filed, instituted or begun against the City for an Indemnified Action, the Permittee shall, upon notice thereof from the City, defend the Indemnified Action at its sole cost and expense with counsel acceptable to the City, and in case judgment shall be rendered against the City in any suit or action for an Indemnified Action, the Permittee shall fully satisfy said judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to the City. Provided that if it is determined by a court of competent jurisdiction, that RCW 4.24.115 applies to this ordinance or that other concurrent negligence has occurred for which the City is liable to a third party other than in regard to any condition caused by the failure of the Permittee to comply with any obligation under this Permit, the Grant or another agreement with the City, then in the event claims or damages are caused by or result from the concurrent negligence of:

(a) The City, its agents, contractors or employees; and

(b) The Permittee, its agents, contractors, or employees,

then the Permittee's obligation shall be limited to the extent of the Permittee's negligence and, to the extent consistent with applicable law, the negligence of the Permittee's agents, contractors or employees.

The City shall indemnify SAM for any claims for loss or damage by third parties to the extent they result from the negligent or otherwise wrongful act of the City or its employees, agents or contractors in the exercise of rights under this Permit on the SAM Property, MDA Property or the skybridges, but only if and to the extent that all of the following apply: (a) the claim is one for which the City would be liable under applicable law, if brought directly against the City by the third party; and (b) the claim is not one for which the City would have a right to indemnity from the Permittee under this Section; and (c) the claim is not covered by insurance maintained by the Permittee; and (d) the claim was not required to have been covered by insurance maintained by the Permittee under the terms of this Permit or by SAM under any contract between SAM and the City.

Section 10. Environmental Agreement. The parties acknowledge the existing Environmental Agreement between the City and SAM dated December 7, 1999 ("Environmental Agreement"), deals with the parties' respective obligations relating to contamination and environmental conditions in the City rights-of-way. No change of rights, obligations, or responsibilities under the existing Environmental Agreement shall occur as a result of this Ordinance or Permit, except as expressly provided in this section. Permittee shall be responsible for any and all costs that arise from or are related to soil removal, if required, and regrading of soil, if required, to the extent required to complete Permittee's construction of the skybridges. Such costs include, but are not limited to, disposal of contaminated soil or ground water that is removed during construction, replacement of material that is capping contaminated soil and is disturbed during construction, mitigation measures required by permitting authorities, and worker safety measures required for construction on a contaminated site.

Section 11. Insurance. For as long as the Permittee shall exercise any permission granted by this ordinance or until the skybridges are entirely removed from their location as described in Section 3, whichever is longer, but not including any period during which both skybridges or the sole remaining skybridge shall be owned by the City pursuant to the terms of this ordinance, and unless discharged by order of the Director as provided in Section 8 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance policies that protect the City from any and all loss, damages, suits, liability, claims, demands or costs resulting from injury or harm to persons or property.

Minimum insurance requirements shall be an occurrence form policy of commercial general liability, placed with a company admitted and licensed to conduct business in Washington State. Minimum policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage shall specifically name the skybridge exposure. Coverage shall add by endorsement The City of Seattle, its elected and appointed officers, officials, employees and agents as additional insured. Coverage shall contain a Separation of Insured's Clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought." Evidence of current coverage shall be submitted to the City in the form of a copy of the full insurance policy with all endorsements attached thereto, and is a condition to the validity of this Permit.

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

Section 12. Additional Insured. The Permittee shall require that all of its contractors performing construction work on the premises as contemplated by this Permit, name the City as an additional insured on all policies of public liability insurance, and shall include in all pertinent contract documents a provision extending construction indemnities and warranties granted to SAM to the City as well.

Section 13. Bond. Within sixty (60) days after the effective date of this ordinance the Permittee shall deliver to the Director for filing with the City Clerk a good and sufficient bond in the sum of Fifty Thousand Dollars (\$50,000.00) for each skybridge executed by a surety company authorized and qualified to do business in the State of Washington conditioned that the Permittee will comply with each and every provision of this ordinance and with each and every order of the Director pursuant thereto; provided, that if the Mayor of the City in his/her judgment shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a new or additional bond in such amount as the Director may specify to be necessary to fully protect the City. Said bond shall remain in effect until such time as the skybridges are entirely removed as described in Section 3, or until discharged by order of the Director as provided in Section 8 of this ordinance.

Section 14. Transfers. Permittee shall not assign, transfer, mortgage, pledge or encumber any privileges conferred by this ordinance without the consent of the City Council by resolution, except that after the Grant described in Section 5 above has been granted to the City, SAM may grant a security interest to Allied Irish Banks, p.l.c., New York Branch pursuant to that springing deed of trust dated as of October 6, 2005. If consent is granted, the assignee or transferee shall be bound by all terms and conditions of this ordinance. The Permit conferred by this ordinance shall not be assignable or transferable by operation of law.

Section 15. Inspections/Payments. The Permittee shall pay to the City such amounts as may be justly chargeable by said City as costs of inspection of the subject skybridges during construction, reconstruction, or repair, and at other times deemed necessary by the Director. In recognition of the public benefits of the OSP, including the Grant, no annual fee is charged for this Permit. All payments shall be made to the City Director of Executive Administration or his successor as custodian of the City Treasury for credit to the Seattle Department of Transportation subfund for Street Use. No inspection or approval by the City shall be construed as a representation, warranty or assurance to the Permittee or any other person as to the safety or soundness of any structure or condition, nor as to compliance with the Permit or any agreement or standard. 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. Acceptance. The Permittee shall deliver its written acceptance of the Permit conferred by this ordinance and the Permittee's agreement to its terms and conditions, and the Grant required in Section 5 above, to the Director within thirty (30) days after the effective date of this ordinance. The Director shall record the Grant with the King County Recorder's Office and file the recorded Grant and the Permittee's acceptance with the City Clerk. If the Grant and acceptance are not timely received, the privileges provided by this ordinance shall be deemed declined or abandoned, and the Permit deemed lapsed and forfeited.

Section 17. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

PASSED by the City Council of the City of Seattle the 24th day of October, and signed by me in open session in authentication of its passage this 24th day of October.

Jan Drago

President of the City Council

Approved by me this 31st day of October.

Gregory J. Nickels

Mayor

Filed by me this 31st day of October.

(Seal) Judith Pippin

City Clerk

Attachment A: Form of Grant of Access and Maintenance Rights including exhibits:

Exhibit 1 Legal description of SAM Property

Exhibit 2 Schematic design showing Skybridges and "Vee"

Exhibit 3 Legal description of MDA Property

Exhibit 4 Schematic design showing Broad Street Access

Attachment B: Legal description of SAM's two upland blocks.

Attachment C: Permitted Encumbrances See City Clerk for Exhibits

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, November 2, 2005.

11/2(191473)

STATE OF WASHINGTON - KING COUNTY

--SS.

191472
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

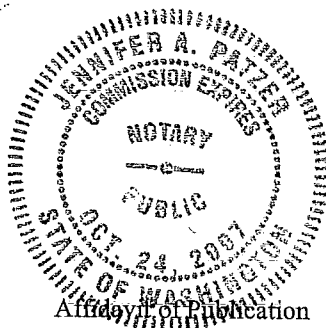
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121967-121971

was published on

11/02/05

The amount of the fee charged for the foregoing publication is the sum of \$ 59.63, which amount has been paid in full.



Affidavit of publication

Subscribed and sworn to before me on

11/02/05

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 24, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121971

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121969

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the grant of an easement to Puget Sound Energy for a nonexclusive easement over, under, along, and across a portion of the property known as the Joint Training Facility with an address of 9401 Myers Way S.

ORDINANCE NO. 121967

AN ORDINANCE relating to the City Light Department; authorizing execution of Amendment No. 2 to the Service Agreement for Point-to-Point Transmission and the Transmission Assignment Agreement, which together will provide for the continuation of firm transmission for Skagit Treaty power from January 1, 2006 through December 31, 2035.

ORDINANCE NO. 121968

AN ORDINANCE relating to the 3rd Avenue NE extension project in the Northgate Urban Center, lifting a budget proviso that had restricted spending on the 3rd Avenue NE extension project and authorizing an agreement with King County.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, November 2, 2005.
11/2(191472)