

Ordinance No. 123511

Council Bill No. 116960

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street; amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File: _____

Date Introduced and Referred: <u>Sept. 13, 2010</u>	To: (committee): <u>Transportation</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>Jan. 3, 2011</u>	Date Presented to Mayor: <u>Jan. 4, 2011</u>
Date Signed by Mayor: <u>1.6.11</u>	Date Returned to City Clerk: <u>1.7.11</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	Date Passed Over Veto:
Date Veto Published:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Tom Rasmussen

Committee Action:

Date	Recommendation	Vote
<u>12-14-10</u>	<u>Approve</u>	<u>TR JG TB 3-0</u>

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
<u>Jan. 3, 2011</u>	<u>PASSED</u>	<u>9-0</u>

Law Department

ORDINANCE

123511

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street; amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 119437 the City granted permission to Clise Properties, Inc. to construct, operate, and maintain a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street for a ten-year term, renewable for two successive ten-year terms, and this ordinance was amended by Ordinance 121855; and

WHEREAS, 2001 Sixth L.L.C. purchased the properties at 2001 6th Avenue and 2000 5th Avenue in August 2007 and assumed ownership of the utility tunnel; and

WHEREAS, the permission authorized by Ordinance 119437 was due for renewal on June 2, 2009; and

WHEREAS, 2001 Sixth L.L.C. has submitted an application to the Seattle Department of Transportation Director (Director) to continue maintaining and operating the utility tunnel; and

WHEREAS, 2001 Sixth L.L.C. has satisfied all terms of the original authorizing ordinance and the Director recommends that the term permit be renewed subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The permission granted to Clise Properties, Inc. to maintain and operate a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street, including all rights, title and interests as conferred by Ordinance 119437 and amended by Ordinance 121855, is transferred to 2001 Sixth L.L.C. (Permittee) and its successors and



1 assigns. 2001 Sixth L.L.C. shall assume all of the responsibilities and duties of the Permittee
2 under Ordinance 119437, as amended by Ordinance 121855, and as amended by this ordinance.
3 The permission (also referred to in this ordinance as a permit) is renewed for a ten-year period
4 starting June 3, 2009 and ending at 11:59 p.m. on June 2, 2019 upon the terms and conditions set
5 forth in Ordinance 119437, as amended by Ordinance 121855, and as further amended by this
6 ordinance.
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8 Section 2. Sections 2, 3, 4, 7, 9, 10, 11, 12, 13, and 14 of Ordinance 119437, as amended
9 by Ordinance 121855, are amended as follows:

10 2. **Term.** The permission (~~herein~~) granted to the Permittee(~~;~~) and its successors and
11 assigns, shall be for a term of ten (~~(10)~~) years, (~~commencing March 27, 1999~~) beginning on
12 the effective date of this ordinance and (~~terminating~~) ending at 11:59 p.m. on the last day of the
13 tenth year (~~;~~ provided, however, that upon). Upon written application of the Permittee at least
14 (~~(thirty-30)~~) 180 days before expiration of the term, the Director of the Seattle Department of
15 Transportation (~~(“Director”)~~) (Director) may renew the (~~permit~~) permission for two (~~(2)~~)
16 successive ten (~~(10)~~)-year terms. (~~;~~ provided further that the) The total term of the permission
17 as originally granted and (~~thus~~) extended shall not exceed (~~(thirty-30)~~) 30 years, subject to the
18 right of (~~(F)~~)the City of Seattle (~~(“City”)~~) (City) to: terminate the permit as provided for in
19 Section 4, require removal as provided for in Section 5, or revise by ordinance (~~to then revise~~
20 any of the terms and) any conditions (~~contained herein~~) of this ordinance. The Permittee shall
21 submit a complete application for a new term permit ordinance no later than 180 days prior to the
22 expiration of the ordinance term. Failure to obtain additional permission through a new tunnel
23



1 ordinance, or to remove the tunnel prior to expiration of the term, is a violation of Chapter 15.90
2 of the Seattle Municipal Code (SMC).

3 **3. Protection of utilities.** ~~((In addition to the conditions herein contained,))~~ The
4 permission granted is subject to the Permittee ~~((shall support, protect and relocate all))~~ bearing
5 the expense of any protection, support or relocation of existing utilities ~~((, as))~~ deemed necessary
6 by ~~((a utility company,))~~ the owners of the utilities and the Permittee shall allow City Light to
7 conduct a camera survey of its existing electrical ducts in the vicinity of the tunnel, all at
8 Permittee's expense, with Permittee being responsible for any subsequent damage to the utilities
9 due to the construction, repair, reconstruction, maintenance, operation or settlement of the tunnel.

12 **4. Removal for public use or cause.** The ~~((permit))~~ permission granted ~~((hereby))~~ is
13 subject to ~~((primary and secondary))~~ use of the street right-of-way by the City and the public for
14 travel, ~~((and))~~ utility purposes, and other street uses. ~~((†))~~ The City expressly reserves the right to
15 require the Permittee to remove the tunnel, or any part thereof or installation thereon, and return
16 the street right-of-way to the condition that existed prior to construction of the utility tunnel at
17 the Permittee's sole cost and expense in the event that:

19 (a) The City Council determines~~((;))~~ by ordinance~~((;))~~ that the space occupied by the
20 tunnel is necessary for any ~~((primary or secondary))~~ public use or benefit~~((;))~~ or that the tunnel
21 interferes with any ~~((primary or secondary))~~ public use or benefit; or

24 (b) The Director ~~((of Transportation ("Director")))~~ determines that any term or condition
25 of this ordinance has been violated~~((;))~~ and ~~((such))~~ the violation ~~((is))~~ has not been corrected by



1 the Permittee ~~((with thirty (30) days of))~~ by the compliance date after written notification from
2 the City.

3 A City Council determination that the space is ~~((necessary for a primary or secondary))~~ needed
4 for or interferes with a public use or benefit shall be conclusive and final without any right of the
5 Permittee to resort to the courts to adjudicate the matter.
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7 * * *

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9 **7. Failure to correct unsafe condition.** After notice to the Permittee~~((;))~~ and failure of
10 the Permittee to correct any unsafe ~~((or risk prone))~~ conditions within the time stated in ~~((such))~~
11 the notice, the Director may order the tunnel closed or removed at the Permittee's expense if the
12 Director deems that it has become unsafe or creates a risk of injury to the public. ~~((In a situation~~
13 ~~in which))~~ If there is an immediate threat to the health or safety of the public, a notice is not
14 required.
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16 * * *

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18 **9. Release, hold harmless, indemnification, and duty to defend.** The tunnel shall
19 remain the exclusive responsibility of the Permittee ~~((The))~~, and the Permittee agrees to
20 maintain the tunnel in good and safe condition. The Permittee, by ~~((acceptance))~~ accepting the
21 terms of this ordinance and the permission ~~((hereby))~~ granted, ~~((does release))~~ releases the City
22 from any and all claims resulting from damage or loss to ~~((its own))~~ the Permittee's property and
23 ~~((does covenant))~~ covenants and ~~((agree))~~ agrees for itself, its successors and assigns, with
24 ~~((The))~~ the City ~~((of Seattle,))~~ to at all times protect and save harmless ~~((The))~~ the City ~~((of~~
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1 Seattle)) from all claims, actions, suits, liability, loss, costs, expense, or damages of every kind
2 and description, ((~~(f)~~))excepting only ((~~sueh~~)) damages that may result from the sole negligence of
3 the City(~~(h)~~), ((~~which~~)) that may accrue to, or be suffered by, any person or persons and/or
4 property or properties, including without limitation, damage or injury to the Permittee, its
5 officers, agents, employees, contractors, invitees, tenants and tenants' invitees, licensees or its
6 successors and assigns, by reason of the construction, maintenance, operation or use of ((~~said~~))
7 the tunnel, or any portion thereof, or by reason of anything that has been done(~~(s)~~) or may at any
8 time be done(~~(s)~~) by the Permittee, its successors or assigns(~~(s)~~) by reason of this ordinance(~~(s)~~) or
9 by reason of the Permittee, its successors or assigns(~~(s)~~) failing or refusing to strictly comply with
10 each and every provision of this ordinance(~~(s) and if~~).

11
12
13 If any ((~~sueh~~)) suit, action or claim ((~~be~~)) of the nature described above is filed, instituted
14 or begun against the City, the Permittee, its successors or assigns(~~(s)~~) shall, upon notice
15 ((~~thereof~~)) from the City, defend the same at its or their sole cost and expense, and in case
16 judgment shall be rendered against the City in any suit or action, the Permittee, its successors or
17 assigns(~~(s)~~) shall fully satisfy ((~~said~~)) the judgment within ((~~ninety (90)~~)) 90 days after ((~~sueh~~)) an
18 action or suit shall have been finally determined, if determined adversely to the City. ((~~Provided~~
19 that if)) If it is determined by a court of competent jurisdiction that Revised Code of Washington
20 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
21 result from the concurrent negligence of:

22
23
24 (a) the City, its agents, contractors or employees; and

25 (b) the Permittee, its agents, contractors, employees, or its successors or assigns(~~(s)~~);



1 this indemnity provision shall be valid and enforceable only to the extent of the negligence of the
2 Permittee or the Permittee's agents, contractors, employees or its successors or assigns.

3 10. **Insurance.** For as long as the Permittee, its successors and assigns, shall exercise any
4 permission granted by this ordinance and until the tunnel is entirely removed from its location as
5 described in Section 1 or until discharged by order of the Director (~~(of Seattle Transportation)~~) as
6 provided in Section 8 (~~(of this ordinance)~~), the Permittee shall obtain and maintain in full force
7 and effect, at its own expense, insurance (~~(policies which)~~) that protects the City from ((any all))
8 claims and risks of loss from perils that can be insured against under commercial general liability
9 (CGL) insurance policies in conjunction with:
10

11
12 (a) construction, reconstruction, operation, maintenance, use, or existence of the tunnel
13 permitted by this ordinance and of any and all portions of the tunnel;
14

15 (b) the Permittee's activity upon, or the use or occupation of the alley right-of-way
16 ((area)) described in Section 1 (~~(of this ordinance, as well as)~~); and
17

18 (c) (~~(any and all)~~) claims and risks in conjunction with any activity performed by the
19 Permittee by virtue of the permission granted by this ordinance.

20
21 Minimum insurance requirements ((shall be an occurrence form policy of commercial general
22 liability,)) are CGL insurance based on the Insurance Services Office (ISO) form CG 00 01 or
23 equivalent. The City requires insurance coverage to be placed with ((a company)) an insurer
24 admitted and licensed to conduct business in Washington State or with a surplus lines carrier
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1 pursuant to RCW Chapter 48.15, except that if it is infeasible to obtain coverage with the
2 required insurer, the City may approve an alternative insurer.

3 Minimum ~~((policy))~~ limits of liability shall be \$2,000,000 ~~((per occurrence,))~~ each
4 occurrence combined single limit bodily injury and property damage, with \$4,000,000 annual
5 aggregate. Coverage shall ~~((specifically))~~ name the ~~((tunnel exposure))~~ “City of Seattle, its
6 elected and appointed officers, officials, employees and agents” as additional insureds for
7 primary and non-contributory limits of liability subject to a Separation of Insureds clause.
8 ~~((Coverage shall add by endorsement The City of Seattle, its elected and appointed officers,~~
9 ~~officials, employees and agents as additional insured. Coverage shall contain a Separation of~~
10 ~~Insureds Clause indicating essentially that "except with respect to the limits of insurance, and any~~
11 ~~rights or duties specifically assigned in this coverage part to the first named insured, this~~
12 ~~insurance applies as if each named insured were the only named insured, and separately to each~~
13 ~~insured against whom claim is made or suit is brought". Evidence of current coverage shall be~~
14 ~~submitted to the City in the form of a copy of the full insurance policy with all endorsements~~
15 ~~attached thereto, and is a condition to the validity of this permit.))~~
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19 Permittee shall provide to the City, or cause to be provided, certification of insurance
20 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and
21 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The
22 insurance coverage certification shall be delivered or sent to the Director or to the Department of
23 Transportation at an address as the Director may specify, from time to time, in writing.
24



1 Should the Permittee be self-insured, a letter of certification from the Corporate Risk
2 Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage
3 certification required by this ordinance, if approved in writing by the City Risk Manager. The
4 letter must provide all information required by the City Risk Manager and document, to the
5 satisfaction of the City Risk Manager, that self-insurance equivalent to the insurance
6 requirements of this ordinance is in force. After a self-insurance certification is approved, the
7 City may subsequently from time to time require updated or additional information. The
8 approved self-insured Permittee must provide 30 days notice of any cancellation or material
9 adverse financial condition of its self-insurance program. The City may at any time revoke
10 approval of self-insurance and require the Permittee to obtain and maintain insurance as specified
11 in this ordinance.

14 **Adjustment of insurance and bond requirements.** ((Whenever in the judgment of the))
15 The Director, in consultation with the City Risk Manager ((of The City of Seattle, such)), may
16 adjust minimum levels of liability insurance and surety bond requirements during the term of this
17 permission. If the Director and City Risk Manager determine that an adjustment is necessary
18 ((filed pursuant to the provisions hereof shall be deemed insufficient)) to fully protect ((The)) the
19 interests of the City ((of Seattle)), the Director shall notify the Permittee ((shall, upon demand by
20 the Risk Manager, furnish additional insurance in such amount as may be specified by the Risk
21 Manager.)) of the new requirements in writing. Upon receipt, the Permittee shall within 60 days,
22 provide proof of the adjusted insurance and surety bond levels to the Director.



1 **11. Contractor Insurance.** The Permittee shall contractually require that any and all of
2 its contractors performing ~~((construction))~~ work on ~~((the))~~ any premises as contemplated by ~~((this~~
3 ~~permit,))~~ the permission name ((The))the “City of Seattle, its elected and appointed officers,
4 officials, employees, and agents” as an additional insureds for primary and non-contributory
5 limits of liability on all ~~((policies of public))~~CGL, Automobile and Pollution liability insurance~~((,~~
6 ~~and))~~ and/or self-insurance. The Permittee shall also include in all contract documents with its
7 contractors a third-party beneficiary provision extending construction indemnities and warranties
8 granted to ~~((Clise Properties, Inc))~~ Permittee to the City as well.

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11 **12. Performance Bond.** Within ~~((sixty(60)))~~ 60 days after the effective date of this
12 ordinance the Permittee shall deliver to the Director ~~((of Transportation))~~ for filing with the City
13 Clerk a ~~((good and))~~ sufficient bond in the sum of ~~((Twenty-Five Thousand Dollars~~
14 ~~(\$25,000.00)))~~ \$25,000 executed by a surety company authorized and qualified to do business in
15 the State of Washington, conditioned that the Permittee will comply with each and every
16 provision of this ordinance and with each and every order of the Director ~~((pursuant thereto;~~
17 ~~provided, that if the Mayor of the City of Seattle in his/her judgement shall deem any bond or~~
18 ~~bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a~~
19 ~~new or additional bond in such amount as the Mayor may specify to be necessary to fully protect~~
20 ~~the City. Said))~~ issued under this ordinance. The Permittee shall ensure that the bond shall
21 remain in effect until ~~((such time as))~~ the tunnel is entirely removed from its location as
22 described in Section 1, or until the Permittee is discharged by order of the Director as provided in
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1 Section 7 ~~((of this ordinance))~~. An irrevocable letter of credit approved by the City Risk
2 Manager may be substituted for the bond.

3
4 **13. Consent for and conditions of assignment or transfer.** The right, privilege and
5 authority granted shall not be assignable or transferable by operation of law; nor shall the
6 Permittee, its successors and assigns ~~((shall not assign,))~~ transfer, assign, mortgage, pledge or
7 encumber ~~((any privileges conferred by this ordinance))~~ the same without the Director's consent,
8 which ~~((of))~~ the Director shall not unreasonably refuse. The Director may approve assignment
9 and/or transferal of the permit to a successor entity in the case of a change of name and/or
10 ownership ~~((provided that))~~ if the successor or assignee has demonstrated its acceptance of all of
11 the terms of the permission ~~((granted to the initial Permittee))~~ provided by this ordinance. ~~((If~~
12 permission is granted, the assignee or transferee shall be bound by all of the terms and conditions
13 of this ordinance. The permission conferred by this ordinance shall not be assignable or
14 transferable by operation of law.))

15
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17 **14. A. Inspection fees.** The Permittee, its successors and assigns~~((;))~~ shall, as provided by
18 SMC Chapter 15.76, pay to ~~((The))~~ the City ~~((of Seattle such))~~ the amounts ~~((as may be justly~~
19 chargeable)) charged by ~~((said))~~ the City as costs ~~((of inspection of said skybridge))~~ to inspect the
20 tunnel during construction, reconstruction, repair, annual structural inspections, and at other
21 times deemed necessary to ensure the safety of the ~~((skybridge, under the direction of the~~
22 Director)) tunnel.



1 **B. Inspection report.** The Permittee, its successors and assigns shall submit to the
2 Director or to the Department of Transportation at an address as the Director may specify, from
3 time to time, in writing an inspection report that:

- 4 (a) describes the physical dimensions and condition of all load-bearing elements,
5 (b) describes any damage or possible repairs to any element of the tunnel,
6 (c) prioritizes all repairs and establishes a timeframe for making the repairs, and
7 (d) is stamped by a professional structural engineer licensed in the State of Washington.

8 The report shall be submitted within 60 days after the effective date of this ordinance;
9 subsequent reports shall be submitted biennially, within 30 days before the anniversary date of
10 the effective date of this ordinance; or in the event of a natural disaster or other event that may
11 have damaged the tunnel, the report shall be submitted by the date established by the Director.

12 **C. Annual fees.** Permittee shall ~~((and in addition shall))~~ promptly pay to the City, ~~((in~~
13 ~~advance))~~ upon statements or invoices ~~((rendered))~~ issued by the Director, an annual fee for the
14 privileges granted ~~((and exercised hereunder))~~ by this ordinance in the amount of ~~((Two~~
15 ~~Thousand One Hundred Seventy Four Dollars (\$2,174.00))~~ \$1,152 beginning on June 3, 2009,
16 and adjusted annually thereafter. Adjustments to the annual fee ~~((amount))~~ shall be made in
17 accordance with a term permit fee schedule adopted by the City Council ~~((by ordinance))~~ and
18 may be ~~((adjusted))~~ made every year. In the absence of ~~((such))~~ a schedule, the Director may only
19 increase or decrease the previous year's fee ~~((amount annually))~~ to reflect any inflationary
20 changes so as to charge ~~((said))~~ the fee in constant dollar terms. This adjustment will be
21 calculated by adjusting the previous year's fee ~~((amount))~~ by the percentage change between the
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1 two most recent year-end values available of the Consumer Price Index for the Seattle-Tacoma-
2 Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments
3 shall be made to the City Finance Director for credit to the Transportation Operating Fund.

4 Section 3. The Permittee shall deliver to the Director its written signed acceptance of the
5 terms of this ordinance within 60 days after the effective date of this ordinance. The Director
6 shall file the written acceptance with the City Clerk. If acceptance is not received within that
7 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned
8 and the permission granted deemed lapsed and forfeited.

9 Section 4. Any act taken by the City or the Permittee pursuant to the authority and in
10 compliance with the conditions of this ordinance, but prior to the effective date, is hereby ratified
11 and confirmed.

12 Section 5. **Successors and assigns.** The rights conferred to the Permittee and the
13 obligations and conditions imposed on the Permittee through this ordinance are also conferred
14 and imposed on the Permittee's successors and assigns. All references in this ordinance to the
15 "Permittee" shall be deemed to refer also to the successors and assigns of the Permittee.
16 References in this ordinance to "Permittee and its successors and assigns" or "Permittee or its
17 successors and assigns" are included as reminders and do not limit the scope of "Permittee" used
18 alone.

19 Section 6. This ordinance shall take effect and be in force 30 days from and after its
20 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
21 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.



1 Passed by the City Council the 3rd day of January, ~~2010~~²⁰¹¹ and

2 signed by me in open session in authentication of its passage this

3 3rd day of January, ~~2010~~²⁰¹¹.

4
5 
6 President _____ of the City Council

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8 Approved by me this 6th day of January, ~~2010~~²⁰¹¹

9
10 
11 Michael McGinn, Mayor

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13 Filed by me this 14th day of January, 2010. ~~2010~~²⁰¹¹

14
15 
16 City Clerk

17 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Stephen Barham/733-9084

Legislation Title:

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street, amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

• **Summary of the Legislation:**

This legislation amends Ordinance 119437, as amended by Ordinance 121855, and transfers the permission granted from Clise Properties, Inc. to 2001 Sixth LLC to continue maintaining and operating the existing utility tunnel located under the alley between 5th Avenue and 6th Avenue, north of Virginia Street. An area map is attached for reference.

The permit is renewed for a ten-year term starting on June 3, 2009. The legislation updates the insurance and surety bond provisions as recommended by the City Risk Manager. The legislation also specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions.

The ordinance requires 2001 Sixth LLC to pay the City an annual fee of \$1,152 starting at the expiration of the last term for this utility tunnel, June 3, 2009, and annually thereafter. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by ordinance. In the absence of such a schedule, the Director may only increase or decrease the previous year's fee annually to reflect any inflationary changes so as to charge the fee in constant-dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available of the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. An Annual Fee Appraisal Summary is attached for reference.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

By Ordinance 119437, the City granted permission to the Clise Properties, Inc. to construct, maintain, and operate a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street. Ordinance 119437 was amended by Ordinance 121855 and the permission authorized by Ordinance 119437 was due for renewal on June 2, 2009.

- 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.)

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 had, or will have, appropriations in other legislation, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
TOTAL				

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

Notes: N/A

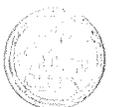
Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received 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	2010 Revenue	2011 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	\$1,152.00 (2009 fee) + \$1,158.71 (2010 fee w/ .58% CPI)	\$1,251.36
TOTAL			\$2,310.71	\$1,251.36

Notes:

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*



TOTAL							

* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.

Notes: N/A

- **Do positions sunset in the future?** No.

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 & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
TOTAL				

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

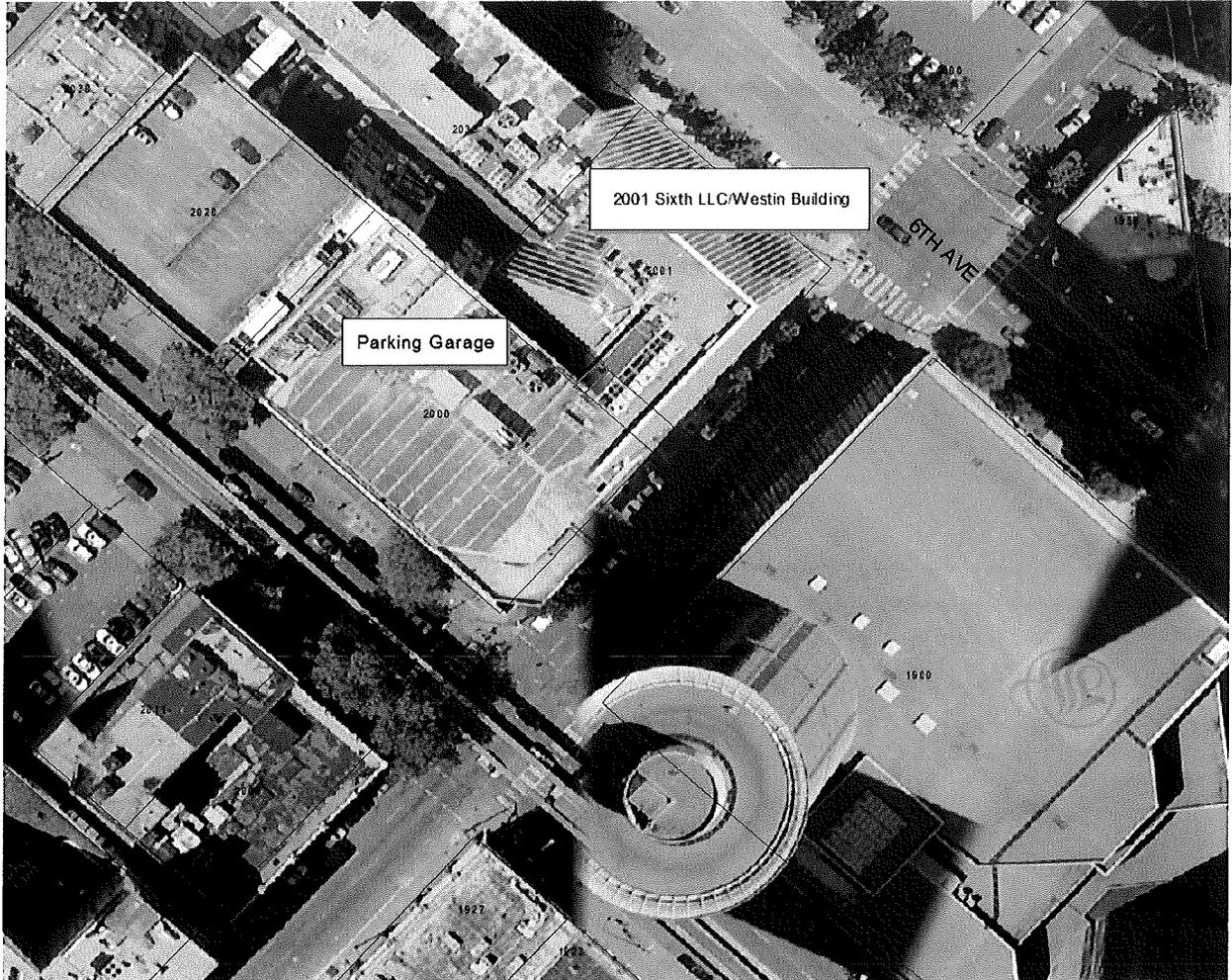
Notes: N/A

- **What is the financial cost of not implementing the legislation?**
 If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$1,152 for at least ten years. The City of Seattle has the option to adjust the fee amount on an annual basis. The utility tunnel, as originally permitted under Ordinance 119437, will no longer be permitted.
- **Does this legislation affect any departments besides the originating department?** None
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None
- **Is the legislation subject to public hearing requirements:** No
- **Other Issues** N/A
- **List attachments to the fiscal note below:**

Attachment A – 2001 Sixth LLC Tunnel Area Map
 Attachment B - Annual Fee Appraisal Summary



Attachment A – 2001 Sixth LLC Tunnel Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.



Attachment B - Annual Fee Appraisal Summary

STREET USE VALUE ESTIMATE

Summary:
Land Value: \$500/SF
First Year Permit Fee:
 \$1,152.00

Date: 7/6/2010
 Prepared by: Leslie M. Bloomer, Sr. Real Property Agent
 SDOT RW, 206.386.1547

I. Property Description:

Existing utility tunnel under the alley between 5th and 6th Avenues, north of Virginia Street. This utility tunnel is six feet in diameter and 16 feet long, and is located 15' below grade. Permit is for a 96 square foot area. The degree of alienation or reduction in value to the land because of the utility tunnel is estimated at 30% as there is no offsetting public use of the structure, unlike a pedestrian/vehicle tunnel.

II. Applicant:

2001 Sixth, LLC

Zoning, Size, Assessed Value:

Parcel 065900-0890: DOC2-500/300-500 19,440 square feet--- Assessed \$500/SF (2010)
 Parcel 065900-0950: DOC2-500/300-500 12,960 square feet--- Assessed \$500/SF (2010)

III. Highest and Best Use Analysis:

The highest and best use of this particular public alley right-of-way would be assemblage to the adjoining properties.

IV. Sales Data Summary:

	Sale #1	Sale #2	Sale #3	Sale #4
Location	1600 9 th Ave.	1912 4 th Ave.	800 Stewart St.	5 th and Stewart
Sale Price	\$2,000,000	\$10,800,000	\$9,839,000	\$9,000,000
Area SF	7,078	14,400	13,560	12,960
Sale Date	3/2009	4/2006	9/2008	5/2006
Zoning	DOC2-500	DOC2-500	DOC2-500	DOC2-500
Price/SF	\$283	\$750	\$726	\$694
Parcel Number	066000-0860	065900-0410 (multiple)	066000-0625	065900-0455

Notes:

A large adjustment for market conditions would have to be made given the age of the comparable sales in the vicinity with similar use and zoning, as evidenced by sale #1. Sale #1 is very inferior as to utility, location and size, so adjustments would be made upward to account for those. I estimate that the larger parcel would sell for around \$500 per square foot.



V. Conclusion:

The value of the subsurface utility tunnel is estimated at \$500.00 per square foot. The first year permit fee should be calculated as follows: $(\$500/\text{SF}) \times (96 \text{ SF}) \times (30\%) \times (8\%) =$ \$1,152.00, where 30% is the degree of alienation multiplier and 8% is the rate of return.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Stephen Barham/733-9084

Legislation Title:

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street, amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

• **Summary of the Legislation:**

This legislation amends Ordinance 119437, as amended by Ordinance 121855, and transfers the permission granted from Clise Properties, Inc. to 2001 Sixth LLC to continue maintaining and operating the existing utility tunnel located under the alley between 5th Avenue and 6th Avenue, north of Virginia Street. An area map is attached for reference.

The permit is renewed for a ten-year term starting on June 3, 2009. The legislation updates the insurance and surety bond provisions as recommended by the City Risk Manager. The legislation also specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions.

The ordinance requires 2001 Sixth LLC to pay the City an annual fee of \$1,152 starting at the expiration of the last term for this utility tunnel, June 3, 2009, and annually thereafter. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by ordinance. In the absence of such a schedule, the Director may only increase or decrease the previous year's fee annually to reflect any inflationary changes so as to charge the fee in constant-dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available of the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. An Annual Fee Appraisal Summary is attached for reference.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

By Ordinance 119437, the City granted permission to the Clise Properties, Inc. to construct, maintain, and operate a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street. Ordinance 119437 was amended by Ordinance 121855 and the permission authorized by Ordinance 119437 was due for renewal on June 2, 2009.



- 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.)

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 had, or will have, appropriations in other legislation, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
TOTAL				

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

Notes: N/A

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	2010 Revenue	2011 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	\$1,152.00 (2009 fee) + \$1,158.71 (2010 fee w/ .58% CPI)	\$1,158.71 + CPI
TOTAL			\$2,310.71	TBD

Notes:

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*





City of Seattle
Office of the Mayor

August 31, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that will grant to 2001 Sixth L.L.C. a ten-year renewal permit for an existing utility tunnel under and across the alley between 5th Avenue and 6th Avenue, north of Virginia Street.

Use of the existing utility tunnel, which was authorized by Ordinance 119437, provides a utility connection between the Westin Building and a parking facility. In addition to renewing the permit, the proposed Council Bill updates the insurance and bond requirements, amends the annual fee, and specifies the conditions under which authorization is granted.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at (206) 684-5967.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

265991
CITY OF SEATTLE, CLERKS OFFICE

No. 12310-123519

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: TITLE ONLY ORDINANCE

was published on

01/19/11

The amount of the fee charged for the foregoing publication is the sum of \$ 191.10, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

01/19/11

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 January 3, 2011, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123510

AN ORDINANCE, relating to a vehicular and pedestrian tunnel under the alley between 6th Avenue and 7th Avenue, north of Stewart Street, amending Ordinance 119508, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to Plaza 600 Building L.L.C.; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123511

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street; amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123512

AN ORDINANCE vacating the alley in Block 48, Replat of Blocks 44-53, Mercer 2nd Addition to North Seattle, on the petition of 500 Mercer Partners, LLC, a Washington limited liability company, and accepting a Property Use and Development Agreement (Clerk File 305398).

ORDINANCE NO. 123513

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123514

AN ORDINANCE accepting for general street purposes 16 deeds conveyed to the City of Seattle by the Central Puget Sound Regional Transit Authority or Sound Transit in connection with the Central Link Light Rail Transit Project as agreed to in a Property Acquisition and Transfer Procedures Agreement between the City of Seattle and Sound Transit; laying off, opening, widening, extending, and establishing portions of the rights-of-way located on Martin Luther King Jr. Way South between South Charleston Street and South Andover Street, South Columbian Way and South Alaska Street, South Angeline Street and South Ferdinand Street; at South Alaska Street and 31st Avenue South; and portions of Rainier Vista Subdivision both East and West of Martin Luther King Jr. Way South; placing the real property conveyed by the 16 deeds under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123515

AN ORDINANCE authorizing the Seattle Center Director to execute an agreement with The Vera Project for presentation of an all-ages music and art program during 2011 and 2012.

ORDINANCE NO. 123516

AN ORDINANCE vacating the following portions of streets, alleys, and blocks: SW Morgan Street between 15th Avenue SW and Burien Way SW; 12th Avenue SW, 13th Avenue SW, and 14th Avenue SW between SW Morgan Street and SW Holly Street; 11th Place SW between SW Morgan Street and SW Warsaw Street; 11th Avenue SW between SW Morgan Street and 10th Avenue SW; 10th Avenue SW between SW Morgan Street and SW Warsaw Street; SW Warsaw Street between 11th Place SW and 10th Avenue SW; SW Holly Street between 12th Avenue SW and W Marginal Way SW; the alley between 12th Avenue SW and Burien Way SW, north of SW Holly Street; Burien Way SW between the projected north margin of SW Morgan Street from the west to the northern margin of SW Holly Street, as vacated by Ordinance 93969, excepting the northern approximately 50' of Burien Way SW east of its centerline; approximately 350 feet of 9th Avenue SW from the north margin of SW Holly Street; approximately 340 feet of 8th Avenue SW from the north margin of SW Holly Street; approximately 350 feet of 7th Avenue SW from the north margin of SW Holly Street; Sound Way SW between SW Holly Street and Highland Park Way SW; all of Blocks 1, 2, and 3 in Ewald's 1st Addition to the City of Seattle; and all of Blocks 6, 7, 8, and 9 and a portion of Block 5 in Melville-Barth Addition to the City of Seattle, together known as the Sound Way properties in the Riverview neighborhood of West Seattle (the "Sound Way Property"), on the petition of the Seattle Department of Parks and Recreation ("Parks"); ratifying and confirming an easement; and approving a memorandum of understanding for utility purposes related herein (Clerk File 309972).

ORDINANCE NO. 123517

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

ORDINANCE NO. 123518

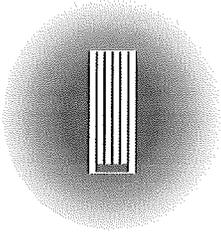
AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 123519

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

Date of publication in the Seattle Daily Journal of Commerce, January 19, 2011.

1/19(265991)



THE WESTIN BUILDING

2001 SIXTH LLC

April 5, 2011

Seattle Department of Transportation
Attn: Angela Steel
700 5th Ave., 39th Floor
PO Box 34996
Seattle, WA 98124

Delivered via courier

Re: Utility Tunnel Ordinance #123511

Ms. Steel,

Please accept this letter as notification that 2001 Sixth, LLC. accepts the terms and conditions set forth in Ordinance #123511.

As required by the Ordinance, the following documentation is included for your review:

- 1) Structural Inspection Report
- 2) Rider to bond # 52BSBFN5710
 - a. A copy of the Continuation Certificate issued September 4, 2010
- 3) Certificate of Liability Insurance

Please do not hesitate to contact me should you have any questions or concerns.

Thank you,

Jaime Page-McGuigan
Operations Administrator
The Westin Building
(206) 443-1682 phone
(206) 443-1683 fax
jpage@westinbldg.com

FILED
CITY OF SEATTLE
11 MAY -5 AM 11:45
CITY CLERK

RIDER

Attached to and forming part of Bond # 52BSBFN5710 ,
on behalf of Clise Properties, Inc.
of Seattle, WA
in favor of City of Seattle
and in the amount of Twenty-Five Thousand and Zero/100 Dollars. (\$25,000.00)

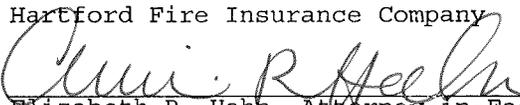
It is understood and agreed that effective 04/06/2011
The Ordinance No. _____ shall be changed
from 119437
to Ordinance 119437, as amended by Ordinances 121855 and 123511.

All other conditions and terms remain as originally written.

Signed, Sealed, and Dated _____, March 18th, 2011

Hartford Fire Insurance Company

By:


Elizabeth R. Hahn, Attorney-in-Fact

The above rider is hereby agreed to and accepted:

By: _____

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

P.O. BOX 2103, 690 ASYLUM AVENUE
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 52-815037

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of unlimited:**

*Barbara R. Johnson, Marie I. Matetich, David L. Eckroth, Karen A. Hunt,
Christin M. Hubble, Sherisa M. Crevier, Jennifer L. Schultz of Anchorage AK;
Karen P. Dever, Deanna M. Meyer, Jill A. Boyle, Stuart A. O'Farrell, Susan B. Larson, Scott Fisher,
Lillian Tse, Benjamin L. Wolfe, Elizabeth R. Hahn, Jana M. Roy, Scott McGilvray of Bellevue WA*

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on January 22, 2004 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Scott Sadowsky

Scott Sadowsky, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Assistant Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 3rd day of March, 2008, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka

Scott E. Paseka
Notary Public

My Commission Expires October 31, 2012

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of March 18th, 2011.

Signed and sealed at the City of Hartford.



Gary W. Stumper

Gary W. Stumper, Assistant Vice President

COPY

Continuation Certificate
Surety - Miscellaneous

The Hartford Insurance Group

The Hartford Fire Insurance Company

(hereinafter called the Company)

hereby continues in force its Bond No. 52BSBFN5710

in the sum of

Twenty-Five Thousand Dollars, \$25,000.00

on behalf of Clise Properties, Inc.
1700 7th Avenue, Suite 1800, Seattle, WA 98101
in favor of City of Seattle

for the (extended) term beginning on September 4, 2010 and ending on September 4, 2011

subject to all the covenants and conditions of said Bond, said bond and this and all continuations thereof being one continuous contract.

This Continuation is executed upon the express condition that the Company's liability under said Bond and this and all continuations thereof shall not be cumulative and shall in no event exceed the sum of

Twenty-Five Thousand Dollars.

IN WITNESS THEREOF, the Company has caused this instrument to be signed by its officers proper for the purpose and its corporate seal to be hereto affixed on August 9, 2010

Hartford Fire Insurance Company

By: _____
Elizabeth R. Hahn, *Attorney in fact*

Attest:
