

Ordinance No. 123598

Council Bill No. 117154

AN ORDINANCE, relating to a pedestrian tunnel under and across Minor Avenue, between Columbia and Marion Streets, amending Ordinance 113238, as previously amended by Ordinances 121494 and 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to Swedish Health Services; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File: \_\_\_\_\_

Date Introduced and Referred: <b>4.18.11</b>	To: (committee): <b>Transportation</b>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <b>May 2, 2011</b>	Date Presented to Mayor: <b>May 3, 2011</b>
Date Signed by Mayor: <b>5.18.11</b>	Date Returned to City Clerk: <b>5.10.11</b>
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Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

# The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Tom Rosness

## Committee Action:

Date	Recommendation	Vote
<b>4-26-11</b>	<b>PASS</b>	<b>TR 1-0</b>

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

## Full Council Action:

Date	Decision	Vote
<b>May 2, 2011</b>	<b>PASSED</b>	<b>9-0</b>

*Law Department*

ORDINANCE 123598

1  
2 AN ORDINANCE, relating to a pedestrian tunnel under and across Minor Avenue, between  
3 Columbia and Marion Streets, amending Ordinance 113238, as previously amended by  
4 Ordinances 121494 and 121855, updating the insurance and bond requirements, and  
5 amending the annual fee; renewing the term of the permit to Swedish Health Services;  
6 providing for acceptance of the permit and conditions; and ratifying and confirming  
7 certain prior acts.

8 WHEREAS, by Ordinance 74335, the City of Seattle granted the Swedish Hospital permission  
9 to construct, operate, and maintain a pedestrian tunnel under and across Minor Avenue,  
10 between Columbia and Marion Streets and the permission expired after 20 years; and

11 WHEREAS, by Ordinance 94157, the City of Seattle granted the Swedish Hospital permission  
12 to operate and maintain the pedestrian tunnel and the permission expired after 20 years;  
13 and

14 WHEREAS, by Ordinance 113238 the City granted permission to Swedish Hospital Medical  
15 Center for the ongoing maintenance and operation of the pedestrian tunnel for a ten-year  
16 term, renewable for two successive ten-year terms, and has been renewed by Resolution  
17 29549 and was due for renewal on January 21, 2007; and

18 WHEREAS, the conditions of Ordinance 113238 were amended by Resolutions 28569 and  
19 29549 and Ordinances 121494 and 121855; and

20 WHEREAS, the Swedish Health Services has submitted an application to the Seattle Department  
21 of Transportation Director (Director) to continue maintaining and operating the  
22 pedestrian tunnel and paid annual fees up to January 2011; and

23 WHEREAS, the Swedish Health Services has satisfied all terms of the original authorizing  
24 ordinance and the Director recommends that the term permit be renewed subject to the  
25 terms identified in this ordinance; NOW, THEREFORE,

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

27 Section 1. The permission granted to Swedish Health Services by Ordinance 113238 and  
28 amended by Ordinances 121494 and 121855 to maintain and operate a pedestrian tunnel under  
and across Minor Avenue, between Columbia and Marion Streets, is renewed for a ten-year  
period, starting January 22, 2007, and ending at 11:59 p.m. on January 21, 2017, upon the terms



1 and conditions set forth in Ordinance 113238, as amended by Ordinances 121494 and 121855,  
2 and as further amended by this ordinance.

3 Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13 of Ordinance 113238, as  
4 amended by Ordinances 121494 and 121855, are amended as follows:

5 1. **Permission.** Subject to the terms and conditions of this ordinance, permission (also  
6 referred to in this ordinance as a permit) is ~~((hereby))~~ granted to ~~((Swedish Hospital Medical~~  
7 ~~Center))~~ Swedish Health Services (“Permittee”) and its successors and assigns ~~((“Permittee”))~~  
8 to maintain and operate a pedestrian tunnel and existing private utilities (tunnel) under and across  
9 Minor Avenue, between Columbia and Marion Streets.

10  
11 2. **Term.** The permission ~~((herein))~~ granted to the Permittee~~(;)~~ and its successors and  
12 assigns, shall be for a term of ten years, commencing upon the effective date of this ordinance  
13 and terminating at 11:59 p.m. on the last day of the tenth year~~(; provided, however, that upon)~~.  
14 Upon written application of the Permittee at least 30 days before expiration of the term, the  
15 Director of the Seattle Department of Transportation (“Director”) may renew the permit for two  
16 successive ten-year terms~~(; provided further that the)~~ subject to the right of the City of Seattle  
17 (“City”) to require the removal of the tunnel as provided for in Section 3 or 4, or revise by  
18 ordinance any of the conditions of this ordinance. The total term of the permission as originally  
19 granted and ~~((thus extended)) renewed~~ shall not exceed ~~((thirty)) 30 years~~~~(; subject to the right~~  
20 of the City to revise the fee provided for in Section 12 hereof, and by ordinance to then revise  
21 any of the terms and conditions contained herein). If a new term permit ordinance is to be  
22 requested, the permittee shall submit a written application 180 days prior to the expiration of the  
23 total term. Failure to obtain additional permission through a new ordinance, or to remove the  
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1 tunnel prior to expiration of the term, is a violation of Chapter 15.90 of the Seattle Municipal  
2 Code (SMC).

3 **3A. Removal for public use or for cause.** The ~~((permit))~~ permission granted ~~((hereby))~~  
4 is subject to ~~((the primary and secondary))~~ use of the street right-of-way by the City and the  
5 public for travel ~~((and utilities)), utility purposes, and other street uses.~~ The City ~~((of Seattle~~  
6 ~~("City")))~~ expressly reserves the right to require the Permittee to remove the tunnel, or any part  
7 thereof or installation thereon, at Permittee's sole cost and expense in the event that:

8  
9 (a) the City Council determines by ordinance that the space occupied by the tunnel  
10 is necessary for any ~~((primary or secondary))~~ public use or benefit or that the tunnel  
11 interferes with any ~~((primary or secondary))~~ public use or benefit; or

12 (b) ~~((The Board of Public Works or a successor board or official of the City~~  
13 ~~("Board")))~~ the Director determines that any term or condition of this ordinance has been  
14 violated and the violation has not been corrected by the Permittee by the compliance date  
15 after a written request by the City to correct the violation.

16  
17 A City Council determination that the space is ~~((necessary for a primary or secondary))~~ needed  
18 for or interferes with a public use or benefit shall be conclusive and final without any right of the  
19 Permittee to resort to the courts to adjudicate the matter.

20  
21 **3B. Protection of utilities.** The permission granted is subject to the Permittee bearing the  
22 expense of any protection, support or relocation of existing utilities deemed necessary by the  
23 owners of the utilities; and the Permittee being responsible for any subsequent damage to the  
24 utilities due to the construction, repair, reconstruction, maintenance, or operation of the tunnel.

25  
26 **4. Removal requirements.** ~~((In the event that the permit))~~ If the permission granted is  
27 not renewed~~((, or the permission hereby granted extends to its termination in thirty years;))~~ at the



1 expiration of a term, or if the permission is extended to its termination date in 30 years and an  
2 application for a new permit is not granted, or if acceptance of this ordinance is not timely  
3 received as required by this ordinance; or if the City orders removal of the tunnel pursuant to the  
4 terms of this ordinance, then within 90 days after ((such)) the expiration((;)) or termination, or  
5 ((order of removal,)) prior to the date stated in an Order to Remove((, as the case may be,)); the  
6 Permittee shall, at its own expense, remove the tunnel and ((shall place)) replace all portions of  
7 the street right-of-way that may have been disturbed for any part of the ((structure,)) tunnel in as  
8 good condition for public use as they were prior to construction~~((;))~~ of the tunnel and~~((;))~~ in at  
9 least as good condition in all respects as the abutting portions ~~((thereof))~~ of the right-of-way as  
10 required by the applicable SDOT standards for right-of-way restoration. ~~((Whereupon, the~~  
11 ~~Board))~~ The Director shall then issue a certificate discharging the Permittee, or its successor or  
12 assign, from ((responsibilities)) responsibility under this ordinance ~~((for occurrences after such~~  
13 ~~discharge))~~.

14  
15  
16 **5. Repair, reconstruction, or relocation.** The Permittee shall not reconstruct, relocate,  
17 ~~((readjust))~~ or repair the tunnel except under the supervision~~((,))~~ of the Director and in strict  
18 accordance with plans and specifications~~((;))~~ approved by the ~~((Board before any work is~~  
19 ~~commenced))~~ Director. The ~~((Board in its judgment))~~ Director may, in the Director's judgment,  
20 order ~~((such reconstruction, relocation, readjustment or repair of))~~ the tunnel be reconstructed or  
21 repaired at the Permittee's own cost and expense because of: the deterioration or unsafe condition  
22 of the tunnel~~((, grade separations,))~~; or the installation, construction, reconstruction,  
23 maintenance, operation, or repair of any ~~((and all))~~ municipally-owned public utilities~~((;))~~; or for  
24 any other cause.  
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1           **6. Failure to correct unsafe condition.** After notice to the Permittee and failure of the  
2 Permittee to correct an unsafe conditions within the time stated in the notice, the ~~((Board))~~  
3 Director may order the tunnel be closed or removed at the Permittee's expense if the ~~((Board))~~  
4 Director deems that it has become unsafe or creates a risk of injury to the public. If there is an  
5 immediate threat to the health or safety of the public, a notice to correct is not required.

6           **7. Continuing obligation to remove and restore.** Notwithstanding termination or  
7 expiration of the permission granted, or closure or removal of the tunnel, the Permittee shall  
8 remain bound by its obligation under this ordinance until:  
9

10           (a) the tunnel and all its equipment and property are removed from the street~~((;))~~ right-of-  
11 way;

12           (b) the area is cleared and restored in a manner and to a condition satisfactory to the  
13 ~~((Board;))~~ Director; and

14           (c) the ~~((Board))~~ Director certifies that the Permittee has discharged its obligations  
15 ~~((herein; Provided, that upon))~~ under this ordinance.

16           Upon prior notice to the Permittee and entry of written findings that ~~((such))~~ it is in the public  
17 interest, the ~~((Board))~~ Director may, in ~~((its))~~ the Director's sole discretion, ~~((excuse Permittee;))~~  
18 conditionally or absolutely~~((;))~~ excuse the Permittee from compliance with all or any of the  
19 Permittee's obligations to remove the tunnel and its property and to restore any disturbed areas  
20 ~~((disturbed)).~~

21           **8. Release, hold harmless, indemnification, and duty to defend.** The tunnel shall  
22 remain the exclusive responsibility of the Permittee and the Permittee agrees to maintain the  
23 tunnel in good and safe condition for use by the public. The Permittee, by ~~((its acceptance of~~  
24 ~~the))~~ accepting the terms of this ordinance ~~((and the permission hereby granted, does release)),~~  
25



1 releases the City from any and all claims resulting from damage or loss to ~~((its own))~~ the  
2 Permittee's property; and ~~((does covenant and agree))~~ agrees for itself, its successors and  
3 assigns~~((, with the City of Seattle))~~; to at all times protect and save harmless ~~((The))~~ the City ~~((of~~  
4 Seattle)) from all claims, actions, suits, liability, loss, costs, expense, or damages of every kind  
5 and description, ~~((t))~~ excepting only ~~((such))~~ damages that may result from the sole negligence of  
6 the City~~((, which))~~; that may accrue to~~((;))~~ or be suffered by~~((;))~~ any person ~~((or persons;))~~ or  
7 property including without limitation, damage or injury to the Permittee, its officers, agents,  
8 employees, contractors, invitees, tenants and tenants' invitees, licensees or ~~((their))~~ its successors  
9 and assigns~~((;))~~; by reason of the maintenance, operation, or use of ~~((said))~~ the tunnel ~~((or the~~  
10 occupation or use of a City street, alley)), or any portion thereof~~((;))~~; or by reason of anything  
11 that has been done~~((;))~~ or may at any time be done~~((;))~~ by the Permittee, its successors or  
12 assigns~~((;))~~ by reason of this ordinance~~((;))~~; or by reason of the Permittee, its successors or  
13 assigns~~((;))~~ failing or refusing to strictly comply with ~~((each and))~~ every provision of this  
14 ordinance~~((; and if))~~.

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

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

2 (b) the Permittee, its agents, contractors, employees, or successors or assigns;

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

5 **9A. Insurance.** For as long as the Permittee, its successors and assigns, shall  
6 exercise any ~~((permissions))~~ permission granted by this ordinance and until the tunnel is entirely  
7 removed from its location as described in Section 1 or until discharged by order of the Director  
8 as provided in Section 4 of this ordinance, ((it shall)) the Permittee shall obtain and maintain in  
9 full force and effect, at its own expense ((deliver to the Director for filing with the City Clerk,)),  
10 insurance that protects the City from claims and risks of loss from perils that can be insured  
11 against under commercial general ((comprehensive policies of public)) liability (CGL)  
12 insurance((, which)) policies ((must be approved by the City Attorney as to form and coverage  
13 and which policies must fully protect the City from any and all claims and risks)) in conjunction  
14 with:

15 (a) construction, reconstruction, operation, maintenance, use, or existence of the tunnel

16 ((permitted by this ordinance)) and ((of)) any ((and all)) portions of the tunnel((,))

17 permitted by this ordinance;

18 (b) the Permittee's activity upon or the use or occupation of the ((areas)) area described

19 in Section 1 of this ordinance((,)); and

20 (c) ((any and all)) claims and risks in connection with any activity performed by the

21 Permittee by virtue of the permission granted by this ordinance.

22 ((Each such policy or policies must specifically name the City of Seattle as an additional insured  
23 party thereunder and provide the following minimum coverages and minimum limits:

1 ~~Minimum Coverage: General comprehensive liability for any injury, death, damage, and/or loss~~  
2 ~~of any sort sustained by any person, organization, or corporation (including any liability of the~~  
3 ~~City for such to Permittee, its officers, agents and/or employees and any liability of Permittee for~~  
4 ~~such to the City of Seattle, its officers, agents and/or employees) in connection with~~

- 5       ~~(a) operation, maintenance, use or existence of the tunnel permitted by this ordinance and~~  
6           ~~any and all portions thereof,~~  
7  
8       ~~(b) any activity upon or use or occupancy of the area described in Section 1 of this~~  
9           ~~ordinance, and~~  
10       ~~(c) for any activity performed by Permittee by virtue of the permission granted pursuant~~  
11           ~~to this ordinance:))~~

12 Minimum insurance requirements are CGL insurance based on the Insurance Services Office  
13 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an  
14 insurer admitted and licensed to conduct business in Washington State or with a surplus lines  
15 carrier pursuant to RCW Chapter 48.15, except that if it is infeasible to obtain coverage with the  
16 required insurer, the City may approve an alternative insurer.

17  
18       ~~((Minimum Limits: (Primary and excess)—not less than those otherwise carried by the~~  
19 ~~Permittee and not less than One Million Dollars (\$1,000,000) per occurrence and annual~~  
20 ~~aggregate.~~

21  
22       Each such policy or endorsement thereto must contain the following provisions:

23       ~~“The City of Seattle is named as an additional insured for all coverage provided by this~~  
24 ~~policy of insurance and shall be fully and completely protected by this policy for all risks and for~~  
25 ~~any and every injury, death, damage and loss of any sort sustained by any person, organization or~~  
26 ~~corporation (including any liability of the City for such to Permittee Swedish Hospital Medical~~  
27



1 Center, its successors and assigns, any of its employees and/or agents and any liability of  
2 Permittee for such to the City of Seattle, its officers, agents and employees) in connection with

3 (a) construction, maintenance, use or existence of the tunnel and any appurtenances  
4 thereto, permitted by the City of Seattle ordinance granting Swedish Hospital  
5 Medical Center permission to operate and maintain a tunnel

6 (b) activities of Swedish Hospital Medical Center its successors and assigns, upon use  
7 or occupation of the areas described in Section 1 of the authorizing ordinance, as  
8 well as  
9

10 (c) any activity performed by Swedish Hospital Medical Center, its successors and  
11 assigns by virtue of the permission granted by the aforesaid ordinance.”

12 “The coverage provided by this policy to the City of Seattle or any other named insured  
13 shall not be terminated, reduced or otherwise changed in any respect without providing at least  
14 thirty (30) days prior written notice to the City of Seattle, Attention: Director of  
15 Transportation.”))

16 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit  
17 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the  
18 “City of Seattle, its elected and appointed officers, officials, employees and agents” as additional  
19 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds  
20 clause.

21 Permittee shall provide to the City, or cause to be provided, certification of insurance  
22 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and  
23 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The insurance  
24



1 coverage certification shall be delivered or sent to the Director or to the Department of  
2 Transportation at an address as the Director may specify in writing from time to time.

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

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16 **9B. Adjustment of insurance and bond requirements.** The Director, in consultation  
17 with the City Risk Manager, may adjust minimum ~~((levels of))~~ liability insurance levels and  
18 surety bond requirements during the term of this permission. ~~((The))~~ If the Director and City  
19 Risk Manager determine that an adjustment is necessary to fully protect the interests of the City,  
20 the Director shall notify the Permittee of the new requirements in writing. Upon receipt, the  
21 Permittee shall, within 60 days, provide proof of the ~~((required levels of))~~ adjusted insurance and  
22 surety bond levels to the Director ~~((within 60 days)).~~

23  
24 **9C. Contractor insurance.** The Permittee shall contractually require that any and all of  
25 its contractors performing work on any premises contemplated by this permit name the “City of  
26 Seattle, its elected and appointed officers, officials, employees and agents” as additional insureds  
27



1 for primary and non-contributory limits of liability on all CGL, Automobile and Pollution  
2 liability insurance and/or self-insurance. The Permittee shall also include in all contract  
3 documents with its contractors a third-party beneficiary provision extending construction  
4 indemnities and warranties granted to Permittee to the City.

5       10. **Performance bond.** Within 60 days after the effective date of this ordinance the  
6 Permittee shall deliver to the Director (~~(of Engineering)~~) for filing with the City Clerk a (~~good~~  
7 and)) sufficient bond executed by a surety company authorized and qualified to do business in  
8 the State of Washington that is: in the ((sum)) amount of ((Twenty-Five Thousand Dollars  
9 ~~(\$25,000) executed by a surety company authorized and qualified to do business in the State of~~  
10 ~~Washington)) \$85,000, and conditioned with a requirement that the Permittee ((will)) shall~~  
11 comply with each and every provision of this ordinance and with ((each and)) every order ((of)  
12 the ((Board pursuant thereto; provided, that if the Mayor of the City in his judgment shall deem  
13 any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee  
14 shall furnish a new or additional bond in such amount as the Mayor may specify to be necessary  
15 to fully protect the City. Said)) Director issues under this ordinance. The Permittee shall ensure  
16 that the bond ((shall remain)) remains in effect until ((such time as)) the tunnel is entirely  
17 removed from ((its)) the location as described in Section 1, or until the Permittee is discharged  
18 by ((order of the Board of Public Works)) a Director's order as provided in Section 4 ((of this  
19 ordinance)). An irrevocable letter of credit approved by the City Risk Manager may be  
20 substituted for the bond.

21 \*\*\*

22       12A. **Inspection fees.** (~~(That the)) The~~ Permittee, its successors and assigns(~~(;)) shall, as~~  
23 provided by SMC Chapter 15.76, pay ((to)) the City ((such)) the amounts ((as may be justly  
24



1 ~~chargeable~~) charged by ~~((said))~~ the City as costs ~~((of inspection of said))~~ to inspect the tunnel  
2 during reconstruction ~~((or)),~~ repair, annual structural inspections, and at other times ~~((under the~~  
3 direction of the Director and shall)) deemed necessary to ensure the safety of the tunnel.

4 **12B. Inspection reports.** The Permittee, its successors and assigns shall submit to the  
5 Director, or to the Department of Transportation at an address as the Director may specify in  
6 writing from time to time, an inspection report that:

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

13

14 The report shall be submitted within 60 days after the effective date of this ordinance;  
15 subsequent reports shall be submitted every two years, within 30 days prior to the anniversary  
16 date of the effective date of this ordinance; or in the event of a natural disaster or other event that  
17 may have damaged the tunnel, the report shall be submitted by the date established by the  
18 Director.

19

20 **12C. Annual fee.** Beginning on January 22, 2011, the Permittee shall promptly pay to  
21 the City ~~((in advance))~~ upon statements or invoices ~~((rendered))~~ issued by the Director, an annual  
22 fee ~~((of \$1709.00 for the period beginning January 22, 2002 and ending January 21, 2007 as~~  
23 established by Ordinance 121494. At the end of this period, adjustments)) of \$2,376 or as  
24 adjusted annually thereafter, for the privileges granted by this ordinance.

25

26 Adjustments to the annual fee ~~((amount))~~ shall be made in accordance with a term permit  
27 fee schedule adopted by the City Council ~~((by ordinance))~~ and may be ~~((adjusted))~~ made every



1 year. In the absence of ~~((such))~~ a schedule, the Director may only increase or decrease the  
2 previous year's fee ~~((amount annually))~~ to reflect any inflationary changes so as to charge ~~((said))~~  
3 the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous  
4 year's fee ~~((amount))~~ by the percentage change between the two most recent year-end values  
5 available ~~((of))~~ from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
6 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
7 City Finance Director for credit to the Transportation Operating Fund.  
8

9 13. ~~((Non-Discrimination: The Permittee shall not discriminate against any employee or~~  
10 ~~applicant for employment in connection with the design, architectural or structural engineering~~  
11 ~~work or the repair, or maintenance of the tunnel permitted pursuant to this ordinance, on the~~  
12 ~~basis of race, religion, creed, color, sex, marital status, sexual orientation, political ideology,~~  
13 ~~ancestry, age, national origin, or the presence of any sensory, mental or physical handicap unless~~  
14 ~~based upon bona fide occupational qualification. The foregoing commitment shall be~~  
15 ~~implemented as follows:~~  
16

17 (a) ~~The Permittee will take affirmative action to ensure that applicants are employed and~~  
18 ~~that employees are treated during employment without regard to their race, religion,~~  
19 ~~creed, color, age, national origin or the presence of any sensory, mental or physical~~  
20 ~~handicap. Such action shall include, but not be limited to, the following:~~  
21 ~~employment, upgrading, demotion or transfer, recruitment or recruitment advertising,~~  
22 ~~layoff or termination, rates of pay or other forms of compensation and selection for~~  
23 ~~training, including apprenticeship.~~  
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1 (b) The Permittee shall post in conspicuous places available to such employees and  
2 applicants for such employment, notices setting forth the provisions of this non-  
3 discrimination clause.

4 (c) The Permittee shall furnish to the Director of Human Rights or a successor official  
5 (the "Director"), upon his or her request and on such forms as may be provided, a  
6 report of the affirmative action taken in implementing this provision and will permit  
7 reasonable access to his records for the purposes of determining compliance with this  
8 section. If, upon investigation the Director finds probable cause to believe that the  
9 Permittee has failed to comply with any of the terms of this section, the Permittee and  
10 the Board will be so notified in writing. The Board shall give the Permittee at least 10  
11 days' notice and a hearing thereon. If the Board finds that there has been a violation  
12 of the Section, the Board may suspend the permission conferred pending full  
13 compliance with the terms of this Section.

14 Failure to comply with any of the terms of this provision shall be a material violation of  
15 this ordinance.

16 The foregoing paragraphs shall be inserted in any subcontracts for work  
17 undertaken pursuant to this ordinance in connection with the design, architectural or structural  
18 engineering work or the repair, or maintenance of the tunnel permitted hereunder, unless the  
19 Director authorizes the use of another equality of employment opportunity provision.))

20 **Non-discrimination.** The Permittee shall comply with the City's laws prohibiting  
21 discrimination in employment and contracting including Seattle's Fair Employment Practices  
22 Ordinance, Chapter 14.04 and Fair Contracting Practices code, Chapter 14.10.



\*\*\*

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2           Section 3. **Acceptance of terms and conditions.** The Permittee shall deliver to the  
3 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
4 effective date of this ordinance. The Director shall file the written acceptance with the City  
5 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by  
6 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed  
7 and forfeited.  
8

9           Section 4. **Successors and assigns.** The rights conferred to the Permittee and the  
10 obligations and conditions imposed on the Permittee through this ordinance are also conferred  
11 and imposed on the Permittee's successors and assigns. All references in this ordinance to the  
12 "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.  
13 References in this ordinance to "Permittee and its successors and assigns" or "Permittee or its  
14 successors and assigns" are included as reminders and do not limit the scope of "Permittee" used  
15 alone.  
16

17           Section 5. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the  
18 authority and in compliance with the conditions of this ordinance but prior to the effective date  
19 of the ordinance is ratified and confirmed.  
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1 Section 6. This ordinance shall take effect and be in force 30 days from and after its  
2 approval by the Mayor, but if not approved and returned by the Mayor within ten days after  
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

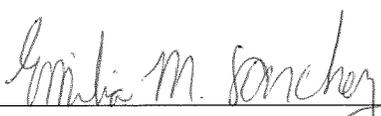
4 Passed by the City Council the 2nd day of May, 2011, and signed by  
5 me in open session in authentication of its passage this  
6 2nd day of May, 2011.

7  
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9  
10 President \_\_\_\_\_ of the City Council

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12 Approved by me this 10th day of May, 2011.

13  
14   
15  
16 Michael McGinn, Mayor

17  
18 Filed by me this 10th day of May, 2011.

19  
20   
21  
22 for City Clerk, Monica Margaret Simmons

23 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Department of Transportation	Angela Steel/684-5967	Rebecca Guerra/684-5339

**Legislation Title:**

AN ORDINANCE, relating to a pedestrian tunnel under and across Minor Avenue, between Columbia and Marion Streets, amending Ordinance 113238, as previously amended by Ordinances 121494 and 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to Swedish Health Services; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

**Summary of the Legislation:**

This legislation amends Ordinance 113238, as amended by Ordinance 121494 and 121855, for the Swedish Health Services to continue maintaining and operating the existing pedestrian tunnel located under and across Minor Avenue, between Columbia and Marion Streets. An area map is attached for reference.

The permit is renewed for a ten-year term starting on January 22, 2007. The legislation updates the insurance and surety bond provisions as recommended by the City Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires Swedish Health Services to pay the City an annual fee of \$2,376 starting from the last paid annual fee invoice, January 22, 2011, 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 123485. An Annual Fee Appraisal Summary is attached to this fiscal note for reference.

**Background:**

By Ordinance 74335, the City granted permission to the Swedish Hospital to construct, maintain, and operate a pedestrian tunnel located under and across Minor Avenue, between Columbia and Marion Streets and the permission expired after 20 years.

By Ordinance 94157, the City granted permission to the Swedish Hospital to operate and maintain the existing pedestrian tunnel and the permission expired after 20 years.

By Ordinance 113238, the City granted permission to Swedish Hospital Medical Center to operate and maintain the existing pedestrian tunnel for a ten-year term, renewable for two



successive ten-year terms. Ordinance 113238 was renewed by Resolutions 29549 and was due again for renewal on January 21, 2007.

The conditions of Ordinance 113238 were amended by Resolution 28569 and 29549 and Ordinance 121494 and 121855.

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:** 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.

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2011 Revenue</b>	<b>2012 Revenue</b>
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	2011 Fee = \$2,376	TBD
<b>TOTAL</b>			\$2,376	<b>TBD</b>

**Revenue/Reimbursement Notes:** N/A

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:** N/A

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

**Spending/Cash Flow:** 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 \$2,376. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis. The tunnel, as originally permitted under Ordinance 113238, would 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:** (Include long-term implications of the legislation.)

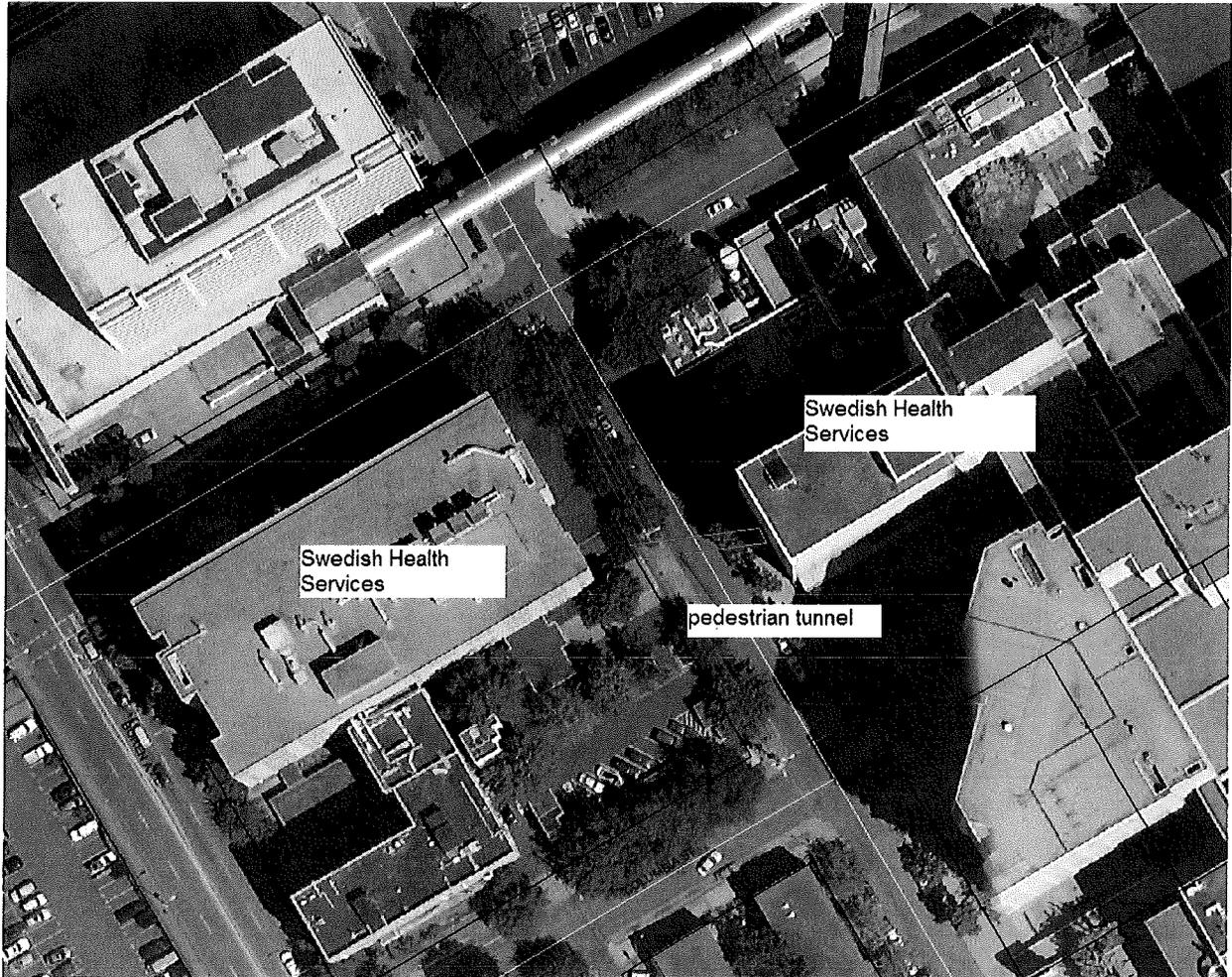
N/A

**List attachments to the fiscal note below:**

- Attachment A – Swedish Minor Tunnel Area Map
- Attachment B - Annual Fee Assessment Summary



Attachment A – Swedish Minor 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 Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 2/1/11

<p><u>Summary:</u> <b>Land Value: \$165/SF</b> <b>First Year Permit Fee:</b> <b>\$2,376</b></p>
---

**I. Property Description:**

Existing subsurface pedestrian tunnel under and across Minor Avenue, between Marion and Columbia Streets. The tunnel connects the properties of 805 Summit Avenue and 1124 Columbia Street. Adjacent tax parcels are listed below. The tunnel is **720 square feet**.

**Applicant:**

Swedish Health Services

**Abutting Parcels, Property Size, Assessed Value:**

1. Parcel 8590900946; 61,440 square feet

Tax year 2011 Appraised Land Value \$10,137,600  
Assessed at \$165/SF

2. Parcel 1978200665; 78,897 SF

Tax year 2011 Appraised Land Value \$13,018,000  
Assessed at \$165/SF

Average 2011 tax assessed land value: \$165/SF

**II. Annual Fee Assessment:**

The 2011 permit fee is calculated as follows:  $(\$165/\text{SF}) \times (720 \text{ SF}) \times (25\%) \times (8\%) =$   
**\$2,376**, where 25% is the degree of alienation for a pedestrian tunnel and 8% is estimated annual rate of return.

Fee methodology authorized under Ordinance 123485.





City of Seattle  
Office of the Mayor

April 12, 2011

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that will grant to Swedish Health Services a ten-year renewal permit for an existing pedestrian tunnel under Minor Avenue, between Columbia and Marion Streets, as authorized by Ordinance 113238.

Use of the existing tunnel, which was authorized by Ordinance 113238 and amended by Ordinances 121494 and 121855, provides an underground connection for pedestrians between the Swedish Health Services Broadway Campus. In addition to granting a new permit, the proposed Council Bill updates the insurance and bond requirements, updates 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

Michael McGinn, Mayor  
Office of the Mayor  
600 Fourth Avenue, 7<sup>th</sup> Floor  
PO Box 94749  
Seattle, WA 98124-4749

Tel (206) 684-4000  
Fax (206) 684-5360  
TDD (206) 615-0476  
mike.mcgin@seattle.gov



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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271061  
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 12<sup>th</sup> 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:123597-123601 TITLE

was published on

05/13/11

The amount of the fee charged for the foregoing publication is the sum of \$ 95.55, which amount has been paid in full.



Affidavit of Publication

*[Signature]*  
\_\_\_\_\_  
Subscribed and sworn to before me on

05/13/11 *[Signature]*  
\_\_\_\_\_

\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

The full text of the following legislation, passed by the City Council on May 2, 2011, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

### ORDINANCE NO. 123597

AN ORDINANCE, relating to certain steam mains and appurtenances in, under, and across East Columbia Street from 12th Avenue to 14th Avenue and 14th Avenue from East Columbia Street to East Jefferson Street; amending Ordinance 96719, as amended by Ordinances 119162 and 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to the Seattle University; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123598

AN ORDINANCE, relating to a pedestrian tunnel under and across Minor Avenue, between Columbia and Marion Streets, amending Ordinance 113238, as previously amended by Ordinances 121494 and 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to Swedish Health Services; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123599

AN ORDINANCE relating to a pedestrian tunnel under and along the easterly side of Broadway at East Cherry Street, amending Ordinance 115021, as amended by Ordinances 121493 and 121855, to update the insurance and bond requirements, and amend the annual fee; renewing the term of the permit to the Swedish Health Services; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123600

AN ORDINANCE relating to street use; adding new Sections 11.14.203 and 11.14.447; amending Section 3.12.030 of the Seattle Municipal Code to authorize the Director of Transportation to designate public places or portions of public places as festival streets, to recommend the designation of public places or portions of public places as pedestrian plazas, and to regulate the use thereof; and amending the Seattle Department of Transportation Street Use Fee Schedule to establish a festival street permit type.

### ORDINANCE NO. 123601

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

Publication ordered by the City Clerk  
Date of publication in the Seattle Daily Journal of Commerce, May 13, 2011.

5/13(271061)

Bond # 69665  
ORD # 123598



SURETY RIDER

Liberty Mutual Surety  
1001 4th Avenue, Suite 1700  
Seattle, WA 98164

To be attached to and form a part of

Bond No. 4930694

Type of Public Works Ordinance/Maintenance Bond  
Bond: Tunnel under and across Minor Avenue between Columbia and Marion Streets)

dated July 23, 1985  
effective (MONTH-DAY-YEAR)

executed by Swedish Hospital Medical Center  
(PRINCIPAL)

, as Principal,

and by Safeco Insurance Company of America, as Surety,

in favor of City of Seattle  
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to

INCLUDING THE FOLLOWING LANGUAGE:

This bond includes Principal's obligations under the permit granted under Ordinance 113238 as amended by the following amending ordinances: Ordinance 121494, Ordinance 121855, and Ordinance 123598, effective retroactively as of the date of each amending ordinance.

Effective date of Ordinance 123598 is June 9, 2011

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective October 5, 2011  
(MONTH-DAY-YEAR)

Signed and Sealed October 5, 2011  
(MONTH-DAY-YEAR)

Swedish Hospital Medical Center  
(PRINCIPAL)

By: [Signature]  
(PRINCIPAL)

Safeco Insurance Company of America  
(SURETY)

By: [Signature]  
(ATTORNEY-IN-FACT)

Pamela A. Nelson



FILED  
CITY OF SEATTLE  
11 OCT 31 AM 9:29  
CITY CLERK

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

SAFECO INSURANCE COMPANY OF AMERICA  
SEATTLE, WASHINGTON  
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Safeco Insurance Company of America (the "Company"), a Washington stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint JOHN CLAEYS, RONALD J. LANGE, PAMELA A. NELSON, JOAN M. COUNCILMAN, ALL OF THE CITY OF SEATTLE, STATE OF WASHINGTON.....

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED MILLION AND 00/100\*\*\*\*\* DOLLARS (\$ 200,000,000.00\*\*\*\*\* ) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitations as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article IV, Section 12 of the By-laws, David M. Carey, Assistant Secretary of Safeco Insurance Company of America, is authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Safeco Insurance Company of America has been affixed thereto in Plymouth Meeting, Pennsylvania this 1st day of June 2011.



SAFECO INSURANCE COMPANY OF AMERICA

By David M. Carey  
David M. Carey, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 1st day of June, 2011, before me, a Notary Public, personally came David M. Carey, to me known, and acknowledged that he is an Assistant Secretary of Safeco Insurance Company of America; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Safeco Insurance Company of America thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires Mar. 28, 2013  
Member, Pennsylvania Association of Notaries

By Teresa Pastella  
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Vice President of Safeco Insurance Company of America, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Officer specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article IV, Section 12 of the By-laws of Safeco Insurance Company of America.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Safeco Insurance Company of America at a meeting duly called and held on the 18th day of September, 2009.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 5th day of October, 2011.



By Gregory W. Davenport  
Gregory W. Davenport, Vice President

not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.