Ordinance No. 123795

Council Bill No. 117353

AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, 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.

Related Legislation File: _____

Date Introduced and Referred: Nov. 28, 2011	To: (committee): Transportation
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 12.19.11	Date Presented to Mayor: 12.20.11
Date Signed by Mayor: 12.28.11	Date Returned to City Clerk: 12.29.11
Published by Title Only X Published in Full Text _____	Date Vetoed by Mayor:
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: Tim Burgess

Committee Action:

Date	Recommendation	Vote
12/13/11	Pass	2-0 TR JG

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

Full Council Action:

Date	Decision	Vote
12.19.11	Passed	9.0

Law Department

ORDINANCE 123795

AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, 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.

WHEREAS, by Ordinance 109558, the City of Seattle (City) granted permission to Westlake Chevrolet Company to construct, maintain, and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street; and

WHEREAS, Cornish College of the Arts purchased the properties adjoining the vehicular tunnel in January 2008, assumed ownership of the tunnel, and was approved by the Director as an assignee of the permission authorized by Ordinance 109558, as amended by Ordinance 121855, upon demonstrating acceptance of the terms and conditions of that permission; and

WHEREAS, the permission authorized by Ordinance 109558 was amended by Ordinance 121855 to allow its extension for a maximum of 30 years, and the permission ended on September 30, 2010; and

WHEREAS, Cornish College of the Arts has submitted an application to the Seattle Department of Transportation Director (Director) to continue maintaining and operating the vehicular tunnel; and

WHEREAS, Cornish College of the Arts has satisfied all terms of the original authorizing ordinance as amended, the Director recommends that the term permit be approved subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, permission (also referred to in this ordinance as a permit) is granted to Cornish College of the Arts, and its successors and assigns as approved by the Director of the Seattle Department of Transportation, (Permittee) to maintain and operate a vehicular tunnel and existing utilities (tunnel) under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, adjacent in part to the property legally described as: Lot 10, Block 24, Second Addition to Town of Seattle as laid

COUNCIL CLERK

off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's 2nd Add. to City of Seattle) Vol. 1, Pg. 121.

Section 2. **Term.** The permission granted to the Permittee, and its successors and assigns as approved by the Director of the Seattle Department of Transportation (Director), shall be for a term of ten years starting on October 1, 2010, and ending at 11:59 p.m. on September 30, 2020. Upon written application of the Permittee at least 180 days before expiration of the term, the Director or the City Council may renew the permit twice, each time for a successive ten-year term, subject to the right of the City of Seattle (City) to require the removal of the tunnel or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The total term of the permission, including renewals, shall not exceed 30 years. The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

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

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term, and require the Permittee to remove the tunnel, or any part thereof or installation thereon, at the Permittee's sole cost and expense in the event that:

COUNCIL CLERK

(a) the City Council determines by ordinance that the space occupied by the tunnel is necessary for any public use or benefit or that the tunnel interferes with any public use or benefit; or

(b) the Director determines that use of the tunnel has been abandoned; or

(c) the Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public); or

(d) the City of Seattle Department of Parks and Recreation seeks to develop for park purposes the following described property (or any portion thereof) and requests that Permittee remove the tunnel: That portion of Lots 1, 2, and 3, Block 24, Second Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's 2nd Addition to the City of Seattle), according to the plat thereof recorded in Volume 1 of Plats, page 121, in King County, Washington, lying easterly of and excepting therefrom that portion condemned in King County Superior Court Cause Number 36118 for Westlake Avenue, as provided by Ordinance Number 7733 of the City of Seattle.

A City Council determination that the space is needed for, or the tunnel interferes with, a public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 5. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after

COUNCIL CLERK

the expiration or termination of permission, or prior to any earlier date stated in an ordinance or order requiring removal of the tunnel, the Permittee shall, at its own expense, remove the tunnel and all of the Permittee's equipment and property and replace and restore all portions of the street right-of-way or public place that may have been disturbed for any part of the tunnel in as good condition for public use as they were prior to construction of the tunnel and in at least as good condition in all respects as the abutting portions of the right-of-way as required by the applicable SDOT standards for right-of-way restoration. Failure to remove the tunnel as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) (or successor provision); however, applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the tunnel and restore the street right-of-way or public place at the Permittee's expense, and collect such expense in the manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and Permittee's payment to the City of the City's costs in connection therewith, the Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 6. **Repair or reconstruction.** The tunnel shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to maintain the tunnel in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the tunnel

COUNCIL CLERK

except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the tunnel reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition of the tunnel; or the installation, construction, reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or for any other cause.

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

Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the tunnel, the Permittee shall remain bound by its obligations under this ordinance until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations set forth in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed pursuant to Section 17 of this ordinance.

Section 9. **Release, hold harmless, indemnification, and duty to defend.** The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the tunnel or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

COUNCIL CLERK

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description (excepting only damages that may result from the sole negligence of the City) that may accrue to or be suffered by any person or property (including, without limitation, damage or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns) arising out of or by reason of: (a) the existence, construction, reconstruction, modification, maintenance, operation, use, or removal of the tunnel or any portion thereof, or Permittee's use, occupation, or restoration of the street right-of-way or other public place or any portion thereof; (b) anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or (c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the tunnel or this ordinance in any other way. If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of:

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

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

COUNCIL CLERK

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

Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance that protects the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the tunnel or any portion thereof, as well as restoration of any disturbed areas of the street right-of-way or other public place in connection with removal of the tunnel;

(b) the Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

(c) claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

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

Minimum limits of liability shall be $2,000,000 each occurrence combined single limit bodily injury and property damage, with $4,000,000 annual aggregate. Coverage shall name the

COUNCIL CLERK

"City of Seattle, its elected and appointed officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage consisting of the CGL declarations page, schedule of forms and endorsements, and blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to the Department of Transportation at an address as the Director may specify in writing from time to time.

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

In the event the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 14.

COUNCIL CLERK

Section 11. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name the "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending construction indemnities and warranties granted to Permittee to the City.

Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the amount of $570,000, and conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5. An irrevocable letter of credit approved by the City Risk Manager may be substituted for the bond upon approval of the Director. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 14.

Section 13. **Adjustment of insurance and bond requirements.** The Director, in consultation with the City Risk Manager, may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director and City Risk Manager determine that an adjustment is necessary to fully protect the interests of the City, the

COUNCIL CLERK

Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of such notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 14. **Consent for and conditions of assignment or transfer.** The permission granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee has accepted in writing all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of said acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 17 of this ordinance. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the tunnel.

Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 (or successor provision), pay the City the amounts charged by the City to inspect the tunnel during construction, reconstruction, repair, annual structural inspections, and at other times deemed necessary to ensure the safety of the tunnel and the public.

Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to the Department of Transportation at an address specified by the Director, an inspection report that:

(a) describes the physical dimensions and condition of all load bearing elements;

(b) describes any damages or possible repairs to any element of the tunnel;

(c) prioritizes all repairs and establishes a timeframe for making repairs; and

COUNCIL CLERK

(d) is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements, shall be submitted within 60 days after the effective date of this ordinance; subsequent reports shall be submitted every two years, within 30 days prior to the anniversary date of the effective date of this ordinance; provided that, in the event of a natural disaster or other event that may have damaged the tunnel, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the tunnel, and the responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's obligations under this ordinance nor create any duties on the part of the Director.

Section 17. **Annual fee.** Beginning on October 1, 2010, and annually thereafter, the Permittee shall promptly pay to the City upon statements or invoices issued by the Director, an annual fee of $2,048, or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the annual fee shall be made in accordance with a term permit fee schedule adopted by the City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the Transportation Operating Fund.

COUNCIL CLERK

Section 18. **Non-discrimination.** In all matters pertaining to the tunnel, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04 and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed and forfeited and Permittee shall, at its own expense, remove the tunnel and all of Permittee's equipment and property and replace and restore all portions of the street right-of-way or public place as provided in Section 5.

Section 20. **Obligations of successors and assigns.** The obligations and conditions imposed on the Permittee by and through this ordinance are also imposed on the Permittee's successors and/or assigns regardless of whether the Director has approved assignment or transfer of the permission granted by this ordinance to such successors and/or assigns. All references in this ordinance to obligations or conditions imposed on the "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.

The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the tunnel and legally described in Section 1 of this ordinance, regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). The Permittee shall, within 60 days of the effective date of this ordinance and prior to conveying

COUNCIL CLERK

any interest in the property legally described in Section 1 of this ordinance, deliver to the Director upon a form to be supplied by the Director, a covenant agreement containing the obligations and conditions set forth in this ordinance, signed by the Permittee and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall contain a reference to this ordinance by its ordinance number.

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

Section 22. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the authority and in compliance with the conditions of this ordinance but prior to the effective date of the ordinance is ratified and confirmed.

Section 23. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

COUNCIL CLERK

Passed by the City Council the 19th day of December, 2011, and signed by me in open session in authentication of its passage this 19th day of December, 2011.

President _____ of the City Council

Approved by me this 28 day of December, 2011.

Michael McGinn, Mayor

Filed by me this 29 day of December, 2011.

Monica Martinez Simmons, City Clerk

(Seal)

COUNCIL CLERK

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:
AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, 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.

Summary of the Legislation:

This legislation will allow Cornish College of the Arts to continue maintaining and operating the existing vehicular tunnel located under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street. An area map is attached for reference.

This tunnel permit is for a term of ten years commencing from the expiration of the last term permit on September 30, 2010. The legislation specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions.

The Cornish College of the Arts is to pay the City of Seattle an annual fee of $2,048 commencing from the last paid annual fee invoice, October 1, 2010, 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 for reference.

Background:

By Ordinance 109558, the City granted permission to Westlake Chevrolet Company to construct, operate, and maintain a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street. By Resolution 27724, the permission authorized by Ordinance 109558 was transferred to University Chevrolet Company. By Resolution 28331, the permission authorized by Ordinance 109558 was transferred again to Howard Anderson.

Cornish College of the Arts purchased the properties adjoining the vehicular tunnel in January 2008, assumed ownership of the tunnel, and was approved by the Director as an assignee of the permission authorized by Ordinance 109558, as amended by Ordinance 121855.

COUNCIL CLERK

The conditions of Ordinance 109558 were amended by Resolutions 27724 and 28331 and Ordinances 120505 and 121855. The permission authorized by Ordinance 109558 was renewed for two successive ten-year terms by Ordinance 120505 and Resolution 28331 and the permission ended on September 30, 2010.

Please check one of the following:

_X_ This legislation has financial implications.

Appropriations: N/A

Anticipated Revenue/Reimbursement: Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2010 Fee = $2,048 2011 Fee = $2,048	$2,048
TOTAL			**$4,096**	**$2,048**

Revenue/Reimbursement Notes: N/A

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

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 $2,048. 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 109558, 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.

COUNCIL CLERK

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 – Cornish Tunnel Area Map
Attachment B - Annual Fee Assessment Summary

COUNCIL CLERK

Angela Steel
SDOT Cornish Tunnel ATT A
August 25, 2011
Version #1

Attachment A – Cornish Tunnel Area Map

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

COUNCIL CLERK

Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 8/25/11

Summary:
Land Value: $400/SF
First Year Permit Fee:
$2,048

I. Property Description:

Existing subsurface vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street. The tunnel connects parking facilities located on Westlake Avenue and 9th Avenue. Adjacent tax parcels are listed below. The tunnel is **256 square feet**.

Applicant:
Cornish College of the Arts

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 0660000485; 8,722 square feet

   Tax year 2010 Appraised Land Value $3,488,800
   Assessed at $400/SF

2. Parcel 0660000540; 7,020 SF

   Tax year 2010 Appraised Land Value $2,808,000
   Assessed at $400/SF

Average 2010 tax assessed land value: $400/SF

II. Annual Fee Assessment:

The 2010 permit fee is calculated as follows: ($400/SF) X (256 SF) X (25%) X (8%) = $2,048, where 25% is the degree of alienation for a vehicle tunnel and 8% is estimated annual rate of return.

Fee methodology authorized under Ordinance 123485.

COUNCIL CLERK

City of Seattle
Office of the Mayor

November 15, 2011

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 Cornish College of the Arts a new ten-year permit for an existing vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, renewable for two additional ten-year terms.

Use of the existing vehicular tunnel, which was last authorized by Ordinance 109558, provides an underground vehicle connection between parking facilities owned by Cornish College and the Seattle Parks Department and leased by Enterprise Rent-A-Car. The Parks Department purchased the abutting parcel to the west of the tunnel in 2008 using Pro Parks Levy funding. A park will be developed there in the future, pending the availability of funding and the termination of the existing Enterprise Rent-A-Car lease, at which time the tunnel will be removed.

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, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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

COUNCIL CLERK

STATE OF WASHINGTON – KING COUNTY

--ss.

279736 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

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:123774,790-123805

was published on

01/06/12

The amount of the fee charged for the foregoing publication is the sum of $ 237.15, which amount has been paid in full.

Subscribed and sworn to before me on

01/06/12

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BORRERO NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-24-15

State of Washington, King County

City of Seattle

The full text of the following legislation passed by the City Council on December 19 2011, and published below by title only, wil be mailed upon request, or can be accessec at http://clerk.seattle.gov. For informatior 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. 123774

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to Seattle Mixed with an 85 foot height limit; and accepting a Property Use and Development Agreement in connection therewith. (Petition by BMR-500 Fairview Avenue LLC, C.F. 311061, DPD Project 3011479)

ORDINANCE NO. 123790

AN ORDINANCE relating to land use and zoning, amending Seattle Municipal Code Section 23.47A.013, enacting new Section 23.47A.009, modifying development standards, and amending the Official Land Use Map Chapter 23.32, at pages 137 and 150 to rezone areas within the West Seattle Junction Hub Urban Village.

ORDINANCE NO. 123791

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

ORDINANCE NO. 123792

AN ORDINANCE authorizing the Interlocal Agreement between the City of Seattle and the Port of Seattle promoting music and musicians primarily associated with Seattle and the Puget Sound region.

ORDINANCE NO. 123793

AN ORDINANCE granting the Board of Regents of the University of Washington permission to maintain and operate an underground pedestrian concourse tunnel under and across 6th Avenue north of University Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123794

AN ORDINANCE granting 2020 Fifth Avenue, LLC permission to construct, maintain, and operate a pedestrian skybridge in the mid-block portion of the alley between 5th Avenue and 6th Avenue, south of Lenora Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

ORDINANCE NO. 123795

AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, 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. 123796

AN ORDINANCE relating to affordable housing; authorizing the Director of the Office of Housing to enter into and administer an Interlocal Cooperation Agreement with King County for a Regional Affordable Housing Program using revenues from a surcharge on document recording fees authorized by State law; and ratifying and confirming prior acts.

ORDINANCE NO. 123797

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to amend the Ground Lease between the City of Seattle and the Center for Wooden Boats for development, operation and maintenance of an Education Center in Lake Union Park.

ORDINANCE NO. 123798

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept an extension and modification to certain lease and interlocal agreements with the City of Renton, Washington, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123799

AN ORDINANCE relating to Seattle Public Utilities, authorizing the Director of Seattle Public Utilities to enter into an agreement with the City of Renton for the sale of water in an emergency from the City of Renton to the City of Seattle; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123800

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute, for and on behalf of The City of Seattle, an easement agreement granting a non-exclusive easement for ingress, egress, and public utilities under, over, and across The City of Seattle's fee-owned [municipal water pipeline property] for the benefit of abutting property owned by 112 Skyway Associates LLC located in the Skyway area of unincorporated King County just south of Seattle in the NW 1/4 of the NE 1/4 of Section 11, Township 23 North, Range 4 East, W. M.

ORDINANCE NO. 123801

AN ORDINANCE, relating to a vehicular and pedestrian ramp over North Northlake Way beneath the George Washington Memorial (Aurora Avenue) Bridge, amending Ordinance 118908, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to the Quadrant Corporation; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123802

AN ORDINANCE relating to the use of Seattle Center Department property; amending Section 17.16.030 of the Seattle Municipal Code to authorize the Seattle Center Director to enter into leases with terms of up to ten years for food and beverage services in the Seattle Center House; establishing an oversight committee to review such leases; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123803

AN ORDINANCE related to the Board of Park Commissioners; authorizing a Get Engaged young adult position to the Board of Park Commissioners; changing the membership composition and terms of Park Commissioners; and amending Section 3.26.010 of the Seattle Municipal Code.

ORDINANCE NO. 123804

AN ORDINANCE relating to Conservation Futures Levy proceeds; authorizing the Mayor to amend the Interlocal Cooperation Agreement between the City of Seattle and King County as authorized by City of Seattle Ordinance 114978; and authorizing the deposit of 2011 allocations from King County Conservation Futures Levy proceeds into the City of Seattle's 2008 Parks Levy Fund.

ORDINANCE NO. 123805

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, January 6, 2012.

1/6(279736)

1000 Lenora Street Seattle WA 98121 206.726.5151 www.cornish.edu

FILED
CITY OF SEATTLE
12 JUL -2 PM 12:15
CITY CLERK

FILED
12 JUL -2 AM 10:37
CITY CLERK

cornish college of the arts

March 19, 2012

Angela Steel
Strategic Advisor
Seattle Department of Transportation
Seattle, WA

Dear Angela:

RE: Ordinance Number 123795

This letter acknowledges that Cornish College of the Arts accepts the terms and conditions of Ordinance Number 123795. We want to thank you for your assistance with the process required to renew the permission to maintain and operate this vehicular tunnel. We also want to apologize for our oversight related to Section 12, the performance bond. We were erroneously relying on historical information related to the prior bond amount of $10,000.

Because of our oversight and in recognition of the upcoming Parks project and tunnel removal (Section 4.(d) , we request that the SDOT Director please reconsider the bond amount. We understand the Director can review this and has the authority to administratively amend the bond amount.

Again, thank you for your assistance.

Sincerely,

Vicki Clayton
Chief Operations Officer

Attachments:

- Certificate of Liability Insurance issued by Willis of Seattle, Inc. including umbrella coverage of $15,000,000
- Updated structural engineering report from CoughlinPorterLundeen dated March 14, 2012
- Signed and recorded Covenant Agreement dated March 5, 2012
- Seattle Public Place Ordinance Bond for $10,000

City of Seattle

Seattle Department of Transportation Peter Hahn, Director

12 JUL -2 AM 10:38
CITY CLERK
FILED

April 18, 2012

Cornish College of the Arts
Attn: Vicki Clayton
1000 Lenora Street
Seattle, WA 98121

RE: Ordinance 123795 Vehicle Tunnel Term Permit, Request to Review Bond Amount

Dear Ms. Clayton,

I have reviewed your request and supporting Seattle Parks Department documents to adjust the bond amount required by Ordinance 123795 (term permit) for the vehicular tunnel under the alley between 8th & 9th Avenue, north of Lenora Street. I support the Park Department's recommendation to reduce the bond amount from $570,000 to $285,000.

The term permit allows the SDOT Director, in consultation with the City's Risk Manager, to administratively adjust bond levels. The bond amount reduction was approved in consideration of the Park's ownership of the adjacent parcel and the forthcoming plans to develop the site and remove the tunnel.

Be advised that in the future the SDOT Director and City's Risk Manager may still adjust the insurance or bond levels if it is determined that it is necessary to fully protect the interests of the City.

Please continue to work with Angela Steel on submitting a new bond in the amount of $285,000. If you have any further questions regarding this letter, please contact Angela at 684-5967.

Sincerely,

Peter Hahn, Director
Seattle Department of Transportation

Seattle Municipal Tower, 700 5th Avenue, Suite 3800, PO Box 34996, Seattle, WA 98124-4996
Tel: (206) 684-ROAD Tel: (206) 684-5000 Fax: (206) 684-5180
Web: www.seattle.gov/transportation
An equal opportunity employer. Accommodations for people with disabilities provided on request.

Return Address:
CORNISH COLLEGE OF THE ARTS
1000 Lenora St
Seattle, Wa. 98121

20120313000395
RICE COV 65.00
PAGE-001 OF 004
03/13/2012 09:20
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document **must** be filled in)
1. Covenant Agreement 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:
Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document
1. Cornish College of the Arts, _____
2. _____, _____
Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document
1. City of Seattle, _____
2. _____, _____
Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
LOT 10, Block 24, Second Addition
_____
Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
066000-0540

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

FILED
12 JUL -2 AM 10:38
CITY CLERK

"I am signing below and paying an additional $50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

_____ Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional $50 fee if the document meets margin/formatting requirements

COVENANT AGREEMENT

THIS COVENANT AGREEMENT ("Agreement") is made and granted by Cornish College of the Arts, a Washington non-profit corporation, ("Grantor") in favor of the City of Seattle ("City").

RECITALS

A. Grantor is the owner of the real property legally described in Exhibit A hereto (the "Property").

B. By adoption of Ordinance No. 123795 (the "Ordinance"), passed by Seattle City Council on December 19, 2011, the City granted permission to Grantor, and its successors and assigns as approved by the Director of the Seattle Department of Transportation ("Director"), to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, adjacent in whole or in part to the Property.

C. Pursuant to the Ordinance, all of the obligations and conditions imposed by the Ordinance on Grantor are also imposed on Grantor's successors and/or assigns regardless of whether the Director has approved assignment or transfer to them of the permission granted by the Ordinance.

D. The Ordinance provides that the obligations and conditions imposed by the Ordinance on Grantor are covenants that run with the land and bind subsequent owners of the Property regardless of whether the Director has approved assignment or transfer to them of the permission granted by the Ordinance, and the Ordinance requires Grantor to execute and record a covenant agreement containing the obligations and conditions set forth in the Ordinance.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing, Grantor hereby declares and covenants for itself and its successors and assigns as owners of the Property, as follows:

1. Grantor agrees to comply with all of the obligations and conditions that the Ordinance imposes upon the "Permittee" under the Ordinance.

2. The covenant set forth in the previous paragraph runs with the land and binds all subsequent owners of the Property, regardless of whether the Director of the Seattle Department of Transportation has approved assignment or transfer to them of the permission granted by the Ordinance.

3. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, Grantor has executed this Agreement on the day and year indicated below.

GRANTOR:

Cornish College of the Arts

By: Vicki Clayton
Chief Operations Officer

Its: _____

Exhibits:

A: Legal Description of Property

State of Washington)

) s.s.

County of King)

This is to certify that on this 9 day of March 2012, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Vicki Clayton to me known to be the Chief Operations Officer (title) of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal, the day and year first above written.

Nichole Rose

Notary Public in and for the State of Washington

Notary Public
State of Washington
NICHOLE ROSE
MY COMMISSION EXPIRES
April 28, 2012

Notary Public
State of Washington
NICHOLE ROSE
MY COMMISSION EXPIRES
April 28, 2012

Exhibit A: Legal Description of Property

Lot 10, Block 24, Second Addition to Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's 2nd Add. to City of Seattle) Vol. 1, Pg. 121, in King County, Washington.