Ordinance No. 124377

Council Bill No. 117926

AN ORDINANCE relating to a utility tunnel under and across Broadway between East Olive Street and East Howell Street; amending Ordinance 116634, as amended by Ordinance 121855; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Seattle Central Community College; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File:

Date Introduced and Referred: 9.16.13	To: (committee): Transportation
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 12.16.13	Date Presented to Mayor: 12.18.13
Date Signed by Mayor: 12.19.13	Date Returned to City Clerk: 12.23.13
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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:

Committee Action:

Date	Recommendation	Vote
12-10-13	PASS	TR JG BH 3-0

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

Full Council Action:

Date	Decision	Vote
12.16.13	passed	9-0

Law Department

Ordinance No. 124377

MA16625

CITY OF SEATTLE

ORDINANCE 124377

COUNCIL BILL 117926

AN ORDINANCE relating to a utility tunnel under and across Broadway between East Olive Street and East Howell Street; amending Ordinance 116634, as amended by Ordinance 121855; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Seattle Central Community College; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 116634, the City of Seattle granted Seattle Central Community College permission to construct and maintain a utility tunnel under and across Broadway between East Olive and East Howell Streets, for a ten-year term, renewable for two successive ten-year terms; and

WHEREAS, the conditions of Ordinance 116634 were amended by Ordinance 121855; and

WHEREAS, the permission authorized by Ordinance 116634 is due for renewal on May 12, 2013; and

WHEREAS, Seattle Central Community College has submitted an application to the Seattle Department of Transportation Director ("Director") to continue maintaining and operating the utility tunnel; and

WHEREAS, Seattle Central Community College has satisfied all terms of the original authorizing ordinance and the Director recommends that the term permit be renewed subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The permission granted to Seattle Central Community College by Ordinance 116634 and as amended by Ordinance 121855, to maintain and operate a utility tunnel under and across Broadway between East Olive Street and East Howell Street, is renewed for a ten-year period starting May 13, 2013, and ending at 11:59 p.m. on May 12, 2023, upon the terms and

conditions set forth in Ordinance 116634, as amended by Ordinance 121855, and as further amended by this ordinance.

Section 2. Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of Ordinance 116634, as amended by Ordinance 121855, are amended as follows:

1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle ("City") grants permission ((~~is hereby granted~~)) (also referred to in this ordinance as a permit) to Seattle Central Community College, and its successors and assigns ((~~("Permittee")~~)) as approved by the Director of the Seattle Department of Transportation ("Director") according to Section 11A of this ordinance (the party named above and each approved successor and assign is referred to as "Permittee"), to construct, maintain, and operate a utility tunnel ("tunnel") under and across Broadway between East Olive Street and East Howell Street, connecting the main college building, Broadway Edison, to the student activities center, Charles H. Mitchell Activity Center, and adjacent in whole or in part to the property legally described as:

Lots 1 through 4, together with south 10 feet of Lot 5, of Block 30 of Nagle's Addition to the City of Seattle, as recorded in Volume 1 of Plats, page 153, Records of King County, Washington, together with vacated Street described as follows: the North ½ and North 23 feet of the South 33 feet of a portion of E Olive Street lying East of Broadway Avenue East and West of Nagle Place and vacated per Seattle Ordinance No. 99865. ((~~Said~~)) The utility tunnel ((~~will be five~~)) is 5 feet in diameter, ((~~three~~)) 3 feet below maximum grade of the street, and situated approximately 280 feet south of the centerline of East Howell Street((~~.~~)).

2. **Term.** The permission ((~~herein~~)) granted to the Permittee ((~~, its successors and assigns shall be~~)) is for a term of ten years, ((~~commencing~~)) starting on the effective date of this

ordinance and ((~~terminating~~)) ending at 11:59 p.m. on the last day of the tenth year ((~~; provided, however, that upon~~)). Upon written application of the Permittee at least ((~~thirty (30)~~)) 180 days before expiration of the term, the Director ((~~of Transportation("Director")~~)) or the City Council may renew the permit ((~~for two (2)~~)) twice, each time for a successive ten ((~~(10)~~))-year ((~~terms, provided further that the total term of the permission as originally granted and thus extended shall not exceed thirty (30) years~~)) term, subject to the right of ((~~T~~)) the City ((~~of Seattle ("City")~~)) to require the removal of the tunnel or to revise by ordinance ((~~to then revise~~)) any of the terms and conditions ((~~contained herein~~)) 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.

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

(a) The City Council determines((~~,~~)) by ordinance((~~,~~)) that the space occupied by the ((~~utility~~)) tunnel is necessary for any ((~~primary and secondary~~)) public use or benefit

or that the ((~~utility~~)) tunnel interferes with any ((~~primary and secondary~~)) public use or benefit; or

(b) The Director ((~~of Engineering or official of the City ("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).

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

4B. **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 is responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the tunnel and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

5. **Permittee's obligation to remove and restore.** ((~~In the event that~~)) If the ((~~permit~~)) permission granted is not renewed at the expiration of a term, or if the permission ((~~hereby~~)) expires without an application for a new permission being granted ((~~extends to its termination in thirty years~~)), or if the City ((~~orders~~)) terminates the permission; then within 90 days after the

expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the ((~~utility~~)) tunnel ((~~pursuant to the terms of this ordinance, then within 90 days after such expiration, termination or order of removal, or prior to the date stated in an "Order to Remove", as the case may be,~~)); the Permittee shall, at its own expense, remove the ((~~utility~~)) tunnel and all of the Permittee's equipment and property from the public place. Following removal of the tunnel, the Permittee shall ((~~place~~)) replace and restore all portions of the ((~~street~~)) public place that may have been disturbed for any part of the ((~~structure,~~)) tunnel. The public place shall be replaced and restored in as good condition for public use as ((~~they were~~)) it was prior to construction((~~,~~)) of the tunnel and in at least as good condition in all respects as the abutting portions ((~~thereof~~)) of the public place as required by SDOT right-of-way restoration standards. ((~~Whereupon, the Director shall issue a certificate discharging Permittee from responsibility under this ordinance for occurrences after the date of such discharge.~~))

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 public place at the Permittee's expense, and collect the expenses in any 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 the Permittee's payment to the City for the City's removal and restoration costs, 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.

6. **Repair or reconstruction.** The tunnel shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the tunnel in good and safe condition for the protection of the public. The Permittee shall not ((~~commence reconstruction, relocation, readjustment~~)) reconstruct or repair ((~~of~~)) the ((~~utility~~)) tunnel except ((~~under the supervision of, and~~)) in strict accordance with plans and specifications approved by((~~,~~)) the Director. The Director may, in ((~~his/her~~)) the Director's judgment ((~~may~~)), order ((~~such reconstruction, relocation, readjustment or repair of~~)) the ((~~utility~~)) tunnel reconstructed or repaired at the Permittee's ((~~own~~)) cost and expense because of: the deterioration or unsafe condition of the ((~~utility~~)) tunnel ((~~, grade separations, or~~)); the installation, construction, reconstruction, maintenance, operation, or repair of any ((~~and all~~)) municipally-owned public utilities((~~,~~)); or for any other cause.

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 ((~~utility~~)) tunnel be closed or removed at the Permittee's expense if the Director deems that ((~~it~~)) the tunnel has become unsafe or creates a risk of injury to the public. ((~~In a situation in which~~)) If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the ((~~utility~~)) tunnel, the Permittee shall remain bound by all of

its obligations under this ordinance until((~~: (a) the utility tunnel and all its equipment and property are removed from the street; (b) the area is cleared and restored in a manner and to a condition satisfactory to the Director; and (c) the Director certifies that the Permittee has discharged its obligation herein. Provided, that upon prior notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in his/her sole discretion, excuse Permittee, conditionally or absolutely, from compliance with all or any of Permittee's obligations to remove the utility tunnel and its property and restore disturbed areas.~~)) 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 obligation of Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 12 of this ordinance.

9. **Release, hold harmless, indemnification, and duty to defend.** ((~~The utility tunnel shall remain the exclusive responsibility of the Permittee.~~)) The Permittee, by ((~~its acceptance~~)) accepting the terms of this ordinance ((~~and the permission hereby granted, does release~~)), releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorney's 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 ((~~its own~~)) the Permittee or the Permittee's property ((~~and does covenant and agree for itself, its successors or assigns, with The City of Seattle~~)).

The Permittee agrees to at all times ((~~protect and save~~)) defend, indemnify, and hold harmless ((~~The~~)) the City ((~~of Seattle~~)), its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorney's fees, or damages of

every kind and description, ((~~(~~))excepting only ((~~such~~)) damages that may result from the sole negligence of the City((~~), which~~)), that may accrue to, be asserted by, or be suffered by((~~,~~)) any person or ((~~persons and/or~~)) property ((~~or properties,~~)) including, without limitation, damage, death or injury to ((~~the Permittee, its~~)) members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants ((~~and~~)), tenants' invitees, licensees, or ((~~their~~)) successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation ((~~or~~)), use, or removal of ((~~said utility~~)) the tunnel or any portion thereof, ((~~the occupation or use of said city street, alley, or any portion thereof, or by reason of~~)) or the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

(b) anything that has been done((~~,~~)) or may at any time be done((~~,~~)) by the Permittee((~~, it's successors or assigns,~~)) by reason of this ordinance((~~, or by reason of~~)); or

(c) the Permittee((~~, its successor or assigns,~~)) failing or refusing to strictly comply with ((~~each and~~)) every provision of this ordinance; ((~~and if~~)) or arising out of or by reason of the tunnel or this ordinance in any other way.

If any ((~~such~~)) suit, action, or claim ((~~shall be~~)) of the nature described above is filed, instituted, or begun against the City, the Permittee((~~, its successors of assigns,~~)) shall((~~,~~)) upon notice ((~~thereof~~)) from the City((~~,~~)) defend the ((~~same~~)) City, with counsel acceptable to the City, at ((~~its or their~~)) the sole cost and expense of the Permittee, and ((~~in case~~)) if a judgment ((~~shall be~~)) is rendered against the City in any suit or action, the Permittee((~~, its successor or assigns,~~)) shall

fully satisfy ((~~said~~)) the judgment within 90 days after ((~~such~~)) the action or suit ((~~shall have~~)) has been finally determined, if determined adversely to the City.

For purposes of this Section 9, to the extent that Permittee proves to a court with jurisdiction over this ordinance that, as of the date of this ordinance, Permittee lacked the authority to indemnify the City with respect to the negligence of any person who is neither an employee nor agent of the Permittee, such *ultra vires* indemnification or indemnifications shall not be enforceable against Permittee.

If it is determined by a court of competent jurisdiction that the Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees.

10A. **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 and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the tunnel or any portion thereof, as well as restoration of any disturbed areas of the 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 written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier according to RCW Chapter 48.15. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum limits of liability shall be $2,000,000 per Occurrence; $4,000,000 General Aggregate; $2,000,000 Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising Injury; Contractual Liability.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to the Department of Transportation (SDOT) at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if

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

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 11A.

10B. Contractor Insurance. ((~~Seattle Central Community College~~)) The Permittee shall contractually require that any and all of its contractors performing ((~~construction~~)) work on ((~~the~~)) any premises ((~~as~~)) contemplated by this permit((~~,~~)) name the "City of Seattle, its officers, officials, employees and agents" as ((~~an~~)) additional ((~~insured on all policies of public~~)) insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance((~~,~~)) and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to ((~~Seattle Central Community College to the City as well~~)) the Permittee.

10C. Performance bond. In the event that the Permittee seeks to assign or transfer the permission granted by this ordinance, the Director in consultation with the City Attorney's Office may determine that a performance bond is necessary to adequately protect the City's interests, in which case the successor entity shall deliver to the Director for filing with the City Clerk, as a condition of approval of the assignment or transfer within 60 days of notification of such determination, a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is in the amount determined by the Director in consultation with the City Attorney's Office, and conditioned with a requirement that the successor entity shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The successor entity shall ensure that the bond remains in effect until the Director has issued a certification that the successor entity has fulfilled its removal and restoration obligations under Section 5. An irrevocable letter of credit approved by the SDOT Director in consultation with the City Attorney's Office may be substituted for the bond.

10D. **Adjustment of insurance and bond requirements.** The Director, in consultation with the City's Risk Manager, may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director and City's Risk Manager determine that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice of adjustment, provide proof of the adjusted insurance and surety bond levels to the Director.

11A. **Consent for and conditions of assignment or transfer.** The ((~~Permittee shall not~~)) permission granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the Permittee assign, transfer, mortgage, pledge, or encumber ((~~any privileges conferred by this ordinance~~)) the same without the Director's consent ((~~of the Director.~~)), which the Director shall not unreasonably refuse. The Director may approve assignment ((~~and/or transferal~~)) or transfer of the ((~~permit~~)) permission granted by this ordinance to a successor entity ((~~in the case of a change of name and/or ownership provided that~~)) only if the successor or assignee has ((~~demonstrated its acceptance of~~)) accepted in writing all of the terms and conditions of the permission granted ((~~to the initial Permittee. If permission is granted, the assignee or transferee shall be bound by all of the terms and conditions of this ordinance. The permission conferred by this ordinance shall not be assignable or transferable by operation of law.~~)) by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 12C 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.

11B. **Obligations run with the Property.** 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 (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all

owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall also file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

12A. **Inspection fees.** The Permittee((~~, its successors and assigns,~~)) shall, as provided by SMC Chapter 15.76 or successor provision, pay ((~~to~~)) the City ((~~such~~)) the amounts ((~~as may be justly chargeable by said~~)) charged by the City ((~~as costs of inspection of said utility~~)) to inspect the tunnel during repair ((~~or~~)), construction, reconstruction, or annual safety inspections, and at other times ((~~under the direction of the Director and~~)) deemed necessary by the City. An inspection of the tunnel by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the tunnel. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

12B. **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

(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 at intervals of 2 years following submittal of the initial report; 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 other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

12C. **Annual fee.** Beginning on May 13, 2013, and annually thereafter, the Permittee shall promptly pay to the City ((~~in advance~~)), upon statements or invoices ((~~rendered~~)) issued by the Director, an annual fee of ((~~$671.00 as established by Resolution 29887~~)) $1,926, or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the annual fee ((~~amount~~)) shall be made in accordance with a term permit fee schedule adopted by the City Council ((~~by ordinance~~)) and may be ((~~adjusted~~)) made every year. In the absence of ((~~such~~)) a schedule, the Director may only increase or decrease the previous year's fee ((~~amount annually~~)) to reflect any inflationary changes so as to charge ((~~said~~)) the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous

year's fee ((~~amount~~)) by the percentage change between the two most recent year-end values available ((~~of~~)) 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 ((~~Treasurer~~)) Finance Director for credit to the Transportation Operating Fund.

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

~~a. The Permittee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, sex, national origin or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.~~

~~b. The Permittee shall post in conspicuous places available to such employees and applicants for such employment, notices setting forth the provisions of this non-discrimination clause.~~

~~c. The Permittee shall furnish to the Director of Human Rights or a successor official, upon his or her request and on such forms as may be provided, a report of the affirmative action~~

~~taken in implementing this provision and will permit reasonable access to its records for the purposes of determining compliance with this section. If, upon investigation the Director of Human Rights finds probable cause to believe that the Permittee has failed to comply with any of the terms of this Section, the Permittee and the Street Use Appeals Board (Board) will be so notified in writing. The Board shall give the Permittee at least 10 days notice and a hearing thereon. If the Board finds that there has been a violation of this Section, the Board may suspend the permission conferred pending full compliance with the terms of this Section.~~

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

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

Permittee shall construct, maintain and operate the tunnel in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, 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).

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Section 3. **Acceptance of terms and conditions.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance as approved by its Board acting on behalf of the Permittee, as well as the certification of insurance coverage, covenant agreement, and inspection report required by Sections 10A, 11B, and 12B of Ordinance 116634, as further amended by Ordinance 121855 and as further amended by 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 to be declined or abandoned and the permission granted deemed to be lapsed and forfeited and the Permittee shall, at its own expense, remove the utility tunnel and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 5 of Ordinance 116634, as further amended by Ordinance 121855 and as further amended by this ordinance.

Section 4. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 5. **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 6. 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.

Passed by the City Council the 16th day of December, 2013, and signed by me in open session in authentication of its passage this 16th day of December, 2013.

President _____ of the City Council

Approved by me this 19th day of December, 2013.

Michael McGinn, Mayor

Filed by me this 23rd day of December, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Christie Parker/684-5211

Legislation Title:
AN ORDINANCE relating to a utility tunnel under and across Broadway between East Olive Street and East Howell Street; amending Ordinance 116634, as amended by Ordinance 121855; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Seattle Central Community College; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation amends Ordinance 116634, as amended by Ordinance 121855, for Seattle Central Community College to continue maintaining and operating the existing utility tunnel located under and across Broadway between East Olive Street and East Howell Street. An area map is attached for reference.

This permit is renewed for a ten-year term starting on May 13, 2013. The legislation updates the insurance and surety bond provisions, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires Seattle Central Community College to pay the City an annual fee of $1,926 starting from May 13, 2013, 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 116634, the City granted permission to Seattle Central Community College to construct, operate, and maintain a utility tunnel located under and across Broadway between East Olive Street and East Howell Street, for a ten-year term, renewable for two successive ten-year terms.

The conditions of Ordinance 116634 were amended by Ordinance 121855. The permission authorized by Ordinance 116634 was due for renewal on May 12, 2013.

Please check one of the following:

____ **This legislation does not have any financial implications.**

__X__ This legislation has financial implications.

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	$1,926	TBD
TOTAL			**$1,926**	**TBD**

Revenue/Reimbursement Notes: None

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

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** No

b) **What is the financial cost of not implementing the legislation?**
If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of $1,926. 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 116634, will no longer be permitted and will have to be removed.

c) **Does this legislation affect any departments besides the originating department?** No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** No

e) **Is a public hearing required for this legislation?** No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No

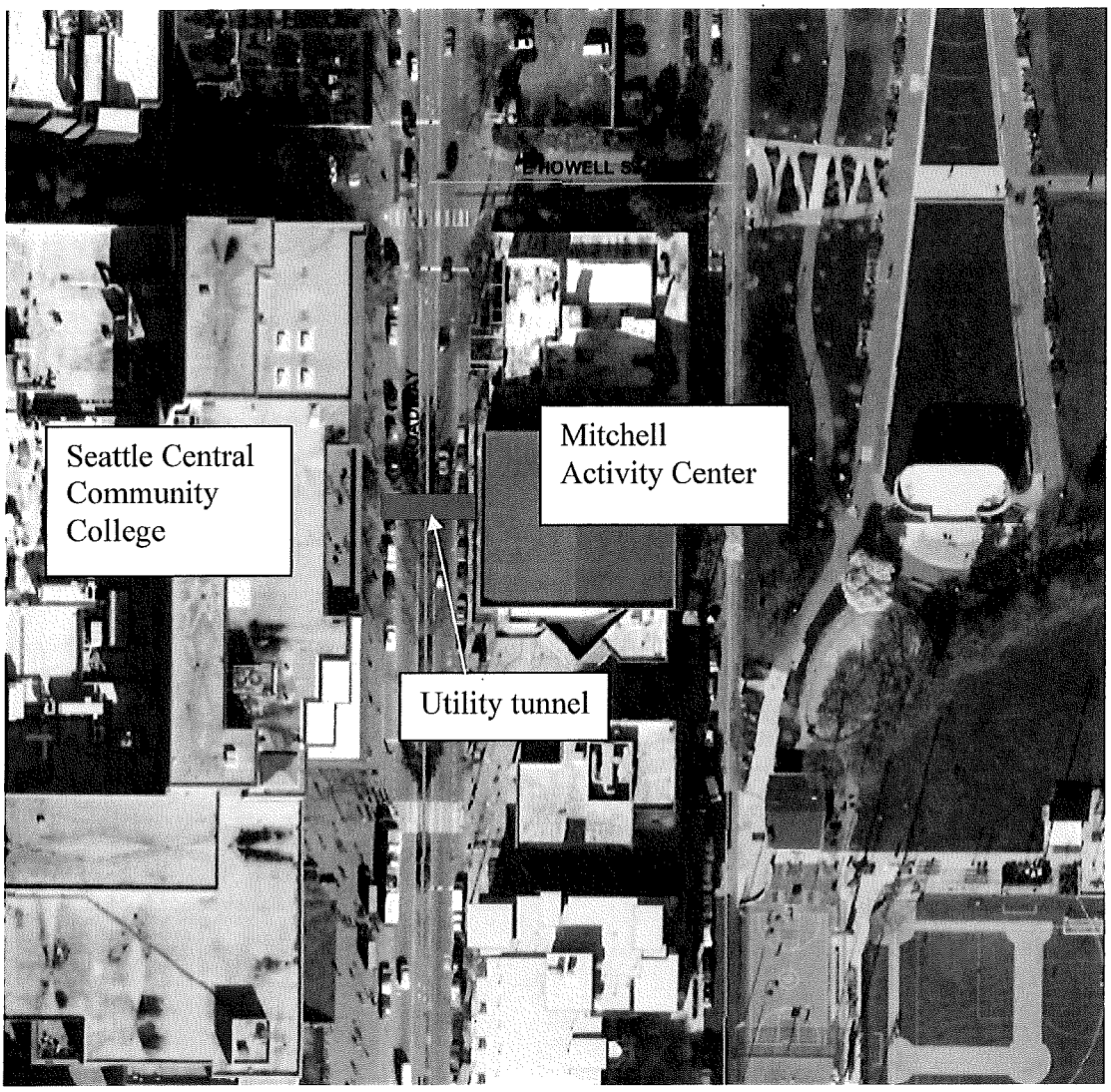
g) **Does this legislation affect a piece of property?** Yes, an area map is attached for reference.

h) **Other Issues:** None

List attachments to the fiscal note below:

Attachment A – Seattle Central Community College Utility Tunnel Area Map
Attachment B – Annual Fee Assessment Summary

Attachment A – Seattle Central Community College 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: 6/5/13

Summary:
Land Value: $150/SF
First Year Permit Fee:
$1,926

I. Property Description:

Existing utility tunnel located under and across Broadway between East Olive Street and East Howell Street. The utility tunnel connects Tax parcels are 6003001130 and 6003001105. The utility tunnel area is **535 square feet.**

Applicant:
Seattle Central Community College

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 6003001130; 109,056 SF

Tax year 2013 Appraised Land Value $16,358,400
Assessed at $150/SF

2. Parcel 6003001105; 39,168 SF

Tax year 2013 Appraised Land Value $5,875,200
Assessed at $150/SF

Average 2013 tax assessed land value: $150/SF

II. Annual Fee Assessment:

The 2013 permit fee is calculated as follows: ($150/SF) X (535 SF) X (30%) X (8%) = $1,926, where 30% is the degree of alienation for a privately-maintained utility tunnel and 8% is the estimated annual rate of return.
Fee methodology authorized under Ordinance 123485.

City of Seattle
Office of the Mayor

September 3, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that grants a 10-year renewal permit to Seattle Central Community College for an existing utility tunnel under and across Broadway between East Olive Street and East Howell Street, as authorized by Ordinance 116634.

The existing utility tunnel connects the Broadway Edison main college building and the Charles H. Mitchell Activity Center. The utility connections include communication cables, emergency electrical power, and chilled water supply and return piping. In addition to granting a new 10-year permit renewal, 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 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

SEATTLE CENTRAL
community college

Office of the President
1701 Broadway
BE 4180
Seattle, WA 98122
206.587.4144
Fax 206.344.4390
seattlecentral.edu

March 14, 2014

Goran Sparrman, Interim Director,
Seattle Department of Transportation
Seattle Municipal Tower
700 Fifth Avenue, Suite 3900
Seattle, WA 98124-4996

Subject: Ordinance #124377 (SDOT - Seattle Central Community College Utility Tunnel ORD)

Dear Mr. Sparrman,

As required under section 3 of the subject ordinance, this letter is to provide you with written, signed acceptance of the terms of the Ordinance #124377. On March 13, 2014, the Board of Trustees reviewed the terms of the ordinance and asked me to notify you of their approval.

Please find enclosed the following supporting documents as required under the ordinance:

1. Certification of (self) Insurance Coverage
2. Covenant Agreement
3. Tunnel Inspection Report

Please share my thanks with Amy Gray in your office. She has been coordinating this matter with Chuck Davis, our Director of Facilities & Plant Operations. Please have Ms. Gray contact Mr. Davis in the event that you have any questions or require additional information or documentation to finalize the tunnel permit renewal process.

Sincerely,

Dr. Paul Killpatrick
President

FILED
CITY OF SEATTLE

2014 FEB -6 PM 4:22

CITY CLERK

STATE OF WASHINGTON -- KING COUNTY

--ss.

306495 No. 124374,375,376,377,378,79

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:TITLE ONLY ORDINANCE

was published on

01/15/14

The amount of the fee charged for the foregoing publication is the sum of $149.50 which amount has been paid in full.

Subscribed and sworn to before me on

01/15/2014

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BORRERO
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
10-24-16

Affidavit of Publication

State of Washington, King County

City of Seattle
Title Only Ordinances

The full text of the following legislation, passed by the City Council on December 16, 2013, 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. 124374

AN ORDINANCE relating to the Department of Transportation's Hazard Mitigation Program; authorizing the Director to acquire, accept, and record on behalf of the City of Seattle, a permanent easement from Dan J. Del Duca and Mary Frances Del Duca, husband and wife, located in a portion of Lots 1 and 2, Block 35, Rainier Beach, for the purpose of slope stabilization along a portion of Rainier Avenue South; placing the real property rights under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming prior acts.

ORDINANCE NO. 124375

AN ORDINANCE relating to historic preservation, imposing controls upon Old Norway Hall, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124376

AN ORDINANCE relating to historic preservation, imposing controls upon the Palladian Apartments, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

ORDINANCE NO. 124377

AN ORDINANCE relating to a utility tunnel under and across Broadway between East Olive Street and East Howell Street; amending Ordinance 116634, as amended by Ordinance 121855; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Seattle Central Community College; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124378

AN ORDINANCE relating to land use and zoning; amending Sections 23.22.062, 23.22.066, 23.22.074, 23.22.100, 23.24.020, 23.24.040, 23.24.045, 23.28.030, 23.40.020, 23.41.004, 23.41.012, 23.42.124, 23.43.008, 23.43.010, 23.43.012, 23.44.014, 23.44.016, 23.44.018, 23.44.026, 23.44.028, 23.44.030, 23.44.036, 23.44.041, 23.44.044, 23.45.502, 23.45.508, 23.45.510, 23.45.514, 23.45.518, 23.45.520, 23.45.522, 23.45.526, 23.45.529, 23.45.532, 23.45.536, 23.45.545, 23.45.570, 23.47A.004, 23.47A.005, 23.47A.008, 23.47A.009, 23.47A.013, 23.47A.014, 23.47A.032, 23.49.013, 23.49.014, 23.49.015, 23.49.025, 23.49.181, 23.50.038, 23.50.044, 23.52.002, 23.52.008, 23.53.005, 23.53.006, 23.53.035, 23.54.015, 23.54.025, 23.54.030, 23.55.034, 23.55.040, 23.58A.024, 23.66.030, 23.66.032, 23.66.115, 23.66.318, 23.69.032, 23.71.014, 23.71.018, 23.72.008, 23.72.010, 23.75.015, 23.75.020, 23.75.140, 23.75.170, 23.76.004, 23.76.012, 23.76.020, 23.76.022, 23.76.024, 23.76.026, 23.76.032, 23.76.046, 23.76.050, 23.76.056, 23.79.010, 23.84A.002, 23.84A.006, 23.84A.018, 23.84A.028, 23.84A.030, 23.84A.032, 23.84A.036, 23.84A.038, 23.84A.040, 23.84A.048, 23.86.007, 23.86.016, 23.88.020, 23.90.018, 23.90.019, 23.91.002, 25.05.350, and 25.05.675 of the Seattle Municipal Code, to correct typographical errors, correct section references, clarify regulations, and make minor amendments.

ORDINANCE NO. 124379

AN ORDINANCE relating to the City Light Department; declaring surplus a certain portion of real property in Pend Oreille County owned by The City of Seattle that is no longer required for providing public utility service; and authorizing the sale and conveyance of the surplus property to the Bonneville Power Administration ("BPA") by quit claim deed.

Date of publication in the Seattle Daily Journal of Commerce, January 15, 2014.

1/15(306495)