

Ordinance No. 123599

Council Bill No. 117155

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

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

Date Introduced and Referred: <b>4.18.11</b>	To: (committee): <b>Transportation</b>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <b>May 2, 2011</b>	Date Presented to Mayor: <b>May 3, 2011</b>
Date Signed by Mayor: <b>5.10.11</b>	Date Returned to City Clerk: <b>5.10.11</b>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	
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: *John R. Peterson*

#### Committee Action:

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

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

#### Full Council Action:

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

*Law Department*

**ORDINANCE** 123599

1  
2 AN ORDINANCE relating to a pedestrian tunnel under and along the easterly side of Broadway  
3 at East Cherry Street, amending Ordinance 115021, as amended by Ordinances 121493  
4 and 121855, to update the insurance and bond requirements, and amend the annual fee;  
renewing the term of the permit to the Swedish Health Services; providing for acceptance  
of the permit and conditions; and ratifying and confirming certain prior acts.

5 WHEREAS, by Resolution 28094, the City Council granted conceptual approval of a pedestrian  
6 tunnel to 600 Broadway Medical Center; and

7 WHEREAS, by Ordinance 115021, the City of Seattle granted the Broadway Medical Center  
8 Limited Partnership permission to construct, operate, and maintain a pedestrian tunnel  
9 along the easterly side of Broadway at East Cherry Street, for a ten-year term, renewable  
for two successive ten-year terms; and

10 WHEREAS, Ordinance 115021 was amended by Ordinances 121493 and 121855 and by  
11 Resolution 29206; and

12 WHEREAS, by Ordinance 121493, the permission authorized by Ordinance 115021 was  
13 transferred to the Swedish Health Services, renewed for a ten-year term, and was due for  
renewal on May 11, 2010; and

14 WHEREAS, the Swedish Health Services has submitted an application to the Seattle Department  
15 of Transportation ("SDOT") Director to continue maintaining and operating the  
16 pedestrian tunnel; and

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

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

20 Section 1. The permission granted to Swedish Health Services by Ordinance 115021 and  
21 amended by Ordinances 121493 and 121855 to maintain and operate a pedestrian tunnel under  
22 and along the easterly side of Broadway at East Cherry Street, is renewed for a ten-year period,  
23 starting May 12, 2010, and ending at 11:59 p.m. on May 11, 2020, upon the terms and conditions  
24 set forth in Ordinance 115021, as amended by Ordinances 121493 and 121855, and as further  
25 amended by this ordinance.  
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1 Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 of Ordinance 115021, as  
2 amended by Ordinances 121493 and 121855, are amended as follows:

3 1. **Permission.** Subject to the terms and conditions of this ordinance, permission (also  
4 referred to in this ordinance as a permit) is (~~hereby~~) granted to (~~Broadway Medical Center~~  
5 ~~Limited partnership its~~) Swedish Health Services (“Permittee”) and its successors and assigns  
6 (~~Permittee~~), to construct, maintain, and operate a pedestrian tunnel and existing utilities  
7 (tunnel) along the easterly side of Broadway at East Cherry Street, connecting the 600  
8 Broadway Building with the existing Northwest Kidney Center tunnel that is located across  
9 Broadway, approximately forty feet north of East Cherry Street.

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

3 **3A. Removal for public use or for cause.** The ~~((permit))~~ permission granted ~~((hereby))~~  
4 is subject to ~~((the primary and secondary))~~ use of the street right-of-way by the City and the  
5 public for travel ~~((and utilities))~~, utility purposes, and other street uses. The City ~~((of Seattle~~  
6 ~~("City")))~~ expressly reserves the right to require the Permittee to remove the tunnel, or any part  
7 thereof or installation thereon, at Permittee's sole cost and expense in the event that:  
8

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

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

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

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

25  
26 **4. Removal requirements.** ~~((In the event that the permit))~~ If the permission granted is  
27 not renewed~~((, or the permission hereby granted extends to its termination in thirty years,))~~ at the  
28



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

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15  
16 **5. Repair, reconstruction, or relocation.** The Permittee shall not reconstruct, relocate,  
17 ((readjust)) or repair the tunnel except under the supervision((;)) of the Director and in strict  
18 accordance with plans and specifications((;)) approved by the ((Board before any work is  
19 commenced)) Director. The ((Board in its judgment)) Director may, in the Director's judgment,  
20 order ((such reconstruction, relocation, readjustment or repair of)) the tunnel be reconstructed or  
21 repaired at the Permittee's own cost and expense because of: the deterioration or unsafe condition  
22 of the tunnel((, grade separations,)); or the installation, construction, reconstruction,  
23 maintenance, operation, or repair of any ((and all)) municipally-owned public utilities((;)); or for  
24 any other cause ((related to the public health, safety, or welfare)).



1           6. **Failure to correct unsafe condition.** After notice to the Permittee and failure of the  
2 Permittee to correct an unsafe conditions within the time stated in the notice, the ~~((Board))~~  
3 Director may order the tunnel be closed or removed at the Permittee's expense if the ~~((Board))~~  
4 Director deems that it has become unsafe or creates a risk of injury to the public. If there is an  
5 immediate threat to the health or safety of the public, a notice to correct is not required.

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

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

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

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

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

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



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

17 If any ~~((such))~~ suit, action, or claim ~~((shall be))~~ of the nature described above is filed,  
18 instituted, or begun against the City~~((,))~~; the Permittee, its successors or assigns, shall~~((,))~~ upon  
19 notice ~~((thereof))~~ from the City~~((,))~~; defend the ~~((same))~~ City at its or their sole cost and  
20 expense~~((,))~~; and ~~((in case))~~ if a judgment ~~((shall be))~~ is rendered against the City in any suit or  
21 action, the Permittee, its successors or assigns, shall fully satisfy ~~((said))~~ the judgment within 90  
22 days after ~~((such))~~ the action or suit ~~((shall have))~~ has been finally determined, if determined  
23 adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code  
24 of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages  
25 are caused by or result from the concurrent negligence of:  
26  
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1 (a) the City, its agents, contractors, or employees; and,

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

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

5 **9A. Insurance.** For as long as the Permittee, its successors and assigns, shall exercise any  
6 ~~((permissions))~~ permission granted by this ordinance and until the tunnel is entirely removed  
7 from its location as described in Section 1 or until discharged by order of the Director as  
8 provided in Section 4 of this ordinance, ~~((it shall))~~ the Permittee shall obtain and maintain in full  
9 force and effect, at its own expense ~~((deliver to the Director for filing with the City Clerk,)),~~  
10 insurance that protects the City from claims and risks of loss from perils that can be insured  
11 against under commercial general ~~((comprehensive policies of public))~~ liability (CGL)  
12 insurance~~((, which))~~ policies ~~((must be approved by the City Attorney as to form and coverage~~  
13 ~~and which policies must fully protect the City from any and all claims and risks))~~ in conjunction  
14 with:  
15

16 (a) construction, reconstruction, operation, maintenance, use, or existence of the tunnel  
17 and ~~((of))~~ any ~~((and all))~~ portions of the tunnel~~((s))~~ permitted by this ordinance;

18 (b) the Permittee's activity upon or the use or occupation of the ~~((areas))~~ area described  
19 in Section 1 of this ordinance~~((s));~~ and

20 (c) ~~((any and all))~~ claims and risks in connection with any activity performed by the  
21 Permittee by virtue of the permission granted by this ordinance.

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



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

5 (a) ~~operation, maintenance, use or existence of the tunnel and any and all portions of the~~  
6 ~~tunnel permitted by this ordinance,~~

7 (b) ~~any activity upon or use or occupancy of the area described in Section 1 of this~~  
8 ~~ordinance, and~~

9 (c) ~~for any activity performed by Permittee by virtue of the permission granted pursuant~~  
10 ~~to this ordinance:))~~

11  
12 Minimum insurance requirements are CGL insurance based on the Insurance Services Office  
13 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an  
14 insurer admitted and licensed to conduct business in Washington State or with a surplus lines  
15 carrier pursuant to RCW Chapter 48.15, except that if it is infeasible to obtain coverage with the  
16 required insurer, the City may approve an alternative insurer.

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

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

23 “The City of Seattle is named as an additional insured for all coverage provided by this  
24 policy of insurance and shall be fully and completely protected by this policy for all risks and for  
25 any and every injury, death, damage and loss of any sort sustained by any person, organization or  
26 corporation (including any liability of the City for such to Permittee Swedish Health Services, its  
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1 ~~successors and assigns, any of its employees and/or agents and any liability of Permittee to the~~  
2 ~~City of Seattle, its officers, agents and employees) in connection with~~

3 ~~(a) operation, maintenance, use or existence of the tunnel and any appurtenances~~  
4 ~~thereto, permitted by the City of Seattle ordinance granting Swedish Health~~  
5 ~~Services permission to operate and maintain a tunnel~~

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

9 ~~(c) any activity performed by Swedish Health Services, its successors and assigns by~~  
10 ~~virtue of the permission granted by the aforesaid ordinance.”~~

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

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

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



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

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

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

23  
24 **10. Contractor insurance.** ~~((The Broadway Medical Center Limited Partnership))~~ The  
25 Permittee shall contractually require that any and all of its contractors performing  
26 ~~((construction))~~ work on ~~((the))~~ any premises as contemplated by this permit~~((s))~~ name the “City  
27



1 of Seattle, its elected and appointed officers, officials, employees and agents” as ~~((an))~~ additional  
2 ~~((insured on all policies of public liability insurance, and shall include in all pertinent))~~ insureds  
3 for primary and non-contributory limits of liability on all CGL, Automobile and Pollution  
4 liability insurance and/or self-insurance. The Permittee shall also include in all contract  
5 documents with its contractors a third-party beneficiary provision extending construction  
6 indemnities and warranties granted to ~~((Broadway Medical Center Limited Partnership))~~  
7 Permittee to the City ~~((as well)).~~

9 11. ~~((Bond:))~~ **Performance bond.** Within 60 days after the effective date of this  
10 ordinance the Permittee shall deliver to the Director ~~((of Engineering))~~ for filing with the City  
11 Clerk a ~~((good and))~~ sufficient bond executed by a surety company authorized and qualified to  
12 do business in the State of Washington that is: in the ~~((sum))~~ amount of ~~((Twenty Thousand~~  
13 ~~Dollars (\$20,000)-executed by a surety company authorized and qualified to do business in the~~  
14 ~~State of Washington))~~ \$105,000 , and conditioned with a requirement that the Permittee ~~((will))~~  
15 shall comply with each and every provision of this ordinance and with ~~((each and))~~ every order  
16 ~~((of))~~ the ~~((Board pursuant thereto; provided, that if the Mayor of the City in his judgment shall~~  
17 ~~deem any bond or bonds filed to be insufficient and demand a new or additional bond, the~~  
18 ~~Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be~~  
19 ~~necessary to fully protect the City. Said))~~ Director issues under this ordinance. The Permittee  
20 shall ensure that the bond ~~((shall remain))~~ remains in effect until ~~((such time as))~~ the tunnel is  
21 entirely removed from ~~((its))~~ the location as described in Section 1, or until the Permittee is  
22 discharged by ~~((order of the Board of Public Works))~~ a Director’s order as provided in Section 4  
23 ~~((of this ordinance)).~~ An irrevocable letter of credit approved by the City Risk Manager may be  
24 substituted for the bond.



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1  
2 **13A. Inspection fees.** ~~((That the))~~ The Permittee, its successors and assigns~~((;))~~ shall, as  
3 provided by SMC Chapter 15.76, pay ~~((to))~~ the City ~~((such))~~ the amounts ~~((as may be justly~~  
4 ~~chargeable))~~ charged by ((said)) the City as costs ((of inspection of said)) to inspect the tunnel  
5 during construction, reconstruction, repair, annual structural inspections, and at other times  
6 deemed necessary to ensure the safety of ((said)) the tunnel~~((, as provided by Municipal Code~~  
7 ~~Section 15.76))~~.

8  
9 **13B. Inspection reports.** The Permittee, its successors and assigns shall submit to the  
10 Director, or to the Department of Transportation at an address as the Director may specify in  
11 writing from time to time, an inspection report that:

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

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

23  
24 **13C. Annual fee.** Beginning on May 12, 2010, the Permittee shall promptly pay to the  
25 City ((in advance)) upon statements or invoices ((rendered)) issued by the Director, an annual fee  
26 ((of \$4,109.00 for the period beginning May 12, 2000, and ending May 11, 2005 for the  
27



1 ~~privileges granted and exercised hereunder as established by Ordinance 121493. At the end of~~  
2 ~~this period, adjustments)) of \$4,362 or as adjusted annually thereafter, for the privileges granted~~  
3 ~~by this ordinance.~~

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

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

22  
23 (a) ~~The Permittee will take affirmative action to ensure that applicants are employed and~~  
24 ~~that employees are treated during employment without regard to their race, religion,~~  
25 ~~creed, color, age, national origin or the presence of any sensory, mental or physical~~  
26 ~~handicap. Such action shall include, but not be limited to, the following:~~  
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1           ~~employment, upgrading, demotion or transfer, recruitment or recruitment advertising,~~  
2           ~~layoff or termination, rates of pay or other forms of compensation and selection for~~  
3           ~~training, including apprenticeship.~~

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

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

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19  
20           ~~Failure to comply with any of the terms of this provision shall be a material violation of~~  
21           ~~this ordinance.~~

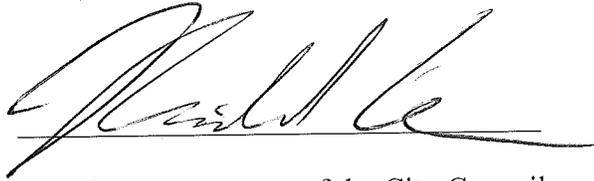
22           ~~The foregoing paragraphs shall be inserted in any subcontracts for work~~  
23           ~~undertaken pursuant to this ordinance in connection with the design, architectural or structural~~  
24           ~~engineering work or the repair, or maintenance of the tunnel permitted hereunder, unless the~~  
25           ~~Director authorizes the use of another equality of employment opportunity provision.))~~  
26  
27  
28





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

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

7  
8 

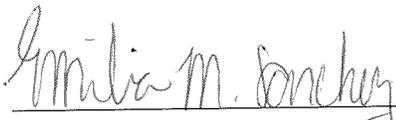
9  
10 President \_\_\_\_\_ of the City Council

11  
12 Approved by me this 10<sup>th</sup> day of May, 2011.

13  
14 

15  
16 Michael McGinn, Mayor

17  
18 Filed by me this 10<sup>th</sup> day of May, 2011.

19  
20   
21 \_\_\_\_\_  
22 for City Clerk, Monica Martinez Simmons

23 (Seal)  
24  
25  
26  
27  
28



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

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

**Legislation Title:**

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

**Summary of the Legislation:**

This legislation amends Ordinance 115021, as amended by Ordinance 121493 and 121855, for the Swedish Health Services to continue maintaining and operating the existing pedestrian tunnel located under and along the easterly side of Broadway at East Cherry Street. An area map is attached for reference.

The permit is renewed for a ten-year term starting on May 12, 2010. The legislation updates the insurance and surety bond provisions as recommended by the City Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires Swedish Health Services to pay the City an annual fee of \$4,362 starting from the last paid annual fee invoice, May 12, 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 to this fiscal note for reference.

**Background:**

By Ordinance 115021, the City granted permission to the Broadway Medical Center Limited Partnership to construct, maintain, and operate a pedestrian tunnel located under and along the easterly side of Broadway at East Cherry Street, for a ten-year term, renewable for two successive ten-year terms.

By Ordinance 121493, the permission authorized by Ordinance 115021 was transferred to the Swedish Health Services, renewed for a ten-year term, and was due for renewal on May 11, 2010.



Ordinance 115021 was amended by Resolution 29206 and Ordinances 121493 and 121855.

Please check one of the following:

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

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

**Appropriations:** N/A

**Anticipated Revenue/Reimbursement: Resulting from this Legislation:**

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

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2011 Revenue</b>	<b>2012 Revenue</b>
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2010 Fee = \$4,362 2011 Fee = \$4,364	TBD
<b>TOTAL</b>			\$8,726	<b>TBD</b>

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

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

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

**Spending/Cash Flow:** N/A

**What is the financial cost of not implementing the legislation?**

If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$4,362. 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 115021, would no longer be permitted.

**Does this legislation affect any departments besides the originating department?**

None.



**What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

None.

**Is the legislation subject to public hearing requirements?**

No.

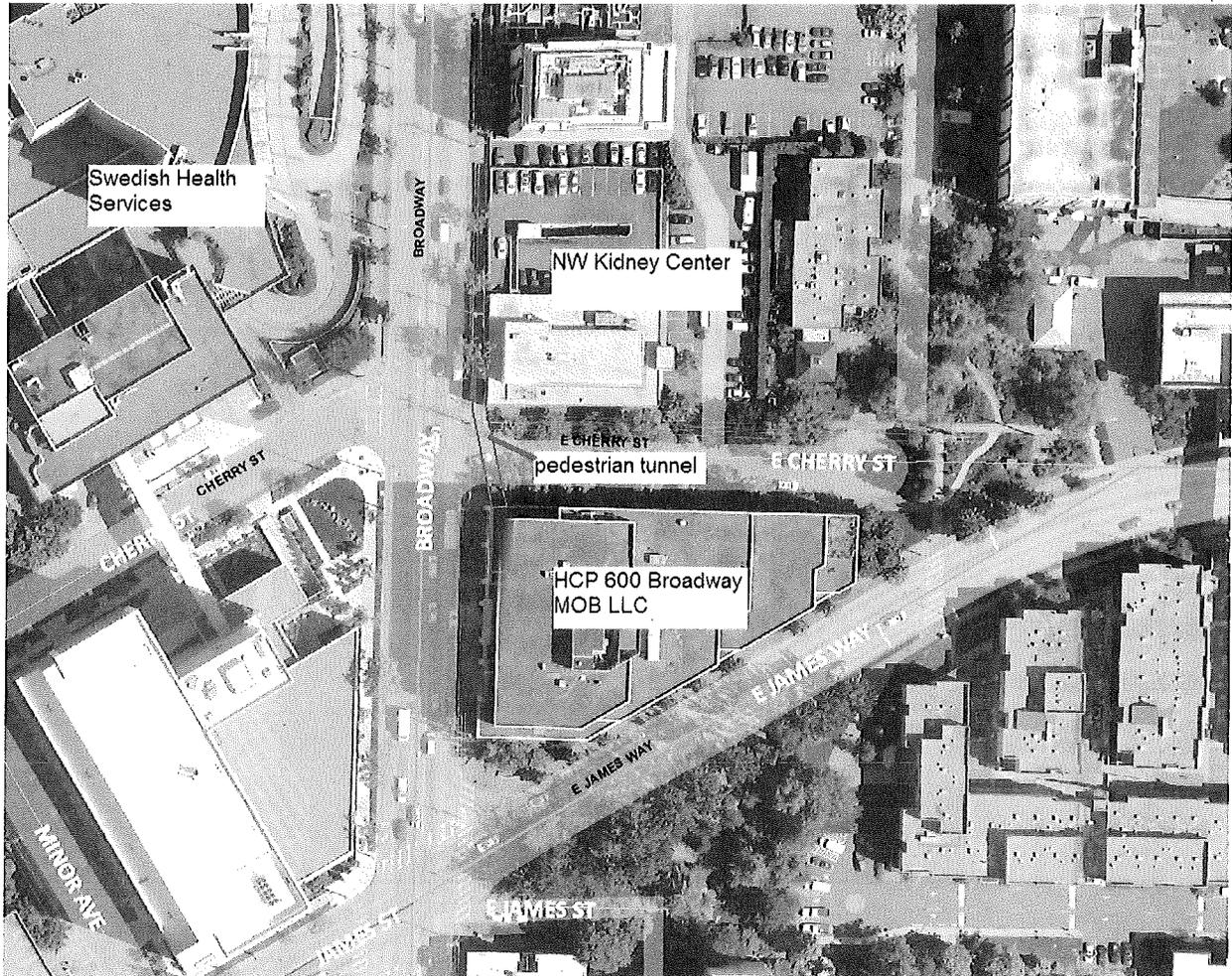
**Other Issues:** (Include long-term implications of the legislation.)

N/A

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

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

### Attachment A – Swedish Broadway Tunnel Area Map



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



Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 2/1/11

<p>Summary: <b>Land Value:</b> \$155/SF <b>First Year Permit Fee:</b> <b>\$4,362</b></p>
------------------------------------------------------------------------------------------------------

I. Property Description:

Existing subsurface pedestrian tunnel under and along the easterly side of Broadway, at East Cherry Street. The tunnel connects the properties of 600 Broadway and 700 Broadway (NW Kidney Center). Adjacent tax parcels are listed below. The tunnel is **1,407 square feet**.

Applicant:

Swedish Health Services

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 2197600250; 32,731 square feet

Tax year 2010 Appraised Land Value \$5,073,300  
Assessed at \$155/SF

2. Parcel 1978201435; 22,983 SF

Tax year 2010 Appraised Land Value \$3,562,300  
Assessed at \$155/SF

Average 2010 tax assessed land value: \$155/SF

II. Annual Fee Assessment:

The 2010 permit fee is calculated as follows:  $(\$155/\text{SF}) \times (1407 \text{ SF}) \times (25\%) \times (8\%) =$   
**\$4,362**, where 25% is the degree of alienation for a pedestrian tunnel and 8% is estimated annual rate of return.

Fee methodology authorized under Ordinance 123485.





**City of Seattle**  
Office of the Mayor

April 12, 2011

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

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that will grant to Swedish Health Services a ten-year renewal permit for an existing pedestrian tunnel under and along the easterly side of Broadway at East Cherry Street, as authorized by Ordinance 115021.

Use of the existing tunnel, which was authorized by Ordinance 115021 and amended by Ordinances 121493 and 121855, provides an underground connection for pedestrians between the 600 Broadway Building and the Northwest Kidney Center tunnel that crosses under Broadway. 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



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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271061  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

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

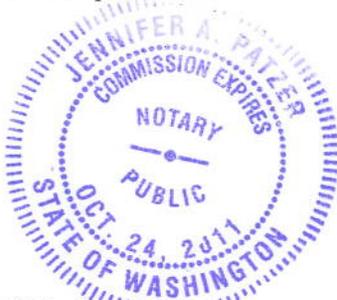
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123597-123601 TITLE

was published on

05/13/11

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



Affidavit of Publication

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

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

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

# State of Washington, King County

## City of Seattle

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

### ORDINANCE NO. 123597

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

### ORDINANCE NO. 123598

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

### ORDINANCE NO. 123599

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

### ORDINANCE NO. 123600

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

### ORDINANCE NO. 123601

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

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

5/13(271061)

Bond #: 69664  
OK# 123599



SURETY RIDER

Liberty Mutual Surety  
1001 4th Avenue, Suite 1700  
Seattle, WA 98154

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

To be attached to and form a part of

Bond No. 6264557

Type of Bond: Public Works Ordinance/Maintenance Bond  
Broadway/Cherry Street Tunnel

dated effective May 18, 2004  
(MONTH-DAY-YEAR)

executed by Swedish Health Services  
(PRINCIPAL)

, as Principal,

and by Safeco Insurance Company of America

, as Surety,

in favor of City of Seattle  
(OBLIGEE)

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

INCLUDING THE FOLLOWING LANGUAGE:

This bond includes Principal's obligations under the permit granted under Ordinance 115021 as amended by the following amending ordinances: Ordinance 121493, Ordinance 121855, and Ordinance 123599, effective retroactively as of the date of each amending ordinance.

Effective date of Ordinance 123599 is June 9, 2011

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

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

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

Swedish Hospital Medical Center  
(PRINCIPAL)

By: *[Signature]*  
(PRINCIPAL)

Safeco Insurance Company of America  
(SURETY)

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

Pamela A. Nelson



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

4620607

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

SAFECO INSURANCE COMPANY OF AMERICA  
SEATTLE, WASHINGTON  
POWER OF ATTORNEY

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

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

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

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

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

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

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

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

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



SAFECO INSURANCE COMPANY OF AMERICA

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

COMMONWEALTH OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

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

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



Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires Mar. 20, 2013  
Member, Pennsylvania Association of Notaries

By Teresa Pastella  
Teresa Pastella, Notary Public

CERTIFICATE

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

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

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

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



Gregory W. Davenport  
Gregory W. Davenport, Vice President

NOT VALID FOR MORTGAGE, NOTE, LOAN, LETTER OF CREDIT, BANK DEPOSIT, CURRENCY RATE, INTEREST RATE OR RESIDUAL VALUE GUARANTEES.

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

B-1169664



**SWEDISH**

747 Broadway  
Seattle, WA 98122-4307  
T 206.386.6000  
www.swedish.org

FILED  
CITY OF SEATTLE

2011 SEP 12 PM 3:19

CITY CLERK

August 2, 2011

Angela Steel  
Street Use Division  
Seattle Department of Transportation  
PO Box 34996  
Seattle, WA 98124-4996

Re: Ordinance No. 123599  
Swedish Broadway Tunnel Permit

Dear Ms. Steel:

This letter confirms that Swedish Health Services, a Washington non-profit corporation, accepts the condition of City of Seattle Ordinance 123599 allowing it to maintain and operate a pedestrian tunnel under and along Broadway Avenue at East Cherry Street.

The bond, proof of self-insurance, and structural report are enclosed herein. The annual fee required by the Ordinance will be submitted to you shortly under separate cover.

Sincerely,

Rodney E. Hochman, M.D.  
President  
Chief Executive Officer

Swedish Medical Center  
Ballard

Swedish Medical Center  
Cherry Hill

Swedish Medical Center  
First Hill

Swedish Medical Center  
Issaquah

Swedish Visiting Nurse  
Services