

#2
CB 117469

CITY OF SEATTLE
ORDINANCE _____

COUNCIL BILL 117469

AN ORDINANCE relating to a pedestrian skybridge over and across Alaskan Way West at West Prospect Street, amending Ordinance 120552, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Immunex Corporation; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 120552, the City of Seattle granted the Immunex Corporation permission to construct, operate, and maintain a pedestrian skybridge over and across Alaskan Way West at West Prospect Street, for a ten-year term, renewable for two successive ten-year terms; and

WHEREAS, the conditions of Ordinance 120552 were amended by Ordinance 121855; and

WHEREAS, the permission authorized by Ordinance 120552 was due for renewal on November 9, 2011; and

WHEREAS, the Immunex Corporation has submitted an application to the Seattle Department of Transportation Director (Director) to continue maintaining and operating the pedestrian skybridge; and

WHEREAS, the Immunex Corporation 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 the Immunex Corporation by Ordinance 120552 and amended by Ordinance 121855 to maintain and operate a pedestrian skybridge over and across Alaskan Way West at West Prospect Street, is renewed for a 20-year period starting November 10, 2011, and ending at 11:59 p.m. on November 9, 2031, upon the terms and conditions set forth in Ordinance 120552, as amended by Ordinance 121855, and as further amended by this ordinance.

1 Section 2. Sections 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Ordinance
2 120552, as amended by Ordinance 121855, are amended as follows:

3 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle
4 (City) grants permission ((is hereby granted)) (also referred to in this ordinance as a permit) to
5 Immunex Corporation, and its successors and assigns as approved by the Director of the Seattle
6 Department of Transportation (Director) according to and to the extent required by Section 14 of
7 this ordinance (the party named above and each approved successor and assign is referred to as
8 Permittee), to construct, maintain, and operate a pedestrian skybridge, elevator, and stairway
9 (skybridge) over and across ~~((the))~~ Alaskan Way West ~~((right-of-way))~~ at West Prospect Street
10 adjacent in whole or in part to the property legally described as:
11

12 Parcel A of Lot Boundary Adjustment No. 3010369, situate in the City of Seattle, King
13 County, Washington per plat recorded in Volume 80 of Plats, Pages 39-41, in the office of the
14 County Recorder of said County.
15

16 The pedestrian skybridge will span the railroad tracks in Alaskan Way West to provide
17 pedestrian and bicyclist access between Elliott Avenue West and the new Immunex research and
18 technology center and adjacent parks (Myrtle Edwards and Elliott Bay Parks).

19 2. **Term.** The permission ~~((herein))~~ granted to the Permittee~~((, its successors and assigns~~
20 ~~shall be))~~ is for a term of ten ~~((10))~~ years commencing on the effective date of ~~((this~~
21 ~~ordinance))~~ Ordinance 120552 and terminating at 11:59 p.m. on the last date of the tenth year ~~((,~~
22 ~~provided, however, that upon))~~ thereafter. Upon written application ~~((of))~~ made by the Permittee
23 at least ((thirty (30))) 180 days before expiration of the term, the ~~((Director of Transportation~~
24 ~~("Director")))~~ Director or the City Council may renew the permit ~~((for two (2) successive ten~~
25 ~~(10) year terms, provided further that the total not exceed thirty (30) years))~~ once, for a
26
27
28

1 successive 20-year term, subject to the right of ((The)) the City ((of Seattle (“City”) by ordinance
2 to then)) to require the removal of the pedestrian skybridge or to revise by ordinance any of the
3 terms and conditions ((contained herein)) of the permission granted by this ordinance. The total
4 term of the permission granted by this Ordinance, including renewals, shall not exceed 30 years.

5 The Permittee shall submit any application for a new permission no later than 180 days prior to
6 the expiration of the then-existing term.

7
8 **3. Protection of utilities.** The permission ((is hereby)) granted is subject to the Permittee
9 bearing the expense of any protection, support, or relocation of existing utilities ((at the time of
10 construction of the pedestrian skybridge that are)) deemed necessary by the ((owner)) owners of
11 the ((utility)) utilities, and ((shall be done at Permittee’s expense with)) the Permittee being
12 responsible for any ((subsequent)) damage to the utilities due to the construction, repair,
13 reconstruction, maintenance, operation, or removal of the pedestrian skybridge.

14
15 **4. Removal for public use or for cause.** The ((permit)) permission granted ((hereby)) is
16 subject to ((primary and secondary)) use of the street right-of-way or other public place
17 (collectively, public place) by the City and the public for travel ((and)), utility purposes, and
18 ((the)) other public uses or benefits. The City expressly reserves the right to deny renewal, or
19 terminate the permission at any time prior to expiration of the initial term or any renewal term,
20 and require the Permittee to remove the pedestrian skybridge, or any part thereof or installation
21 on the public place, at the Permittee’s sole cost and expense in the event that:

22
23 (a) ((The)) the City Council determines((;)) by ordinance((;)) that the space occupied by
24 the pedestrian skybridge is necessary for any ((primary and secondary)) public use or benefit((;))
25 or that the pedestrian skybridge interferes with any ((primary and secondary)) public use or
26 benefit; or
27

1 (b) the Director determines that use of the pedestrian skybridge has been abandoned; or

2 (c) ~~((The))~~ the Director ((of Transportation (“Director”))) determines that any term or
3 condition of this ordinance has been violated, and ((such)) the violation has not been corrected
4 by the Permittee ((after notice of violation has been given)) by the compliance date after a
5 written request by the City ((and the Permittee has had sixty (60) days thereafter to correct the
6 violation)) to correct the violation (unless a notice to correct is not required due to an immediate
7 threat to the health or safety of the public). Such compliance date shall not be less than 60 days
8 from the date the written notice is mailed.

9
10 A City Council determination that the space is ~~((necessary for a primary or secondary))~~
11 needed for, or the pedestrian skybridge interferes with, a public use or benefit ((shall be)) is
12 conclusive and final without any right of the Permittee to resort to the courts to adjudicate the
13 matter.

14
15 ***

16 **6. Permittee’s obligation to remove and restore.** ~~((In the event that the permit))~~ If the
17 permission granted is not renewed at the expiration of a term, or if the permission ((hereby
18 granted extends to its termination in thirty (30) years)) expires without an application for a new
19 permission being granted, or if the City ((orders)) terminates the permission, then within 90 days
20 after the expiration or termination of the permission, or prior to any earlier date stated in an
21 ordinance or order requiring removal of the pedestrian skybridge ((pursuant to the terms of this
22 ordinance, then within ninety (90) days after issuance of the necessary street use permit(s) for
23 removal pursuant to such expiration, termination or order of removal, or prior to the date stated
24 in an “Order to Remove”, as the case may be)), the Permittee shall, at its own expense, remove
25 the pedestrian skybridge and ((shall place)) all of the Permittee’s equipment and property from
26
27
28

1 the public place and replace and restore all portions of the ((street)) public place that may have
2 been disturbed for any part of the pedestrian skybridge((s)) in as good condition for public use as
3 ((they were)) existed prior to construction((s)) of the pedestrian skybridge and in at least as good
4 condition in all respects as the abutting portions ((thereof)) of the public place as required by
5 SDOT right-of-way restoration standards. The Director may extend the time for removal if
6 necessary in order for the Permittee to obtain approvals for removal from entities or agencies
7 with jurisdiction. ((Upon removal of the skybridge pursuant to his section, the Director shall issue
8 a certificate discharging the Permittee from responsibility under this ordinance for occurrences
9 after the date of such discharge.))

11 Failure to remove the pedestrian skybridge as required by this section is a violation of
12 Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however,
13 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this
14 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this
15 section, the City may in its sole discretion remove the pedestrian skybridge and restore the public
16 place at the Permittee's expense, and collect such expense in any manner provided by law.

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

1 7. **Repair or reconstruction.** (~~Except in instances of routine maintenance and repairs;~~
2 ~~the Permittee shall commence reconstruction, relocation, readjustment~~) The pedestrian
3 skybridge shall remain the exclusive responsibility of the Permittee and the Permittee shall
4 maintain the pedestrian skybridge in good and safe condition for the protection of the public.
5 Except in instances of routine maintenance and repairs, the Permittee shall not reconstruct or
6 repair ((of)) the pedestrian skybridge ((under the supervision of, and)) except in strict accordance
7 with plans and specifications approved by the Director. The Director may, in ~~((his/her))~~ the
8 Director's reasonable judgment ((may)), order ~~((such reconstruction, relocation, readjustment or~~
9 ~~repair of))~~ the pedestrian skybridge reconstructed or repaired at the Permittee's ~~((own))~~ cost and
10 expense because of: the deterioration or unsafe condition of the pedestrian skybridge~~((, grade~~
11 ~~separations, or))~~; the installation, construction, reconstruction, maintenance, operation, or repair
12 of any ~~((and all))~~ municipally-owned public utilities~~((,))~~; or for any other cause. ~~((As an~~
13 ~~alternative to reconstruction, relocation, readjustment or repair, the Permittee may remove the~~
14 ~~skybridge in its entirety.))~~

17 8. **Failure to correct unsafe condition.** After written notice to the Permittee~~((,))~~ and
18 failure of the Permittee to correct ~~((said))~~ an unsafe ~~((or risk-prone))~~ condition within the time
19 stated in ~~((such))~~ the notice, which shall not be less than 60 days from the date the written notice
20 is mailed, the Director may order the pedestrian skybridge be closed or removed at the
21 Permittee's expense if the Director deems that ~~((it))~~ the pedestrian skybridge has become unsafe
22 or creates a risk of injury to the public. ~~((In a situation in which))~~ If there is an immediate threat
23 to the health or safety of the public, a notice to correct is not required.
24
25
26
27
28

1 **9. Continuing obligations.** ~~((Notwithstanding))~~ Notwithstanding termination or
2 expiration of the permission granted, or closure or removal of the pedestrian skybridge, the
3 Permittee shall remain bound by all of its obligations under this ordinance until(~~(:~~
4 (a) ~~the pedestrian skybridge and all its equipment and property are removed from the~~
5 ~~street;~~
6 (b) ~~the area is cleared and restored in a manner consistent with Section 6; and,~~
7 (c) ~~the Director certifies that the Permittee has discharged its obligation herein. Provided,~~
8 ~~that upon prior notice to the Permittee and entry of written findings that such is in the public~~
9 ~~interest, the Director may, in his/her sole discretion, excuse the Permittee, conditionally or~~
10 ~~absolutely, from compliance with all or any of the Permittee's obligations to remove the~~
11 ~~pedestrian skybridge and its property and restore disturbed areas.)) the Director has issued a
12 certification that the Permittee has fulfilled its removal and restoration obligations under Section
13 6 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall
14 continue to be bound by the obligations in Section 10 of this ordinance and shall remain liable
15 for any unpaid fees assessed under Section 15 of this ordinance.~~

16 **10. Release, hold harmless, indemnification, and duty to defend.** ~~((The pedestrian~~
17 ~~skybridge shall remain the exclusive responsibility of the Permittee.))~~ The Permittee, by
18 ~~((acceptance))~~ accepting the terms of this ordinance ~~((and the permission hereby granted, does~~
19 ~~release)),~~ releases the City, its officials, officers, employees, and agents from any and all claims,
20 actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and
21 description arising out of or by reason of the pedestrian skybridge or this ordinance, including
22 but not limited to claims resulting from injury, damage, or loss to ((its own)) the Permittee or the
23
24
25
26
27
28

1 Permittee's property ~~((and does covenant and agree for itself, its successors and assigns, with~~
2 ~~The City of Seattle,))~~.

3 The Permittee agrees to at all times ~~((protect and save))~~ defend, indemnify, and hold
4 harmless ~~((The))~~ the City ~~((of Seattle))~~, its officials, officers, employees, and agents from and
5 against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of
6 every kind and description ~~((collectively, "Claims") (except to the extent such Claims))~~,
7 excepting only damages that may result from the sole negligence of the City ~~((, which))~~, that
8 may accrue to, be asserted by, or be suffered by ~~((;))~~ any person or ~~((persons and/or))~~ property
9 ~~((or properties,))~~ including, without limitation, damage, death, or injury to members of the public
10 or to the ~~((Permittee, its))~~ Permittee's officers, agents, employees, contractors, invitees, tenants
11 ~~((and))~~, tenants' invitees, licensees, or ~~((Permittee's))~~ successors and assigns, arising out of or by
12 reason of:

13 (a) the condition, construction, reconstruction, modification, maintenance, operation
14 ~~((or))~~, use, or removal of ~~((said))~~ the pedestrian skybridge ~~((;))~~ or any portion thereof, or ~~((by~~
15 ~~reason of))~~ the use of the public place or any portion thereof by the Permittee;

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

18 (c) the Permittee ~~((, its successors or assigns,))~~ failing or refusing to strictly comply with
19 ~~((each and))~~ every provision of this ordinance; ~~((and if any such Claim be))~~

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

1 against the City in any such suit or action, the Permittee(~~(, its successors and assigns,))~~ shall fully
2 satisfy ~~((said))~~ the judgment within ~~((ninety (90)))~~ 90 days after ~~((such))~~ the action or suit ~~((shall~~
3 ~~have))~~ has been finally determined, if determined adversely to the City. ~~((Provided, that if))~~ If it
4 is determined by a court of competent jurisdiction that Revised Code of Washington (RCW)
5 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result
6 from the concurrent negligence of(~~(:~~

7
8 (a)) the City, its agents, contractors, or employees(~~(;)),~~ and(~~(;~~

9 (b)) the Permittee, its agents, contractors, or employees ~~((or its successors or assigns)),~~

10 this indemnity provision shall be valid and enforceable only to the extent of the negligence of the
11 Permittee or the Permittee's agents, contractors, or employees ~~((or its successors or assigns)).~~

12 11A. **Insurance.** For as long as the Permittee(~~(, its successors or assigns, shall exercise))~~
13 exercises any permission granted by this ordinance and until the ~~((pedestrian skybridge is~~
14 ~~entirely removed from its location as described in Section 1 or until discharged by order of the))~~
15 Director ~~((as provided in))~~ has issued a certification that the Permittee has fulfilled its removal
16 and restoration obligations under Section 6 of this ordinance, the Permittee shall obtain and
17 maintain in full force and effect, at its own expense, insurance ~~((policies which fully protect))~~
18 and/or self-insurance that protects the Permittee and the City from ~~((any and all))~~ claims and risks
19 of ~~((any))~~ loss from perils ~~((which))~~ that can be insured against under commercial general
20 liability (CGL) insurance ~~((contracts and fire insurance contracts, including any extended~~
21 ~~coverage endorsements thereto which are customarily available from time to time,))~~ policies in
22 conjunction with:
23
24

25 (a) construction, reconstruction, modification, operation, maintenance, use, ~~((or))~~
26 existence, or removal of the pedestrian skybridge ~~((permitted by this ordinance))~~ or any portion
27

1 thereof, as well as restoration of any ((and all portions)) ~~disturbed areas of the public place in~~
2 connection with removal of the pedestrian skybridge;

3 (b) the Permittee's activity upon or the use or occupation of the ((areas)) public place
4 described in Section 1 of this ordinance((, as well as)); and

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

7
8 Minimum insurance requirements ((shall be a policy of comprehensive commercial
9 general liability of a form acceptable to the City.)) are CGL insurance based on the Insurance
10 Services Office (ISO) form CG 00 01 or equivalent. The City ((will require)) requires insurance
11 coverage to be placed with ((a company)) an insurer admitted and licensed to conduct business in
12 Washington State or with a surplus lines carrier pursuant to RCW Chapter 48.15 ((, except that if
13 it is infeasible to obtain such a policy, the City may approve an alternate company)). If coverage
14 is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-
15 insurance is subject to the reasonable approval by the City's Risk Manager.

16
17 Minimum ((policy)) limits of liability shall be \$2,000,000 ((per)) each occurrence
18 combined single limit bodily injury and property damage, with \$4,000,000 annual aggregate
19 ((each period)). Coverage shall ((specifically)) name the ((pedestrian skybridge exposure.
20 Liability coverage shall add by endorsement the)) "City of Seattle, its elected and appointed
21 officers, officials, employees and agents" as additional ((insured. Coverage shall contain))
22 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds
23 ((indicating essentially that except with respect to the limits of insurance, and any rights or duties
24 specifically assigned in this coverage part of the first name insured, and separately to each
25 insured against whom claim is made or suit is brought. The City will not accept a certificate of
26
27
28

1 ~~insurance as evidence of current coverage. Evidence of current coverage shall be submitted to~~
2 ~~the City in the form of a photocopy of the insurance policy declaration page, indicating all~~
3 ~~endorsements attached thereto, and is a condition to the validity of this permit)) clause.~~

4 Within 60 days after the effective date of this ordinance, the Permittee shall provide to
5 the City, or cause to be provided, certification of insurance coverage including an actual copy of
6 the blanket or additional insured policy provision per the ISO CG 20 12 endorsement or
7 equivalent. The insurance coverage certification shall be delivered or sent to the Director or to
8 the Department of Transportation at an address as the Director may specify in writing from time
9 to time. If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
10 may be submitted in lieu of the insurance coverage certification required by this ordinance, if
11 approved in writing by the City's Risk Manager. The letter of certification must provide all
12 information required by the City's Risk Manager and document, to the satisfaction of the City's
13 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in
14 force. After a self-insurance certification is approved, the City may from time to time
15 subsequently require updated or additional information. The approved self-insured Permittee
16 must provide 30 days' prior notice of any cancellation or material adverse financial condition of
17 its self-insurance program. The City may at any time revoke approval of self-insurance and
18 require the Permittee to obtain and maintain insurance as specified in this ordinance.

19
20
21
22 In the event that the Permittee assigns or transfers the permission granted by this
23 ordinance, the Permittee shall maintain in effect the insurance required under this section until
24 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

25
26 **11B. Adjustment of insurance and bond requirements.** The Director, in consultation
27 with the ((City)) City's Risk Manager and Permittee, may reasonably adjust minimum ((levels
28

1 ~~of~~) liability insurance levels and surety bond requirements during the term of this permission. If
2 the Director and City's Risk Manager determine that an adjustment attributable to a significant
3 increase in loss exposures is necessary to fully protect the interests of the City, ~~((The))~~ the
4 Director shall notify the Permittee of the new requirements in writing. ~~((Upon receipt, the))~~ The
5 Permittee shall, within 60 days of the date of the notice, provide proof of the ~~((required levels~~
6 ~~of))~~ required insurance and surety bond levels to the Director ~~((within 60 days))~~.

8 12. **Contractor insurance.** The Permittee shall exercise commercially reasonable efforts
9 to contractually require that any and all of its contractors performing ~~((construction))~~ work on the
10 skybridge contemplated by this permit~~((s))~~ name the "City of Seattle, its elected and appointed
11 officers, officials, employees and agents" as ~~((an))~~ additional ~~((insured on all policies of public~~
12 ~~liability insurance, and))~~ insureds for primary and non-contributory limits of liability on all CGL,
13 Automobile and Pollution liability insurance and/or self-insurance required to be carried by such
14 parties under such agreements with Permittee. The Permittee shall also exercise commercially
15 reasonable efforts to include in all contract documents ~~((entered into hereafter))~~ executed after
16 the effective date of this Ordinance with its contractors performing work on the skybridge
17 contemplated by this permit, a third-party beneficiary provision extending to the City
18 construction indemnities and warranties granted to the Permittee~~((to the City as well)),~~ if any,
19 under such contract documents.

22 13. **Performance bond.** Within ~~((sixty (60)))~~ 60 days after the effective date of this
23 ordinance, the Permittee shall deliver to the Director ~~((of Transportation))~~ for filing with the City
24 Clerk a ~~((good and))~~ sufficient bond executed by a surety company authorized and qualified to
25 do business in the State of Washington that is: in the ~~((sum of Fifty Thousand Dollars~~
26 ~~(\$50,000.00), executed by a surety company authorized and qualified to do business in the State~~

1 of Washington,)) amount of \$185,000, and conditioned with a requirement that the Permittee
2 ~~((will)) shall~~ comply with ((each and)) every provision of this ordinance and with ((each and))
3 every order ((of)) the Director ((pursuant thereto; provided, that if the Mayor of the City of
4 Seattle in his/her reasonable judgment shall deem any bond or bonds filed to be insufficient and
5 demand a new or additional bond, the)) issues under this ordinance. The Permittee shall ((furnish
6 a new or additional bond in such amount as the Mayor may specify to be reasonably necessary to
7 fully protect the City. Said bond shall remain)) ensure that the bond remains in effect until ((such
8 time as the pedestrian skybridge is entirely removed from its location as described in Section 1,
9 or until discharged by order of)) the Director ((as provided in)) has issued a certification that the
10 Permittee has fulfilled its removal and restoration obligations under Section 6 of this ordinance.
11 An irrevocable letter of credit approved by the City's Risk Manager may be substituted for the
12 bond upon approval of the Director. In the event that the Permittee assigns or transfers the
13 permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of
14 credit required under this section until the Director has approved the assignment or transfer
15 pursuant to Section 14 of this ordinance.

16
17
18 **14A. Consent for and conditions of assignment or transfer.** ~~((The))~~ Except as
19 provided below, the permission granted by this ordinance shall not be assignable or transferable
20 by operation of law; nor shall the Permittee((, its successors and assigns shall not)) transfer or
21 assign ((or transfer)) any privileges conferred by this ordinance without the consent of the
22 Director or the City Council by resolution. Notwithstanding anything contained herein to the
23 contrary, consent of the City Council or Director shall not be required for any transfer or
24 assignment of the privileges conferred by this ordinance to an affiliate or to a successor by
25 reason of Permittee's merger, sale of all or substantially all of its assets, or other form of

1 acquisition, or by way of mortgage, pledge or encumbrance, or by way of foreclosure or deed in
2 lieu of foreclosure of any mortgage, pledge or encumbrance. If permission is granted or if
3 permission is not required pursuant to the provisions above, the assignee or transferee shall be
4 bound by all terms and conditions of this ordinance. The Director or City Council may approve
5 assignment or transfer of the permission granted by this ordinance to a successor entity only if
6 the successor or assignee has accepted in writing all of the terms and conditions of the
7 permission granted by this ordinance; has provided, at the time of the acceptance, the bond and
8 certification of insurance coverage required under this ordinance; and has paid any fees due
9 under Section 15 of this ordinance. Upon the Director's or City Council's approval of an
10 assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance
11 shall be conferred on the successors and assigns. Any person or entity seeking approval for an
12 assignment or transfer of the permission granted by this ordinance shall provide the Director with
13 a description of the current and anticipated use of the pedestrian skybridge.

14
15
16 **14B. Obligations run with the Property.** The obligations and conditions imposed on
17 the Permittee by and through this ordinance are covenants that run with the land and bind
18 subsequent owners of the property adjacent to the pedestrian skybridge and legally described in
19 Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved
20 assignment or transfer of the permission granted herein to such subsequent owner(s). At the
21 request of the Director, Permittee shall provide to the Director a current title report showing the
22 identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee
23 shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in
24 the Property, deliver to the Director upon a form to be supplied by the Director, a covenant
25 agreement imposing the obligations and conditions set forth in this ordinance, signed and
26
27
28

1 acknowledged by the Permittee and any other owner(s) of the Property and recorded with the
2 King County Recorder's Office. The Director shall file the recorded covenant agreement with
3 the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number.

4 15A. **Inspection fees.** The Permittee(~~(, its successors and assigns,))~~ shall, as provided by
5 SMC Chapter 15.76 or successor provision, pay ~~((to The))~~ the City ~~((of Seattle such))~~ the
6 amounts ~~((as may be justly chargeable by said))~~ charged by the City ~~((as costs of inspection of~~
7 said)) to inspect the pedestrian skybridge during construction, reconstruction, repair, annual
8 ~~((structural))~~ safety inspections, and at other times deemed necessary ~~((to ensure the safety of the~~
9 skybridge, under the direction of the Director of Transportation)) by the City. An inspection or
10 approval of the skybridge by the City shall not be construed as a representation, warranty, or
11 assurance to the Permittee or any other person as to the safety, soundness, or condition of the
12 skybridge. Any failure by the City to require correction of any defect or condition shall not in any
13 way limit the responsibility or liability of the Permittee.

14 15B. **Annual fee.** Beginning on November 10, 2011, and annually thereafter, the
15 Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an
16 annual fee of \$2,589, or as adjusted annually thereafter, for the privileges granted by this
17 ordinance.

18 Adjustments to the annual fee shall be made in accordance with a term permit fee
19 schedule adopted by the City Council and may be made every year. In the absence of a schedule,
20 the Director may only increase or decrease the previous year's fee to reflect any inflationary
21 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by
22 adjusting the previous year's fee by the percentage change between the two most recent year-end
23 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All
24

1 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the
2 City Finance Director for credit to the Transportation Operating Fund.

3 16. **Inspection reports.** The Permittee shall ((conduct non-destructive testing of the
4 hangers and/or trusses and their connections every two years and at other times as deemed
5 necessary to ensure the safety of the skybridge; said inspections to be done by a certified testing
6 laboratory hired by Permittee. The results of these inspections shall be submitted to the Seattle
7 Transportation—Roadway Structures Division within thirty (30) days of the completion of the
8 testing.)) submit to the Director, or to the Department of Transportation at an address specified
9 by the Director, an inspection report that:

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

12 (b) includes inspection in conformance with the recommendations and procedures of the
13 Washington State Bridge Inspection Manual (WSBIM) and the Federal Highway Administration
14 (FHWA) National Bridge Inspection Standards (NBIS), including non-destructive testing of the
15 hangers or trusses and their connections only in the event such testing is deemed necessary by
16 said procedures and standards;

18 (c) describes any damages or possible repairs to any element of the pedestrian skybridge;

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

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

21 A report meeting the foregoing requirements shall be submitted within 60 days after the effective
22 date of this ordinance; subsequent reports shall be submitted every 2 years, within 30 days prior
23 to the anniversary date of the last inspection report; provided that, in the event of a natural
24 disaster or other event that may have damaged the pedestrian skybridge, the Director may require
25 that additional reports be submitted by a date established by the Director. The inspection reports
26
27
28

1 required by Section 16 are in addition to the annual walkthrough safety inspection reports by the
2 City engineers. The Permittee has the duty of inspecting and maintaining the pedestrian
3 skybridge. The responsibility to submit structural inspection reports periodically or as required
4 by the Director does not waive or alter any of the Permittee's other obligations under this
5 ordinance. The receipt of any reports by the Director shall not create any duties on the part of
6 the Director. Any failure by the Director to require a report, or to require action after receipt of
7 any report, shall not waive or limit the obligations of the Permittee.

8
9 **17. Compliance with other laws.** ~~((The Permittee shall not discriminate against any~~
10 ~~employee or applicant for employment in connection with the design, architectural or structural~~
11 ~~engineering work or the repair, or maintenance of the pedestrian skybridge permitted to be~~
12 ~~erected pursuant to this ordinance, on the basis of race, religion, creed, color, sex, marital status,~~
13 ~~sexual orientation, political ideology, ancestry, age, national origin, or the presence of any~~
14 ~~sensory, mental or physical handicap unless based upon bona fide occupational qualification.~~

15
16 The foregoing commitment shall be implemented as follows:

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

23
24 b. ~~The Permittee shall ensure that contractors and subcontractors of the pedestrian~~
25 ~~skybridge addressed by this Ordinance shall post in conspicuous places available to such~~
26

1 ~~employees and applicants for such employment, notices setting forth the provisions of this non-~~
2 ~~discrimination clause.~~

3 ~~e. The Permittee shall ensure that contractors and subcontractors for construction of the~~
4 ~~pedestrian skybridge addressed by this Ordinance shall furnish to the Director of Human Rights~~
5 ~~or a successor official, upon his or her request and on such forms as may be provided, a report of~~
6 ~~the affirmative action taken in implementing this provision and will permit reasonable access to~~
7 ~~its records for the purposes of determining compliance with this Section. If, upon investigation,~~
8 ~~the Director of Human Rights finds probable cause to believe that the Permittee has failed to~~
9 ~~comply with any of the terms of this Section, the Permittee and the Director of Transportation~~
10 ~~will be so notified in writing. Within ten (10) days of receipt of the Director of Human Rights~~
11 ~~notice, the Director of Transportation shall give the Permittee an opportunity to be heard on the~~
12 ~~matter of compliance with this Section. The Director of Transportation shall designate a review~~
13 ~~officer, who shall consider the matter and make a recommendation to the Director of~~
14 ~~Transportation. If the Director of Transportation finds that there has been a violation of this~~
15 ~~Section, he or she may suspend the permission conferred pending full compliance with the terms~~
16 ~~of this Section.~~

17
18
19
20 Failure to comply with any of the terms of this provision shall be a material violation of
21 this ordinance. The foregoing paragraphs shall be inserted in any subcontracts for work
22 undertaken hereafter pursuant to this ordinance in connection with the design, architectural or
23 structural engineering work or the repair, or maintenance of the pedestrian skybridge permitted
24 to be maintained hereunder, unless the Director of Human Rights authorizes the use of another
25 equality of employment opportunity provision)) Permittee shall construct, maintain, and operate
26 the pedestrian skybridge in compliance with all applicable federal, state, County, and City laws
27

1 and regulations. Without limitation, in all matters pertaining to the pedestrian skybridge, the
2 Permittee shall comply with the City's laws prohibiting discrimination in employment and
3 contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair
4 Contracting Practices code, Chapter 14.10 (or successor provisions).

5 ***

6
7 Section 3. **Acceptance of terms and conditions.** The Permittee shall deliver to the
8 Director its written signed acceptance of the terms of this ordinance within 60 days after the
9 effective date of this ordinance. The Director shall file the written acceptance with the City
10 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by
11 this ordinance shall be deemed declined or abandoned and the permission granted deemed to be
12 lapsed and forfeited and the Permittee shall, at its own expense, remove the pedestrian skybridge
13 and all of the Permittee's equipment and property and replace and restore all portions of the
14 public place as provided in Section 6 of Ordinance 120552, as further amended by Ordinance
15 121855 and as further amended by this ordinance.
16

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

19 Section 5. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the
20 authority and in compliance with the conditions of this ordinance but prior to the effective date
21 of the ordinance is ratified and confirmed.
22
23
24
25
26
27
28

1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.
4

5 Passed by the City Council the ____ day of _____, 2012, and
6 signed by me in open session in authentication of its passage this
7 ____ day of _____, 2012.
8

9
10 _____
11 President _____ of the City Council

12 Approved by me this ____ day of _____, 2012.
13

14
15 _____
16 Michael McGinn, Mayor

17 Filed by me this ____ day of _____, 2012.
18

19 _____
20 Monica Martinez Simmons, City Clerk

21 (Seal)
22
23
24
25
26
27
28

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:

AN ORDINANCE relating to a pedestrian skybridge over and across Alaskan Way West at West Prospect Street, amending Ordinance 120552, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Immunex Corporation; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:

This legislation amends Ordinance 120552, as amended by Ordinance 121855, for the Immunex Corporation to continue maintaining and operating the existing pedestrian skybridge located over and across Alaskan Way West at West Prospect Street. An area map is attached for reference.

This permit is renewed for a 20-year term starting on November 10, 2011. 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 the Immunex Corporation to pay the City an annual fee of \$2,589 starting from November 10, 2011, and annually thereafter. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by Ordinance 123485. An Annual Fee Appraisal Summary is attached for reference.

Background:

By Ordinance 120552, the City granted permission to the Immunex Corporation to construct, operate, and maintain a pedestrian skybridge over and across Alaskan Way West at West Prospect Street, for a ten-year term, renewable for two successive ten-year terms.

The conditions of Ordinance 120552 were amended by Ordinance 121855. The permission authorized by Ordinance 120552 was due for renewal on November 9, 2011.

Please check one of the following:

x **This legislation has financial implications.**

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2011 fee: \$2,589 2012 fee: \$2,589	TBD
TOTAL			\$5,178	TBD

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

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 \$2,589. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.
- 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?** None
- 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.

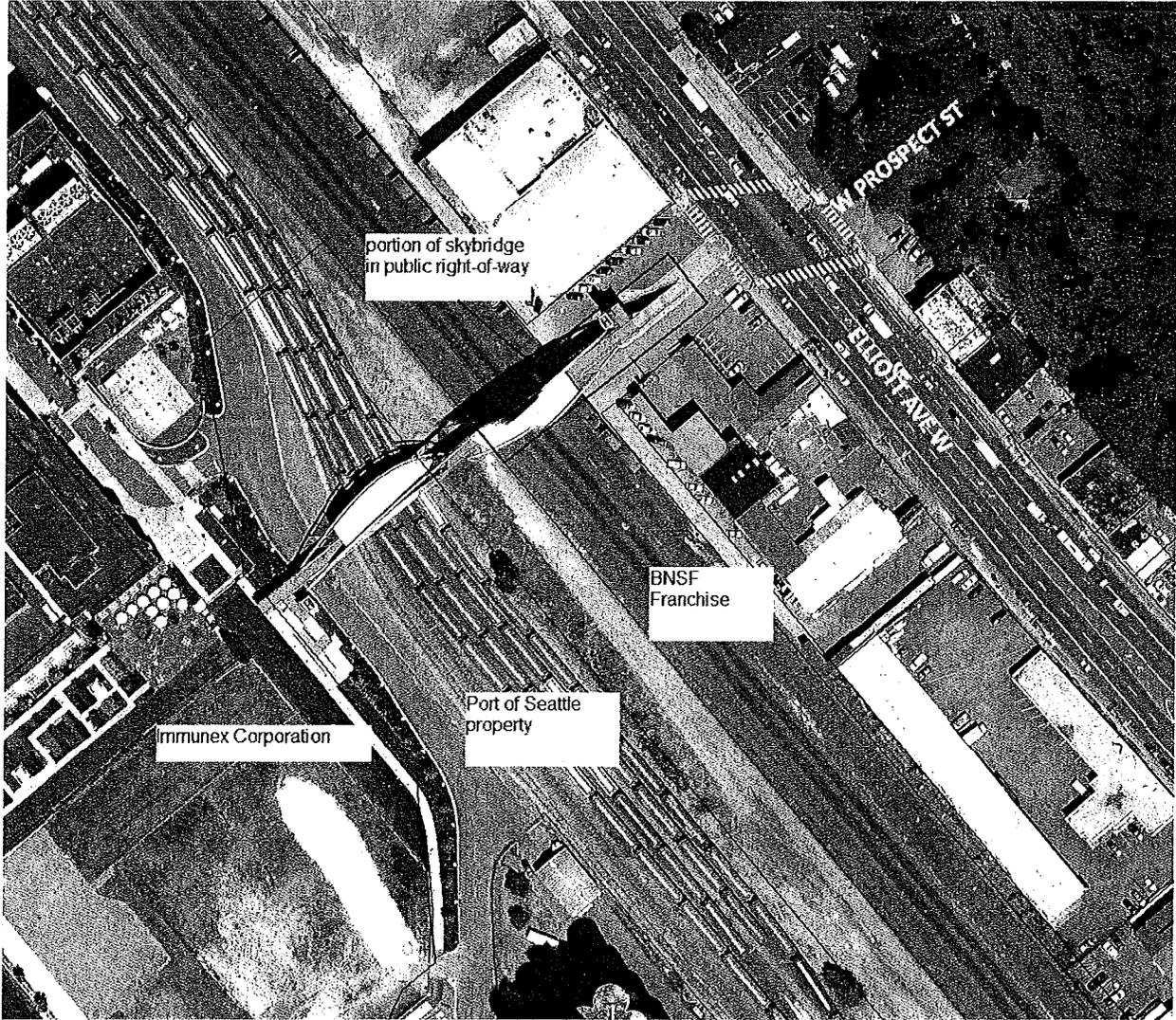
h) Other Issues: N/A

List attachments to the fiscal note below:

Attachment A – Immunex Skybridge Area Map

Attachment B – Annual Fee Assessment Summary

Attachment A – Immunex Skybridge 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: 3/30/12

<p><u>Summary:</u> Land Value: \$50/SF First Year Permit Fee: \$2,589</p>
--

I. Property Description:

Existing pedestrian skybridge located over and across Alaskan Way West, at West Prospect Street. The skybridge provides a connection over the railroad lines from Elliott Avenue West to the Puget Sound and Elliott Bay trail. Adjacent tax parcels are listed below. The public skybridge bridge-deck and stairwell is **5,752 square feet** and the at-grade elevator is **90 square feet**.

Applicant:

Immunex Corporation

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 7666201885; 26,328 square feet

Tax year 2011 Appraised Land Value \$1,448,000
Assessed at \$55/SF

2. Parcel 3879902145; 44,400 SF

Tax year 2011 Appraised Land Value \$2,886,000
Assessed at \$65/SF

3. Parcel 7666201903; 201,320 square feet

Tax year 2011 Appraised Land Value \$10,066,000
Assessed at \$50/SF

4. Parcel 7666201887; 19,871 square feet

Tax year 2011 Appraised Land Value \$794,800
Assessed at \$40/SF

5. Parcel 7666202000; 11,007 square feet

Tax year 2011 Appraised Land Value \$440,200
Assessed at \$40/SF

Average 2011 tax assessed land value: \$50/SF

II. Annual Fee Assessment:

The 2011 permit fee is calculated separately for the above-grade and at-grade portions of the skybridge/stair and elevator as follows:

- A. Skybridge: $(\$50/\text{SF}) \times (5,725 \text{ SF}) \times (10\%) \times (8\%) = \boxed{\$2301}$, where 10% is the degree of alienation for a public-use skybridge and 8% is estimated annual rate of return.
- B. At-grade elevator: $(\$50/\text{SF}) \times (90 \text{ SF}) \times (80\%) \times (8\%) = \boxed{\$288}$, where 80% is the degree of alienation for at-grade structures (elevator) and 8% is estimated annual rate of return.

The total annual fee is \$2,589 for 2011.

Fee methodology authorized under Ordinance 123485.



City of Seattle
Office of the Mayor

May 1, 2012

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 will grant to the Immunex Corporation a twenty-year renewal permit for an existing pedestrian skybridge over and across Alaskan Way West, at West Prospect Street, as authorized by the proposed amendment.

The existing skybridge provides an aerial connection over the railroad tracks for pedestrians to connect with the Puget Sound and Elliott Bay Trail from Elliott Avenue West. In addition to granting a new 20-year permit renewal, the proposed Council Bill updates the insurance and bond requirements, incorporates an 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