

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118148

AN ORDINANCE relating to a pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East; amending Ordinance 122597; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to Group Health Cooperative, formerly known as Group Health Cooperative of Puget Sound; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 102519, the City of Seattle granted permission to Group Health Cooperative of Puget Sound to construct, operate, and maintain a pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East; and

WHEREAS, the permission granted by Ordinance 102519, as amended by Ordinances 103242, 113876, and 119342, expired in 2003 and the permission was reauthorized by Ordinance 122597 for a ten-year term, renewable for two successive ten-year terms; and

WHEREAS, the permission authorized by Ordinance 122597 was due for renewal on September 27, 2013; and

WHEREAS, Group Health Cooperative has submitted an application to the Seattle Department of Transportation Director ("Director") to continue maintaining and operating the pedestrian tunnel; and

WHEREAS, Group Health Cooperative, formerly known as Group Health Cooperative of Puget Sound, 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 Group Health Cooperative by Ordinance 122597 to maintain and operate a pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East, is renewed for a ten-year period starting September 28, 2013, and ending at 11:59

1 p.m. on September 27, 2023, upon the terms and conditions set forth in Ordinance 122597, and
2 as further amended by this ordinance.

3 Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Ordinance 122597
4 are amended as follows:

5 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle
6 ("City") grants permission ((is hereby granted)) (also referred to in this ordinance as a permit) to
7 Group Health Cooperative, formerly known as Group Health Cooperative of Puget Sound, and
8 its successors and assigns (((("Permittee")))) as approved by the Director of the Seattle
9 Department of Transportation ("Director") according to Section 13A of this ordinance (the party
10 named above and each approved successor and assign is referred to as "Permittee"), to maintain
11 and operate a tunnel for pedestrian and hospital purposes ("tunnel") under and across East
12 Thomas Street, east of 15th Avenue East ((Avenue, connecting Block 5, Lot 1 of Harper's
13 Addition to Block 4, Lots 3-8 of D.M. Crane's Addition between properties known as King
14 County parcel numbers 1806900305 and 3117000005; the pedestrian tunnel is)), located
15 approximately 65 feet east of 15th Avenue East and occupies a horizontal space of approximately
16 16 feet and a vertical space of approximately 20 feet adjacent in whole or in part to the property
17 legally described as:

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21 PARCEL 1:

22 LOTS 1 THROUGH 12 IN BLOCK 5 OF HARPERS ADDITION, AS PER PLAT
23 PRECORDED IN VOLUME 3 OF PLATS, PAGE 45, RECORDS OF KING COUNTY;

24 TOGETHER WITH THE NORTH 1/2 OF VACATED EAST JOHN STREET
25 ADJOINING SAID LOTS 1 AND 12, AS WOULD ATTACH BY OPERATION OF
26 LAW UNDER ORDINANCE 86142, 90425 AND 95094 OF THE CITY OF SEATTLE;

1 AND TOGETHER WITH VACATED ALLEY IN SAID BLOCK 5, AS WOULD
2 ATTACH BY OPERATION OF LAW UNDER ORDINANCE 95094 OF THE CITY
OF SEATTLE;

3 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
4 WASHINGTON.

5 PARCEL 2:

6 LOTS 1, 2 AND 12 IN BLOCK 12 OF SUMMIT ADDITION, AS PER PLAT
7 RECORDED IN VOLUME 1 OF PLATS, PAGE 109, RECORDS OF KING COUNTY;

8 TOGETHER WITH THE SOUTH 1/2 OF VACATED EAST JOHN STREET
9 ADJOINING SAID LOTS 1 AND 12 AS WOULD ATTACH BY OPERATION OF
LAW UNDER ORDINANCE 86142, 90425 AND 95094 OF THE CITY OF SEATTLE;

10 AND TOGETHER WITH THAT PORTION OF VACATED ALLEY IN SAID BLOCK
11 12 AS WOULD ATTACH BY OPERATION OF LAW UNDER ORDINANCE 95094
OF THE CITY OF SEATTLE;

12 EXCEPT THAT PORTION OF SAID LOT 12 (REMAINING AFTER VACATION
13 UNDER ORDINANCE 95094 OF THE CITY OF SEATTLE), CONVEYED TO THE
14 CITY OF SEATTLE BY DEEDS RECORDED AUGUST 18, 1959, UNDER
15 RECORDING NO. 5069633 AND RECORDED OCTOBER 30, 1962, UNDER
RECORDING NO. 5499451 FOR PUBLIC WALKWAY MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

16 THE SOUTH 10 FEET OF LOT 12, SAID BLOCK 12;

17
18 AND EXCEPT THAT PORTION OF THE SOUTH 10 FEET OF THE NORTH 12
19 FEET OF LOT 2, SAID BLOCK 12, LYING BELOW ELEVATION 415.5 FEET CITY
20 DATUM, AS CONVEYED TO THE CITY OF SEATTLE FOR PUBLIC WALKWAY
21 BY DEED RECORDED OCTOBER 30, 1962 UNDER RECORDING NO. 5499451;
AND EXCEPT THAT PORTION OF SAID LOT 2 CONVEYED TO THE CITY OF
SEATTLE FOR STREET PURPOSES BY DEED RECORDED OCTOBER 30, 1962,
UNDER RECORDING NO. 5499451, DESCRIBED AS FOLLOWS:

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23 THAT PORTION LYING SOUTHERLY OF A LINE BEGINNING AT THE
24 INTERSECTION OF THE WEST LINE OF SAID LOT AND A LINE 25 FEET
NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT;

25 THENCE EAST ALONG SAID PARALLEL LINE 111 FEET TO A POINT OF
26 CURVATURE;

1 THENCE NORTHERLY ALONG THE ARC OF A CURVE TO THE LEFT, HAVING
2 A RADIUS OF 9 FEET TO A POINT OF TANGENCY WITH THE EAST LINE OF
3 SAID LOT AND TERMINUS OF SAID LINE;

4 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
5 WASHINGTON;

6 PARCEL 3;

7 LOTS 3 THROUGH 11 IN BLOCK 12 OF SUMMIT ADDITION TO SEATTLE, AS
8 PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 109, RECORDS OF KING
9 COUNTY;

10 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
11 WASHINGTON;

12 PARCEL 7:

13 LOTS 3 THOUGH 8, 12 AND 13 IN BLOCK 4 OF D.M. CRANE ADDITION TO THE
14 CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE
15 71, RECORDS OF KING COUNTY;

16 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
17 WASHINGTON.

18 2. **Term.** The permission ~~((herein))~~ granted to the Permittee ~~((its successors and assigns
19 shall be))~~ is for a term of ten ~~((10))~~ years ~~((commencing))~~, starting on September 28, ~~((2003))~~
20 2013, and ~~((terminating))~~ ending at 11:59 p.m. on September 27, ~~((2013))~~ 2023 ~~((; provided,~~
21 ~~however, that upon))~~. Upon written application of the Permittee at least ~~((thirty (30)))~~ 180 days
22 before expiration of the term, the Director ~~((of Transportation ("Director")))~~ or the City Council
23 may renew the permit ~~((for two (2)))~~ twice, each time for a successive ten((10))-year ~~((terms,~~
24 ~~provided further that the total term of the permission as originally granted and thus extended~~
25 ~~shall not exceed thirty (30) years))~~ term, subject to the right of ~~((F))~~ the City ~~((of Seattle~~
26 ~~("City")))~~ to require the removal of the tunnel or to revise by ordinance ~~((to then revise))~~ any of

1 the terms and conditions (~~contained herein~~) of the permission granted by this ordinance. The
2 total term of the permission, including renewals, shall not exceed 30 years. The Permittee shall
3 submit any application for a new permission no later than 180 days prior to the expiration of the
4 then-existing term.

5 3. **Protection of utilities.** The permission granted is (~~hereby~~) subject to the Permittee
6 bearing the expense of any protection, support, or relocation of existing utilities deemed
7 necessary by the owners of the (~~utility and shall be done at Permittee's expense with~~) utilities,
8 and the Permittee being responsible for any (~~subsequent~~) damage to the utilities (~~to the~~
9 ~~extent~~) due to the construction, repair, reconstruction, maintenance, (~~or~~) operation, or removal
10 of the tunnel and for any consequential damages that may result from any damage to utilities or
11 interruption in service caused by any of the foregoing.

12 4. **Removal for public use or for cause.** The (~~permit~~) permission granted (~~hereby~~) is
13 subject to (~~primary and secondary~~) use of the street right-of-way or other public place
14 (collectively, public place) by the City and the public (~~of the street right-of-way~~) for travel
15 (~~and~~), utility purposes, and other public uses or benefits. (~~t~~) The City expressly reserves the
16 right to deny renewal, or terminate the permission at any time prior to expiration of the initial
17 term or any renewal term, and require the Permittee to remove the tunnel, or any part thereof or
18 installation on the public place at the Permittee's sole cost and expense in the event that:

- 19 a) the City Council determines(~~s~~) by ordinance(~~s~~) that the space occupied by the
20 tunnel is necessary for any (~~primary or secondary~~) public use or benefit(~~s~~) or
21 that the tunnel interferes with any (~~primary or secondary~~) public use or benefit;

22 or

- 1 b) the Director determines that use of the tunnel has been abandoned; or
- 2 c) the Director determines that any term or condition of this ordinance has been
- 3 violated, and ((such)) the violation ((is)) has not been corrected by the Permittee
- 4 by the compliance date after ((notice of violation has been given by the City)) a
- 5 written request by the City to correct the violation (unless a notice to correct is not
- 6 required due to an immediate threat to the health or safety of the public).

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8 A City Council determination that the space is ~~((necessary))~~ needed for, or the tunnel

9 interferes with, a ((primary or secondary)) public use or benefit ((shall be)) is conclusive and

10 final.

11 **5. Permittee's obligation to remove and restore.** ~~((In the event that))~~ If the permission

12 ~~((hereby)) granted ((extends to its termination in thirty (30) years and the Permittee is not~~

13 ~~granted an extension))~~ is not renewed at the expiration of a term, or if the permission expires

14 without an application for a new permission being granted, or if the City ((orders)) terminates the

15 permission (as may be specifically provided for herein), then within 210 days after the expiration

16 or termination of the permission, or prior to any earlier date stated in an ordinance or order

17 requiring removal of the tunnel ((pursuant to the terms of this ordinance, then within ninety (90)

18 days after such expiration, termination or order of removal, or prior to the date stated in an

19 "Order to Remove", as the case may be)), the Permittee shall, at its own expense, remove the

20 tunnel and all of the Permittee's equipment and property from the public place and ((shall place))

21 replace and restore all portions of the ((street)) public place that may have been disturbed for any

22 part of the tunnel((;)) in as good condition for public use as ((it was)) existed prior to

23 construction of the tunnel((;)) and in at least as good condition in all respects as the abutting

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1 portions (~~(thereof)~~) of the public place as required by SDOT right-of-way restoration standards.

2 (~~(Whereupon, the Director shall issue a certificate discharging the Permittee from responsibility~~
3 ~~under this ordinance for occurrences after the date of such discharge.)~~)

4 Failure to remove the tunnel as required by this section is a violation of Chapter 15.90 of
5 the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter
6 15.90 does not eliminate any remedies available to the City under this ordinance or any other
7 authority. If the Permittee does not timely fulfill its obligations under this section, the City may
8 in its sole discretion remove the tunnel and restore the public place at the Permittee's expense,
9 and collect such expense in any manner provided by law.

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

17 **6. Repair or reconstruction.** The tunnel shall remain the exclusive responsibility of the
18 Permittee and the Permittee shall maintain the tunnel in good and safe condition for the
19 protection of the public. The Permittee shall not (~~commence reconstruction, relocation,~~
20 ~~readjustment or~~) reconstruct or repair (~~(, other than routine maintenance, of)~~) the tunnel except
21 (~~(under the supervision of, and)~~) in strict accordance with plans and specifications approved by
22 the Director. The Director may, in (~~(his/her)~~) the Director's judgment (~~(may)~~), order (~~(such~~

1 ~~reconstruction, relocation, readjustment or repair of~~) the tunnel reconstructed or repaired at the
2 Permittee's ~~((own))~~ cost and expense because of: ~~((a))~~ the deterioration or unsafe condition of
3 the tunnel ~~((, or (b) grade separations, or))~~; the installation, construction, reconstruction,
4 maintenance, operation, or repair of any ~~((and all))~~ municipally-owned public utilities~~((;))~~; or
5 ~~((e))~~ for any other cause.

6 7. **Failure to correct unsafe condition.** After written notice to the Permittee ~~((;))~~ and
7 failure of the Permittee to correct ~~((the))~~ an unsafe ~~((or risk prone))~~ condition within the time
8 stated in ~~((such))~~ the notice, the Director may order the tunnel be closed or removed at the
9 Permittee's expense if the Director deems that ~~((it))~~ the tunnel has become unsafe or creates a
10 risk of injury to the public. ~~((In a situation in which))~~ If there is an immediate threat to the health
11 or safety of the public, a notice to correct is not required.

12 8. **Continuing obligations.** Notwithstanding termination or expiration of the permission
13 granted, or closure or removal of the tunnel, the Permittee shall remain bound by all of its
14 obligations under this ordinance until ~~((:~~

15 a) ~~the tunnel and all its equipment and property are removed from the street;~~

16 b) ~~the area is cleared and restored in a manner and to a condition satisfactory to the~~

17 ~~Director; and~~

18 c) ~~the Director certifies that the Permittee has discharged its obligation herein.~~

19 ~~Provided, that upon prior notice to the Permittee and entry of written findings that such is~~
20 ~~in the public interest, the Director may, in his/her sole discretion, excuse the Permittee,~~
21 ~~conditionally or absolutely, from compliance with all or any of the Permittee's obligations to~~
22 ~~remove the tunnel and its property, and restore disturbed areas.))~~ the Director has issued a

1 certification that the Permittee has fulfilled its removal and restoration obligations under Section
2 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall
3 continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for
4 any unpaid fees assessed under Section 14 of this ordinance.

5 9. **Release, hold harmless, indemnification, and duty to defend.** ~~((The tunnel shall~~
6 ~~remain the exclusive responsibility of the Permittee.))~~ The Permittee, by ~~((acceptance))~~ accepting
7 the terms of this ordinance ~~((and the permission hereby granted, does release)),~~ releases the City,
8 its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss,
9 costs, expense, attorneys' fees, or damages of every kind and description, excepting those caused
10 by the willful or negligent acts or omissions of the City, its officials, officers, employees, and
11 agents, arising out of or by reason of the tunnel or this ordinance, including but not limited to
12 claims resulting from injury, damage, or loss to the Permittee or the Permittee's ~~((own))
13 property~~
14 ~~((and does covenant and agree for itself, its successors and assigns, with the City,)).~~

15 The Permittee agrees to at all times ~~((protect and save))~~ defend, indemnify, and hold
16 harmless ~~((The))~~ the City, its officials, officers, employees, and agents, from and against all
17 claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and
18 description, ~~((excepting only~~ ~~((such))
19 damages that may result from the willful or negligent~~
20 acts or omissions of the City, its officials, officers, employees, and agents ~~((, which)),~~ that may
21 accrue to, be asserted by, or be suffered by ~~((any person or~~ ~~((persons and/or))
22 property~~ ~~((or~~
23 properties,)) including, without limitation, damage, death, or injury to ~~((the Permittee, its))
24 members of the public or to the Permittee's officers, agents, employees, contractors, invitees,
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1 tenants (~~and~~), tenants' invitees, licensees, or (~~its~~) successors and assigns, arising out of or

2 (~~(a)~~) by reason of:

3 (a) the existence, condition, construction, reconstruction, modification, maintenance,
4 operation (~~or~~), use, or removal of the tunnel (~~or~~) or any portion thereof, or the use, occupation,
5 or restoration of the public place or any portion thereof by the Permittee or any other person or
6 entity;

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

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

14
15 If any (~~such~~) suit, action, or claim (~~be~~) of the nature described above is filed,
16 instituted, or begun against the City, the Permittee(~~, its successors or assigns,~~) shall(~~or~~) upon
17 notice (~~thereof~~) from the City(~~or~~) defend the (~~same~~) City, with counsel acceptable to the City,
18 at (~~its or their~~) the sole cost and expense of the Permittee, and (~~in case~~) if a judgment (~~shall~~
19 be) is rendered against the City in any suit or action, the Permittee(~~, its successors or assigns,~~)
20 shall fully satisfy the judgment within (~~ninety-~~)90(~~or~~) days after (~~such~~) the action or suit
21 (~~shall have~~) has been finally determined, if determined adversely to the City. (~~Provided that~~
22 if) If it is determined by a court of competent jurisdiction that Revised Code of Washington
23 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
24 result from the concurrent negligence of(~~or~~) the City, its agents, contractors, or

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

5 **10A. Insurance.** For as long as the Permittee (~~(, its successors or assigns, shall exercise)~~)
6 exercises any 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))~~ has issued a certification that the Permittee has fulfilled its removal and restoration
9 obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full
10 force and effect, at its own expense, insurance ((policies which fully protect)) and/or self-
11 insurance that protects the Permittee and the City from ((any all)) claims and risks of ((any)) loss
12 from perils ((which)) that can be insured against under commercial general liability (CGL)
13 insurance ((contracts and fire insurance contracts, including any extended coverage
14 endorsements thereto which are customarily available from time to time,)) policies in
15 conjunction with:

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18 a) construction, reconstruction, modification, operation, maintenance, use (~~((or)),~~
19 existence, or removal of the tunnel (~~((permitted by this ordinance and of any and all))~~
20 or any portion(s) thereof, as well as restoration of any disturbed areas of the public
21 place in connection with removal of the tunnel;
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23 b) the Permittee's activity upon or the use or occupation of the (~~((area))~~) public place
24 described in Section 1 of this ordinance((, as well as)); and
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1 c) ~~((any and all))~~ claims and risks in connection with ~~((and activity))~~ activities

2 performed by the Permittee by virtue of the permission granted by this ordinance.

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

11
12 Minimum ~~((policy))~~ limits of liability shall be \$2,000,000 per ~~((e))~~ Occurrence ~~((and));~~
13 \$4,000,000 ~~((annual aggregate each period.))~~ General Aggregate; \$2,000,000
14 Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising
15 Injury; Contractual Liability. Coverage shall ~~((specifically name the tunnel exposure. Liability~~
16 ~~coverage shall add by endorsement the))~~ include the "City of Seattle, its ~~((elected and~~
17 ~~appointed))~~ officers, officials, employees and agents" as ~~((insured. Coverage shall contain a~~
18 ~~Separation of Insureds clause indicating essentially that "except with respect to the limits of~~
19 ~~insurance, and any rights or duties specifically assigned in this coverage part of the first named~~
20 ~~insured, this insurance applies as if each named insured were the only named insured, and~~
21 ~~separately to each insured against whom claim is made or suit is brought"~~.

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24 The City will not accept a certificate of insurance as evidence of current coverage.
25 Evidence of current coverage shall be submitted to the City in the form of a copy of the
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1 ~~insurance policy declaration page, indicating all endorsements attached thereto, to the receipt of~~
2 ~~which is a requisite for the validity of this permit.~~

3 ~~The Director, in consultation with the City Risk Manager, may adjust minimum levels of~~
4 ~~liability insurance and surety bond requirements. The Director shall notify the Permittee of the~~
5 ~~new requirements in writing. Upon receipt, the Permittee shall provide proof of the required~~
6 ~~levels of insurance and surety bond to the Director within 60 days.~~

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8 ~~Should the Permittee be self insured, a letter from the Corporate Risk Manager, or~~
9 ~~appropriate Finance Officer, is acceptable, stipulating if actuarially funded and funds limit: plus~~
10 ~~any excess declaration pages to meet the contract requirements. Further, this letter shall advise~~
11 ~~how Permittee would protect and defend the City of Seattle as an Additional Insured in their~~
12 ~~Self-Insured layer, and include claims handling directions in the event of a claim.)) certificate~~
13 ~~holders. In the event Permittee ceases to self insure, or Permittee's program of self insurance~~
14 ~~allows the addition of 'additional insureds', then Permittee will include the City of Seattle as~~
15 ~~additional insured under Permittee's coverage.~~

16
17 ~~Within 60 days after the effective date of this ordinance, the Permittee shall provide to~~
18 ~~the City, or cause to be provided, certification of insurance coverage including an actual copy of~~
19 ~~the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement~~
20 ~~or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to~~
21 ~~the Department of Transportation ("SDOT") at an address as the Director may specify in writing~~
22 ~~from time to time. The Permittee shall provide a certified complete copy of the insurance policy~~
23 ~~to the City promptly upon request.~~

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

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14 In the event that the Permittee assigns or transfers the permission granted by this
15 ordinance, the Permittee shall maintain in effect the insurance required under this section until
16 the Director has approved the assignment or transfer pursuant to Section 13A.

17 **10B. Adjustment of insurance and bond requirements.** The Director may adjust
18 minimum liability insurance levels and surety bond requirements during the term of this
19 permission. If the Director determines that an adjustment is necessary to fully protect the
20 interests of the City, the Director shall notify the Permittee of the new requirements in writing.
21 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted
22 insurance and surety bond levels to the Director.

23
24 **11. Contractor insurance.** The Permittee shall contractually require that any and all of
25 its contractors performing ((construction)) work on ((the)) any premises ((as)) contemplated by
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1 this permit~~((s))~~ name the "City of Seattle, its officers, officials, employees and agents" as ~~((an))~~
2 additional ~~((insured on all policies of public liability insurance, and))~~ insureds for primary and
3 non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance
4 and/or self insurance. The Permittee shall also include in all contract documents with its
5 contractors a third-party beneficiary provision extending to the City construction indemnities and
6 warranties granted to Permittee ((to the City as well)).

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8 12. **Performance bond.** Within ~~((sixty-))~~60~~((t))~~ days after the effective date of this
9 ordinance, the Permittee shall deliver to the Director ~~((of Transportation))~~ for filing with the City
10 Clerk a ~~((good and))~~ sufficient bond executed by a surety company authorized and qualified to
11 do business in the State of Washington that is: in the ((sum)) amount of ((~~\$50,000~~, executed by
12 a surety company authorized and qualified to do business in the State of Washington)) \$160,000,
13 and conditioned with a requirement that the Permittee ((will)) shall comply with ((each and))
14 every provision of this ordinance and with ((each and)) every order ((of)) the Director ((pursuant
15 thereto. The)) issues under this ordinance. The Permittee shall ensure that the bond ((shall))
16 remains in effect until ((such time as the tunnel is entirely removed from its location as described
17 in Section 1, or until discharged by order of the Director as provided in)) the Director has issued
18 a certification that the Permittee has fulfilled its removal and restoration obligations under
19 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in
20 consultation with the City Attorney's Office may be substituted for the bond. In the event that
21 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall
22 maintain in effect the bond or letter of credit required under this section until the Director has
23 approved the assignment or transfer pursuant to Section 13A of this ordinance.
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1 **13A. Consent for and conditions of assignment or transfer.** The ~~((right, privilege and~~
2 ~~authority hereby))~~ permission granted by this ordinance shall not be assignable or transferable by
3 operation of law~~((s));~~; nor shall the Permittee~~((s, their successors or assigns,))~~ assign, transfer,
4 mortgage, pledge, or encumber the same without the Director's consent ~~((of the Director)),~~
5 which ~~((consent))~~ the Director shall not unreasonably refuse. The Director may approve
6 assignment ~~((and/or transfer))~~ or transfer of the ~~((permit))~~ permission granted by this ordinance
7 to a successor entity ~~((in the case of a change of name and/or ownership provided that))~~ only if
8 the successor or assignee has ~~((demonstrated its acceptance of))~~ accepted in writing all of the
9 terms and conditions of the permission granted ~~((to the initial Permittee. Notwithstanding~~
10 ~~anything contained herein to the contrary, consent of the Director shall be not required for any~~
11 ~~transfer or assignment of the privileges conferred by this ordinance by way of mortgage, pledge~~
12 ~~or encumbrance or by way of foreclosure or deed in lieu of foreclosure of any mortgage, pledge~~
13 ~~or encumbrance.))~~ by this ordinance; has provided, at the time of the acceptance, the bond and
14 certification of insurance coverage required under this ordinance; and has paid any fees due
15 under Section 14 of this ordinance. Upon the Director's approval of an assignment or transfer,
16 the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the
17 successors and assigns and the transferor Permittee shall be released from its obligations arising
18 under this Ordinance. Any person or entity seeking approval for an assignment or transfer of the
19 permission granted by this ordinance shall provide the Director with a description of the current
20 and anticipated use of the tunnel.

21 **13B. Obligations run with the Property.** The obligations and conditions imposed on
22 the Permittee by and through this ordinance are covenants that run with the land and bind
23

1 subsequent owners of the property adjacent to the tunnel and legally described in Section 1 of
2 this ordinance (the "Property"), regardless of whether the Director has approved assignment or
3 transfer of the permission granted herein to such subsequent owner(s). At the request of the
4 Director, Permittee shall provide to the Director a current title report showing the identity of all
5 owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within no
6 later than 60 days of the effective date of this ordinance, and prior to conveying any interest in
7 the Property, deliver to the Director upon a form to be supplied by the Director, a covenant
8 agreement imposing the obligations and conditions set forth in this ordinance, signed and
9 acknowledged by the Permittee and any other owner(s) of the Property and recorded with the
10 King County Recorder's Office. The Director shall file the recorded covenant agreement with the
11 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At
12 the request of the Director, Permittee shall cause encumbrances on the Property to be
13 subordinated to the covenant agreement.

14
15
16 **14A. Inspection fees.** The Permittee(~~(, its successors and assigns,)) shall, as provided by~~
17 SMC Chapter 15.76 or successor provision, pay (~~(to)) the City (~~(such)) the amounts (~~(as may be~~~~~~
18 justly chargeable)) charged by the City (~~(as to its inspection of)) to inspect the tunnel during~~
19 construction, reconstruction, repair, annual (~~(structural)) safety inspections, and at other times~~
20 deemed necessary by the (~~(Director to ensure the safety of the tunnel, as provided by Municipal~~
21 Code Section 15.76:)) City. An inspection or approval of the tunnel by the City shall not be
22 construed as a representation, warranty, or assurance to the Permittee or any other person as to the
23 safety, soundness, or condition of the tunnel. Any failure by the City to require correction of any
24 defect or condition shall not in any way limit the responsibility or liability of the Permittee.

1 14B. Inspection reports. ~~The Permittee ((, its successors and assigns,)) shall submit~~
2 ~~((each year)) to the ((Seattle Department of Transportation Roadway Structures Division))~~
3 ~~Director, or to SDOT at an address specified by the Director, an inspection report ((detailing the~~
4 ~~physical dimensions and condition of all load bearing elements of the tunnel; subject report to be~~
5 ~~stamped by a Professional Civil or Structural Engineer who is licensed in the State of~~
6 ~~Washington and is experienced in the inspection of tunnels. All recommended repairs in the~~
7 ~~report shall be described and prioritized; the report to be submitted each year within thirty days~~
8 ~~of the anniversary date of the completion of the construction of the tunnel)) that:~~

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

16 A report meeting the foregoing requirements shall be submitted within 60 days after the
17 effective date of this ordinance; subsequent reports shall be submitted every two years, within 30
18 days prior to the anniversary date of the last inspection report; provided that, in the event of a
19 natural disaster or other event that may have damaged the tunnel, the Director may require that
20 additional reports be submitted by a date established by the Director. The Permittee has the duty
21 of inspecting and maintaining the tunnel. The responsibility to submit structural inspection
22 reports periodically or as required by the Director does not waive or alter any of the Permittee's
23 other obligations under this ordinance. The receipt of any reports by the Director shall not create

1 any duties on the part of the Director. Any failure by the Director to require a report, or to
2 require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

3 14C. Annual fee. Beginning on September 28, 2013, and annually thereafter, the
4 Permittee shall ((also)) promptly pay to the City ((in advance)), upon statements ((rendered)) or
5 invoices issued by the Director, an annual fee((for the privileges granted and exercised hereunder
6 of Two Thousand Three Hundred Fifty Two Dollars and Sixteen Cents (\$2,352.16)) of
7 \$2,104.50, or as adjusted annually thereafter, for the privileges granted by this ordinance.

8
9 Adjustments to the annual fee ((amount)) shall be made in accordance with a term permit
10 fee schedule adopted by the City Council ((by ordinance)) and may be ((adjusted)) made every
11 year. In the absence of ((such)) a schedule, the Director may only increase or decrease the
12 previous year's fee ((amount annually)) to reflect any inflationary changes so as to charge the fee
13 in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee
14 ((amount)) by the percentage change between the two most recent year-end values available
15 ((of)) from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban
16 Consumers, All Products, Not Seasonally Adjusted ((Base Period 1982-84 = 100)). All
17 payments shall be made to the City Finance Director for credit to the Transportation Operating
18 Fund.
19
20

21 15. Compliance with other laws. ((The Permittee shall not discriminate against any (1)
22 employee, (2) applicant for employment, or (3) person with respect to the award or referral of a
23 contract or with respect to the conditions, terms, price or performance standards, or other
24 provisions of a contract in connection with the design, architectural or structural engineering
25 work or the construction, repair, or maintenance of the tunnel permitted to be erected and/or
26

1 ~~operated pursuant to this ordinance, on the basis of race, religion, creed, color, sex, marital~~
2 ~~status, sexual orientation, gender identity, political ideology, ancestry, age, national origin, or the~~
3 ~~presence of any sensory, mental or physical handicap unless based on bona fide occupational~~
4 ~~qualification. The Permittee shall:~~

5 a) ~~post in conspicuous places available to such employees and applicants for such~~
6 ~~employment, notices setting forth the provisions of this non discrimination clause.~~

7 b) ~~insert in any contract for work undertaken in connection with the design, architectural~~
8 ~~or structural engineering work or repair, construction, maintenance or operation of the tunnel~~
9 ~~referenced in this ordinance language substantially similar to the language contained in this~~
10 ~~Section 15 and which requires any person or entity entering into such contract to comply with~~
11 ~~the non discrimination provisions of this Section.))~~

12 Permittee shall construct, maintain and operate the tunnel in compliance with all
13 applicable federal, state, County and City laws and regulations. Without limitation, in all matters
14 pertaining to the tunnel, the Permittee shall comply with the City's laws prohibiting
15 discrimination in employment and contracting including Seattle's Fair Employment Practices
16 Ordinance, Chapter 14.04, and Fair Contracting Practices code, Chapter 14.10 (or successor
17 provisions).

18 ***

19 Section 3. **Acceptance of terms and conditions.** Within 60 days after the effective date
20 of this ordinance, the Permittee shall deliver to the Director its written signed acceptance of the
21 terms of this ordinance, as well as the certification of insurance coverage, performance bond,
22 covenant agreement, and inspection report required by Sections 10A, 12, 13B, and 14B of
23

1 Ordinance 122597, as further amended by this ordinance. The Director shall file the written
2 acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the
3 privileges conferred by this ordinance shall be deemed declined or abandoned and the permission
4 granted deemed lapsed and forfeited and the Permittee shall, at its own expense, remove the
5 tunnel and all of the Permittee's equipment and property and replace and restore all portions of
6 the public place as provided in Section 5 of Ordinance 122597 and as further amended by this
7 ordinance.
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9 Section 4. **Section titles.** Section titles are for convenient reference only and do not
10 modify or limit the text of a section.
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1 Section 5. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to
2 the authority and in compliance with the conditions of this ordinance but prior to the effective
3 date of the ordinance is ratified and confirmed.

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

7
8 Passed by the City Council the ____ day of _____, 2014, and
9 signed by me in open session in authentication of its passage this
10 ____ day of _____, 2014.

11
12
13 _____
14 President _____ of the City Council

15
16 Approved by me this ____ day of _____, 2014.

17
18 _____
19 Edward B. Murray, Mayor

20
21 Filed by me this ____ day of _____, 2014.

22
23 _____
24 Monica Martinez Simmons, City Clerk

25 (Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Doug Palmer / 684-5266

Legislation Title:

AN ORDINANCE relating to a pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East; amending Ordinance 122597; updating the insurance and bond requirements; amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to Group Health Cooperative, formerly known as Group Health Cooperative of Puget Sound; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:

This legislation amends Ordinance 122597 for Group Health Cooperative to continue maintaining and operating the existing pedestrian tunnel located under and across East Thomas Street, east of 15th Avenue East. An area map is attached for reference.

This permit is renewed for a ten-year term starting on September 28, 2013. The legislation updates the insurance and surety bond provisions, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires Group Health Cooperative to pay the City an annual fee of \$2,104.50 starting on September 28, 2013, and annually thereafter. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by Ordinance 123485. An Annual Fee Appraisal Summary is attached for reference.

Background:

By Ordinance 102519, and as further amended by Ordinances 103242, 113876, and 119342, the City granted permission to Group Health Cooperative, formerly known as Group Health Cooperative of Puget Sound, to construct, operate, and maintain a pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East. This permission expired on September 27, 2003 and was reauthorized by Ordinance 122597 for a ten-year term, renewable for two successive ten-year terms.

X This legislation has financial implications.

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2014 Revenue	2015 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee-	2013 Fee = \$2,104.50 2014 Fee = \$2,104.50	TBD
TOTAL			\$4,209	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 City Council, the City of Seattle will not receive the annual fee of \$2,104.50. 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 122597, will no longer be permitted and will have to be removed.
- c) **Does this legislation affect any departments besides the originating department?**
No
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** 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: None

List attachments to the fiscal note below:

Attachment A – Group Health Cooperative Tunnel Area Map

Attachment B – Annual Fee Assessment Summary

Attachment A – Group Health Cooperative 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: 4/15/14

<p><u>Summary:</u> Land Value: \$115/SF First Year Permit Fee: \$2,104.50</p>
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I. Property Description:

Existing pedestrian tunnel located under and across East Thomas Street, east of 15th Avenue East. The tunnel connects Tax parcels 3117000005 and 1806900305. Permit is for a total **915 square foot area.**

Applicant:

Group Health Cooperative

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 3117000005; 122,968 SF

Tax year 2013 Appraised Land Value \$14,141,300
Assessed at \$115/SF

2. Parcel 1806900305; 28,800 SF

Tax year 2013 Appraised Land Value \$3,312,000
Assessed at \$115/SF

2013 tax assessed land value: \$115/SF

II. Annual Fee Assessment:

The 2013 permit fee is calculated as follows: $(\$115/\text{SF}) \times (915 \text{ SF}) \times (25\%) \times (8\%) =$
\$2,104.50, where 25% is the degree of alienation for a pedestrian tunnel and 8% is the
estimated annual rate of return.

Fee methodology authorized under Ordinance 123485.



City of Seattle
Edward B. Murray
Mayor

June 17, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that will grant to Group Health Cooperative a 10-year renewal permit for an existing pedestrian tunnel under and across East Thomas Street, east of 15th Avenue East, as authorized by Ordinance 122597.

The existing pedestrian tunnel connects Group Health Cooperative's Group Health Main Building with the Group Health North Building for patients to travel between the buildings. In addition to granting a new 10-year permit renewal, the proposed Council Bill updates the insurance and bond requirements, updates the annual fee, and specifies the conditions under which authorization is granted.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at 684-5967.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council