Ordinance No. [redacted] 124259

Council Bill No. 117819

AN ORDINANCE granting BNSF Railway Company permission to construct, maintain, and operate Biotech Reader Kiosks and Optical Character Recognition Camera Portals in the westerly margin of Colorado Avenue South, south of Atlantic Street, for a ten-year term, renewable for four successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File: _____

Date Introduced and Referred: 7.1.13	To: (committee): Transportation
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 9/3/13	Date Presented to Mayor: 9/4/13
Date Signed by Mayor: 9/13/13	Date Returned to City Clerk: 9/16/13
Published by Title Only X Published in Full Text _____	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: [signature]

Committee Action:

Date	Recommendation	Vote
8-13-13	PASS	TRBHJG 3-0

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

Full Council Action:

Date	Decision	Vote
Sept. 3, 2013	Passed	7/0 (excused: Burgess; Godden)

Law Department

Angela Steel
SDOT BNSF ORD
March 15, 2013
Version #10

CITY OF SEATTLE

ORDINANCE 124259

COUNCIL BILL 117819

AN ORDINANCE granting BNSF Railway Company permission to construct, maintain, and operate Biotech Reader Kiosks and Optical Character Recognition Camera Portals in the westerly margin of Colorado Avenue South, south of Atlantic Street, for a ten-year term, renewable for four successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Resolution 31248, the City Council granted conceptual approval of the construction of the Biotech Reader Kiosks and Optical Character Recognition Camera Portals in the westerly margin of Colorado Avenue South, south of Atlantic Street, as proposed by BNSF Railway Company ("BNSF"); and

WHEREAS, as part of the SR 99 South Holgate to South King Street Viaduct Replacement Project Phase 2, the Washington State Department of Transportation ("WSDOT") constructed the foundations and utilities for BNSF to support the Kiosks and OCRs (defined below), devices used to identify trucks and facilitate separation of general purpose traffic from truck traffic to the Seattle International Gateway yard; and

WHEREAS, BNSF shall complete the installation of the Kiosks and OCRs pending final technical review and approval from the Seattle Department of Transportation ("SDOT") and other applicable City Departments; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the Kiosks and OCRs to legally occupy a portion of the public right-of-way or other public place, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle ("City") grants permission (also referred to in this ordinance as a permit) to BNSF, and its successors and assigns, as approved by the Director of SDOT ("Director"), according to Section 13 of this ordinance (the party named above and each approved successor and assign is referred to as "Permittee"), to construct, maintain, and operate Biotech Reader Kiosks and

CITY CLERK

Optical Character Recognition Camera Portals, including concrete barriers, vehicle loop detectors, impact attenuators, electrical conduit and handholes (collectively "Kiosks and OCRs"), on the westerly margin of Colorado Avenue South, south of Atlantic Street, adjacent in whole or in part to the property legally described as: Lots 1-8, Block 366, Seattle Tide Lands and portion of adjacent vacated street per Ordinance 9363.

Section 2. **Term.** The permission granted to the Permittee is for a ten-year term starting on October 1, 2011, and ending at 11:59 p.m. on September 30, 2021. Upon written application made by the Permittee at least 180 days before the term's expiration, the Director or the City Council may renew the permit four times, each time for a successive ten-year term, subject to the right of the City to require the removal of the Kiosks and OCRs or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The total term of the permission, including renewals, shall not exceed 50 years. The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

Section 3. **Protecting utilities.** The permission granted is subject to the Permittee bearing the expense of protecting, supporting, or relocating existing utilities deemed necessary by the owners of the utilities as a result of the Permittee, or anyone hired by the Permittee, constructing the Kiosks and OCRs. The Permittee shall be responsible for any actual damages to the existing utilities and for any actual and consequential damages resulting from any interruption in utility service, to the extent either are caused by the Permittee or anyone hired by the Permittee in constructing, repairing, reconstructing, maintaining, operating, or removing the Kiosks and OCRs.

CITY CLERK

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively "public place") by the City and the public for travel, utility purposes, and other public uses or benefits, provided that during the term of this permission, the use may not materially interfere with the permission granted by this ordinance unless the use is authorized by the City Council. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term and require the Permittee to remove the Kiosks and OCRs, or any part thereof, and restore the public place in accordance with Section 5 at the Permittee's sole cost and expense in the event that:

(a) The City Council determines by ordinance that the space occupied by the Kiosks and OCRs is necessary for any public use or benefit or that the Kiosks and OCRs interferes with any public use or benefit; or The Director determines that use of the Kiosks and OCRs has been abandoned; or

(b) The Director determines that any material term or condition of this ordinance has been violated and the violation has not been corrected by the Permittee by the compliance date contained after a written request by the City to correct the violation, unless a notice to correct is not required due to an immediate threat to the health or safety of the public. The compliance date shall not be less than 60 days from the date the written notice is mailed.

Moreover, the City expressly reserves the right to terminate the permission at any time prior to expiration of the initial term or any renewal term and require the Permittee to remove the Kiosks and OCRs, or any part thereof, and restore the public place in accordance with Section 5 at the Permittee's sole cost and expense in the event that the City Council determines by ordinance that the space occupied by the Kiosks and OCRS is necessary for any public use or

SDS CITY CLERK

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

Section 5. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission as provided in this ordinance, then within 180 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the Kiosks and OCRs; the Permittee shall, at its own expense, remove the Kiosks and OCRs and all of the Permittee's equipment and property from the public place. Following removal of the Kiosks and OCRs, the Permittee shall restore all portions of the public place that may have been disturbed by the Kiosks and OCRs to as good condition for public use as they were prior to the Permittee, or anyone hired by the Permittee, constructing the Kiosks and OCRs and in at least as good condition in all respects as the abutting portions of the public place as required by SDOT right-of-way restoration standards.

Failure to remove the Kiosks and OCRs as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, the applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority.

If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the Kiosks and OCRs and restore the public place disturbed by the Kiosks and OCRs at the Permittee's expense. Any required removal and restoration shall be at

SDS CITY CLERK

the Permittee's expense as if it was originally required by the City, regardless of whether the Permittee timely fulfills its obligations under this section. If the Permittee is required to pay for removal and restoration according to the preceding sentence, then the Permittee shall, within 30 days after receiving from the City an invoice and supporting documentation as the Permittee may reasonably request, reimburse the City for expenses incurred in removing the Kiosks and OCRs or restoring the public place.

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

Section 6. **Repair or reconstruction.** The Kiosks and OCRs shall remain the exclusive property and responsibility of the Permittee and the Permittee shall maintain the Kiosks and OCRs in good and safe condition for the protection of the public. Except in instances of routine maintenance and repairs, the Permittee shall not reconstruct or repair the Kiosks and OCRs except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the Kiosks and OCRs reconstructed or repaired at the Permittee's cost and expense because of the deterioration or unsafe condition of the Kiosks and OCRs, or at the Permitee's cost and expense because of:

SDS CITY CLERK

(a) The installation, construction, reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or

(b) Any other cause as determined by the Director.

Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and failure of the Permittee to correct an unsafe condition within the time stated in the notice, or as provided for in a notice issued under Chapter 15.90, the Director may order the Kiosks and OCRs be closed or removed at the Permittee's expense if the Director reasonably deems that the Kiosks and OCRs have become unsafe or create a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the Kiosks and OCRs, the Permittee shall remain bound by all of its obligations under this ordinance until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 16 of this ordinance.

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

SEA CITY CLERK

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description except damages that may result from the sole negligence of the City, its officials, officers, employees, or agents, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns arising out of or by reason of:

(a) The existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the Kiosks and OCRs or any portion thereof; or the use, occupation, or restoration of the public place or any portion thereof by the Permittee, anyone hired by the Permittee, or any other person or entity; or

(b) Anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or

(c) The Permittee failing or refusing to strictly comply with every material provision of this ordinance; or

(d) This ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any such suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined following any appeal, if determined adversely to the City. If it is determined by a court of competent jurisdiction that

SEA CITY CLERK

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

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

(a) Construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the Kiosks and OCRs or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with the Permittee removing the Kiosks and OCRs;

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

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

Minimum insurance requirements are CGL insurance based on the Insurance Services Office ("ISO") form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus

SEA CITY CLERK

lines carrier according to RCW Chapter 48.15, except that if it is infeasible to obtain coverage with the required insurer, the City may approve an alternative insurer.

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

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

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or

SDS CITY CLERK

material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

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

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

Section 12. **Adjustment of insurance requirements.** The Director, in consultation with the City's Risk Manager, may adjust minimum liability insurance levels during the term of this permission. If the Director and City's Risk Manager determine that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance levels to the Director.

Section 13. **Consent for and conditions of assignment or transfer.** The permission granted by this ordinance shall not be assignable or transferable by operation of law nor shall the Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment

SEA. CITY CLERK

or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee has accepted in writing all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of an acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 16 of this ordinance. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the Kiosks and OCRs.

Section 14. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the Kiosks and OCRs during construction, reconstruction, repair, annual safety inspections and at other times deemed necessary by the City. An inspection or approval of the Kiosks and OCRs by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the Kiosks and OCRs. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 15. **Inspection reports.** If a natural disaster or other event damages the Kiosks and OCRs, Permittee shall by the date established by the Director, submit to the Director or to SDOT at an address specified by the Director, an inspection report that:

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

(b) Describes any damages or possible repairs to any element of the Kiosks and OCRs;

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

SEA CITY CLERK

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

The Permittee has the duty of inspecting and maintaining the Kiosks and OCRs, and the responsibility to submit structural inspection reports as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance nor create any duties on the part of the Director. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

Section 16. **Annual fee.** Beginning on October 1, 2011, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an annual fee of $5,304, or as adjusted annually thereafter, for the privileges granted by this ordinance.

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

Section 17. **Compliance with other laws.** Permittee shall construct, maintain, and operate the Kiosks and OCRs in compliance with all applicable federal, State, County, and City laws and regulations. Without limitation, in all matters pertaining to the Kiosks and OCRs, the

2013 CITY CLERK

Permittee shall, to the extent applicable, comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04 and Fair Contracting Practices code, Chapter 14.10 or successor provisions. Nothing in this ordinance shall be deemed a submission by the Permittee to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law or shall be deemed to limit in any way the City's authority to control the use of its rights-of-way.

Section 18. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed to be declined or abandoned and the permission granted deemed to be lapsed and forfeited and the Permittee shall, at its own expense, remove the Kiosks and OCRs and all of the Permittee's equipment and property and replace and restore all portions of the street right-of-way or public place as provided in Section 5.

Section 19. **Obligations of successors and assigns.** The obligations and conditions imposed on the Permittee by and through this ordinance are also imposed on the Permittee's successors and assigns regardless of whether the Director has approved assignment or transfer of the permission granted by this ordinance to the Permittee's successors or assigns. All references in this ordinance to obligations or conditions imposed on the "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.

Section 20. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

DNS CITY CLERK

Section 21. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the authority and in compliance with the conditions of this ordinance but prior to the effective date of the ordinance is ratified and confirmed.

Section 22. **Effective date.** This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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Passed by the City Council the 3rd day of September, 2013, and signed by me in open session in authentication of its passage this 3rd day of September, 2013.

President _____ of the City Council

Approved by me this 13th day of Sept., 2013.

Michael McGinn, Mayor

Filed by me this 16th day of September, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

2013 CITY CLERK

Amy Gray
SDOT BNSF FISC
April 3, 2013
Version #1a

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:

AN ORDINANCE granting BNSF Railway Company permission to construct, maintain, and operate Biotech Reader Kiosks and Optical Character Recognition Camera Portals in the westerly margin of Colorado Avenue South, south of Atlantic Street, for a ten-year term, renewable for four successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation grants approval to BNSF Railway Company ("BNSF") to construct Biotech Reader Kiosks and Optical Character Recognition Camera Portals ("Kiosks and OCRs") in the westerly margin of Colorado Avenue South, south of Atlantic Street. As part of the SR 99 South Holgate to South King Street Viaduct Replacement Project Phase 2, the Washington State Department of Transportation ("WSDOT") constructed the foundations and utilities for BNSF to support the Kiosks and OCRs used to identify trucks and facilitate separation of general purpose traffic from truck traffic to the Seattle International Gateway yard. BNSF will complete the installation of the Kiosks and OCRs pending final technical review and approval from the SDOT and other applicable City Departments.

This permit is for a ten-year term starting on October 1, 2011. The legislation has an insurance provision 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 BNSF to pay the City an annual fee of $5,304 commencing on October 1, 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 Resolution 31248, the City granted conceptual approval for the Biotech Reader Kiosks and Optical Character Recognition Camera Portals.

2013 CITY CLERK

Amy Gray
SDOT BNSF FISC
April 3, 2013
Version #1a

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	2013 Revenue	2014 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	2011 Fee: $5,304 2012 Fee: $5,304 2013 Fee: $6,528	TBD
TOTAL			**$17,136**	**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?** N/A

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 $5,304. 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.

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h) Other Issues: None

List attachments to the fiscal note below:
Attachment A – BNSF Kiosks and OCRs Area Map

Attachment B – Annual Fee Assessment Summary

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Amy Gray
SDOT BNSF ATT A
April 13, 2013
Version #1a

Attachment A – BNSF Kiosks and OCRs Area Map

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

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Amy Gray
SDOT BNSF ATT B
April 3, 2013
Version #1a

Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 4/1/13

Summary:
Land Value: $32.50/SF
2011 Permit Fee:
$5,304

I. Property Description:

BNSF Railway Company has proposed the construction of Biotech Reader Kiosks and Optical Character Recognition Camera Portals ("Kiosks and OCRs") in the westerly margin of Colorado Avenue South, south of Atlantic Street. The area of the Kiosks and OCRs is **2,550 square feet**.

Applicant:
BNSF Railway Company

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 7666207685, Square Feet 58,806

   Tax year 2011 Appraised Land Value $1,822,900

2. Parcel 7666207675, Square Feet 282,704

   Tax year 2011 Appraised Land Value $9,611,900

II. Annual Fee Assessment:

The 2011 permit fee is calculated as follows:

($32.50/SF) X (2,550 SF) X (80%) X (8%) = $5,304 where 80% is the degree of alienation for an at-grade structure and 8% is the annual rate of return.

Fee methodology authorized under Ordinance 123485.

CITY CLERK

City of Seattle
Office of the Mayor

May 14, 2013

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

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will grant to the BNSF Railway Company ("BNSF") permission to construct, maintain, and operate Biotech Reader Kiosks and Optical Character Recognition Camera Portals ("Kiosks and OCRs") in the westerly margin of Colorado Avenue South, south of Atlantic Street.

The purpose of the Kiosks and OCRs project is to identify trucks and facilitate separation of general purpose traffic from truck traffic to the Seattle International Gateway yard. As part of the SR 99 South Holgate to South King Street Viaduct Replacement Project Phase 2, the Washington State Department of Transportation constructed the foundations and utilities for BNSF to support the Kiosks and OCRs.

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

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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

DNS CITY CLERK

SamS. Phanekham
Mgr. Facility Planning-Development
BNSF Railway Company
2650 Lou Menk Drive, MOB-1
Fort Worth, TX 76131

FILED
CITY OF SEATTLE
2013 DEC 16 PM 3:51
CITY CLERK

December 10, 2013

Seattle Department of Transportation
Attn: Angela Steel
700 5th Avenue, Suite 2300
PO Box 34996
Seattle, WA 98124

Re: Ordinance 124259

This letter confirms that BNSF Railway Company accepts the terms and conditions of Ordinance 124259 and that the undersigned has the authority to accept the terms and conditions of the Ordinance on behalf of the permittee.

Please send the annual fee invoice to the following address:

BNSF Railway Company
c/o Jones Lang LaSalle
attn.: Facility Lease Administration
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

Sincerely,

Sam Phanekham
Manager Facility Planning/Development

STATE OF WASHINGTON -- KING COUNTY

--ss.

303046 No. 124259,260,261,262,263

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

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

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

CT;TITLE ONLY ORDINANCE

was published on

10/01/13

The amount of the fee charged for the foregoing publication is the sum of $123.75 which amount has been paid in full.

Subscribed and sworn to before me on

10/01/2013

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle
Title Only Ordinance

The full text of the following legislation, passed by the City Council on September 3, 2013, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124259

AN ORDINANCE granting BNSF Railway Company permission to construct, maintain, and operate Biotech Reader Kiosks and Optical Character Recognition Camera Portals in the westerly margin of Colorado Avenue South, south of Atlantic Street, for a ten-year term, renewable for four successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124260

AN ORDINANCE relating to the City Light Department; declaring as surplus and authorizing the General Manager and Chief Executive Officer of the City Light Department or his designee to grant an easement to Snohomish County and the Alderwood Water and Wastewater District limited to roadway and underground utility purposes, within the City of Seattle transmission line corridor in Section 16, Township 27 North, Range 5 East, W.M., in Snohomish County, Washington; accepting payment for the true and full value of the easement from Toll WA, LP; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124261

AN ORDINANCE relating to authorizing a bike share program to be implemented in public places; and amending Sections 11.23.440 and 15.17.005 of the Seattle Municipal Code.

ORDINANCE NO. 124262

AN ORDINANCE relating to the Opportunity Fund category of the 2008 Parks and Green Spaces Levy; accepting the recommendations of the 2008 Parks and Green Spaces Levy Oversight Committee; authorizing the acquisition of real property commonly known as 48th Ave. SW & SW Charlestown, Baker Park Expansion, and South Park Plaza; authorizing acceptance of the deeds for open space, park, and recreation purposes; amending the 2013 Adopted Budget and 2013-2018 Capital Improvement Program; increasing appropriations in connection thereto; and ratifying and confirming certain prior acts, all by a three-fourths vote of the City Council.

ORDINANCE NO. 124263

AN ORDINANCE relating to the Department of Neighborhoods; authorizing implementation of certain Neighborhood Matching Fund projects in 2013, and specifying that 2013 appropriations for the Neighborhood Matching Subfund shall carry forward automatically to future budget years.

Date of publication in the Seattle Daily Journal of Commerce, October 1, 2013.

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