SEATTLE CITY COUNCIL

Legislative Summary

CB 118482

Record No.: CB 118482 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 124874 **In Control:** City Clerk

File Created: 07/14/2015

Final Action: 09/29/2015

Title: AN ORDINANCE relating to an open space improvements over and across Utah Avenue South between South Stacy Street and South Lander Street; amending Ordinance 121572; 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 First & Utah Street Associates, LLC; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Rasmussen

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: amy.gray@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/28/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk **Notes:**						
1	City Clerk	07/28/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	07/29/2015	sent for review	Transportation Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Transportation Committee **Notes:**						

1	Full Council	08/17/2015	referred	Transportation Committee	

Action Text: The Council Bill (CB) was referred. to the Transportation Committee
Notes:

1	Transportation Committee	09/11/2015	pass		Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:

In Favor: 3 Chair Rasmussen, Vice Chair O'Brien, Member Godden

Opposed: 0

1	Full Council	09/21/2015	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

In Favor: 9 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Okamoto, Councilmember Rasmussen, Councilmember Sawant

Opposed: 0

1	City Clerk	09/22/2015	submitted for Mayor's signature	Mayor	

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

1	Mayor	09/29/2015	Signed		

Action Text: The Council Bill (CB) was Signed.
Notes:

1	Mayor	09/29/2015	returned	City Clerk	

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

1	City Clerk	09/29/2015	attested by City Clerk		

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 124874

COUNCIL BILL 118482

AN ORDINANCE relating to an open space improvements over and across Utah Avenue South between South Stacy Street and South Lander Street; amending Ordinance 121572; 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 First & Utah Street Associates, LLC; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 121572, The City of Seattle granted permission to First & Utah Street Associates, LLC to occupy, construct, maintain, and operate open space improvements over and across Utah Avenue South, between South Stacy Street and South Lander Street; and

WHEREAS, the permission granted by Ordinance 121572, as amended by Ordinance 121855, was due for renewal on October 12, 2014; and

WHEREAS, First & Utah Street Associates, LLC has submitted an application to the Seattle Department of Transportation Director ("Director") to continue maintaining and operating the open space improvements; and

WHEREAS, First & Utah Street Associates, LLC 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 First & Utah Street Associates, LLC by Ordinance 121572 to maintain and operate open space improvements over and across Utah Avenue South, between South Stacy Street and South Lander Street, is renewed for a ten-year period starting on the effective date of this ordinance, and ending at 11:59 p.m. on the last day of the tenth year,

upon the terms and conditions set forth in Ordinance 121572; and as further amended by this ordinance.

Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Ordinance 121572 are as amended as follows:

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) ((~~is hereby granted~~)) to the First & Utah Street Associates, LLC ("Permittee"), and its successors and assigns as approved by the Director of the Seattle Department of Transportation ("Director") according to Section 14 of this ordinance, ((~~as follows:~~)) to occupy Utah Avenue South between South Stacy Street and South Lander Street to construct, maintain, and operate landscaping, decorative paving, benches, and other open space improvements ((~~over and across the right-of-way~~)) in the public place ("open space improvements"). The permit granted ((~~hereby~~)) is subject to use by the public for pedestrian travel, emergency vehicle access, and utility purposes.

2. **Term.** The permission ((~~herein~~)) granted to ((~~the~~)) Permittee ((~~, its successors and assigns, shall be~~)) is for a term of ten (((~~10~~))) years ((~~, commencing~~)) starting on the effective date of this ordinance and ((~~terminating~~)) ending at 11:59 p.m. on the last day of the tenth year. Upon written application ((~~of~~)) made by the Permittee at least ((~~thirty (30)~~))) 180 days before the expiration of the term, the Director ((~~of Seattle Department of Transportation shall~~)) or the City Council may renew the permit ((~~for~~)) twice, each time for a successive ten (((~~10~~)))-year ((~~terms~~)) term, ((~~unless~~))subject to the City ((~~Council determines~~)) determining pursuant to Section 3.A. below that the area subject to this permit is necessary for a primary or secondary public use or benefit, or that the Permittee's improvements interfere with a primary or secondary public use or

benefit. The total term of the permission, including renewals, ((~~as originally granted and thus extended~~))shall not exceed ((~~thirty (~~))30((~~)~~)) years((~~, subject to the right of City Council by ordinance to revise any of the terms and conditions contained herein at the time of each renewal~~)). The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

3. **Removal for public use or cause.** The ((~~permit~~)) permission granted ((~~hereby~~)) is subject to ((~~primary and secondary use by the public~~)) use of the street right-of-way or other public place (collectively, public place) by the City and the public for travel, ((~~and~~)) utility purposes, and other public uses or benefits. ((~~t~~))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 open space improvements, or any part thereof or installation on the public place, at the Permittee's sole cost and expense in the event that:

(((~~A~~))a) the City Council determines((~~,~~)) by ordinance((~~,~~)) that the space occupied by the open space improvements is necessary for any ((~~primary or secondary~~)) public use or benefit((~~,~~)) or that the improvements interfere with any ((~~primary or secondary~~)) public use or benefit; or

(b) the Director determines that use of the open space improvements has been abandoned ; or

(((~~B~~))c) the Director ((~~of Transportation ("Director")~~)) determines that any term or condition of this ordinance has been violated, and ((~~such~~)) the violation has not been corrected

by the Permittee by the compliance date after ((~~such notice of violation having been given~~)) a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public). ((~~A City Council determination that the space is necessary for a primary or secondary public use or benefit shall be conclusive and final.~~))

4. **Permittee's obligation to remove and restore.** ((~~In the event that~~)) If the permission ((~~hereby~~)) granted ((~~extends to its termination in thirty (30) years, or the City orders removal of the open space improvements pursuant to the terms of this ordinance,~~)) 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, then within ((~~ninety (~~))90((~~)~~)) days after ((~~such~~)) the expiration((~~,~~)) or termination of the permission, or prior to any earlier date stated in an ordinance or order ((~~of~~)) requiring removal((~~, or prior to the date stated in an "Order to Remove", as the case may be,~~)) of the open space improvements, the Permittee shall, at its own expense, remove the open space improvements and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place ((~~and shall return all portions of the right-of-way~~)) that may have been disturbed for any part of the open space improvements((~~, back to the condition for public use as it was prior to construction of the improvements, and in at least~~)) in as good condition ((~~in all respects as the abutting portions thereof and consistent with the Restoration Plan set forth in Attachment A~~)) for public use as existed prior to the construction of the open space and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation ("SDOT") right-of-way restoration standards. ((~~Whereupon, the Director shall issue certificate~~

~~discharging the Permittee from responsibility under this ordinance for occurrence after the date of such discharge.~~))

5. **Repair or reconstruction.** The open space improvements shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the open space improvements in good and safe condition for the protection of the public. The Permittee shall not ((~~commence reconstruction, relocation, readjustments~~)) reconstruct, relocate, readjust, or repair ((~~of~~)) the open space improvements except ((~~under the supervision of, and~~)) in strict accordance with plans and specifications approved by the Director. The Director ((~~in her/his~~)) may, in the Director's judgment, ((~~may~~)) order ((~~such~~)) the reconstruction, relocation, readjustment, or repair of the open space improvements at the Permittee's ((~~own~~)) cost and expense ((~~subject to the provisions of Section 8 of this ordnance,~~)) because of: the deterioration or unsafe condition of the open space improvements((~~, or~~)); the installation, construction, reconstruction, maintenance, operation, or repair of any ((~~and all~~)) municipally owned public utilities((~~,~~)); or for any other cause.

6. **Failure to correct.** ((~~After notice to the Permittee, and f~~))Failure ((~~of the Permittee to correct said unsafe or risk prone condition within the time stated in such notice, the Director may order the open space improvements closed if the Director deems that it has become unsafe or creates a risk of injury to the public. In a situation in which there is an immediate threat to the health or safety of the public, notice is not required~~)) to remove the open space improvements as required by this ordinance is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provisions; however, applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely

fulfill its obligations under this section, the City may at its sole discretion remove the open space improvements and restore the public place at the Permittee's expense, and collect such expense in any manner provided by law.

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

7. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the open space improvements, the Permittee shall remain bound by all of its obligations under this ordinance until((~~:~~

~~(A) the area is left in a manner as required by Section 4 and~~

~~(B)~~)) the Director ((~~certifies~~)) has issued a certification that the Permittee has ((~~discharged it obligations herein~~)) fulfilled its removal and restoration obligations under Section 4 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 4 of this ordinance and shall remain liable for any unpaid fees assessed under Section 15 of this ordinance.

((~~Provided, that upon prior notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in her/his sole discretion, excuse the Permittee, conditionally or~~

~~absolutely, from compliance with all or any of the Permittee's obligation to remove the open space improvements and restore disturbed areas.~~))

8. **Protections of utilities.** The permission granted ((~~by this permit~~))is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the ((~~owner~~))owners of the ((~~utility~~))utilities, and shall be done at Permittee's expense with the Permittee being responsible for any ((~~subsequent~~))damage to the utilities due to the construction, repair, reconstruction, maintenance((~~or~~)), operation, or removal of the open space improvements and for any consequential damage that may result from any damage to utilities or interruption in service caused by any of the foregoing. Whenever a utility needs to excavate within the street area subject to this permit, the Director will require the utility to restore, at its own expense, the pavement or other street area excavated in accordance with the City's Pavement Opening and Restoration Rules and with applicable Seattle Standard Plans and Specifications; provided, however, that if the utility's excavation has disturbed or removed Permittee's open space improvements, the utility shall not be required to be responsible for any additional cost incurred as a result of the open space improvements costing more than the applicable Seattle Standard Plans and Specifications for street surface restoration. Such additional restoration costs shall be the sole responsibility of the Permittee. If Permittee desires surface restoration with decorative or special paving materials, Permittee shall furnish such materials to the utility. Prior to commencement of any pavement opening work in the street area subject to this permit, the Director will require the utility to consult with the Permittee on the means for minimizing interference with the Permittee's use of the street, and the utility's restoration plan and schedule.

9. **Open Space Improvements.** The Permittee shall own any improvements and fixtures, including but not limited to: art, benches, or other amenities that were installed in and on the closed street by Permittee((~~,~~)); provided, however, that ((~~said~~)) ownership may be negotiated with the City at the termination of the permit. Activation of the public place with uses open to the public is allowed, subject to applicable City departments' review and approval. Any activation of the public place for private uses must be permitted by the City.

10. **Release, hold harmless, indemnification, and duty to defend.** ((~~The open space improvements shall remain the exclusive responsibility of the Permittee.~~)) The Permittee, by ((~~its acceptance~~)) accepting the terms of this ordinance ((~~and the permission hereby granted, does release~~)), releases the City, its officials, officers, employees and agents from any and all claims, ((~~resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, with the City to at all times protect and save harmless the City from all claims,~~)) actions, suits, liability, loss, costs, expenses, attorneys' fees, or damages of every kind and description (((~~excepting only such damages that may result from the negligence of the City), which may accrue to, or be suffered by, any person or persons and/or property or properties, including without limitation, damage or injury to the Permittee, its officers, agents, contractors, invitees, tenants and tenants' invitees, licenses, or their successors and assigns,~~)) arising out of or by reason of the ((~~maintenance, operation or use of said City street, alley, or any portion thereof,~~)) open space improvements or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times to ((~~or by reason of anything that has been done, or may at any time be done, by the Permittee, its successors and assigns, by reason of this~~

~~ordinance, or by reason of the Permittee, its successor or assigns, failing or refusing to strictly comply with each and every provision of this ordinance; and if any such suit, action or assigns, shall, upon notice thereof from the City,~~)) 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, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitations, 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 open space improvements or any portion thereof, or the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

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

(c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the open space improvements or this ordinance in any other way.

((~~the same at its or their sole cost and expense, and in case judgment shall be rendered~~)) If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City ((~~in any suit or action~~)), the Permittee((~~, its successors and assigns,~~)) shall ((~~fully~~)) 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 ((~~satisfy said~~)) a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within ((~~ninety (~~)90((~~)~~)) days after ((~~such~~)) the action or suit ((~~shall have~~)) has been finally determined, if determined adversely to the City. ((~~Provided that if~~)) If it is determined by a court of competent jurisdiction that 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((~~:~~

~~(A)~~)) the City, its agents, contractors, or employees((~~;~~)), and

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

11. **Insurance.** For as long as the Permittee((~~, its successors and assigns, shall~~)) exercises any permission granted by this ordinance and until the ((~~open space improvements are entirely removed from its location as described in Section 4 or until discharge by order of the~~)) Director has issued a certification that ((~~as provided in~~)) the Permittee has fulfilled its removal and restoration obligations under Section 7 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance and/or self-insurance ((~~policies which fully~~)) which protects the Permittee and the City from claims and risks of loss from perils ((~~which~~)) that can be insured against under commercial general liability (CGL) insurance policies ((~~and fire insurance contracts, including any extended coverage endorsements thereto which are customarily available from time to time~~)), in conjunction with:

(((~~A~~))a) construction, reconstruction, modification, operation, maintenance, use, ((~~or~~)) existence, or removal of the open space improvements or any portion thereof, as well as

restoration of any disturbed areas of the public place in connection with the removal ((~~permitted by this ordinance and of any and all portions~~)) of the open space improvements;

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

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

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

_____Minimum ((~~policy~~)) limits of liability shall be $2,000,000 per ((~~o~~))Occurrence; $4,000,000 General Aggregate; and, $2,000,000 ((~~annual aggregate each period~~)) Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury, Contractual Liability. Coverage shall name ((~~specifically name the open space improvement exposure. Liability coverages shall add by endorsement the~~)) The City of Seattle, its ((~~elected and appointed~~)) officers, officials, employees, and agents" as additional insured((~~.~~))s for primary and non-contributory limits of liability subject to ((~~Coverage shall contain~~)) a Separation of Insureds((~~, indicating essentially that except with respect to the limits of insurance,~~

~~and any rights or duties specifically assigned in this coverage part of the first-named insured, this insurance applies as if each insured were the only insured, and separately to each insured against whom claim is made or suit is brought~~))clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to ((~~T~~))the City((~~ will not accept a certificate of insurance as evidence of current coverage. Evidence of current coverage shall be submitted to the City in the form of a photocopy of the insurance policy declaration page, indicating all endorsements and exclusions attached thereto, and is a condition to the validity of this permit~~)), or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

((~~Whenever in the judgment of the Risk Manager of the City of Seattle, such insurance filed pursuant to the provisions hereof shall be deemed insufficient to fully protect the City of Seattle, the Permittee shall, upon thirty days notice by the Risk Manager, furnish additional insurance in such reasonable amount as may be specified by the Risk Manager.~~))

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in

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

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

12. **Contractor insurance.** The Permittee shall contractually require((~~that~~)) any and all of its contractors performing ((~~construction~~)) work on ((~~the~~)) any premises ((~~as~~)) contemplated by this permit((~~,~~)) name ((~~the~~))"The City of Seattle, its officers, officials, employees, and agents" as ((~~an~~)) additional insureds ((~~on all policies of commercial general liability insurance,~~)) for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee ((~~and~~)) 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 Permittee to the City as well~~)).

13A. **Performance bond.** Within ((~~sixty (~~))60((~~)~~))) days after the effective date of this ordinance, the Permittee shall deliver to the Director ((~~of Seattle Transportation~~)) for filing with the City Clerk a ((~~good and~~)) sufficient bond ((~~in the sum of One Million Dollars ($1,000,000),~~)) executed by a surety company authorized and qualified to do business in the State of Washington((~~,~~)) that is: in the amount of $1,000,000, and conditioned with a requirement that the Permittee ((~~will~~)) shall comply with ((~~each and~~)) every provision of this ordinance and with

((~~each and~~)) every order ((~~of~~)) the Director ((~~pursuant thereto; provided, that if the Mayor of the City of Seattle in his/her judgment shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be necessary to fully protect the City~~)) issues under this ordinance. ((~~Said~~))The Permittee shall ensure that the bond amount ((~~shall~~)) remains in effect until ((~~such time as the open space improvements are entirely removed from its location as described in Section 1, or until discharged by order of~~)) the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under ((~~as provided in~~)) Section 7 of this ordinance. ((~~As an alternative to a bond, the Permittee shall deliver to the Director of Seattle Transportation a~~))An irrevocable letter of credit ((~~payable to the City of Seattle in the sum of Two Hundred Fifty Thousand Dollars ($250,000), executed by a local established financial institute authorized and qualified to do business in the State of Washington, conditioned that the Permittee will comply with each and every provision of this ordinance and with each and every order of~~)) approved by the Director ((~~pursuant thereto; provided, that if the Mayor of the City of Seattle in his/her judgment shall deem any letter of credit filed to be insufficient and demand a new or additional letter of credit, the Permittee shall furnish a new or additional letter of credit in such amount the Mayor may specify to be necessary to fully protect the City. Said letter of credit shall remain in effect until such time as the open space improvements are entirely removed from its location as described in Section 1, or until discharged by order of the Director as provided in Section 7 of this ordinance~~)) in consultation with the City Attorney's Office may be substituted for the bond. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in

effect the bond or letter of credit required until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

13B. **Adjustment of insurance and bond requirements.** The Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director determines 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 and surety bond levels to the Director.

14. **Consent for and conditions of assignment or transfer.** The ((~~Permittee shall not assign or transfer any privileges conferred~~)) 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 ((~~consent of the~~)) Director's consent, which the Director shall not unreasonably refuse. The Director ((~~shall be satisfied that the proposed assignee or transferee is financially capable of assuming the obligations under this permit, and that surety bonds and insurance coverage in sufficient amounts have been provided. If permission is granted, the assignee or transferee shall be bound by~~)) may approve assignment 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 acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 15 of this ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns.

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 open space improvements. ((~~Notwithstanding the above language contained in this Section 14, consent of the City shall not be required for any transfer or assignment of the privileges conferred by this ordinance by way of mortgage, pledge or encumbrance or by way of foreclosure or deed in lieu of foreclosure or any mortgage, pledge or encumbrance.~~))

15. **Inspection fees.** The Permittee((~~, its successors and assigns,~~)) shall, as provided by SMC Chapter 15.76 or successor provisions, pay ((~~to T~~))the City ((~~of Seattle such~~)) the amounts ((~~as may be justly chargeable~~)) charged by ((~~said~~)) the City ((~~as costs of inspection of said~~)) to inspect the open space improvements during construction, reconstruction, repair, annual safety inspections, and at other times as deemed necessary ((~~to ensure safety of the improvements, under the direction of the Director of Seattle Transportation, as provided by Municipal Code Section 15.76~~)) by the City. An inspection or approval of the open space improvements by the City shall not be construed as a representation, warranty, or other assurance to the Permittee or any other person as to the safety, soundness, or condition of the open space improvements. 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. Beginning on October 13, 2014, and annually thereafter, the Permittee shall ((~~also~~)) promptly pay to the City, ((~~in advance~~)) upon statements or invoices ((~~rendered~~)) issued by the Director, an annual fee ((~~for the privileges granted and exercised hereunder~~)) of ((~~Forty-two Thousand Dollars ($42,000)~~))) $21,840.00, or as adjusted thereafter, for ((~~each of the first five years of the permit. For each succeeding five years of the permit the fee shall be adjusted based on the City's fee model for term permits~~)) the privileges granted by this ordinance.

Adjustments to the annual fee shall be made in accordance with a term permit fee schedule adopted by 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 inflationary 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 from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the ((~~Seattle~~)) Transportation Operating Fund.

16. **Compliance with other laws.** ((~~The Permittee shall not discriminate against any employee or applicant for employment in connection with the design, architectural or engineering work or the repair, or maintenance of the open space improvements permitted to be installed pursuant to this ordinance, on the basis of race, religion, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, age, national origin, or the presence of any sensory, mental or physical handicap unless based on bona fide occupational qualifications. The foregoing commitment shall be implemented as follows:~~

~~(A) the Permittee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin or the presence of any sensory, mental or physical handicap. Such action shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff of termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.~~

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

~~(C) Permittee shall furnish to the Director of Human Rights or successor official, upon his or her request and on such forms as may be provided, a report of the affirmative action taken in implementing this provision and will permit reasonable access to its records for the purposes of determining compliance with this Section. If, upon investigation, the Director of Human Rights finds probable cause to believe that the Permittee has failed to comply with any of the terms of this Section, the Permittee and the Director of Seattle Transportation will be so notified in writing. Within ten (10) days of receipt of the Director of Human Rights notice, the Director of Seattle Transportation shall give the Permittee an opportunity to be heard on the matter of compliance with this Section. The Director of Seattle Transportation shall designate a review officer, who shall consider the matter and make a recommendation to the Director of Seattle Transportation. If the Director of Seattle Transportation finds there has been a violation of this Section, he or she may suspend the permission conferred pending full compliance with the terms of this Section.~~

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

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

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

17. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the ((~~permission conferred by~~)) terms of this ordinance ((~~and its terms and conditions to the Director~~))within ((~~sixty (~~))60((~~)~~)) days after the effective date of this ordinance. The Director ((~~acceptance~~)) shall ((~~be~~))file((~~d~~)) the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period ((~~by then~~)), the privileges conferred ((~~provided~~))by this ordinance shall be deemed declined or abandoned((~~;~~)) and the permission ((~~extended, contingent upon its acceptance,~~))granted deemed lapsed and forfeited.

Section 3. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. 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.

Passed by the City Council the 21st day of September, 2015, and signed by me in open session in authentication of its passage this 21st day of September, 2015.

_____
President _____ of the City Council

Approved by me this 24th day of September, 2015.

_____
Edward B. Murray, Mayor

Filed by me this 29th day of september, 2015.

_____
Monica Martinez Simmons, City Clerk

(Seal)

STATE OF WASHINGTON -- KING COUNTY

--ss.

329282

No. 124869,870,871,872,873,74

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 ORDINANCES

was published on

10/09/15

The amount of the fee charged for the foregoing publication is the sum of $93.00 which amount has been paid in full.

Subscribed and sworn to before me on

10/09/2015

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BARNES
COMMISSION EXPIRES
NOTARY
10-24-19
STATE OF WASHINGTON

Affidavit of Publication

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on September 21, 2015, 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 124870

AN ORDINANCE relating to The City of Seattle's (City) emergency notification and alerting system; establishing AlertSeattle as the City's emergency notification and alerting system; adopting policies governing the use thereof including administrative guidelines and a governance charter; and repealing Ordinance Number 122527.

Ordinance 124871

AN ORDINANCE relating to the Department of Neighborhoods; authorizing implementation of certain Neighborhood Matching Fund projects in 2015, and specifying that 2015 appropriations for the Neighborhood Matching Subfund shall carry forward automatically to future budget years.

Ordinance 124872

AN ORDINANCE relating to the Stormwater Code; amending Chapters 22.800, 22.801, 22.802, 22.803, 22.805, 22.807, and 22.808 of the Seattle Municipal Code and adding a new Section 22.800.100.

Ordinance 124873

AN ORDINANCE relating to the implementation of the 2016 Stormwater Code update; ensuring that the City's local program for stormwater regulation meets substantive requirements of the State Department of Ecology; amending Sections 22.170.120, 23.22.028, 23.22.074, 23.24.050, and 23.76.032 of the Seattle Municipal Code; amending Section 106 of the 2012 Seattle Building Code; and amending Section R105 of the 2012 Seattle Residential Code.

Ordinance 124874

AN ORDINANCE relating to an open space improvements over and across Utah Avenue South between South Stacy Street and South Lander Street; amending Ordinance 121572; 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 First & Utah Street Associates, LLC; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Date of publication in the Seattle Daily Journal of Commerce, October 9, 2015.

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