SEATTLE CITY COUNCIL

Legislative Summary

CB 118611

Record No.: CB 118611 **Type:** Council Bill (CB) 124986 **Status:** Passed at Full Council

Version: 2 **In Control:** City Clerk

File Created: 11/04/2015

Final Action: 02/11/2016

Title: AN ORDINANCE relating to the permission granted to Fremont Dock Co. by Ordinance 121706 to use and occupy a portion of Fremont Avenue North under the Fremont Bridge North Approach lying north of the Lake Washington Ship Canal and south of the former Burlington Northern Main Line Right-of-Way; providing for the acceptance of the permit and conditions; amending Ordinance 121706, repealing Exhibit A to Ordinance 121706, and adopting a new Attachment A to Ordinance 121706; and ratifying and confirming certain prior acts.

Notes:

Sponsors: O'Brien

Attachments: Att A - Attachment A to Ordinance 121706

Drafter: amy.gray@seattle.gov

	Date
Filed with City Clerk:	2/11/2016
Mayor's Signature:	2/11/2016
Vetoed by Mayor:	
Veto Overridden:	
Veto Sustained:	

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	11/24/2015	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	11/24/2015	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	11/24/2015	sent for review	Transportation Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Transportation Committee						

Notes:

1	Council President's Office	01/08/2016	sent for review	Sustainability and Transportation Committee	

Action Text: The Council Bill (CB) was sent for review. to the Sustainability and Transportation
Notes:

1	Full Council	01/25/2016	referred	Sustainability and Transportation Committee	

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

1	Sustainability and Transportation Committee	02/02/2016	pass		Pass

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

In Favor: 2 Chair O'Brien, Vice Chair Johnson

Opposed: 0

1	Full Council	02/08/2016	passed as amended		Pass

Action Text: The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:
Notes: ACTION 1:

Motion was made by Councilmember O'Brien and duly seconded, to amend Council Bill 118611, Sections 10A.(c), fourth paragraph, first sentence, and 13C, first paragraph, third sentence, as shown in the underlined and strike through language below:

***

Section 10A.(c)

Within 60 days after the effective date of this ~~thes~~ ordinance introduced as Council Bill 118611, the Permittee shall provide to the City, 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.

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Section 13C.

The Permittee shall, within 60 days of the effective date of the ordinance introduced as Council Bill 118611, and prior to conveying any interest in the Property, deliver to the Director, upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office.

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ACTION 2:

By unanimous consent, Council Rule III.A.6, Business Brought Before the Full Council, was suspended to allow the consideration of amendments to Council Bill 118611.

ACTION 3:

The Amendment in Action 1 was restated and the amendment passed.

In Favor: 8 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

2	City Clerk	02/08/2016	submitted for Mayor's signature	Mayor

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

Notes:

2	Mayor	02/11/2016	Signed

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

Notes:

2	Mayor	02/11/2016	returned	City Clerk

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

Notes:

2	City Clerk	02/11/2016	attested by City Clerk

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

Notes:

CITY OF SEATTLE

ORDINANCE 124986

COUNCIL BILL 118611

AN ORDINANCE relating to the permission granted to Fremont Dock Co. by Ordinance 121706 to use and occupy a portion of Fremont Avenue North under the Fremont Bridge North Approach lying north of the Lake Washington Ship Canal and south of the former Burlington Northern Main Line Right-of-Way; providing for the acceptance of the permit and conditions; amending Ordinance 121706, repealing Exhibit A to Ordinance 121706, and adopting a new Attachment A to Ordinance 121706; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 121706 permission was granted to Fremont Dock Co. to use and occupy a portion of Fremont Avenue North under the Fremont Bridge North Approach and lying north of the Lake Washington Ship Canal and south of the former Burlington Northern Main Line Right-of-Way; and

WHEREAS, Fremont Dock Co. has applied for permission to use and occupy a modified portion of Fremont Avenue North under the Fremont Bridge North Approach lying north of the Lake Washington Ship Canal and south of the former Burlington Northern Main Line Right-of-Way and further described below as the "Use Area" (or PP3) in exchange for the granting of a 25-foot-wide easement across Permittee's property for access to the Fremont Bridge North Approach; and

WHEREAS, The City of Seattle has also entered into an agreement with Fremont Dock Co. to allow Seattle Department of Transportation (SDOT) to use a portion of Fremont Avenue North under the Fremont Bridge North approach that is privately owned, and this area is further described in Attachment A to this ordinance at page 3 and a map of the area at page 4 of Attachment A (also referred to as PP4); and

WHEREAS, Ordinance 121706 needs to be amended to meet current term permit requirements; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the Use Area to legally occupy a portion of the public right-of-way; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of Ordinance 121706 are amended as follows:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle ("City") grants permission ((~~is hereby granted~~)) (also referred to in this ordinance as a permit) to the Fremont Dock Co., and its successors and assigns((~~, (Permittee)~~)) as approved by the Director of the Seattle Department of Transportation ("Director") according to Section 12 of this ordinance (the party named above and each such approved successor and assign is referred to as "Permittee"), to use and occupy a portion of Fremont Avenue North under the Fremont Bridge North Approach ((~~and~~)) lying ((~~between the northerly margin~~)) north of the Lake Washington Ship Canal and ((~~the southerly boundary~~)) south of the former Burlington Northern Main Line Right-of-Way and described in Exhibit A (the "Use Area"), adjacent in whole or in part to the property legally described as:

That certain parcel of land situated in the City of Seattle, County of King, State of Washington, within the Southeast Quarter of Section 18, Township 25 North Range 4 East, W.M., that portion of Fremont Avenue North under the bridge approach for the Fremont Avenue Bridge, described as follows:

Commencing at the centerline intersection of Fremont Avenue North and North 34th Street; thence along the centerline of said North 34th Street, North 77°29'54" West 39.73 feet to the northerly projection of the westerly right-of-way line of said Fremont Avenue North;

Thence along said northerly projection, South 00°09'34" West 122.71 feet to the intersection with the northwesterly projection of the northwesterly line of Block 84 of Denny &

Hoyt's Supplemental Plat to the City of Seattle according to the plat thereof recorded in Volume 3 of Plats, Page 3, records of said county and the True Point of Beginning;

Thence along said westerly right-of-way line, South 00°09'34" West 241.66 feet to the westerly projection of an existing chain link fence;

Thence along said westerly projection and along said existing chain link fence, South 89°39'02" East 80.00 feet to the easterly right-of-way line of said Fremont Avenue North;

Thence along said easterly right-of-way line, North 00°09'34" East 224.40 feet to said northwesterly projection of the northwesterly line of Block 84;

Thence along said northwesterly projection, North 77°29'04" West 81.90 feet to the True Point of Beginning.

Section 2. **Term.** The permission ((~~herein~~)) granted to Permittee ((~~shall be~~)) is for a term of ten (((~~10~~))) years((~~, commencing at the completion of the Fremont Bridge Approaches Project as determined by the Director of Transportation (Director) (the "Commencement Date")~~))) starting on February 25, 2008, and ((~~terminating~~)) ending at 11:59 p.m. on the last day of the tenth year ((~~from the Commencement Date~~)) . ((~~The Permittee shall have the option to extend this Permit for two (2) additional ten (10) year terms.~~)) Upon written application ((~~of~~)) made by the Permittee at least ((~~thirty (30)~~))) 180 days before expiration of the ((~~then applicable~~)) term, the Director ((~~shall~~)) or the City Council may renew the permit ((~~for a successive ten (10) year term~~)) twice, each time for a successive ten-year term, subject to the right of the City to require the removal of the Use Area or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The total term of the permission ((~~as originally granted and thus extended~~)) , including renewals, shall not exceed ((~~thirty (30)~~))) 30 years ((~~subject to the right of the City of Seattle (City) by ordinance or otherwise to revise any of the terms and conditions contained herein at the time of renewal. Permittee shall have the option not to extend this Permit by not filing a new acceptance~~)) . 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. **Protection of utilities.** The permission granted is ((~~hereby~~)) 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 the Permittee being responsible for any damage to the utilities due to ((~~any of Permittee's~~)) the construction, repair, reconstruction ((~~or~~)) , maintenance ((~~activities related to its use and occupancy. And such protection, support, relocation, repair, reconstruction and maintenance shall be done at Permittee's sole cost and expense for any subsequent damage to the utilities due to any of the Permittee's construction repair, reconstruction or maintenance activities related to its use and occupancy.~~)) , operation, or removal of the Use Area and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 4. **Removal for public use or for cause.** The permission granted ((~~hereby~~)) is subject to ((~~the primary and secondary~~)) use of the street right-of-way or other public place (collectively, "public place") by the City and the public ((~~of the Fremont Avenue North street right-of-way~~)) for travel ((~~and~~)) , utility purposes, and ((~~the~~)) other public uses or benefits. The City expressly reserves the right ((~~upon thirty (30) days written notice to require~~)) 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 ((~~Permittee's use and occupancy~~)) the Use Area, or any part thereof or installation on the public place, at the Permittee's sole cost and expense in the event that:

(a) The City Council determines by ordinance that the space ((~~used and~~)) occupied by the ((~~Permittee~~)) Use Area is necessary for any ((~~primary or secondary~~)) public use or benefit((~~,~~)) or that ((~~Permittee's use and occupancy~~)) the Use Area interferes with any

((~~primary or secondary~~)) public use or benefit (((~~a City determination that the space is necessary for a primary or secondary public use or benefit shall be conclusive or final~~))); or

(b) The City determines that use of the Use Area has been abandoned; or

(((~~b~~))) (c) The City 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 a written ((~~notice of the violation has been issued by the City and Permittee has had thirty (30) days to cure such alleged noncompliance~~)) 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 needed for, or the Use Area interferes 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.** ((~~In the event that~~)) If the permission ((~~hereby~~)) granted ((~~extends to its termination in thirty (30) years,~~)) 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 ((~~orders removal of Permittee's use and occupancy pursuant to the terms of this ordinance~~)) terminates the permission, then within ((~~ninety (90)~~)) 90 days after ((~~such~~)) the expiration ((~~,~~)) or termination ((~~or order of removal, or prior to the date stated in the "Order to Remove," as the case may be,~~)) of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the Use Area, the Permittee shall, at its own expense, remove ((~~its use and occupancy and shall place all portions of the space under the Fremont Bridge North Approach that may have been disturbed for any part of Permittee's use and occupation,~~)) the Use Area and all of the Permittee's equipment and property from the public

place and replace and restore all portions of the public place that may have been disturbed for any part of the Use Area in as good condition for public use as ((~~it was~~)) existed prior to ((~~the use,~~)) construction of the Use Area and in at least as good condition in all respects as the abutting portions ((~~thereof. Whereupon, the Director shall promptly issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge and such issuance shall not be unreasonably withheld, conditioned or delayed.~~)) of the public place as required by SDOT right-of-way restoration standards.

Failure to remove the Use Area as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; 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 in its sole discretion remove the Use Area 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.

Section 6. **Repair or reconstruction.** The Use Area shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the Use Area in good and safe condition for the protection of the public. The Permittee shall not ((~~commence its use and~~

~~occupancy of~~)) reconstruct or repair the Use Area except in strict accordance with plans and specifications approved by the Director. ((~~Permittee shall submit its plans and specifications to the Director and the~~)) The Director ((~~shall review such plans in a timely manner. The Director in his/her~~)) may, in the Director's judgment, ((~~may~~)) order ((~~reconstruction, relocation, readjustment or repair of the Use Area at~~)) the Use Area reconstructed or repaired at the Permittee's ((~~own~~)) cost and expense because of: the deterioration or unsafe ((~~conditions, grade separations, or~~)) condition of the Use Area; the installation, construction, reconstruction, maintenance, operation, or repair of any ((~~and all~~)) municipally-owned public utilities((~~,~~)); or for any other cause ((~~, resulting from the Permittee's use and occupation of the Use Area~~)) .

Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee ((~~,~~)) and failure of the Permittee to correct an unsafe ((~~or risk prone~~)) condition within the time stated in ((~~such~~)) the notice, the Director may order the Use Area be closed or removed at the Permittee's expense if the Director deems that ((~~it~~)) the Use Area has become unsafe or creates a risk of injury to the public. ((~~In a situation in which there~~)) If there is an immediate threat to the health or safety of the public, ((~~written~~)) a notice ((~~is not required, and the Director may summarily close the Use Area. In the event any such closure is the result of conditions or events beyond the control of the Permittee, then the current term of the permit shall be extended by the same number of days that the Use Area is closed~~)) to correct is not required.

Section 8. **Continuing obligations.** Notwithstanding ((~~the~~)) termination or expiration of the permission granted ((~~herein~~)), or closure or removal of ((~~Permittee's use and occupancy~~)) the Use Area, the Permittee shall remain bound by all of its obligations under this ordinance until ((~~: (i) the Use Area is cleared and restored in a manner and to a condition satisfactory to the Director; and (ii)~~)) the Director ((~~certifies that Permittee has discharged its obligations herein,~~

~~and such certification shall not be unreasonably withheld, conditioned or delayed~~)) 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 Sections 13A and 13B of this ordinance.

Section 9. **Release, hold harmless, indemnification, and duty to defend.** ((~~The Use area shall remain the exclusive responsibility of Permittee.~~)) The Permittee, by ((~~acceptance of~~)) accepting the terms of this ordinance ((~~and the permission hereby granted~~)) , releases the City, its officials, officers, employees, and agents from 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 Use Area or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property ((~~and does covenant and agree for itself, its successors and assigns, with the City, to at all times protect and save~~)) .

The Permittee agrees to at all times defend, indemnify, and hold harmless ((~~The~~)) the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense ((~~or damages of every kind and description, including reasonable attorney~~)) , attorneys' fees ((~~and necessary litigation expenses incurred by the City~~)) , or damages of every kind and description, (((~~(~~))excepting only ((~~such~~)) damages that may result from the sole negligence of the City ((~~)~~)) which may accrue to, be asserted by, or be suffered by any person or ((~~persons and/or~~)) property ((~~or properties~~)) including, without limitation, damage, death, or injury to ((~~Permittee, its~~)) members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants ((~~and~~)) , tenants' invitees, licensees, or its successors and assigns, arising out of or by reason of ((~~Permittee's use and occupancy of the Use Area,~~)):

(a) The existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the Use Area or any portion thereof, or ((~~by reason of anything that has been done, or may at any time be done~~)) the use, occupation, or restoration of the public place or any portion thereof by the Permittee ((~~, its successors or assigns,~~)) 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 by reason of Permittee, its successors and assigns~~)); or

(c) The Permittee failing or refusing to strictly comply with ((~~each and~~)) every provision of this ordinance, ((~~and if~~)) or requirements arising out of or by reason of the Use Area or this ordinance in any other way.

If any ((~~such~~)) suit, action, or claim ((~~be~~)) of the nature described above is filed, instituted, or begun against the City,((~~then~~)) the Permittee ((~~, its successors and assigns,~~)) shall ((~~,~~)) upon ((~~written~~)) notice ((~~thereof~~)) from the City ((~~,~~)) defend the City, with counsel acceptable to the City, at ((~~its~~)) the sole cost and expense of the Permittee, and ((~~in case~~)) if a judgment ((~~shall be~~)) is rendered against the City in any suit or action, the Permittee ((~~, its successors and assigns,~~)) shall fully satisfy ((~~said~~)) the judgment within ((~~ninety (90)~~)) 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, 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 the Permittee's agents, contractors, or employees ((~~or its successors and assigns~~)) .

((~~Permittee specifically and expressly agrees to waive Permittee's and Permittee's successors' and assigns' immunity under industrial insurance, Tittle 51 of the Revised Code of Washington, to the extent necessary to provide the City with a full and complete indemnity from claims made by employees of Permittee or Permittee's successors and assigns. Permittee, on behalf of Permittee and Permittee's successors and assigns, specifically and expressly agrees that such waiver of immunity was mutually negotiated by the parties~~))

Section 10A. **Insurance.** For as long as the Permittee((~~, its successors and assigns, shall exercise~~)) exercises any permission granted by this ordinance and until ((~~Permittee's use and occupancy is entirely removed and discontinued and Permittee discharged by order of~~)) the Director ((~~as provided in~~)) has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, the Permittee shall ((~~unless the City and Permittee mutually agree that insurance is unavailable at a reasonable cost~~)) obtain and maintain in full force and effect, at its own cost and expense, insurance ((~~policies which protect~~)) and/or self-insurance that protects the Permittee and the City from any and all claims and risks of ((~~any~~)) loss from perils ((~~which~~)) that can be insured against under commercial general liability (CGL) insurance ((~~contracts and fire insurance policies, including any extended coverage endorsements thereto which are customarily available from time to time for~~)) policies in conjunction with:

(a) Construction, reconstruction, modification, operation, maintenance, use ((~~or~~)) , existence ((~~of Permittee's use and occupancy permitted by this ordinance and of any and all portions of the Use Area;~~)) , or removal of the Use Area or any portion thereof, as well as

restoration of any disturbed areas of the public place in connection with removal of the Use Area;

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

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

Minimum insurance requirements ((~~shall be for a commercial general liability insurance policy of a form, and placed with insurers, acceptable to the City.~~)) are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State 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 limits of liability shall be $2,000,000 ((~~each occurrence combined single limit bodily injury and property damage and~~)) per Occurrence; $4,000,000 ((~~annual aggregate~~)) General Aggregate; $4,000,000 Products/Completed Operations Aggregate, including Premises Operation, Personal/Advertising Injury, and Contractual Liability. Coverage shall ((~~specifically apply to the Use Area under the Fremont Bridge North Approach exposure. The policy shall~~)) include "The City of Seattle, its ((~~elected and appointed~~)) officers, officials, employees and agents" as additional insureds ((~~either by designated additional insured endorsement or by blanket additional insured policy wording, either of which shall expressly provide such additional insured status for the City in its role of governmental permitting Coverage shall be on~~

~~a primary basis and not contributory with any insurance or self-insurance that the City may maintain. Evidence of current coverage shall be maintained on file with the City's Risk Manager in the form of a copy of certification of property and liability insurance coverage, including an actual copy of the designated additional insured endorsement to the commercial general liability insurance policy or of the blanket additional insured wording forming a part thereof. Whenever in the judgment of the City's Risk Manager, the coverage's or limits of such insurance filed pursuant to the provisions hereof shall be deemed insufficient to fully protect the City, Permittee shall, upon written demand by the Risk Manager, furnish additional insurance in such amount as may be specified by the Risk Manager~~)) 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 introduced as Council Bill 118611, the Permittee shall provide to the City, 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 or to the Department of Transportation (SDOT) 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.

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 12 of this ordinance.

Section 10B. **Adjustment of insurance requirements.** The Director may adjust minimum liability insurance levels 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 levels to the Director.

Section 11. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors ((~~and subcontractors at all tiers that~~)) performing ((~~construction~~)) work on ((~~the Use Area~~)) any premises as contemplated by this permit ((~~,~~)) name "The City of Seattle, its officers, officials, employees and agents" as ((~~an~~)) additional ((~~insured~~)) insureds ((~~on all policies of commercial general liability insurance for such project(s), and~~)) 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 ((~~for such projects(s) a~~)) with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee ((~~to the City as well~~)) .

Section 12. **Consent for and conditions of assignment or transfer.** ((~~Permittee, its successors and assigns shall not assign or transfer any privileges conferred~~)) 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 ((~~of the City~~)) which ((~~consent~~)) the Director shall not ((~~be~~)) unreasonably ((~~withheld, conditioned or delayed~~)) refuse. ((~~If permission is~~)) The Director may approve assignment or transfer of the permission granted ((~~, the assignee or transferee shall be bound~~)) by this ordinance to a successor entity only if the successor or assignee has accepted in writing all of the terms and conditions of ((~~this ordinance and Fremont Dock Co. shall be released therefrom. This consent requirement does not apply to any lessees or sublessees of Fremont Dock Co.~~)) the permission granted by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Sections 13A and 13B 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 Use Area.

Section 13A. **Inspection fees.** The Permittee ((~~, its successors and assigns,~~)) shall, as provided by Seattle Municipal Code Chapter 15.76 or successor provision, pay ((~~to~~)) the City ((~~reasonable costs~~)) the amounts charged by the City to inspect the Use Area during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the Use Area by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to ((~~ensure~~)) the safety ((~~of the use and occupancy, under the direction of the Director, as provided by Seattle Municipal Code Chapter 15.76~~)) , soundness, or condition of the Use Area. 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 13B. Annual Fee. In consideration for a non-exclusive 25-foot-wide easement across the Permittee's property, as recorded with King County Records No. 2005307001886, an annual fee for the Use Fee will not be assessed. If the easement is ever rescinded or revoked by the Permittee, an annual fee according to the Street Use Permit Fee Schedule term permit fee methodology shall be issued by the Director, and annually thereafter, for privileges granted by this ordinance.

Section 13C. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the Use Area and legally described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of the ordinance introduced as Council Bill 118611, and prior to conveying any interest in the Property, deliver to the Director, upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, the Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

Section 13D. **Compliance with other laws.** Permittee shall construct, maintain and operate the Use Area in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the Use Area, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04 of the Seattle Municipal Code, and Fair Contracting Practices Code, Chapter 14.10 of the Seattle Municipal Code (or successor provisions).

* * *

Section 2. **Repeal of Exhibit A.** Exhibit A to Ordinance 121706, providing a legal description of the Fremont Dock Use Area, is repealed.

Section 3. **Adoption of Attachment A.** Attachment A to this ordinance is adopted as Attachment A to Ordinance 121706.

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

Section 5. **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 declined or abandoned and the permission granted deemed lapsed and forfeited and the Permittee shall, at its own expense, remove the Use Area and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 5 of Ordinance 121706, and as further amended by this ordinance.

Section 6. **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 this ordinance is ratified and confirmed.

Section 7. 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 8th day of Feb, 2016, and signed by me in open session in authentication of its passage this 8th day of Feb, 2016.

President _____ of the City Council

Approved by me this 11th day of February, 2016.

Edward B. Murray, Mayor

Filed by me this 11th day of February, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment A - Attachment A to Ordinance 121706

Attachment A: Attachment A to Ordinance 121706

PERMIT AREA TO FREMONT DOCK COMPANY– PP3
PARCEL NO. 197320-0230-09

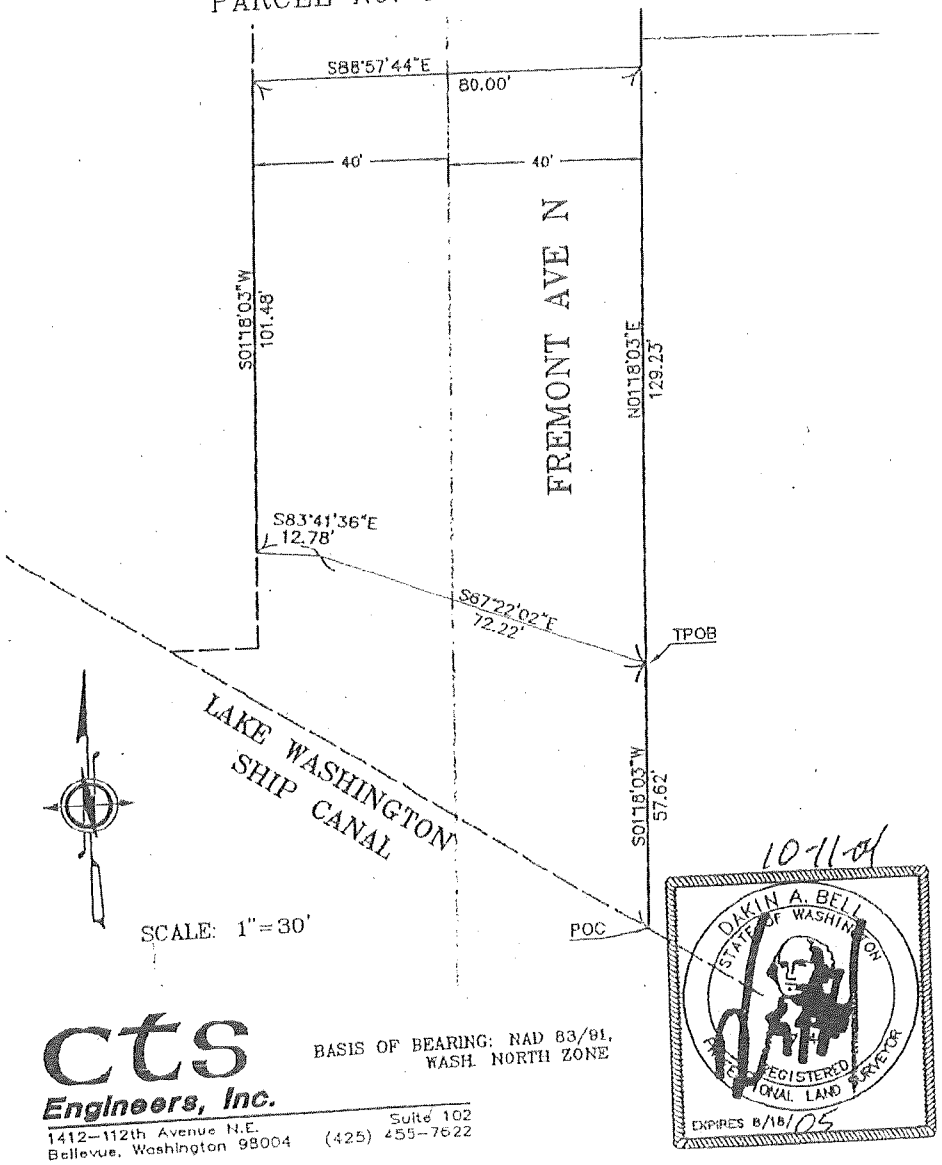
THOSE PORTIONS OF BLOCKS 81AND 84 DENNY AND HOYT'S SUPPLEMENTAL PLAT TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 3, IN KING COUNTY, WASHINGTON, AND OF VACATED STREETS AND ALLEYS ABUTTING THEREON; LOT F, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NUMBER 9801013, RECORDED UNDER RECORDING NUMBER 9803239017; LOCATED IN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 25 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY WASHINGTON AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH MARGIN OF THE LAKE WASHINGTON SHIP CANAL AS CONDEMNED NOVEMBER 25, 1898, UNDER KING COUNTY SUPERIOR COURT CAUSE NUMBER 21942 WITH THE EAST MARGIN OF FREMONT AVENUE NORTH BEING DESCRIBED AS THE EAST LINE OF THE WEST 7.00 FEET OF BLOCK 84, DENNY AND HOYT'S SUPPLEMENTAL PLAT TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 3, IN KING COUNTY, WASHINGTON, CONDEMNED BY THE CITY OF SEATTLE ON AUGUST 16, 1909 FOR THE WIDENING OF FREMONT AVENUE NORTH UNDER KING COUNTY SUPERIOR COURT CAUSE NUMBER 62184 AS PROVIDED FOR IN THE CITY OF SEATTLE ORDINANCE NUMBER 17629;
THENCE NORTH 1°18'03" EAST ALONG SAID EAST MARGIN, A DISTANCE OF 57.62 FEET TO THE TRUE PONT OF BEGINNING;

THENCE CONTINUING NORTH 1°18'03" EAST ALONG SAID EAST MARGIN, A DISTANCE OF 129.23 FEET;
THENCE NORTH 88°57'44" WEST, A DISTANCE OF 80.00 FEET TO THE WEST MARGIN OF FREMONT AVENUE NORTH AS CONDEMNED BY THE CITY OF SEATTLE ON AUGUST 16, 1909 FOR THE WIDENING OF FREMONT AVENUE NORTH UNDER KING COUNTY SUPERIOR COURT CAUSE NUMBER 62184 AS PROVIDED FOR IN THE CITY OF SEATTLE ORDINANCE NUMBER 17629;
THENCE SOUTH 1°18'03" WEST, A DISTANCE OF 101.48 FEET;
THENCE SOUTH 83°41'36" EAST, A DISTANCE OF 12.78 FEET
THENCE SOUTH 67°22'02" EAST, A DISTANCE OF 72.22 FEET TO THE TRUE POINT OF BEGINNING;

THE ABOVE DESCRIBED CONTAINING 9, 099 SQUARE FEET MORE OR LESS.

PERMIT AREA TO FREMONT DOCK COMPANY – (PP3)
PARCEL NO. 197320-0230-09



cts
Engineers, Inc.
1412–112th Avenue N.E. Suite 102
Bellevue, Washington 98004 (425) 455-7622

BASIS OF BEARING: NAD 83/91, WASH. NORTH ZONE

Legal Description
Street Use Permit Area (PP4)
Under the Fremont Avenue Bridge Approach

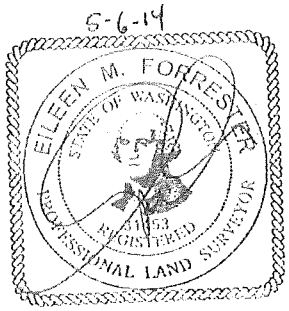
THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON, WITHIN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.,
TOGETHER WITH THAT PORTION OF BLOCKS 82, 83 AND 84, DENNY & HOYT'S SUPPLEMENTAL PLAT ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 3, RECORDS OF KING COUNTY;
TOGETHER WITH THAT PORTION OF VACATED N. 32ND STREET, PURSUANT TO ORDINANCE NO'S. 45989 AND 76425;
TOGETHER WITH THAT PORTION OF THE VACATED ALLEY, BETWEEN SAID BLOCKS 82 AND 83, PURSUANT TO ORDINANCE NO. 10471;
ALL BEING A PORTION OF FREMONT AVENUE NORTH UNDER THE BRIDGE APPROACH FOR THE FREMONT AVENUE BRIDGE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF FREMONT AVENUE NORTH AND NORTH 34TH STREET;
THENCE ALONG THE CENTERLINE OF SAID NORTH 34TH STREET, NORTH 77°29'54" WEST, 39.73 FEET TO THE NORTHERLY PROJECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF SAID FREMONT AVENUE NORTH;
THENCE ALONG SAID NORTHERLY PROJECTION AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 00°09'34" WEST, 138.99 FEET TO THE **TRUE POINT OF BEGINNING;**
THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 00°09'34" WEST, 215.38 FEET;
THENCE SOUTH 89°39'02" EAST 80.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID FREMONT AVENUE NORTH;
THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 00°09'34" EAST, 216.38 FEET;
THENCE SOUTH 89°37'49" WEST, 80.01 FEET TO THE **TRUE POINT OF BEGINNING.**

Containing: 17,271 square feet, more or less.

Exhibit "B" attached and by this reference made a part hereof.

5-6-19



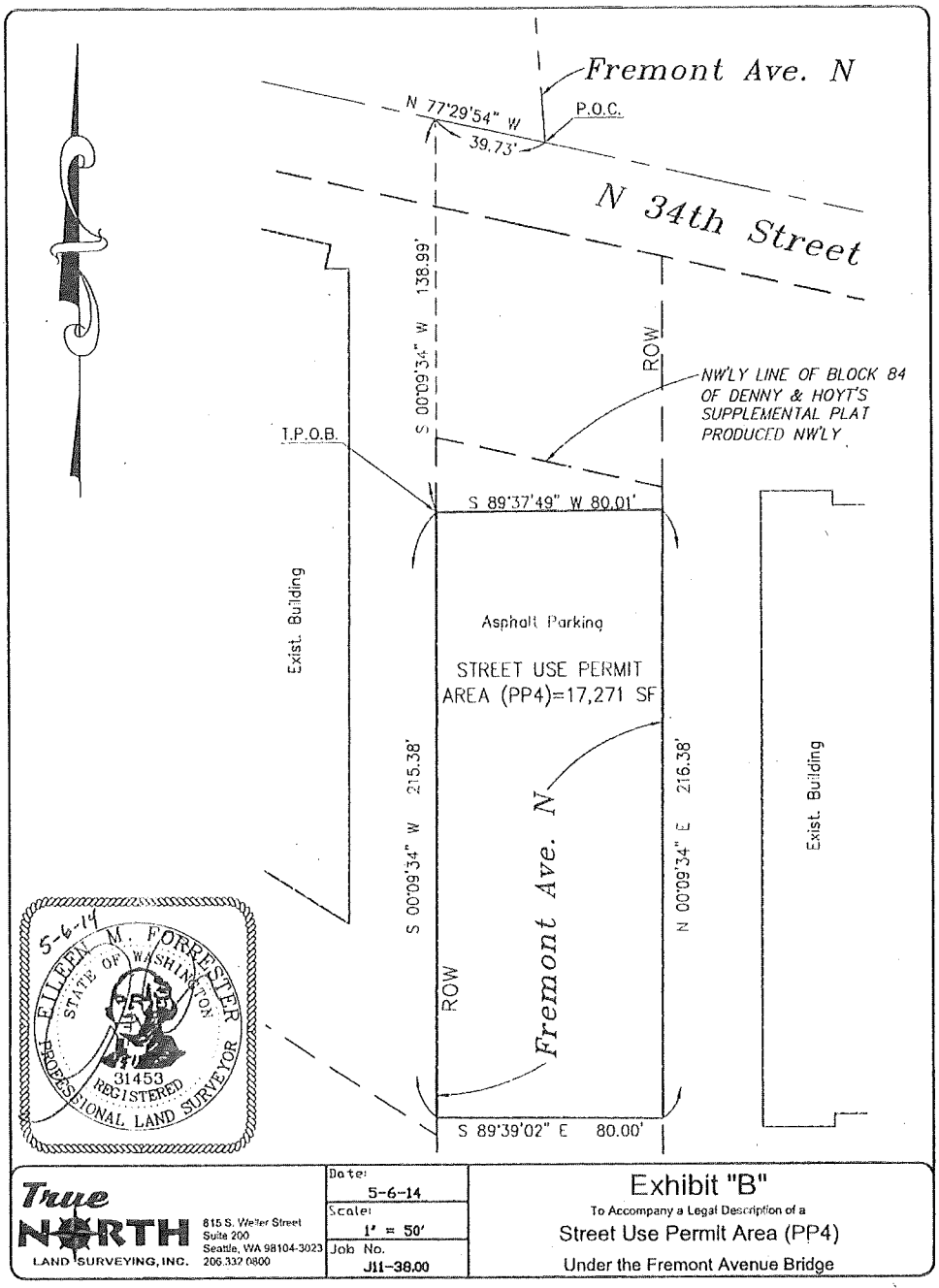

Fremont Ave. N
N 77°29'54" W
39.73'
P.O.C.
N 34th Street
S 00°09'34" W 138.99'
ROW
NW'LY LINE OF BLOCK 84
OF DENNY & HOYT'S
SUPPLEMENTAL PLAT
PRODUCED NW'LY
T.P.O.B.
S 89°37'49" W 80.01'
Exist. Building
Asphalt Parking
STREET USE PERMIT
AREA (PP4)=17,271 SF
S 00°09'34" W 215.38'
N 00°09'34" E 216.38'
ROW
Fremont Ave. N
Exist. Building
S 89°39'02" E 80.00'
5-6-14
EILEEN M. FORRESTER
STATE OF WASHINGTON
31453
REGISTERED
PROFESSIONAL LAND SURVEYOR
True NORTH
LAND SURVEYING, INC.
815 S. Weller Street
Suite 200
Seattle, WA 98104-3023
206.332.0800
Date: 5-6-14
Scale: 1" = 50'
Job No. J11-38.00
Exhibit "B"
To Accompany a Legal Description of a
Street Use Permit Area (PP4)
Under the Fremont Avenue Bridge

EXHIBIT A