

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 118104

AN ORDINANCE granting the Port of Seattle permission to construct, maintain, and operate a private roadway and electrical utilities on a portion of South Dakota Street and East Marginal Way South, as part of the Argo Yard Truck Roadway Project, for a ten-year term renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, the Port of Seattle, as lead agency, has applied for permission to construct an at-grade private road, private light poles, and buried electrical utilities between a new underpass of the State Route 99 Spokane Street Overcrossing and Colorado Avenue South; and

WHEREAS, a small part of the Argo Yard Truck Roadway Project (the "Project") would occupy a portion of South Dakota Street and Marginal Way South. The purpose of the Project is to provide a faster and safer route for freight traffic from the Port of Seattle marine terminals to the Union Pacific Railroad Argo Yard gate; and

WHEREAS, the Port of Seattle, Union Pacific Railroad, Washington State Freight Mobility Strategic Investment Board, ProLogis, L.P., and the City of Seattle (the "City") have entered into a Memorandum of Understanding for the Project; and

WHEREAS, constructing the Project will reduce traffic congestion on southbound SR 99/East Marginal Way South and provide time savings for all users; and

WHEREAS, by Resolution 31479, the City granted conceptual approval for the construction, maintenance, and operation of the private roadway and electrical utilities; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the Port of Seattle 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 the Port of Seattle, and its successors and assigns as approved by the Director of the Seattle Department of

1 Transportation ("Director") according to Section 13 of this ordinance (the party named above  
2 and each such approved successor and assign is referred to as "Permittee"), to maintain and  
3 operate a private roadway, private light poles, and buried electrical utilities, fencing, jersey  
4 barriers, and any other appurtenances related to the function of the private roadway ("roadway")  
5 on a portion of South Dakota Street and East Marginal Way South, occupying the public place as  
6 legally described as:

7  
8 The private roadway is in the Southeast Quarter of Section 18, Township  
24 North, Range 4 East, Willamette Meridian:

9 Commencing at a concrete filling pipe with lead and tack at the  
10 intersection of South Dakota Street and East Marginal Way South;

11 Thence North  $01^{\circ}08'55''$  East, along the centerline of said East Marginal  
Way South, a distance of 393.30 feet;

12 Thence South  $88^{\circ}51'05''$  East a distance of 111.39 feet to an angle point in  
the Right of Way margin of said East Marginal Way South and the most northerly  
13 point of Assessor's Parcel No. 7666207545, said point being the Point of  
Beginning;

14 Thence South  $39^{\circ}53'29''$  East, along the northeasterly boundary of said  
parcel and southwesterly Right of Way margin of said East Marginal Way South,  
15 a distance of 87.67 feet to an angle point in said Right of Way margin;

16 Thence North  $14^{\circ}15'59''$  West, along said Right of Way margin, a  
distance of 1.06 feet to the beginning of a nontangent 121.50 foot radius curve to  
17 the left, the radius point of which bears South  $68^{\circ}07'13''$  West and a point  
hereinafter described as Point "A";

18 Thence northwesterly along said curve, through a central angle of  
 $20^{\circ}32'25''$  and an arc distance of 43.56 feet;

19 Thence North  $45^{\circ}50'29''$  West a distance of 14.50 feet to the beginning of  
a nontangent 19,610.30 foot radius curve to the right;

20 Thence northeasterly along said curve, through a central angle of  
21  $00^{\circ}03'00''$  and an arc distance of 17.14 feet;

22 Thence North  $46^{\circ}38'26''$  West a distance of 13.78 feet;

23 Thence South  $00^{\circ}31'29''$  West a distance of 1.77 feet to the Point of  
Beginning.

24 TOGETHER WITH:

25 Commencing at the hereinbefore described Point "A";

26 Thence South  $14^{\circ}51'59''$  East, along the boundary of Assessor's Parcel No.  
7666207545, a distance of 288.47 feet to an angle point in northerly Right of Way  
margin of South Dakota Street;

1 Thence North  $88^{\circ}49'33''$  West, along the northerly Right of Way margin  
2 of South Dakota Street, a distance of 32.63 feet to a point on a nontangent 249.25  
3 foot radius curve to the left, the radius point of which bears North  $72^{\circ}45'42''$  East,  
4 said point being the Point of Beginning;

5 Thence southeasterly along said curve, through a central angle of  
6  $05^{\circ}57'51''$  and an arc distance of 25.95 feet to a point on the Right of Way margin  
7 of said South Dakota Street, said point being on a nontangent 536.73 foot radius  
8 curve to the right, the radius point of which bears North  $58^{\circ}31'54''$  East;

9 Thence northwesterly along said curve, through a central angle of  
10  $00^{\circ}03'57''$  and an arc distance of 0.65 feet to an angle point in said Right of Way  
11 margin;

12 Thence South  $01^{\circ}10'27''$  West a distance of 41.87 feet to a point on a  
13 nontangent 269.25 foot radius curve to the right, the radius point of which bears  
14 North  $58^{\circ}47'29''$  East;

15 Thence northwesterly along said curve through a central angle of  
16  $15^{\circ}22'53''$  and an arc distance of 72.28 feet to a point on the northerly Right of  
17 Way margin of said South Dakota Street;

18 Thence South  $88^{\circ}49'33''$  East, along said northerly Right of Way margin, a  
19 distance of 20.99 feet to the Point of Beginning.

20 Having an area of 1,362 square feet, within the Rights of Way of South  
21 Dakota Street and East Marginal Way South.

22 And:

23 The private utilities are in the Southeast Quarter of Section 18, Township  
24 24 North, Range 4 East, Willamette Meridian:

25 Commencing at a concrete filled pipe with lead and tack at the intersection  
26 of South Dakota Street and East Marginal Way South;

27 Thence North  $01^{\circ}08'55''$  East, along the centerline of said East Marginal  
28 Way South a distance of 393.30 feet;

Thence South  $88^{\circ}51'05''$  East, a distance of 111.39 feet to an angle point  
in the Right of Way margin of said East Marginal Way South, said point being  
the most northerly point of Assessor's Parcel No. 7666207545;

Thence North  $00^{\circ}31'29''$  East, a distance of 1.77 feet to the Point of  
Beginning;

Thence North  $00^{\circ}05'23''$  East, a distance of 1.93 feet;

Thence North  $00^{\circ}56'07''$  East, a distance of 8.92 feet;

Thence South  $46^{\circ}38'51''$  East, a distance of 17.72 feet to the beginning of  
a nontangent curve to the right, having a radius of 3108.88 feet, the center of  
which bears South  $43^{\circ}10'00''$  West;

Thence southeasterly along said curve, through a central angle of  
 $00^{\circ}22'18''$  and an arc distance of 20.17 feet to a point hereinafter described as  
point "B";

Thence South  $40^{\circ}44'14''$  West a distance of 8.00 feet to the beginning of a  
nontangent 19,610.30 foot radius curve to the right;

1 Thence northeasterly along said curve, through a central angle of  
00°03'00" and an arc distance of 17.14 feet;

2 Thence North 46°38'26" West a distance of 13.78 feet to the Point of  
Beginning;

3 TOGETHER WITH:

4 Commencing at the hereinbefore described Point "B";

5 Thence South 46°03'13" East, a distance of 14.50 feet to the beginning of  
a nontangent curve to the right, having a radius of 129.50 feet, the center of which  
bears South 47°09'19" West, said point being the Point of Beginning;

6 Thence continuing southeasterly along said curve, through a central angle  
of 06°36'06" and an arc distance of 14.92 feet to a point on the easterly Right of  
7 Way margin of East Marginal Way South;

8 Thence South 14°51'59" East, along said easterly Right of Way margin, a  
distance of 32.37 feet to the beginning of a nontangent 121.50 foot radius curve to  
9 the left, the radius point of which bears South 68°07'13" West and a point  
hereinafter described as Point "C";

10 Thence northwesterly along said curve, through a central angle of  
20°32'25" and an arc distance of 43.56 feet;

11 Thence North 40°44'14" East a distance of 8.05 feet to the Point of  
12 Beginning;

13 TOGETHER WITH:

14 Commencing at the hereinbefore described Point "C";

15 Thence South 14°51'59" East, along the boundary of Assessor's Parcel No.  
7666207545, a distance of 289.54 feet to an angle point in the northerly Right of  
Way margin of South Dakota Street;

16 Thence North 88°49'33" West, along said northerly Right of Way margin,  
a distance of 32.63 feet to a point on a nontangent 241.25 foot radius curve to the  
17 left, the radius point of which bears North 72°07'41" East, said point being the  
Point of Beginning;

18 Thence southeasterly along said curve, through a central angle of  
21°41'52" and an arc distance of 91.36 feet;

19 Thence South 88°51'05" East a distance of 3.63 feet to a point on the  
20 Right of Way margin of South Dakota Street;

21 Thence South 14°54'18" East along said Right of Way margin, a distance  
of 8.54 feet to the beginning of a nontangent 563.73 foot radius curve to the right,  
the radius point of which bears North 50°12'30" East;

22 Thence northwesterly along said curve, through a central angle of  
08°19'23" and an arc distance of 81.89 feet to a point on the Right of Way margin  
23 of said South Dakota Street, said point being the beginning of a nontangent  
24 249.25 foot radius curve to the right, the radius point of which bears North  
66°47'51" East;

25 Thence northwesterly along said curve, through a central angle of  
05°57'51" and an arc distance of 25.95 feet to a point on the northerly Right of  
26 Way margin of said Dakota Street;

1 Thence South 88°49'33" East, along said northerly Right of Way margin, ,  
a distance of 8.45 feet to the Point of Beginning.

2 Having an area of 1.041 square feet within the Rights of Way of South  
3 Dakota Street and East Marginal Way South.

4 Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting  
5 on July 1, 2014 and ending at 11:59 p.m. on June 30, 2024. Upon written application made by  
6 the Permittee at least 180 days before expiration of the term, the Director or the City Council  
7 may renew the permit twice, each time for a successive ten-year term, subject to the right of the  
8 City to require the removal of the roadway or to revise by ordinance any of the terms and  
9 conditions of the permission granted by this ordinance. The total term of the permission,  
10 including renewals, shall not exceed 30 years. The Permittee shall submit any application for a  
11 new permission no later than 180 days prior to the expiration of the then-existing term.  
12

13 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee  
14 bearing the expense of any protection, support, or relocation of existing utilities deemed  
15 necessary by the owners of the utilities, and the Permittee being responsible for any damage to  
16 the utilities due to the maintenance and operation of the roadway and for any consequential  
17 damages that may result from any damage to utilities or interruption in service caused by any of  
18 the foregoing.  
19

20 Section 4. **Removal for public use or for cause.** The permission granted is subject to use  
21 of the street right-of-way or other public place (collectively, public place) by the City and the  
22 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves  
23 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial  
24 term or any renewal term, and require the Permittee to remove the roadway, or any part thereof  
25 or installation on the public place, at the Permittee's sole cost and expense in the event that:  
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1 (a) The City Council determines by ordinance that the roadway is necessary for any  
2 public use or benefit or that the roadway interferes with any public use or benefit; or

3 (b) The Director determines the roadway has been abandoned; or

4 (c) The Director determines any term or condition of this ordinance has been  
5 violated, and the violation has not been corrected by the Permittee by the compliance date after a  
6 written request by the City to correct the violation (unless a notice to correct is not required due  
7 to an immediate threat to the health or safety of the public).

8  
9 A City Council determination that the space is needed for, or the roadway interferes with,  
10 a public use or benefit is conclusive and final without any right of the Permittee to resort to the  
11 courts to adjudicate the matter.

12  
13 **Section 5. Permittee's obligation to remove and restore.** If the permission granted is  
14 not renewed at the expiration date of a term, or if the permission expires without an application  
15 for a new permission being granted, or if the City terminates the permission, then within 90 days  
16 after the expiration or termination of the permission, or prior to any earlier date stated in an  
17 ordinance or order requiring removal of the roadway, the Permittee shall at its own expense  
18 remove the roadway and all of the Permittee's equipment and property from the public place, and  
19 replace and restore all portions of the public place that may have been disturbed for any part of  
20 the roadway in as good condition for public use as existed prior to construction of the roadway  
21 and in at least as good condition in all respects as the abutting portions of the public place as  
22 required by SDOT right-of-way restoration standards.

23  
24 Failure to remove the roadway as required by this section is a violation of Chapter 15.90  
25 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter  
26 15.90 does not eliminate any remedies available to the City under this ordinance or any other  
27

1 authority. If the Permittee does not timely fulfill its obligations under this section, the City may  
2 in its sole discretion restore the public place at the Permittee's expense, and collect such expense  
3 in any manner provided by law.

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

12       **Section 6. Repair or reconstruction.** The roadway shall remain the exclusive  
13 responsibility of the Permittee and the Permittee shall maintain the roadway in good and safe  
14 condition for the protection of the public. The Permittee shall not reconstruct or repair the  
15 roadway except in strict accordance with plans and specifications approved by the Director. The  
16 Director may, in the Director's judgment, order the roadway repaired at the Permittee's cost and  
17 expense because of: the deterioration or unsafe condition of the roadway; the installation,  
18 construction, reconstruction, maintenance, operation, or repair of any municipally-owned public  
19 utilities; or for any other cause.  
20  
21

22       **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and  
23 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
24 Director may order the roadway be closed or removed at the Permittee's expense if the Director  
25 deems that the roadway has become unsafe or creates a risk of injury to the public. If there is an  
26 immediate threat to the health or safety of the public, a notice to correct is not required.  
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1           **Section 8. Continuing obligations.** Notwithstanding termination or expiration of the  
2 permission granted, or closure of the roadway, the Permittee shall remain bound by all of its  
3 obligations under this ordinance until the Director has issued a certification that the Permittee has  
4 fulfilled its removal and restoration obligations under Section 5 of this ordinance.

5 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by  
6 the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed  
7 under Section 16 of this ordinance.  
8

9           **Section 9. Release, hold harmless, indemnification, and duty to defend.** The  
10 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,  
11 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,  
12 attorneys' fees, or damages of every kind and description arising out of or by reason of the  
13 roadway or this ordinance, including but not limited to claims resulting from injury, damage, or  
14 loss to the Permittee or the Permittee's property.  
15

16           The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its  
17 officials, officers, employees, and agents from and against all claims, actions, suits, liability,  
18 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only  
19 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,  
20 or be suffered by any person or property including, without limitation, damage, death or injury to  
21 members of the public or to the Permittee's officers, agents, employees, contractors, invitees,  
22 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:  
23

24           (a) The existence, condition, modification, maintenance, operation, use, or removal of  
25 the roadway or any portion thereof, or the use, occupation, or restoration of the public place or  
26 any portion thereof by the Permittee or any other person or entity;  
27

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

3 (c) The Permittee failing or refusing to strictly comply with every provision of this  
4 ordinance; or arising out of or by reason of the roadway or this ordinance in any other way.

5 If any suit, action, or claim of the nature described above is filed, instituted, or begun  
6 against the City, the Permittee shall upon notice from the City defend the City, with counsel  
7 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is  
8 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment  
9 within 90 days after the action or suit has been finally determined, if determined adversely to the  
10 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington  
11 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or  
12 result from the concurrent negligence of the City, its agents, contractors, or employees, and the  
13 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and  
14 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,  
15 contractors, or employees.  
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18 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by  
19 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
20 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain  
21 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that  
22 protects the Permittee and the City from claims and risks of loss from perils that can be insured  
23 against under commercial general liability (CGL) insurance policies in conjunction with:  
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1 (a) Construction, reconstruction, modification, operation, maintenance, use,  
2 existence, or removal of the roadway or any portion thereof, as well as restoration of any  
3 disturbed areas of the public place in connection with removal of the roadway;

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

6 (c) Claims and risks in connection with activities performed by the Permittee by  
7 virtue of the permission granted by this ordinance.  
8

9 Minimum insurance requirements are CGL insurance written on an occurrence form at  
10 least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance  
11 coverage to be placed with an insurer admitted and licensed to conduct business in Washington  
12 State or with a surplus lines carrier pursuant to RCW Chapter 48.15. If coverage is placed with  
13 any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject  
14 to approval by the City's Risk Manager.  
15

16 Minimum limits of liability shall be \$2,000,000 each Occurrence; \$4,000,000 General  
17 Aggregate; \$2,000,000 Products/Completed Operations Aggregate, including Premises  
18 Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City  
19 of Seattle, its officers, officials, employees and agents" as additional insureds for primary and  
20 non-contributory limits of liability subject to a Separation of Insureds clause.  
21

22 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
23 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
24 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
25 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
26 the Department of Transportation (SDOT) at an address as the Director may specify in writing  
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28

1 from time to time. The Permittee shall provide a certified complete copy of the insurance policy  
2 to the City promptly upon request.

3 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager  
4 may be submitted in lieu of the insurance coverage certification required by this ordinance, if  
5 approved in writing by the City's Risk Manager. The letter of certification must provide all  
6 information required by the City's Risk Manager and document, to the satisfaction of the City's  
7 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in  
8 force. After a self-insurance certification is approved, the City may from time to time  
9 subsequently require updated or additional information. The approved self-insured Permittee  
10 must provide 30 days' prior notice of any cancellation or material adverse financial condition of  
11 its self-insurance program. The City may at any time revoke approval of self-insurance and  
12 require the Permittee to obtain and maintain insurance as specified in this ordinance.  
13  
14

15 In the event that the Permittee assigns or transfers the permission granted by this  
16 ordinance, the Permittee shall maintain in effect the insurance required under this section until  
17 the Director has approved the assignment or transfer pursuant to Section 13 of this ordinance.  
18

19 **Section 11. Contractor insurance.** The Permittee shall contractually require that any  
20 and all of its contractors performing work on any premises contemplated by this permit name the  
21 "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary  
22 and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance  
23 and/or self-insurance. The Permittee shall also include in all contract documents with its  
24 contractors a third-party beneficiary provision extending to the City construction indemnities and  
25 warranties granted to the Permittee.  
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1           Section 12. **Adjustment of insurance requirements.** The Director may adjust minimum  
2 liability insurance levels and requirements during the term of this permission. If the Director  
3 determines that an adjustment is necessary to fully protect the interests of the City, the Director  
4 shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days  
5 of the date of the notice, provide proof of the adjusted insurance levels to the Director.  
6

7           Section 13. **Consent for and conditions of assignment or transfer.** The permission  
8 granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the  
9 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's  
10 consent, which the Director shall not unreasonably refuse. The Director may approve assignment  
11 or transfer of the permission granted by this ordinance to a successor entity only if the successor  
12 or assignee has accepted in writing all of the terms and conditions of the permission granted by  
13 this ordinance; has provided, at the time of the acceptance, the certification of insurance  
14 coverage required under this ordinance; and has paid any fees due under Section 16 of this  
15 ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations  
16 conferred on the Permittee by this ordinance shall be conferred on the successors and assigns.  
17

18 Any person or entity seeking approval for an assignment or transfer of the permission granted by  
19 this ordinance shall provide the Director with a description of the current and anticipated use of  
20 the roadway.  
21

22           Section 14. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
23 successor provision, pay the City the amounts charged by the City to inspect the roadway during  
24 times deemed necessary by the City. An inspection or approval of the roadway by the City shall  
25 not be construed as a representation, warranty, or assurance to the Permittee or any other person as  
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1 to the safety, soundness, or condition of the roadway. Any failure by the City to require correction  
2 of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

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

- 6       (a) Describes the physical dimensions and condition of the roadway;  
7       (b) Describes any damages or possible repairs to any element of the roadway;  
8       (c) Prioritizes all repairs and establishes a timeframe for making repairs; and  
9       (d) Is stamped by a professional engineer licensed in the State of Washington.  
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11 The Permittee has the duty of inspecting and maintaining the roadway. The responsibility to  
12 submit inspection reports as required by the Director does not waive or alter any of the  
13 Permittee's other obligations under this ordinance. The receipt of any reports by the Director  
14 shall not create any duties on the part of the Director. Any failure by the Director to require a  
15 report, or to require action after receipt of any report, shall not waive or limit the obligations of  
16 the Permittee.  
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18       **Section 16. Annual fee.** Beginning on July 1, 2014 and annually thereafter, the Permittee  
19 shall promptly pay to the City, upon statements or invoices issued by the Director, an annual fee  
20 of \$3,476.52 or as adjusted annually thereafter, for the privileges granted by this ordinance.  
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22       Adjustments to the annual fee shall be made in accordance with a term permit fee  
23 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
24 the Director may only increase or decrease the previous year's fee to reflect any inflationary  
25 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
26 adjusting the previous year's fee by the percentage change between the two most recent year-end  
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1 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
2 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
3 City Finance Director for credit to the Transportation Operating Fund.

4       **Section 17. Compliance with other laws.** Permittee shall maintain and operate the  
5 roadway in compliance with all applicable federal, state, County and City laws and regulations.  
6 Without limitation, in all matters pertaining to the roadway, the Permittee shall comply with the  
7 City's laws prohibiting discrimination in employment and contracting including Seattle's Fair  
8 Employment Practices Ordinance, Chapter 14.04, and Fair Contracting Practices code, Chapter  
9 14.10 (or successor provisions).  
10

11       **Section 18. Acceptance of terms and conditions.** The Permittee shall deliver to the  
12 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
13 effective date of this ordinance. The Director shall file the written acceptance with the City  
14 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by  
15 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed  
16 and forfeited. The Permittee shall not commence construction of the roadway prior to the  
17 Permittee delivering its written signed acceptance of the terms of this ordinance and providing  
18 the certification of insurance coverage required by this ordinance as well as the covenant  
19 agreement required by Section 19 of this ordinance.  
20  
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22       **Section 19. Ordinance obligations bind subsequent Permittees.** The obligations and  
23 conditions imposed on the Permittee by this ordinance are covenants that bind the Permittee's  
24 heirs, successors, and assigns regardless of whether the Director has approved an assignment or  
25 transfer of the permission granted by this ordinance. The Permittee shall, within 60 days of the  
26 effective date of this ordinance, and prior to conveying any interest in the encroachments or  
27

1 improvements that are the subject of this ordinance, deliver to the Director on a form supplied by  
2 the Director, a covenant agreement imposing the obligations and conditions in this ordinance,  
3 signed and acknowledged by the Permittee, and recorded with the King County Recorder's  
4 Office. The Director shall file the recorded covenant agreement with the City Clerk. The  
5 covenant agreement shall reference this ordinance by its ordinance number.

6           Section 20. **Section titles.** Section titles are for convenient reference only and do not  
7 modify or limit the text of a section.  
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1 Section 21. This ordinance shall take effect and be in force 30 days after its approval by the  
2 Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall  
3 take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2014, and  
5 signed by me in open session in authentication of its passage this  
6 \_\_\_\_ day of \_\_\_\_\_, 2014.  
7

8  
9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council

11  
12 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2014.  
13

14 \_\_\_\_\_  
15 Edward B. Murray, Mayor  
16

17 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2014.  
18

19 \_\_\_\_\_  
20 Monica Martinez Simmons, City Clerk

21 (Seal)  
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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

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

**Legislation Title:**

AN ORDINANCE granting the Port of Seattle permission to construct, maintain, and operate a private roadway and electrical utilities on a portion of South Dakota Street and East Marginal Way South, as part of the Argo Yard Truck Roadway Project, for a ten-year term renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

**Summary of the Legislation:**

This legislation grants approval to the Port of Seattle to construct, maintain, and operate a private road, private light poles and buried electrical utilities between a new underpass of the State Route 99 Spokane Street Overcrossing and Colorado Avenue South for the Argo Yard Truck Roadway Project (the "Project"). A small portion of the Project would occupy a portion of East Marginal Way South.

This permit is for a ten-year term, renewable for two successive ten-year terms. The legislation has an insurance provision as recommended by the City's Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires the Port of Seattle to pay the City an annual fee of \$3,476.52 commencing July 1, 2014, 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 31479, the City granted conceptual approval for the construction, maintenance and operation of the private road and electrical utilities. The purpose of the Project is to provide a faster route from the Port of Seattle marine terminals to the Union Pacific Railroad Argo Yard gate.

Please check one of the following:

**This legislation has financial implications.**

**Appropriations: N/A**

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2014 Revenue</b>	<b>2015 Revenue</b>
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	\$3,476.52	TBD
<b>TOTAL</b>			<b>\$3,476.52</b>	<b>TBD</b>

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:**

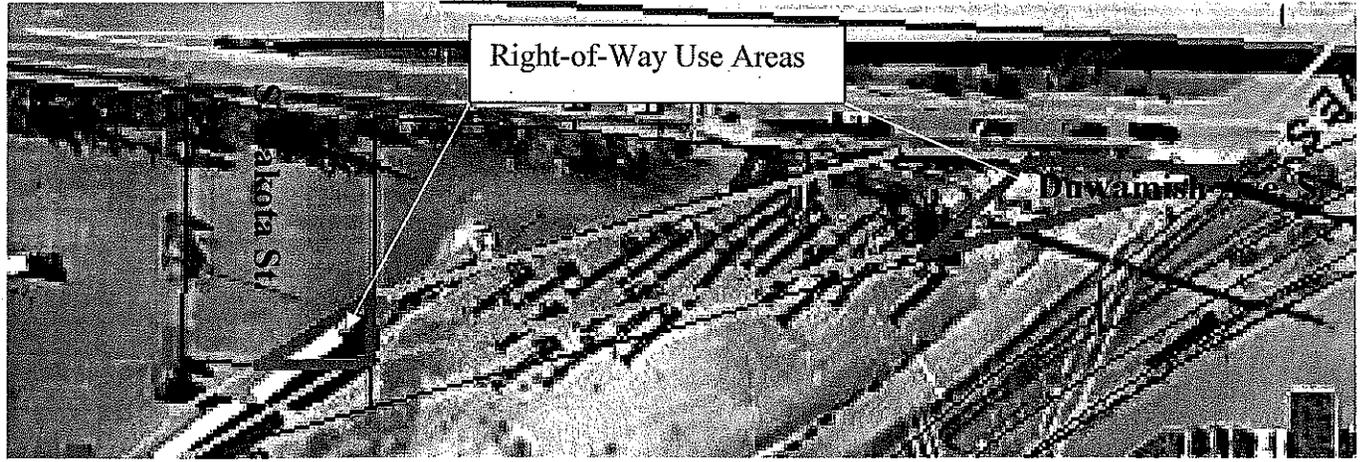
- a) **Does the legislation have indirect financial implications, or long-term implications?**  
N/A
- b) **What is the financial cost of not implementing the legislation?**  
If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$3,476.52. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.
- c) **Does this legislation affect any departments besides the originating department?** No
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None
- e) **Is a public hearing required for this legislation?** No
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No
- g) **Does this legislation affect a piece of property?** Yes, an area map is attached for reference.
- h) **Other Issues:** None

Amy Gray  
SDOT Port Argo Yard Roadway FISC  
April 8, 2014  
Version #2

**List attachments to the fiscal note below:**

Attachment A – Argo Yard Truck Roadway Project Right-of-Way Use Areas  
Attachment B – Annual Fee Assessment Summary

Attachment A – Argo Yard Truck Roadway Project Right-of-Way Use Areas



Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 3/10/14

<p><u>Summary:</u> <b>Land Value: \$31.00/SF</b> <b>2014 Permit Fee:</b> <b>\$3,476.52</b></p>
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I. Property Description:

Private roadway and electrical utilities on a portion of South Dakota Street and East Marginal Way South. The total encroachment area is **2,403 square feet**, consisting of 1,041 sf of utility area and 1,362 sf of private roadway.

Applicant:  
Port of Seattle

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 7666207536, square feet 783,522  
Tax year 2014 Appraised Land Value \$24,289,100  
2014 tax assessed land value: \$31.00/SF
2. Parcel 7666207545, square feet 19,645  
Tax year 2014 Appraised Land Value \$608,900  
2014 tax assessed land value: \$31.00/SF
3. Parcel 1824049008, square feet 344,787  
Tax year 2014 Appraised Land Value \$10,688,300  
2014 tax assessed land value: \$31.00/SF  
Average 2014 tax assessed land value: \$31.00/SF

II. Annual Fee Assessment:

The 2014 permit fee is calculated as follows:

**Roadway:**  $(\$31 / \text{SF}) \times (1,362 \text{ SF}) \times (80\%) \times (8\%) = \boxed{\$2,702.06}$  where 80% is the degree of alienation for an at-grade restricted access/private road and 8% is estimated annual rate of return.

**Private utilities:**  $(\$31 / \text{SF}) \times (1,041 \text{ SF}) \times (30\%) \times (8\%) = \$774.46$  where 30% is the degree of alienation below-grade utilities and 8% is estimated annual rate of return.

Total Fee:  $\$2702.06 + \$774.46 = \$3,476.52$

Fee methodology authorized under Ordinance 123485.



**City of Seattle**  
**Edward B. Murray**  
**Mayor**

April 22, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that will grant permission to the Port of Seattle to construct, maintain, and operate a private road and electrical utilities on a portion of South Dakota Street and East Marginal Way South as part of the Argo Yard Truck Roadway Project.

The purpose of the Argo Yard Truck Roadway Project is to provide a faster route from the Port of Seattle marine terminals to the Union Pacific Railroad Argo Yard gate. The Port of Seattle will construct an at-grade private road, private light poles, and bury electrical utilities between a new underpass of the State Route 99 Spokane Street Overcrossing and Colorado Avenue South.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Edward B. Murray".

Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council