

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b>                  | <b>Contact Person/Phone:</b> | <b>CBO Analyst/Phone:</b> |
|-------------------------------------|------------------------------|---------------------------|
| Finance and Administrative Services | Chris Potter/x6-1576         | Jennifer Devore/x5-1238   |

**Legislation Title:**

AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the amendment of certain lease agreements with the Washington State Department of Transportation, to clarify that the City’s indemnity obligations are limited to funds that have been appropriated and are available at the time an indemnity claim is made, and to specify the resources available to meet the City’s indemnity obligations.

**Summary of the Legislation:**

This legislation authorizes the amendment of fourteen current leases between the City and the Washington State Department of Transportation (WSDOT) executed between 1975 and 2013. A new section is proposed to be added to each lease in order to clarify that the indemnity obligations of the City, as Tenant, are not open-ended. The proposed Lease Amendment notifies WSDOT that the City’s indemnity obligation is limited to funds that have been appropriated and are available at the time that an indemnity claim is made. The new proposed language then documents the City’s appropriation structure and specifies the funds currently appropriated that could be used to pay for an indemnity claim. The City’s Department of Finance and Administrative Services (FAS) is further obligated to notify WSDOT each year of any changes to the City’s appropriation structure, or to the appropriation amounts.

**Background:**

In 2011, the Law Department began to identify a need to address how certain grants of City indemnities were offered in a variety of contracts, including leases. During negotiations with WSDOT over a new City lease of WSDOT property in 2012, the City proposed language clarifying that the City’s indemnity obligations are limited to funds appropriated and available at the time an indemnity claim is made. In response, WSDOT sought assurance that the City would have sufficient funds available to satisfy future indemnity claims.

Because the City cannot guarantee that funds will be available in the future, the City instead agreed to document, in current and future City leases of WSDOT property, the City’s appropriation structure. Therefore, the new proposed language explains that the City satisfies indemnity claims through funds available in the Budget Control Level (BCL) under which the lease was made, through any associated BCL controlled for transfer, and through the City’s

Judgment and Claims Subfund. The new language also notes that the City maintains excess liability insurance coverage.

The lease amendment language also specifies the funds the City has currently appropriated. For 2013 the amount appropriated for the Judgment and Claims Subfund is \$21,533,963 (which includes \$9,745,897 for litigation expenses; \$3,750,000 to pay claims; and \$6,500,000 to satisfy unanticipated claims); and the amount of excess liability insurance coverage is \$40 million. The new language requires FAS to notify WSDOT each year if such amounts, or the appropriation structure, changes.

While specifically identifying resources available to meet indemnities is a change in practice, this ordinance does not materially affect the way the City plans for or meets its indemnity obligations.

Please check one of the following:

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

#### **Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

The long-term implication for FAS is that FAS must notify WSDOT each year if the appropriation amounts listed, or the City's appropriation structure, changes.

**b) What is the financial cost of not implementing the legislation?**

The financial cost of not implementing the legislation would be that WSDOT could decide to terminate any or all of the affected leases. In this case, the City would need to find alternate locations for a number of uses, which could have significant financial cost. For example, cancellation of Agreement AA-1-10891 would necessitate the purchase or lease of land to support operations at the Charles Street Campus.

**c) Does this legislation affect any departments besides the originating department?**

Yes, this legislation affects several departments which have entered into leases with WSDOT, including Human Services Department, Seattle City Light, Seattle Department of Transportation, Department of Parks and Recreation, and Seattle Public Utilities, as well as the Mayor's Office. A list and description of leases to be amended is included within the Ordinance text, and is also attached to this Fiscal Note as Exhibit A. A list of the leases is also included in Attachment 1 to the Ordinance.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

This legislation is a global amendment to fourteen separate leases. It would be possible for each lease to be amended separately so that Council could take each one up in turn. However, since the amendment merely documents certain appropriated funds for 2013, and clarifies the City's indemnity obligations, there is little benefit from taking each agreement up separately.

**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?**

No.

**h) Other Issues:**

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

**Exhibit A – List of Existing WSDOT Leases to be Amended**

**Exhibit A  
 Existing WSDOT Leases to be Amended**

|    | <b>Tenant</b>  | <b>Description</b>                               | <b>Term</b>                                     | <b>WSDOT Lease #</b> | <b>WSDOT IC #</b> | <b>Commencement Date</b> |
|----|--|--|---|----------------------|-------------------|--------------------------|
| 1  | City of Seattle, HSD                                   | Homeless Feeding Program – Operation Sack Lunch  | Year to year, automatically renewing annually   | AA-1-12666           | 1-17-02154        | 4/19/2011                |
| 2  | City of Seattle, SCL                                   | I-5 Transmission Line Station’s Landscaping      | Indefinite                                      | AA-1-07215           | 1-17-02371        | 11/6/1979                |
| 3  | City of Seattle, SDOT                                  | Cougar Mountain Radio Site                       | On holdover, expires in 2022                    | WF-1-11367           | 1-17-03521        | 5/31/2002                |
| 4  | City of Seattle, Department of Administrative Services | Seattle Municipal Tower                          | Expires on May 4, 2064, but can be renegotiated | AA-1-10494           | 1-17-04819        | 3/28/1988                |
| 5  | City of Seattle, Parks                                 | Old Colman School Playground Ground Lease & I-90 | Expires in 2017, but can be renewed             | RA-1-10542           | 1-17-05677        | 4/25/1997                |
| 6  | City of Seattle, Parks                                 | Day Street Ramp & I-90                           | Expires in 2052, but can be renewed             | AA-1-10543           | 1-17-05679        | 4/25/1997                |
| 7  | City of Seattle, Parks                                 | Air Space Leases & I-90                          | Expires in 2017, but can be renewed             | AA-1-10546           | 1-17-05680        | 4/25/1997                |
| 8  | City Of Seattle, Executive Services Department         | Charles Street Interchange                       | Expires on February 28, 2015                    | AA-1-10891           | 1-17-05807        | 3/1/2010                 |
| 9  | City of Seattle, Parks                                 | Plymouth Pillars Park                            | Expires in 2016                                 | AA-1-11481           | 1-17-06633        | 2/3/2006                 |
| 10 | City of Seattle, Parks                                 | I-5 Colonnade                                    | Indefinite                                      | AA-1-11623           | 1-17-06970        | 3/4/2005                 |

|    |                           |   |  |            |            |            |
|----|---------------------------|---|--|------------|------------|------------|
| 11 | City of Seattle,<br>SDOT  | Mountain to Sound<br>Trail                        | Expires in 2023,<br>but may be<br>renewed  | TR-1-12702 | 1-17-08803 | 3/21/2013  |
| 12 | City of Seattle,<br>SPU   | S. Transfer Station<br>Bike/Pedestrian<br>Pathway | Month to month,<br>automatically<br>renews | AA-1-13053 | 1-17-09488 | 12/16/2012 |
| 13 | City of Seattle,<br>Parks | Two parcels of land for<br>parks                  | Expires in 2015                            | AA-7-05522 | 7-17-02191 | 6/27/1975  |
| 14 | City of Seattle,<br>Parks | North Passage & South<br>Passage Parks            | Expires in 2016                            | AA-7-05395 | 7-17-02066 | 8/19/1976  |