Chris Potter/hjh
FAS WSDOT Lease Amendments ORD
May 23, 2013
Version #10

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117812

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 such obligations.

WHEREAS, the City of Seattle leases various parcels of property that are owned and managed by the Washington State Department of Transportation (WSDOT); and

WHEREAS, WSDOT requires such leases to include an indemnity obligation of the City for third party claims caused by, or resulting from, the City's use of WSDOT property, or arising out of, or in connection with, any acts or activities related to the leases; and

WHEREAS, the City believes that such indemnity provisions are appropriate as well as common leasing practice; and

WHEREAS, the City and WSDOT wish to clarify that the City's indemnity obligations are not unlimited, but by State law must be limited to funds that have been appropriated and are available at the time an indemnity claim is made; and

WHEREAS, the City has diligently performed its indemnity obligations in the past, and has made robust appropriations to enable performance of these obligations in the future; and

WHEREAS, the City and WSDOT have agreed to amend certain existing lease agreements to include clarifying language that explains the City's appropriation structure and specifies the appropriated funds that could be drawn from and used to pay for an indemnity claim were it to be triggered; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City of Seattle is hereby authorized to amend its existing lease agreements with the Washington State Department of Transportation as identified in Section 2 below, to include the following language:

TENANT'S FUNDS AVAILABLE TO SATISFY INDEMNITY CLAIMS.

A. TENANT's indemnity obligations under this lease are limited to funds that have been appropriated and are available at the time an indemnity claim is made. TENANT's annual appropriations available to satisfy an indemnity claim are the funds available in (1) the Budget Control Level (BCL) under which the lease was made; (2) any associated BCL controlled and authorized for transfer by TENANT; and (3) the Judgment and Claims Subfund. In addition, the City maintains excess liability insurance coverage, disbursements of which do not require City appropriation.

B. For 2013 the amount appropriated in 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.

C. The Seattle Department of Finance and Administrative Services, or successor department, shall notify WSDOT annually of any changes to the City's appropriation structure, or to the appropriation amounts, set forth in part (B) above. Such notice will be sent to:

DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P.O. Box 47338
Olympia, WA 98504-7338;

or

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Property Management Program Manager
7345 Linderson Way S.W.
Tumwater, WA 98501

Section 2. The leases to be amended are the following:

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
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, SDOT	Mountain to Sound Trail	Expires in 2023, but may be renewed	TR-1-12702	1-17-08803	3/21/2013
12	City of Seattle, SPU	S. Transfer Station Bike/Pedestrian Pathway	Month to month, automatically renews	AA-1-13053	1-17-09488	12/16/2012

13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976

Section 3. The Director of the Department of Finance and Administrative Services, or his designee, is hereby authorized to execute, for and on behalf of the City of Seattle, a Lease Amendment with the Washington State Department of Transportation, substantially in the form attached hereto as Attachment 1.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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

_____
President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____
Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Lease Amendment

Chris Potter/hjh
FAS WSDOT Lease Amendments ORD ATT 1
May 23, 2013
Version #9

LEASE AMENDMENT

1. The City leases of WSDOT property identified in Section 2. below are hereby amended to include the following section:

TENANT'S FUNDS AVAILABLE TO SATISFY INDEMNITY CLAIMS.

A. TENANT's indemnity obligations under this Lease are limited to funds that have been appropriated and are available at the time an indemnity claim is made. TENANT's annual appropriations available to satisfy an indemnity claim are the funds available in (1) the Budget Control Level (BCL) under which the lease was made; (2) any associated BCL controlled and authorized for transfer by TENANT; and (3) the Judgment and Claims Subfund. In addition, the City maintains excess liability insurance coverage, disbursements of which do not require City appropriation.

B. For 2013 the amount appropriated in 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.

C. The Seattle Department of Finance and Administrative Services, or successor department, shall notify WSDOT annually of any changes to the City's appropriation structure, or to the appropriation amounts, set forth in part (B) above. Such notice will be sent to:

DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P.O. Box 47338
Olympia, WA 98504-7338;

or

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Property Management Program Manager
7345 Linderson Way S.W.
Tumwater, WA 98501

2. The leases to be amended are:

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
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
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10	City of Seattle, Parks	I-5 Colonnade	Indefinite	AA-1-11623	1-17-06970	3/4/2005
11	City of Seattle, SDOT	Mountain to Sound Trail	Expires in 2023, but may be renewed	TR-1-12702	1-17-08803	3/21/2013
12	City of Seattle, SPU	S. Transfer Station Bike/Pedestrian Pathway	Month to month, automatically renews	AA-1-13053	1-17-09488	12/16/2012
13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976

IN WITNESS WHEREOF, the parties have executed this Lease Amendment as of the date last written below.

Accepted and Approved by:

CITY OF SEATTLE, DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES

By: _____

Title: _____

Dated: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____
Cynthia Tremblay,
Property Management Program Manager

Dated: _____

APPROVED AS TO FORM

By: _____
Assistant Attorney General

_____, 2013

WSDOT AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 2013 before me personally appeared Cynthia Tremblay, to me known to be the duly appointed Property Management Program Manager, and that she executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2013.

_____
(Signature)

_____
(Print or type name)
Notary Public in and for the State of Washington

residing
at_____

My commission expires
_____

CITY AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____ before me personally appeared _____, to me known to be the duly appointed _____ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath Lessees that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2013.

_____

(Signature)

_____
(Print or type name)
Notary Public in and for the State of Washington

residing
at_____

My commission expires
_____

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
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:

_X_ 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

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
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13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976

City of Seattle
Office of the Mayor

May 28, 2013

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

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes the amendment of fourteen current leases between the City and the Washington State Department of Transportation (WSDOT) executed between 1975 and 2013. Each lease would be amended to add a new section clarifying that the indemnity obligations of the City, as Tenant, are not open-ended, but are limited to funds that have been appropriated and are available at the time an indemnity claim is made.

Efforts to amend these leases began in 2012, during negotiations over a new City lease of WSDOT property. While the City sought to specify that the City's indemnity funds were limited to appropriated and available funds, WSDOT wanted assurance that the City would have sufficient funds available to satisfy future indemnity claims.

The parties agreed that the City will document the City's appropriation structure in current and future City leases of WSDOT property. The lease amendment further obligates the Department of Finance and Administrative Services to notify WSDOT each year of any changes to the City's appropriation structure, or to the appropriation amounts. While specifying resources available to meet indemnities is a change in practice, this legislation will not materially affect the way the City plans for or meets its indemnity obligations.

Resolving this outstanding issue with WSDOT will allow the City to move forward with several outstanding leases supporting City operations. Thank you for your consideration of this legislation. Should you have questions, please contact Chris Potter at 386-1576.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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

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