

Portland, Oregon

## FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Randy Stenquist		2. Telephone No. 503-823-6000	3. Bureau/Office/Dept. OMF/Risk Management
4a. To be filed (hearing date): May 22, 2013	4b. Calendar (Check One) Regular    Consent    4/5ths <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		5. Date Submitted to Commissioner's office and FPD Budget Analyst:
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

**1) Legislation Title:** \*Pay Claim of Scott Hughes in the sum of \$88,000 involving the Bureau of Transportation. (Ordinance)

**2) Purpose of the Proposed Legislation:**

This ordinance will close OMF Risk Management File No. F2009-5050-03

**3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?**

- |  |                                    |                                    |                                |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast             | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East  |
| <input type="checkbox"/> Central City                  |                                    |                                    |                                |

### FINANCIAL IMPACT

**4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.**

This legislation will have no impact on City revenue.

**5) Expense: What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the *level of confidence*.)**

Cost to the City is \$88,000. The source of funding is the City's Insurance and Claims Fund. All cost of the settlement is in the current fiscal year.

**6) Staffing Requirements:**

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)*

No.

- **Will positions be created or eliminated in future years as a result of this legislation?**

No.

*(Complete the following section only if an amendment to the budget is proposed.)*

**7) Change in Appropriations** *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)*

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

**[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]**

PUBLIC INVOLVEMENT

**8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:**

- ☐ **YES:** Please proceed to Question #9.  
☒ **NO:** Please, explain why below; and proceed to Question #10.

This Ordinance settles a tort lawsuit filed against the City of Portland by Scott Hughes. The City Attorney's Office and Risk Management have concluded that it is not appropriate to have public involvement in settlement negotiations regarding tort claims or lawsuits against the City.

**9) If "YES," please answer the following questions:**

**a) What impacts are anticipated in the community from this proposed Council item?**

**b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?**

**c) How did public involvement shape the outcome of this Council item?**

**d) Who designed and implemented the public involvement related to this Council item?**

**e) Primary contact for more information on this public involvement process (name, title, phone, email):**

**10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.**

No future public involvement is anticipated or necessary. Approval by City Council of this Ordinance will fully settle a tort lawsuit against the City of Portland.

Bryant Enge, Director, BIBS  
 Kate Wood, Risk Manager



APPROPRIATION UNIT HEAD (Typed name and signature)



## CITY OF PORTLAND, OREGON

### Office of Management and Finance Risk Management Services

Charlie Hales, Mayor  
Kate Wood, Risk Manager  
1120 S.W. Fifth Avenue, Room 709 • Portland, OR 97204-1912  
Phone: 503-823-5101 • Fax: 503-823-6120  
[www.portlandonline.com](http://www.portlandonline.com)

**DATE:** May 13, 2013  
**TO:** Mayor Charlie Hales  
**FROM:** Randy Stenquist  
503-823-6000

#### FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison \_\_\_\_\_

**RE: \*Pay Claim of Scott Hughes in the sum of \$88,000 involving the Bureau of Transportation. (Ordinance)**

- 1. INTENDED THURSDAY FILING DATE:** May 22, 2013
- 2. REQUESTED COUNCIL AGENDA DATE:** June 5, 2013
- 3. CONTACT NAME & NUMBER:** Randy Stenquist, 503-823-6000
- 4. PLACE ON:** ☒ **CONSENT** ☐ **REGULAR**
- 5. BUDGET IMPACT STATEMENT ATTACHED:** ☒ **Y** ☐ **N** ☐ **N/A**
- 6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED:** ☐ **Yes** ☐ **No** ☒ **N/A**

### 7. BACKGROUND/ANALYSIS

Scott Hughes was a passenger in his friend Michael Bruce's truck on November 20, 2008 when they were involved in a multi-vehicle chain reaction collision on I-5 in North Portland. The cause of the crash was the inattention of the PBOT driver operating a large, heavy truck and trailer. It was initially believed that both Mr. Bruce and Mr. Hughes sustained only minor injuries. Mr. Bruce's auto insurance carrier, State Farm, opened PIP (personal injury protection) claims for both men, and sent notification to the City in December 2008, advising of the open PIP claims and the carrier's intent to recover from the City the medical expenses paid under the policy. In January 2010 State Farm finally submitted a demand letter, seeking reimbursement of \$532.11 for Mr. Hughes and \$104 for Mr. Bruce. Risk Management promptly issued payment in full to State Farm. At that time, Risk had never been contacted by either Mr. Hughes or Mr. Bruce. Oregon law (ORS 30.275) requires a party to provide tort claim notice to the City within 180 days of the date of injury, and also imposes a two-year statute of limitations on actions against public entities. Thus, a claim must be resolved within the two-year period, or else a lawsuit must be filed with the court in order to allow the case to continue.

Mr. Hughes first contacted Risk Management in March 2010, sixteen months after the MVA. Risk advised Hughes of the need to file his tort claim notice, and discussed with him the two-year statute of limitations that would run in November 2010. Mr. Hughes submitted his claim form, citing neck injuries, in April 2010, and the following month advised he was having neck surgery. In September 2010, through his attorney, Hughes filed a lawsuit against the City, seeking \$150,000.

In July 2011, the City sought to have the case dismissed, on the theory that plaintiff had failed to provide timely tort claim notice. Plaintiff's attorney argued that the City's tort claim notice was met when State Farm Insurance notified the City of the open PIP claim for Mr. Hughes in 2008, and the City's payment to State Farm in 2010 reinforced this notice. The City's response was that State Farm's PIP subrogation claim was distinct from any claim Mr. Hughes might make on his own. The City's motion for summary judgment was granted, and the court dismissed the case. Plaintiff appealed. In early 2013, the Oregon Court of Appeals ruled the lower court had erred in granting summary judgment for the City, and remanded the case to the trial court. The City subsequently negotiated a proposed settlement agreement with plaintiff's attorney. The agreement calls for Mr. Hughes to voluntarily dismiss his case in exchange for \$88,000, which is inclusive of all of his medical bills, attorney fees and court costs.

**8. FINANCIAL IMPACT**

Approval of the settlement would result in a payment of \$88,000 from the liability fund.

**9. RECOMMENDATION/ACTION REQUESTED**

Approve settlement of Scott Hughes BI lawsuit in the sum of \$88,000.