



Nancy Bush
Director

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Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement (IGA) with the State of Oregon for County Right-of-Way (ROW) Hazard Tree Removal and Private Property Debris Removal (PPDR).

Purpose/ Outcomes	Intergovernmental Agreement with Oregon Department of Transportation (ODOT) to facilitate removal of hazard trees on the County Right-of-Way and on private properties approved for cleanup.
Dollar Amount and Fiscal Impact	No cost to the County for direct debris removal under this IGA. Costs incurred by the State of Oregon in carrying out this work shall be borne by the State at no cost to the County. As will be described in an upcoming Board agenda item, however, the coordination and liaison functions acknowledged by this IGA will result in costs in support of wildfire recovery debris removal, as the County works with ODOT and its debris contractors. In a subsequent agenda item, staff will recommend reactivating the County's debris monitoring contractor to accomplish this, seeking Board authorization for up to \$228,000, for which the County will seek 75% reimbursement.
Funding Source	No funding source is required.
Duration	Upon signature by the Board and signature by the State, this IGA will remain in effect for 2 years.
Strategic Plan Alignment	1) How does this item align with your Department's Strategic Business Plan goals? Work to support recovery by removing wildfire debris aligns with both the mission of the Disaster Management Department including disaster recovery, and Department of Transportation and Development's mission to support disaster debris management and transportation safety. 2) How does this item align with the County's Performance Clackamas goals? Work to support recovery by removing wildfire debris helps to <i>ensure safe, healthy and secure communities</i> by removing hazards to public health, the environment, and the travelling public.
Previous Board Action	On October 26 th , 2020 per Board approval authorized the Disaster Manager to send to the State a "Notice of Request / Intent to Conduct Debris Removal from Private Property in Clackamas County"
County Counsel Review	The IGA has been reviewed and cleared by County Counsel. (2/1/21, JM)
Procurement Review	No. Procurement review is not applicable. Item is a no cost IGA.
Contact Person	Nancy Bush (503) 655-8665 / Eben Polk (503) 422-1520

BACKGROUND:

Clackamas County experienced devastating wildfires in September 2020. Approximately 60 homes and over 200 outbuildings were destroyed. In addition, approximately 3,000 - 5,000 burned trees within the right-of-way of County roads require removal to prevent hazards to the travelling public. Through a local, state and federal effort, hazardous materials were collected and removed at no cost to property owners from many who opted in. The State of Oregon subsequently offered to perform further debris removal on private properties, covering the entire cost of the contracts for cleanup. Through a unified approach approximately 60 property owners filled out Right of Entry (ROE) forms and requested PPDR assistance.

On October 26th, 2020 the Board authorized a letter to the State providing "Notice of Request / Intent to Conduct Debris Removal from Private Property in Clackamas County". On October 28, 2020, Governor Brown issued Executive Order 20-60, identifying the Oregon Department of Transportation as the lead agency for statewide disaster debris efforts and authorizing ODOT to enter into contracts to perform the work. In turn, on November 20, 2020, the Oregon Department of Transportation, on behalf of the state, formally requested FEMA approval for public assistance in removing disaster debris from public and private property. These communications allowed FEMA to consider and approve public assistance funding for private property debris removal. These plans included state coverage of the 25% local cost share for debris removal.

While the state sought contracts and developed a Debris Removal Operations Plan, Clackamas County identified the need for greater clarity on debris cleanup roles, responsibilities and costs. Through mutual agreement an Intergovernmental Agreement (IGA) was determined to be the proper document for this purpose. The subject IGA clarifies roles and responsibilities and specifies that all costs for debris removal contracts will be paid by the State. The IGA also recognizes and defines the role of the County Field Liaison. The IGA includes an Exhibit covering "Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way". This Exhibit is important as trees along the County ROW belong to the property owner and are managed differently than trees on the State Right-of-Way.

RECOMMENDATION:

Staff respectfully recommends the Board:

- 1) Approve the Intergovernmental Agreement between the State of Oregon and Clackamas County concerning the removal of hazard trees on the County ROW and the removal of debris from private properties; and,
- 2) Authorize the Director of Disaster Management to request that ODOT expand debris removal operations beyond private property to include removal of hazard trees on County right-of-way and clean-up of wildfire debris on other public property as may be identified during removal operations.

Respectfully submitted,



Nancy Bush
Director
Disaster Management

INTERGOVERNMENTAL AGREEMENT
Wildfire Recovery Operations; Step 2 Cleanup Activities

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and **Clackamas County**, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. On August 20, 2020, pursuant to ORS 401.165 *et seq.*, the Governor of Oregon declared a State of Emergency due to the imminent threat of wildfire in Executive Order No. 20-35.
3. Pursuant to ORS 401.168 and 401.178 and by the authority granted in Executive Order No 20-60, Proclamation of State of Emergency to Support Ongoing Recovery From Catastrophic Wildfires, ODOT has been directed to lead step 2 cleanup activities and authorized to conduct procurements and enter into contracts and agreements to perform any tasks necessary to effectuate clearance or removal operations in the geographic scope of the wildfire disaster emergency ("disaster recovery area"), which includes Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn and Marion Counties.
4. Pursuant to Executive Order No. 20-60, ODOT has awarded and is continuing to pursue contracts in support of step 2 cleanup activities to include but not limited to professional monitoring services of hazard tree and debris removal; removal of hazardous trees; and removal of debris. The services or work provided as a result of these contracts are in direct support of the step 2 of the cleanup process, which includes the removal of ash and debris for homes and businesses in the disaster recovery area.
5. The State of Oregon is working with the Federal Emergency Management Agency ("FEMA") to determine funding eligibility in each county to include, but not limited to private property debris, cars, hazard trees, concrete removal, confirmation testing, and commercial properties including mobile home parks.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. It is the intent of Parties to document in this Agreement, the coordinated efforts of the Parties for wildfire recovery step 2 cleanup activities led by ODOT. Step 2 cleanup led

by ODOT comprises any tasks necessary to effectuate clearance or removal operations in the disaster recovery area including but not limited to:

- a. Removal of hazardous trees and debris that pose a threat to the traveling public.
 - b. Work activities along ODOT right of way ("R/W") and in other areas where requested by the Agency.
 - c. Wildfire debris removal for private properties where ODOT has received Right of Entry's ("ROE's") forms which includes but is not limited to ash and debris, hazard trees, burnt vehicles and concrete foundations.
2. The term of this Agreement shall begin the date all required signatures are obtained and shall be in effect for a period of two (2) years. The Agreement may be extended at any time by mutual consent of the Parties in the form of a written amendment to this Agreement.
 3. The Parties agree to work in partnership throughout delivery of the services and work supporting step 2 cleanup activities to include, but not limited to having open and regular communications on all matters relating to activities regarding their respective county. As used in this section, "all matters" include but is not limited to scheduling, right of entry, and the overall process including changes.
 4. The Parties acknowledge that ODOT is the State of Oregon department leading the procurements and entering into contracts and agreements to perform any step 2 cleanup activity necessary to effectuate clearance or removal operations in the disaster recovery area.

AGENCY OBLIGATIONS

1. Agency shall designate a representative to attend meetings designated by ODOT for matters relating to step 2 cleanup activities and receive official notices under this Agreement. Attendance to meetings by teleconference or video conference is acceptable.
2. Agency shall provide ODOT with a written request for step 2 cleanup activities that are not addressed in the private property debris removal ("PPDR"). Step 2 cleanup activities include but are not limited to removal of hazard trees and debris within Agency R/W, parks, public water sources and Agency owned and maintained properties. Written request(s) must be received by ODOT within **3 months** after the Parties have executed this Agreement. Should additional locations requiring step 2 cleanup activities be discovered during the agreement term, not identified initially despite reasonably diligent efforts, such additional cleanup requests shall be requested in writing within 14 days of discovery.

Each written request must include at a minimum the specific location (the "Cleanup Location") including as needed, map and tax lot, address, road designation and limits

of the request (e.g. mile post to mile post), R/W limits, estimated quantities of structural debris and hazard trees. The request must also include the lawful documentation that demonstrates that ODOT or their agents have the legal right to access said property and document access points to the Cleanup Location and designate surrounding areas of the Cleanup Location that may be seriously or directly affected by step 2 cleanup activities (the "Impacted Area").

After the request is acknowledged by ODOT, ODOT or its contractor will provide an estimated time for the completion of step 2 cleanup activities. For each Cleanup Location, Agency shall provide a photograph or video or both to ODOT that shows the Cleanup Location and Impacted Area. The photograph or video or both must have been taken no more than **72 business hours** (not including Sat.-Sun. or holidays) prior to step 2 cleanup activities starting. Photography, video or both must clearly show the current condition(s) of the Cleanup Location and Impacted Area. Agency, at their own accord, shall be responsible for photography or video of the Cleanup Location and Impacted Area during the performance and at the completion of step 2 cleanup activities.

3. Agency shall coordinate with ODOT and local jurisdictions in their respective county when issues arise that may impact or delay step 2 cleanup activities contracted by ODOT. The Agency will perform the duties as described in Exhibit A: "Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Under Step 2 Cleanup of Debris from 2020 Wildfire Disaster".
4. Agency shall identify to ODOT their highest priority areas so that services and work may be prioritized appropriately and consistent with their needs when requests are made for step 2 cleanup activities.
5. The Agency's representative will designate a field liaison, to coordinate step 2 cleanup activities including private property debris removal activities. The field liaison, or delegate, shall be the Agency's primary point of contact for property owners, ODOT and contractors when questions arise in the field. The field liaison, or delegate, shall be present if possible when work is initiated on individual properties and on an as needed, basis, throughout the remainder of the step 2 cleanup process. The field liaison, or delegate, shall assist in troubleshooting conflicts and provide local input on general work practices, safety and health and environmental protection. The field liaison, or delegate, will coordinate with ODOT on managing public inquiries in the field and direct media inquiries to the appropriate Agency / ODOT Public Information Officer. ODOT contract managers shall utilize the field liaison, or delegate, as their primary contact for debris removal activities on private property.

ODOT OBLIGATIONS

1. ODOT will lead the performance of any tasks necessary to effectuate the step 2 cleanup activities in disaster recovery area including but not limited to:

- a. Removal of hazardous trees and debris that pose a threat to the traveling public.
 - b. Work activities along ODOT R/W and in other areas where requested by the Agency.
 - c. Wildfire debris removal for private properties where ODOT has received ROE's which includes but is not limited to ash and debris, hazard trees, burnt vehicles and concrete foundations.
2. ODOT is solely responsible for the costs associated for the step 2 cleanup activities performed by ODOT under this Agreement, or work provided as a result of step 2 of the wildfire recovery cleanup process contracts to include but not limited to the non-federal share and any non-FEMA eligible costs. ODOT is solely responsible for seeking maximum reimbursement from FEMA for step 2 cleanup activities to include, but not limited to private property debris, cars, hazard trees, concrete removal, confirmation testing, and commercial properties including mobile home parks. ODOT will not seek contribution or reimbursement from the Agency for any of the costs associated for the step 2 cleanup activities performed by ODOT under this Agreement.
3. For locations outside of the PPDR, ODOT will acknowledge receipt of written requests submitted by Agency for Cleanup Locations. ODOT will not perform services at Cleanup Locations until a proper written request is received, acknowledged and ODOT confirms the Cleanup Location.

ODOT will make good faith efforts to restore Impacted Areas to the current conditions as shown in the photograph or video received from the Agency prior to step 2 cleanup activities beginning. ODOT will not make improvements or develop Impacted Areas as part of the step 2 cleanup activities.

4. ODOT will designate an ODOT representative who will be responsible for coordination and communication with the Agency and provide notification to the Agency on ODOT led meetings for matters relating to step 2 cleanup activities that require Agency attendance. ODOT will perform the duties described in Exhibit A: "Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Under Step 2 Cleanup of Debris from 2020 Wildfire Disaster".

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual consent of the Parties upon thirty (30) days' notice, in writing.
2. ODOT may terminate this Agreement, effective upon delivery of written notice to the Agency, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If the Agency fails to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written

notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.

- b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim.
5. To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, each Party agrees to indemnify, defend, and hold harmless the other Parties and their officers, employees, and agents from and against all damages, losses and expenses, including but not limited to attorney fees and costs related to litigation, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the indemnifying Party's negligence in the performance of or failure to perform under this Agreement.
6. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
7. The Parties acknowledge and agree that the Agency, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
8. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the

foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

9. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
10. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties.
11. This Agreement may be executed in several counterparts (email or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
12. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

Signature Page to Follow

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Clackamas County, by and through its by and through its Elected Officials

STATE OF OREGON, by and through its Department of Transportation

By _____

By _____

Date _____

Date _____

By _____

APPROVAL RECOMMENDED

Date _____

By _____

LEGAL REVIEW APPROVAL (If required in Agency's process)

Date _____

By  _____
Agency's Counsel

By _____

Date _____

Date 2/2/2021 _____

By _____

Date _____

Agency Contact:

Name: Eben Polk
Title: Debris Manager
Address: 150 Beaver Creek Road, Oregon City, OR
Phone: 503-205-2678 (m); 503-742-4470 (o)
E-Mail: epolk@clackamas.us

APPROVED AS TO LEGAL SUFFICIENCY: Not Required

ODOT Representative:

Name: Anna Henson
Title: North Operations Chief
Phone: 503-986-2639 Cell: 971-707-2020
E-Mail: Anna.HENSON@odot.state.or.us

Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Under Step 2 Cleanup of Debris from 2020 Wildfire Disaster

1. Clackamas County provides support documents to ODOT including Arborist Surveys, Right-of-Way maps and other relevant documents as available.
2. ODOT marks hazard trees in the Clackamas County Right-of-Way and in turn provides Clackamas County GPS coordinates for hazard trees, in order for Clackamas County to assist in identifying property ownership, address, and available contact information.
3. Clackamas County provides available point-of-contact information to ODOT for trees identified in step two, above.
4. ODOT conducts required historical, cultural and environmental reviews, and obtains permits if required prior to commencing work.
5. ODOT contacts property owners to notify them of the pending work, determine whether hazard trees are to be flush-cut, and left, or flush-cut and removed. If the property owner is not responsive within a time frame approved by ODOT and the County, default shall be flush-cut and left. County supports and supplements communication with property owners.
6. FEMA-eligible stumps with greater than 50% of the root ball exposed shall be removed and the hole filled with compacted soil.
7. FEMA-eligible stumps with less than 50% of the root ball exposed shall be flush-cut and left in place. No filling is required.
8. ODOT removes hazard trees limbs and stumps identified for removal, on the Clackamas County Right-of-Way in a safe and efficient manner with minimal impact to local traffic.
9. ODOT will distribute chips (hog fuel) no more than three (3) inches deep only on areas where soil has been disturbed by hazard tree removal. Such material will not be placed in or near drainages, wetlands, streams, or water bodies to avoid blockages or impedances to water flow. ODOT loads, hauls, reduces and disposes of all other vegetative material off-site, excluding trees to be left onsite as indicated by the property owner or if property owner is non-responsive. No excess slash, chips or vegetative material shall be left on the Clackamas County Right-of-Way.
10. ODOT and Clackamas County jointly provide timely and clear information to the public concerning hazard tree removal.
11. ODOT provides to Clackamas County a summary report documenting all activities following the conclusion of hazard tree removal.