



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 29, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of IGA #PO-44000-00005557, Amendment #1 with the State of Oregon to extend the Fire Hardening Grant program through December 31, 2023. No change in total value. Funding through State of Oregon, Department of Consumer & Business Services, Building Codes Division. No County General Funds are involved.

Previous Board Action/Review	<ul style="list-style-type: none"> March 22, 2022: Issues. Board approved the consent agenda item. March 24, 2022: Consent Agenda. Board approved grant agreement #PO-44000-00005557. 		
Performance Clackamas	<p>1. The Land Use and Permitting line of business has a strategic focus on Customer Service as well as emergency preparedness. Working with the state on this IGA provides customers the help to fire-harden their homes to mitigate the risk of fires in the future. It also provide great customers service to those who suffered a loss in the 2020 wildfires</p> <p>2. Building a strong infrastructure is one of the County's Performance goals. By offering this grant money through the state building codes division, it helps to ensure private infrastructure is built to withstand the potential impacts of wildfires, and mitigate future losses.</p>		
Counsel Review	N/A – Time extension.	Procurement Review	N/A – Grant.
Contact Person	Cheryl Bell	Contact Phone	503-260-7124

EXECUTIVE SUMMARY: The State of Oregon approved a Fire Hardening Grant (FHG) program after the 2020 wildfires in an effort to incentivize the use of fire hardening building materials when rebuilding structures that were damaged in the wildfires. Fire hardening describes steps that can be taken to make a home or business more resistant to damage from a wildfire. The program provides money directly to home and business owners to help pay for fire hardening of a home or business that was damaged or destroyed in the 2020 wildfires.

An Intergovernmental Agreement was established in March 2022 for disbursement of these state funds, and the Department of Transportation and Development's Building Codes Program has been managing the state funds disbursement in partnership with the State Building Codes Division. The program

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was set to end on June 30, 2023, at which point Clackamas County would need to return the remaining funds to the State of Oregon and terminate the grant program.

Based on the Wildfire Damage Summary Dated October 1, 2020 Clackamas County lost 59 dwellings including stick built and manufactured homes, 147 out buildings, and one church. The county has received 24 applications for FHG funds; 13 applicants have been approved for awards totaling \$52,950. There are four active applications currently under review which may be denied if we do not extend the program.

On June 21, 2023, the State of Oregon provided Amendment #1 to this Agreement, which accomplishes two things:

- Extends the agreement through December 31, 2023 to allow for more property owners to take advantage of the program.
- Updates the contract administrator/Building Official, since the previous administrator Matt Rozzell has left Clackamas County.

With this Amendment #1 there are no changes in the IGA value or terms.

RECOMMENDATION: Staff respectfully recommends approval of IGA #PO-44000-00005557, Amendment #1 with the State of Oregon to extend the Fire Hardening Grant program

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

**AMENDMENT #1 to
INTERGOVERNMENTAL AGREEMENT #PO-44000-00005557**

This is Amendment No. 1 to PO-44000-00005557, dated March 29, 2022, as amended from time to time (“Intergovernmental Agreement”) between the State of Oregon, acting by and through its Department of Consumer and Business Services, Building Codes Division (“DCBS”) and Clackamas County (“County”).

RECITALS

1. *Intergovernmental Agreement PO-44000-00005557 for the administering of the Wildfire Grant Program was executed March 29, 2022.*
2. *Amendment 1 updates the County Contract Administrator information and the term of the Agreement.*

1. The Agreement is hereby amended as follows (new language is indicated by **bold underlining** font, and deleted language is indicated by ~~strike through~~ font).

a. This section updates Contract Administrator information.

DCBS	Clackamas County
Contract Administrator: Andrea Simmons Title: Fiscal Operations Manager State of Oregon, Department of Consumer and Business Services, Building Codes Division 1535 Edgewater St NW P.O. Box 14470 Salem, OR 97309 Phone: (503) 378-3755 Fax: (503) 884-6845 Email: andrea.f.simmons@dcbs.oregon.gov	Contract Administrator: Cheryl Bell Matt Rozzell Title: Assistant Director of Development Building Official Address: 150 S Beaver creek Rd. Oregon City, OR 97045 Phone: (503) 260-7124 (503) 742-4748 Fax: N/A Email: cbell@clackamas.us mrozzell@clackamas.us FEIN: 93-6002286

b. This section modifies the term of the Agreement.

II. TERM OF AGREEMENT:

This Agreement will take effect on the later of (a) February 1, 2022, or (b) the first date on which all parties have signed the Agreement and all necessary approvals have been obtained, whichever date is later (the “Effective Date”). This Agreement will remain in effect until **December 31, 2023** ~~June 30, 2023~~, unless earlier terminated pursuant to Section V. of this Agreement.

2. Except as expressly amended above, all other terms and conditions of original Agreement are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Signatures on next page.

Clackamas County

**STATE OF OREGON acting by and through its
Department of Consumer & Business Services,
Building Codes Division**

By: _____

Reviewed By: _____

Printed Name: _____

Printed Name: Dawn Bass

Title: _____

Title: Deputy Administrator

Date: _____

Date: _____

FEIN: 93-6002286

Executed By: _____

Oregon Business Registry:

Printed Name: Miriha Aglietti

COBID: N/A

Title: Designated Procurement Officer

Date: _____

Approved Pursuant to ORS 279A.140

DEPARTMENT OF ADMINISTRATIVE SERVICES:

By: Not Required per OAR 125-246-0365(4)

Date: _____

Approved Pursuant to ORS 291.047

DEPARTMENT OF JUSTICE:

By: Not Required per ORS 190.430

Date: _____

INTERGOVERNMENTAL AGREEMENT IGA #PO-44000-00005557

This Agreement is made and entered into by Clackamas County (“County”) and the State of Oregon, acting by and through its Department of Consumer and Business Services, Building Codes Division (“DCBS”), under the authority of ORS 455.185.

The Contract Administrators of this Agreement are:

DCBS	Clackamas County
Contract Administrator: Andrea Simmons Title: Fiscal Operations Manager State of Oregon, Department of Consumer and Business Services, Building Codes Division 1535 Edgewater St. NW P.O. Box 14470 Salem, OR 97309-0404 Phone: (503) 378-3755 Fax: (503) 884-6845 Email: andrea.f.simmons@dcbs.oregon.gov	Contract Administrator: Matt Rozzell Title: Building Official Address: 150 S Beavercreek Rd. Oregon City, OR 97045 Phone: 503-742-4748 Fax: N/A Email: mrozzell@clackamas.us FEIN: 93-6002286

- I. PURPOSE:** By this Agreement, DCBS and County agree to work together to implement and administer the Wildfire Grant Program (“Grant Program”) for the 2020 wildfire victims in the County based on OAR 918-001-5000 through OAR 918-001-5070 and the terms and conditions set forth in this Agreement.
- II. TERM OF AGREEMENT:** This Agreement will take effect on the later of (a) February 1, 2022, or (b) the first date on which all parties have signed the Agreement and all necessary approvals have been obtained, whichever date is later (the “Effective Date”). This Agreement will remain in effect until June 30, 2023, unless earlier terminated pursuant to Section V. of this Agreement.
- III. STATEMENT OF WORK**
1. County shall:
 - a) Work in cooperation and coordination with DCBS to publicize and market the Grant Program to County residents and other persons who may own structures located within the County that were damaged or destroyed by the 2020 wildfires;
 - b) Receive and review all applications and other required documentation in OAR 918-001-5020 and OAR 918-001-5050 submitted in connection with any requests for funds under

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the Grant Program related to the replacement or repair of any dwellings or other eligible structures located within the County;

- c) Perform and document all inspections or other forms of verification listed in OAR 918-001-5050 that are required in connection with the review of each such application (either itself, under County's building inspection program delegated pursuant to ORS 455.148 or 455.150, or in cooperation with cities within the County having building inspection programs delegated pursuant to ORS 455.148 or 455.150); and
- d) Determine if each application received by County meets the program criteria described in OAR 918-001-5000 through OAR 918-001-5070 ("Program Criteria") and entitles the applicant to payment under the Grant Program.
 - i) If an application meets the Program Criteria and entitles the applicant to payment under the Grant Program, then County, in accordance with the Program Criteria, will:
 - (1) Approve the application;
 - (2) Determine the amount to be paid to the applicant under the Grant Program; and
 - (3) Pay the determined amount of Grant Program funds to the applicant within 45-days after the later of (i) the approval of the application, (ii) the issuance of a Certificate of Occupancy for the dwelling or other structure covered by the application, or (iii) receipt of a completed new County vendor packet or other prepayment form required by the County, all of which has to be done prior to payment.
 - ii) County will not pay or otherwise transfer any Grant Program funds to any person in connection with an application that does not meet the Program Criteria.
 - iii) DCBS retains sole authority to recapture disbursed funds from an applicant if DCBS determines that the grant funds were disbursed to an applicant that does not meet the program's eligibility requirements.
- e) On or before the second Monday occurring after the delivery of the Initial Distribution pursuant to Section III.2(a)(ii) of this Agreement, and on or before 5:00 PM (Pacific) on the Monday of every other week thereafter during the term of this Agreement, County will submit Required Program Information related to applications received and grants issued to DCBS through the Program Information System in accordance with all directions communicated in writing to County. As used in this Agreement, "Required Program Information" means all information, documents, and other materials related to the Grant Program that are specified by DCBS and communicated in writing to County. As used in this Agreement, "Program Information System" means the electronic method agreed to by both parties for the purpose of collecting Required Program Information.
- f) County will record and account for all financial information and financial resources related to the Grant Program in accordance with generally accepted accounting principles and applicable law.

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- g) County will comply with any and all applicable provisions of the Internal Revenue Code, 26 U.S. Code Title 26, and the rules promulgated thereunder, including preparing and filing any Form 1099s or other information returns required in connection with any payments to applicants under the Grant Program.
- h) County will retain, preserve, and make available for inspection by DCBS: (a) all applications and associated documents received by County; and (b) all correspondence, inspection-related documents, and other documents, information, and other materials created or received by County in connection with or as a result of County's performance of its obligations under this Agreement.
- i) County shall retain, in accordance with applicable record retention requirements, all State-approved forms associated with the State's responsibility for administering the grant program.

2. DCBS shall:

- a) DCBS will provide the following funds to County in connection with the Grant Program:
 - i) Within 10 days after the Effective Date, DCBS will deliver to County administrative funds in the amount of \$1,435.00 (the "Initial Administrative Funds") to assist with setting up the process for administering the Grant Program pursuant to this Agreement.
 - ii) Within 10 days after the Effective Date of this Agreement as defined in Section II, DCBS will deliver to County funds in the amount of \$32,400.00 for distribution to applicants under the Grant Program (the "Initial Distribution"), which amount is equal to 20% of the Total Expected Distribution, \$162,000.00. As used in this Agreement, "Total Expected Distribution" means the total amount that DCBS expects County to distribute to applicants under the Grant Program based on the number of reported structures damaged or destroyed by the 2020 wildfires.
 - iii) Within 10 days after County notifies DCBS in writing that County has made payments to applicants under the Grant Program totaling at least 90% of the Initial Distribution, DCBS will deliver to County additional funds for distribution to applicants under the Grant Program in an amount equal to the Initial Distribution (any delivery to County of funds for distribution to applicants under the Grant Program following the Initial Distribution being referred to in this Agreement as a "Supplemental Distribution").
 - iv) Within 10 days after County notifies DCBS in writing that County has made payments to applicants under the Grant Program totaling at least 90% of any Supplemental Distribution, DCBS will deliver to County an additional Supplemental Distribution in an amount equal to the Initial Distribution. However, except as provided in Section III.2(a)(v) of this Agreement, in no event will the total amount of funds delivered to County for distribution to applicants under the Grant Program exceed the Total Expected Distribution.

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- v) If County has made payments to applicants under the Grant Program totaling 90% of the Total Expected Distribution, then DCBS, upon receipt of a written request by County, may choose to deliver to County additional Supplemental Distributions in such amounts and at such times as DCBS may determine in its sole discretion.
- vi) DCBS will deliver payments to County in a not-to-exceed amount of \$172,072.00 for all aspects of this program.
- b) DCBS will deliver to County administrative funds in the amount of \$150 for each application received and reviewed by County. DCBS will deliver such funds (i) with each Supplemental Distribution for all applications approved during the period between such Supplemental Distribution and the prior Initial Distribution or Supplemental Distribution (as applicable); and (ii) within 30 days after the termination of this Agreement for all applications approved during the period between such termination and the prior Initial Distribution or Supplemental Distribution (as applicable).
- c) Within 10 days after County notifies DCBS in writing that County has issued payment and has collected all information required for the U.S. Internal Revenue Service, Form 1099s, if required, or other information required to be so filed in connection with any payments to applicants under the Grant Program, DCBS will deliver to County additional administrative funds in the amount of \$150 for each parcel of land for which a grant payment is issued under this program.
- d) DCBS will deliver all funds to County pursuant to this Agreement by check, credit card payment, cash, wire transfer, or transfer through the Oregon State Treasury, as determined by DCBS in its sole discretion.
- e) DCBS shall retain, in accordance with applicable record retention requirements, all State-approved forms associated with the State's responsibility for administering the grant program.

IV. AMENDMENTS

The terms of this agreement shall not be waived, altered, modified, supplemented or amended except by written instrument signed by both parties.

V. TERMINATION

This Agreement may be terminated by mutual consent by both parties or by either party upon thirty (30) days' notice, in writing. Within 45-days after the termination of this Agreement, County will deliver to DCBS funds in an amount equal to any Undistributed Grant Funds. As used in this Agreement, "Undistributed Grant Funds" means the portion of any Initial Distribution or Supplemental Distribution that County has not paid to applicants under the Grant Program. It does not include any administrative funds

VI. FORCE MAJEURE

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot be reasonably foreseen or provided against. In such event, the period for the performance shall be extended for the period of such delay. Upon the cessation of the cause of delay or nonperformance, the affected Party shall resume performance of its obligations under this Agreement. Either party may terminate the Agreement, effective with the giving of written notice, after determining such delays or failure will reasonably prevent successful performance in accordance with the terms of this Agreement.

VII. DEFAULT

Neither party shall be in default under this Agreement until written notice of the unperformed obligation has been given and that obligation remains unperformed after notice for 7 days in the case of County's obligations; or 14 days in the case of DCBS's obligations. In the case of a default, the nondefaulting party may terminate this Agreement with (10) days prior written notice to the defaulting party and shall be entitled to seek damages or any other remedy provided by applicable law. If DCBS is the nondefaulting party, it may elect to perform any of the defaulting party's obligations and recover from the defaulting party the costs of such performance plus interest at the rate of 10% of such costs. If DCBS is the nondefaulting party, it may also elect to commence an investigation of County under ORS 455.770(1) and (2)(b).

VIII. ALTERNATIVE DISPUTE RESOLUTION

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

IX. CONTRIBUTION

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 a party (the "Notified Party") with respect to which the other party ("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. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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With respect to a Third Party Claim for which the State is jointly liable with the County(or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

X. NONDISCRIMINATION

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this Agreement.

XI. COMPLIANCE WITH APPLICABLE LAWS

The parties agree that both shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this Agreement shall be administered and construed under the laws of the State of Oregon.

XII. PARTNERSHIP

Neither party is, by virtue of this Agreement, a partner nor a joint venturer in connection with activities carried out under this Agreement, and shall have no obligation with respect to the other party's debts or any other liability or obligation of the other party of whatever kind or nature.

XIII. AUDIT

DCBS reserves the right to audit, at DCBS's expense, all records pertinent to this Agreement.

XIV. NO WAIVER OF CLAIMS

The failure by either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision or provisions of this Agreement.

XV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any and all prior or contemporaneous negotiations or agreements between the parties, whether written or oral, concerning the subject matter of this Agreement which is not fully expressed herein. This Agreement may not be modified or amended except in writing and signed by all parties.

Signatures on next page.

Remainder of page intentionally left blank.

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XVI. SIGNATURES

Department of Consumer and Business
Services, Building Codes Division

Clackamas County

Alana Cox 2/4/22
Alana Cox, Administrator Date

Tootie Smith 3/24/22
Tootie Smith, Chair Date
Clackamas County Board of Commissioners

Miriha Aglietti 3-29-22

Miriha Aglietti, Date
Designated Procurement Officer

Name Date
Title

Approved Pursuant to ORS 291.047
DEPARTMENT OF JUSTICE

Approved via email 1/5/2022
David Berryman, Assistant Attorney General

Exhibit A

Residential Site Built Structures and Manufactured Homes		
ELEMENT	OPTIONS	Proposed Grant Amount
Roofing	Class A, B and C roofing shall be tested in accordance with UL 790 or ASTM E108	\$2,200.00
Exterior wall covering	Noncombustible, ignition-resistant, heavy timber assembly, log wall assembly	\$1,750.00
Ventilation openings	Vents designed to resist ember intrusion and flame Vents not located on underside of eave/soffit	\$150.00
Overhangs, cantilevers and projections	Underside of eaves, soffits, cantilevers, etc., protected by: <ul style="list-style-type: none"> • Noncombustible material • Ignition-resistant material • Exterior portion of 1 hour wall assembly • 1 layer of 5/8" Type X gypsum sheathing or equivalent 	\$275.00
Walking surfaces of porches, balconies and decks	Noncombustible, ignition resistant, Exterior fire retardant treated wood, materials meeting ASTM E2632	\$550.00
Windows	Tempered glass 20-minute fire rated	\$550.00
Skirting (Manufactured Homes only)	Noncombustible, ignition resistant skirting materials.	\$500.00

Exhibit A

Commercial Structures of Combustible Construction		
ELEMENT	OPTIONS	Proposed Grant Amounts
Roofing	Class A, B and C roofing shall be tested in accordance with UL 790 or ASTM E108	\$2,200.00
Exterior wall covering	Noncombustible, ignition-resistant, heavy timber assembly, log wall assembly	\$1,750.00
Ventilation openings	Vents designed to resist ember intrusion and flame Vents not located on underside of eave/soffit	\$150.00
Overhangs, cantilevers and projections	Underside of eaves, soffits, cantilevers, etc., protected by: <ul style="list-style-type: none"> • Noncombustible material • Ignition-resistant material • Exterior portion of 1 hour wall assembly • 1 layer of 5/8" Type X gypsum sheathing or equivalent 	\$275.00
Walking surfaces of porches, balconies and decks	Noncombustible, ignition resistant, Exterior fire retardant treated wood, materials meeting ASTM E2632	\$550.00
Windows	Tempered glass 20-minute fire rated	\$550.00