



Daniel Nibouar
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December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment Number 1 to Intergovernmental Agreement #34636 with Oregon Department of Transportation for Right-of-Way (ROW) Wildfire-Damaged Hazard Tree Removal. No County General Funds are Involved.

Purpose/Outcomes	Amending Exhibit A to the existing Intergovernmental Agreement with Oregon Department of Transportation (ODOT) to facilitate removal of wildfire hazard trees in the County Right-of-Way.
Dollar Amount and Fiscal Impact	No cost to the County for work performed by under this IGA. Authorized separately, the County is incurring reimbursable costs under its debris monitoring contract (not to exceed \$228,000) in support of wildfire debris removal.
Funding Source	No funding source is required.
Duration	This IGA remains in effect for 2 years from the original signature in February 2021.
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 ensure safe, healthy and secure communities by removing hazards to public health, the environment, and the travelling public.
Previous Board Action	February 4, 2021: the Board approved the existing IGA with the State of Oregon and directed Disaster Management to request that ODOT conduct removal of wildfire-damaged hazard trees along County roads.
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	Daniel Nibouar (971) 219-6932 / Eben Polk (503) 422-1520

BACKGROUND:

Under an IGA approved by the Board on February 4, 2021, and under Executive Order 20-60, the Oregon Department of Transportation (ODOT) is tasked with removing wildfire-damaged trees along County roads that constitute a hazard to the traveling public. Also covered under the IGA is the removal of hazardous and other wildfire debris from property owners. The private property cleanup has successfully concluded and ODOT is ready to begin surveying and cutting trees along county roads.



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After the fires of September 2020, an estimated 3,000 – 5,000 trees along County roads needed to be surveyed by arborists. Some have since been removed by property owners. It is unknown how many trees remain to be surveyed and, of those, how many will be determined to be a hazard that must be removed. If professional arborists contracted by ODOT determine that a fire-damaged tree is dead or likely to die in the near future, and may fall into the roadway or the clear zone, it will be eligible for removal.

This amendment is exclusively operational in nature and clarifies how County staff, ODOT, and state contractors will collaborate to execute the mission. Substantive changes include the potential for the County to provide sites to temporarily deck logs before their sale or disposal, the option for property owners to keep logs cut down in the right-of-way (at no cost to them), the option for property owners to request that trees beyond the right-of-way also be surveyed and potentially removed, and recognition of the possibility that some logs may be donated for use by local non-profits in stream protection or restoration projects.

ODOT-led activities will continue to be completed at no cost to the County. To facilitate ODOT's work in our community, however, the County activated our debris monitoring contract with Tetra Tech, under which Tetra Tech is providing a field liaison to coordinate activities with property owners and the County. This activation (currently not to exceed \$228,000) allows the County to promote good communication with our community members and is reimbursable by FEMA at 75%. This amendment does not change the amount already authorized on the current Tetra Tech task order. The initial cost (pre-reimbursement) and ultimate 25% cost match is already included in the Disaster Management and Transportation and Development budgets.

RECOMMENDATION:

Staff respectfully recommends the Board approve the Amendment Number 1 to Intergovernmental Agreement #34636 between the State of Oregon and Clackamas County concerning the removal of hazard trees on the County ROW

Sincerely,

Daniel Nibouar
Interim Director Disaster Management



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RECORDING MEMO

	New Agreement/Contract
X	Amendment/Change/Extension
	Policy Reports
	Other

ORIGINATING COUNTY

DEPARTMENT: Disaster Management

PURCHASING FOR: n/a

OTHER PARTY TO

CONTRACT/AGREEMENT: Oregon Department of Transportation

BOARD AGENDA DATE: December 9, 2021

AGENDA ITEM NUMBER:

← Completed by
Clerk to the Board
after Approval

PURPOSE: Approval of an Amendment to Intergovernmental Agreement #34636 with Oregon Department of Transportation for Right-of-Way (ROW) Wildfire-Damaged Hazard Tree Removal

Please return to Eben Polk – DTD – S&SW program, and Aryka Hanto, Disaster Management after recording.

AMENDMENT NUMBER 1
INTERGOVERNMENTAL AGREEMENT
Wildfire Recovery Operations; Step 2 Cleanup Activities

This is **Amendment No. 1** to the Agreement 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**,” entered into on February 4, 2021.

It has now been determined by State and Clackamas County that the Agreement referenced above shall be amended to Amend 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. Effective Date. This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. Amendment to Agreement.

a. Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster shall be deleted in its entirety and replaced with the attached Revised Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster.

All references to “Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster” shall hereinafter be referred to as “Revised Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster”

b. Delete and replace in its entirety the ODOT Representative with the following:

ODOT Representative:

Name: Jeff Shambaugh

Phone: 503-986-5764 Cell: 971-301-0903

E-Mail: jeff.shambaugh@odot.state.or.us

3. Counterparts. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

4. Original Agreement. Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications 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.

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
Elected Officials

By _____

Date _____

By _____

Date _____

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

By  _____
Agency Counsel

Date 11/30/2021

STATE OF OREGON, by and through
its Department of Transportation

By _____

Frank Reading, ODOT Wildfire Recovery
Area Commander

Date _____

APPROVAL RECOMMENDED: Not Required

APPROVED AS TO LEGAL SUFFICIENCY: Not
Required

Agency Contact:

Name: Eben Polk
Title: Debris Manager
Address: 150 Beaver Creek Road, Oregon
City, OR 97045
Phone: 503-205-2678 / 503-742-4470
E-Mail: epolk@clackamas.us

ODOT Contact:

Name: Jeff Shambaugh
Phone: 503-986-5764 / 971-301-0903
E-Mail: jeff.shambaugh@odot.state.or.us

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

1. **General.** ODOT will deploy its contractors to perform hazardous tree removal in accordance with the Hazardous Tree Contract and Statement of Work referenced in those Contracts for removal of hazard trees impacted by Oregon’s federally declared September 2020 wildfires.
2. **Clackamas County Right-of-Way.** The right-of-way (ROW) on Agency roads varies from 30 feet wide (15 feet per side from centerline) on minor roads, up to 120 feet wide (60 feet per side from centerline) for major roads. The Agency also has “clear zone” requirements described in paragraph 245.3 of the *Clackamas Roadway Standards* (2020), provided by the Agency to ODOT. Burned trees on the Agency ROW shall be assessed and if found to meet ODOT criteria for removal as a “hazard tree” shall be marked for felling.
3. **Historical, Cultural and Environmental Compliance.** Prior to commencing work ODOT shall conduct required historical, cultural and environmental reviews, and obtain permits if required.
4. **Coordination with Agency Liaison.** To support coordination with property owners, ODOT will provide schedule estimates or forecasts of locations for upcoming tree assessments or felling operations to the Agency. During daily start of work (or similar) tail-board meetings, ODOT will provide a verbal briefing to the Agency Liaison describing where upcoming tree assessments or felling operations are planned.
5. **Agency Work Requests, Work Areas, and Map Book.** If requested the Agency shall provide to ODOT within 14 business days a table and a map-book with complete information as outlined below and similar to that as provided in Attachment A (as an example) showing the Agency ROW and property lines.
 - A Summary of Work Requests.
 - Clear Concise Work Area Descriptions including but not limited to;
 - Clackamas County Roads Table including County Road Name, Starting and Ending Mile Point, Road Type, and ROW Width.
 - Private Property(s) Table including property owner name, Map & Taxlot, Site Address, ROE, and County Road Name.
 - Federal Property(s) Table, including property owner name, Map & Taxlot, and County Road Name.
 - Private Property Maps – Hazard Tree Permits Requested, with the property clearly delineated by a color contrasted property boundary.

- Federal Property Maps – Bureau of Land Management & U.S. Forest Service with the property clearly delineated by a color contrasted property boundary.

Late entries will not be accepted into the wildfire recovery program after October 31, 2021.

6. **Hazard Trees on the Agency ROW Easement.** The Agency's ROW is an easement; hazard trees within the ROW are owned by the underlying property owner. Prior to the removal of hazard trees on the Agency ROW, the Agency Liaison shall contact property owners to inform them of the scheduled tree felling operations. If the property owner wants to receive the felled trees and a safe decking location is available on their property outside the ROW, they shall sign a Tree Permit Right of Entry Form and ODOT shall leave logs decked on the property outside the ROW. The ROE shall provide the authority for ODOT's contractor to leave the felled trees decked at or near the location where felled and outside of the "clear zone" on the property owner's property. Felled trees not requested by the property owner through completion of the Tree Permit ROE will be removed and disposed by ODOT.

Hazard Trees Beyond the Agency ROW Easement. At least fourteen business days prior to the removal of hazard trees adjacent to the County Agency ROW, the Agency will identify potential hazard trees located on private and federal property and beyond the Agency ROW but still within "striking distance" (1.5 times the tree height) of the edge of pavement. This information will be used by the Agency to contact property owners and request a ROE along with permission for ODOT and its contractors to enter, assess individual trees, and, fell the trees that pose a hazard and meet removal criteria. Permission to assess, survey, and cut down hazard trees on private property beyond the Agency ROW shall be obtained by the Agency using an approved Tree Permit ROE. If the property owner is non-responsive (at least 7 calendar days after notification attempts) or not does submit a Tree Permit ROE, then the trees will not be assessed or removed.

7. **Chips and Slash.** ODOT will process and distribute chips (hog fuel) no more than three (3) inches in accordance with ODOT's existing Contracts and SOW along with the Debris Removal Operations Plan (DROP) and Environmental Protection Plan (EPP). Such material will not be placed in or near drainages, wetlands, streams, or water bodies to avoid blockages or impedances to water flow. Excess slash, chips or vegetative material may be left at nearby decking sites in the Clackamas County ROW outside clear zones or decking locations described below for up to six months. Subject to chip quality, the Agency may assist in identifying opportunities for chip-drops by ODOT to local property owners that want chips, where doing so reduces chip disposal costs.
8. **Decking Locations.** ODOT has salvage rights and responsibility for all logs, chips and slash not requested by property owners with a Tree Permit ROE as described above. In

the event that temporary decking locations at or near the hazard tree felling operation are not available because (1) there is not space available to safely place a log deck or excess chips outside the County Road clear zone or (2) the property owner has not requested to retain ownership of the felled hazard tree, then ODOT will have salvage rights, take possession, and may transport the logs to an Agency-provided decking locations. ODOT will subsequently sell the logs. Proceeds from any ODOT wildfire related log sale shall be retained by ODOT and used to off-set wildfire recovery effort cost by ODOT and FEMA, in accordance with FEMA requirements.

ODOT desires not to un-necessarily haul all logs to the Agency provided decking locations. ODOT has been successful in selling logs from decked location adjacent to but outside of clear zones along state highways. Where physically possible, the Agency agrees ODOT's current log decking criteria deployed along state highway may be used along County roads.

In such circumstances where logs cannot be decked adjacent to County Roads, then ODOT may haul logs to an Agency provided location. The Agency offers two decking locations for ODOT to use pursuant to this work.

Location 1 shall be the Agency's Steel Bridge stockpile site at 16154 Hwy 211. This location has a railroad car steel bridge that provides access to the south portion of this site. The southern portion of the site is located in a designated floodplain, therefore will not be used for temporary storage. If necessary, the Agency and ODOT will work together to locate alternate sites within 30 business days of amending this IGA.

Location 2 shall be at the Agency's Springwater stockpile site at southeast corner of South Springwater Road and South Tucker Road. Decking locations may be used to temporarily site logs and chips, with chip storage subject to available space and in accordance with best management practices, such as for fire safety. Both locations may be used for up to within 6 months of commencement of last log or chips placement at a decking location. This time period may be extended by mutual agreement.

9. **Clackamas River Basin Council Log Donation.** The Agency desires to donate some resultant logs to the [Clackamas River Basin Council \(CRBC\)](#) for purposes of habitat restoration. The Agency and CRBC shall be able to haul logs directly from either a decking location or directly from field operations. The CRBC and Agency shall not employ or use ODOT contractors to haul, load, or off-load logs for this habitat restoration effort. CRBC and the Agency shall be solely responsible for obtaining the desired logs with the desired dimensions. CRBC log loading and hauling shall be coordinated with ODOT contractors through ODOT's On-Scene Incident Commanders (OSIC) and shall not interfere with any ODOT operation.

10. **Documentation.** The Agency Liaison will document situations where burned trees on private property are observed beyond the County ROW and believed to be a hazard, and the property owner is either unreachable or declines permission to enter the property. ODOT shall document the number and size of trees felled on private property by location.