



Oregon

John A. Kitzhaber, M.D., Governor

MEASURE: HB 4072A
EXHIBIT: 4
2012 SESSION S ENV. & NAT. RESOURCES
DATE: 2/21/12 PAGES: 10
SUBMITTED BY: Luci Moore

Department of Transportation

Director's Office
1158 Chemeketa St. NE
Salem, OR 97301

DATE: February 21, 2012
TO: Senate Committee on Environment and Natural Resources
FROM: Luci Moore, ODOT State Maintenance and Operations Engineer
SUBJECT: HB 4072-A

Introduction

House Bill 4072-A allows the Douglas Forest Protective Association, Coos Forest Protective Association, Walker Range Forest Protective Association or their successors and the Oregon Department of Transportation (ODOT) to enter into contracts for use of forest protective association (FPA) seasonal fire suppression personal during their off-season. The off-season services provided to ODOT must be consistent with the services being provided under the current agreement between ODOT and Oregon Department of Forestry (ODF).

Background

For many years, ODOT and ODF have entered into an interagency agreement (attached) for ODF to provide employees to ODOT during the time when ODF does not need the employees for fire suppression. ODOT uses these employees primarily for snow removal. Since the ODF off-season is during the winter, this has become know as the "fire and ice agreement."

The agreement between ODOT and ODF allows for local ODOT and ODF staff to enter into supplement cooperative work agreements to address specific seasonal needs. In 2011 ODOT attempted to enter into a supplemental agreement with a FPA believing the FPA was associated with ODF; ODOT learned from its legal council that the ODOT/ODF agreement did not include a FPA, so that agreement could not be used to contract for FPA employees. ODOT also learned that a FPA was not a governmental body so ODOT could not contract directly with a FPA for services.

Implementation

Should HB 4072-A become law, ODOT intends to use the agreement for the same purposes as the agreement with ODF. ODOT will use the agreement to hire FPA staff for seasonal highway maintenance activities. No ODOT employees will be displaced as a result.

Summary

HB 4072-A will allow ODOT to hire FPA staff for seasonal highway maintenance activities. ODOT plans to implement the bill by following current practices and not increasing the scope of activities for the FPA staff hired seasonally. Since the FPAs may provide fire suppression services to ODF, this bill will facilitate the retention of employees by the FPA, as well as trained seasonal workers for both ODF and ODOT.

Attachment

INTERAGENCY AGREEMENT
Highway Maintenance Services
Department of Forestry

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 the STATE OF OREGON, acting by and through its Department of Forestry, hereinafter referred to as "ODF", hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies 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. ODF retains personnel to meet their responsibilities for forest fire suppression on certain lands within the state. The fire suppression personnel experience periods when fire danger is low and does not require their immediate presence. During these low fire danger periods, ODOT will utilize ODF personnel to perform highway maintenance services.

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. Under such authority, ODOT wishes to retain the services of ODF employees to perform highway maintenance services during periods of low fire danger as described on a Supplemental Cooperative Work Agreement identified as Exhibit A, attached hereto and by this reference made a part hereof. ODOT shall provide training to ODF employees for said services. Payment for said services shall not exceed a maximum amount of \$10,000,000 in state funds available to ODOT. The use of ODF employees will be authorized by the execution of a Supplemental Cooperative Work Agreement. ODOT's District Manager or assigned designee and ODF's District Forester or assigned designee may sign the Supplemental Cooperative Work Agreement.
2. The term of this Agreement shall begin upon execution and shall terminate on July 1, 2018, unless extended by an executed amendment.

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3. This Agreement supersedes the previous agreement, Agreement Number 16551 dated March 18, 1999.

ODF OBLIGATIONS

1. ODF shall provide employees, as available for use by ODOT, to accomplish highway maintenance services.
2. ODF shall pay affected employees in accordance with the ODF section of the Service Employees International Union (SEIU), Local 503, OPEU, collective bargaining contract.
3. ODF shall provide affected employees with proper notification of change of work assignment and wage agreement.
4. ODF shall provide formal discipline of ODF employees working under this Agreement in accordance with the Service Employees International Union (SEIU), Local 503, OPEU, collective bargaining contract.
5. ODF shall present invoices for 100 percent of actual costs incurred while performing highway maintenance services on the state highway system, directly to ODOT's District Maintenance Manager or assigned designee for review and approval. ODOT shall reimburse ODF for services based on ODF's rates used for its internal financial management of personnel. Such invoices shall be in a form identifying the agreement number, invoice number and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one (1) month duration, based on actual expenses incurred. Under no conditions shall ODOT's obligations exceed the amount identified in the individual Supplemental Cooperative Work Agreements, including all expenses.
6. ODF shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT.
7. ODF agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, Forestry expressly agrees 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 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.

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8. ODF shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings, except as outlined in ODOT obligations 1 and 6.
9. All employers, including ODF, 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. Agency shall ensure that each of its subcontractors complies with these requirements.
10. The Supplemental Cooperative Work Agreement for ODF may be signed by ODF District Forester or assigned designee.
11. ODF's Project Manager for this Agreement is ODF, Human Resources Director, 2600 State St; Salem, OR 97310, or assigned designee upon individual's absence.

ODOT OBLIGATIONS

1. In consideration for the services performed, ODOT agrees to pay ODF a maximum amount of \$10,000,000. Said maximum amount shall include reimbursement for all payment of wages and benefits incurred, including travel expenses. Travel expenses shall be reimbursed to ODF in accordance with the current State Department of Administrative Services' rates. Payment will be made within forty-five (45) calendar days from receipt of invoice.
2. ODOT agrees to pay ODF for its direct and indirect costs. Indirect costs to be paid by an administrative charge of five percent (5%) on the direct costs. Direct costs will be those costs incurred in the conduct of work including ODF's payroll costs. Indirect costs will be those expenses for necessary support services and costs incurred in common with other activities for ODF.
3. ODOT shall provide direct instruction, assign work and set performance standards to ODF employees concerning work to be performed under the Supplemental Cooperative Work Agreements.
4. ODOT shall provide ODF employees with a job description, work policies/expectations, and shift schedule ODOT shall direct and supervise ODF employees who are assigned to work for ODOT.

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5. ODOT shall submit daily timecards of ODF employees to the ODF District Forester or assigned designee identified on the Supplemental Cooperative Work Agreements on a weekly basis.
6. ODOT agrees to pay costs associated with alcohol and drug testing of commercially licensed drivers in accordance with 49 CFR Part 382 for those ODF employees who are required to operate commercial motor vehicles while performing ODOT work. Positive alcohol and drug test results of ODF employees will be reported by ODOT Human Resources to ODF Human Resources for appropriate action. After receiving a positive test result, no ODF employee will return to ODOT work until they have successfully passed a return to duty test, and have agreed to participate in any treatment recommended by the certified Substance Abuse Professional. Cost of any treatment program will not be the responsibility of ODOT.
7. ODOT shall make available vehicles, equipment, tools and machinery needed by ODF employees to perform services. This includes any training in the proper and safe operation of such vehicles, equipment, tools and machinery.
8. ODOT grants ODF, its contractors and subcontractors, the right to enter onto ODOT right of way for the performance of duties set forth in this Agreement.
9. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
10. ODOT's Project Manager for this Agreement is ODOT Office of Maintenance, Materials Lab, 800 Airport Rd SE, Salem, OR 97301-4798 or assigned designee upon individual's absence.

GENERAL PROVISIONS

1. The ODF employee shall remain in the same position number and classification; retain the same status and salary rate; receive annual merit increases contingent upon satisfactory performance; receive applicable salary adjustments; and retain all right, privileges and benefits of the original position.
2. The ODOT supervisor shall prepare a performance evaluation at the completion of the assignment and submit to the ODF District Forester or assigned designee for the ODF employee's personnel file.
3. The ODF employee will be able to list the experience gained as part of their qualifications on future applications

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4. The ODF employee will be eligible for promotional opportunities with ODF.
5. The ODF employee will return to their ODF position at the end of the ODOT assignment or the beginning of their respective season.
6. ODOT will assume responsibility for providing all workers' compensation claims and claims costs for all occupational injuries/illnesses incurred by ODF employees while said employees are performing work for ODOT under this Agreement.
 - a. In those cases where the injured ODF employee is temporarily physically restricted from performing regular ODOT duties, ODOT will assume primary responsibility for providing the injured ODF employee modified duty in an early return to work program approved by the employee's treating physician. In the event such work cannot be provided by ODOT, ODF will assume secondary responsibility for said work.
 - b. Where ODF employees are permanently restricted, as a result of their injury, from performing their regular ODOT duties, ODF will assume responsibility for providing suitable work pursuant to ORS 659A.043 and ORS 659A.046, if such work is or becomes available.
 - c. In cases where the ODF employee is determined to have a disability as defined in Title 1 of the Americans with Disabilities Act, ODF will assume responsibility for conducting a reasonable accommodation analysis to determine if the employee can perform the essential functions of the position, with or without reasonable accommodation. This analysis will include a review of the duties performed for ODOT.
 - d. ODF will assume responsibility for all other compensation, benefits and legal rights for injured employees including but not limited to salaries, leave time and benefits, health care benefits, and retirement benefits as prescribed by the Service Employees International Union (SEIU), Local 503, OPEU, collective bargaining contract and all applicable Oregon/Federal laws.
7. This Agreement may be terminated by mutual written consent by either Party upon thirty (30) days' notice, and delivered in person or by certified mail.
8. ODOT may terminate this Agreement effective upon delivery of written notice to ODF, or at such later date as may be established by ODOT, under any of the following conditions:

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- a. If ODF fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If ODF fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance 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.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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 if ODOT is prohibited from paying for such work from the planned funding source.
9. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
10. ODF employees assigned to work for ODOT shall not be considered employees of ODOT. ODF shall be responsible for the following items in regard to their own employees.
- a. Payment of all wages and benefits that its employees are entitled to receive through their employment including, but not limited to, vacation, holiday and sick leave; other leaves with pay; medical, dental, life and accident insurance; other insurance coverage; overtime; Social Security; Workers' Compensation; unemployment compensation, and retirement benefits.
 - b. Withholding Social Security, federal and state taxes, and other regular deductions from wages paid to employees.
 - c. Administration of applicable civil service statutes and rules, classification and compensation plans, collective bargaining agreements, and other laws and agreements governing personnel relations with employees.
11. The Parties acknowledge and agree that either Party, 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 Agency 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

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payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

12. The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of any activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Risk Management Division of the Department of Administrative Services (DAS) for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to this Agreement agrees to notify the Risk Management Division and the other Party in the event it receives notice or knowledge of any claims arising out of the performance of, or the Parties activities under this Agreement.
13. The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). Each Party agrees to accept that coverage as adequate insurance of the other Party with respect to personal injury and property damage.
14. This Agreement may be executed in several counterparts (facsimile 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.
15. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.
16. The ODOT District Manager or assigned designee and ODF District Forester or assigned designee, are hereby authorized to approve and execute Supplemental Cooperative Work Agreements on behalf of their respective agencies for work under this Agreement. Both Parties shall sign the Supplemental Cooperative Work Agreements before commencement of work.

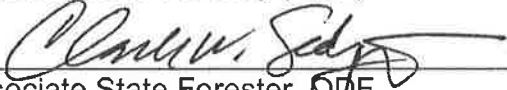
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THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; Deputy Director, Central Services and the Chief of Staff, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission.

STATE OF OREGON, by and through its
Department of Forestry (ODF)

By 
Associate State Forester, ODF

Date 11-20-08

REVIEWED FOR ODF BY

By _____
Assistant Attorney General

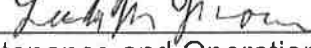
Date _____

STATE OF OREGON, by and through
its Department of Transportation (ODOT)

By 
Deputy Director, Highways

Date 11-21-08

APPROVAL RECOMMENDED

By 
Maintenance and Operations Engineer

Date 11-18-08

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EXHIBIT A
SUPPLEMENTAL COOPERATIVE WORK AGREEMENT
(INTERAGENCY AGREEMENT # 24792)

(Insert name of position here)

This Supplemental Cooperative Work Agreement is between the Oregon Department of Transportation (ODOT) and the Oregon Department of Forestry (ODF). The purpose of this Supplemental Cooperative Work Agreement is to outline requirements related to the interagency appointment/job rotation assignment of *[insert name of individual]* who will serve as an *[insert job title/ name of position]*.

Authorized ODF Representative:
Oregon Department of Forestry District/Unit Forester Name/Phone Number: *[insert name/number]*
[Insert District Office address]

Employee Current Salary Range: _____ Employee Current Classification: _____ Current Step: _____

Authorized ODOT Representative:
Oregon Department of Transportation District Manager Name/Phone Number: *[insert name/number]*
[Insert District Office address]

Assignment Range: _____ Assignment Classification: _____
Assignment Step: _____ Work Out of Class: (Yes or No)

[Insert Employee Name], will be assigned to work for ODOT from XXXXX to XXXXX under this Supplemental Cooperative Work Agreement. The intent is to eliminate involuntary layoff during transition from one agency to another. Seasonal transfer dates between agencies will be negotiated between authorized representatives for each agency.

This Supplemental Cooperative Work Agreement may be executed in several counterparts (facsimile 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 Supplemental Cooperative Work Agreement so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

STATE OF OREGON, by and through its
Department of Forestry

By _____
District Forester or Designee

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
District Manager or Designee

Date _____