



January 20, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Cooperation Agreement between Clackamas County and PGE for  
using FEMA Grants Funds in Partnership for the Mt Hood Corridor Resiliency  
Project. No County General Funds Needed.

Purpose/Outcomes	Disaster Management (DM) requests the Board to approve this Cooperation Agreement to support the Mt Hood Corridor Resiliency Project through the administration of FEMA 2021 Building Resilient Infrastructures for Communities (BRIC) Grant, if awarded.
Dollar Amount and Fiscal Impact	No direct fiscal impact. This approval establishes a shared understanding of the working relationship for the administration of the FEMA BRIC grant funds. A formal contract between the County and PGE will be implemented upon the award of the grant.
Funding Source	FEMA 2021 BRIC Grant
Duration	Until December 31, 2025
Previous Board Action	The Board approved the ability to apply for the FEMA BRIC program for 2021 on September 23, 2020, Item F. 2.
Strategic Plan Alignment	1. This item will foster community resilience through planning and preparedness. 2. This item will support long-term investments in strong and affordable infrastructure that will help ensure the safety, and security of our residents.
County Counsel Review	Andrew Naylor on 1/12/22
Procurement Review	Procurement review is not required.
Contact Person	Jay Wilson, (503) 723-4848

**BACKGROUND:**

In pursuit of the FEMA 2021 BRIC grant for the Mt Hood Corridor Resiliency Project, the County and PGE are entering into a Public-Private Partnership and this Cooperative Agreement establishes the administrative relationships for managing the federal funds, if awarded.

**RECOMMENDATION:**

Staff respectfully recommends the approval of the Cooperation Agreement with PGE.

Sincerely,

Daniel Nibouar  
Interim Director

Attachments: Clackamas County and PGE Cooperation Agreement

**Daniel Nibouar**

*Interim Director*

**Disaster Management**  
1710 Red Soils Ct., Ste. 225  
Oregon City, OR 97045

T 503-655-8378

[clackamas.us](http://clackamas.us)

## COOPERATION AGREEMENT

This Cooperation Agreement (“Agreement”) is made and entered into on January 12, 2022 (“Effective Date”) between Portland General Electric Company (“PGE”), an Oregon corporation, principally located at 121 SW Salmon Street, Portland, OR 97204, and Clackamas County (“County”), an Oregon municipality, principally located at 2051 Kaen Road, Oregon City, 97045, each a “Party” or collectively the “Parties.”

### RECITALS

WHEREAS, as a critical service provider, PGE is committed to providing safe, reliable, affordable and responsibly generated electricity to its customers every day;

WHEREAS, in September of 2020, due to increased threat of wildfire from a combination of high winds, low humidity and other wildfire threat metrics, PGE implemented a Public Safety Power Shutoff in the Mt. Hood Corridor. The heavily forested, relatively isolated communities along the Mt. Hood corridor are more vulnerable to wildfire and harder to protect. The series of wildfires that burned in the area burned more than one million acres that resulted from the weather conditions throughout the state;

WHEREAS, the rapid acceleration of climate change within Oregon in the last few years has magnified the need for utilities, like PGE, and their communities, like the County, to work together to plan for the resiliency of critical infrastructure when faced with the increased threat of wildfire and extreme weather;

WHEREAS, to further the County’s public interest objective to ensure access to critical services and infrastructure to its residents and businesses, the County has applied for a Fifty Million Dollar (\$50,000,000) FEMA Building Resilient Infrastructure and Communities Grant (the “Grant”) to help fund its proposed Mt. Hood Corridor Resiliency Project (“Resiliency Project”), which includes the undergrounding of the sub-transmission and distribution lines located in the Mt. Hood Corridor that power the Bull Run Watershed, which is the primary drinking water supply for nearly one million people; and

WHEREAS, all of the infrastructure that will be undergrounded as part of the Resiliency Project is located within PGE’s electric service territory and is owned and operated by PGE, except for the Dunns Corner-Portland Hydro 57kV line, which is co-owned by PGE and the City of Portland and operated by PGE;

WHEREAS, the Resiliency Project aligns with PGE’s strategy to improve the resiliency of its critical energy infrastructure.

NOW THEREFORE, the Parties desire to collaborate on the Resiliency Project and agree as follows:

1. Term. This Agreement will commence on the Effective Date and expire on December 31, 2025 (the “Term”) unless earlier terminated in accordance with the provisions of this Agreement.

2. Consideration. There is no monetary consideration for this Agreement. The consideration for this Agreement is the Parties' agreement to comply with the terms and conditions herein.
3. Project Management Services. If County is awarded the Grant, PGE will provide, at County's request, in-kind project management services for Stage 1 of the Resiliency Project.
4. Engineering Services. At its sole cost, PGE will hire and manage qualified engineering consultants ("Consultants") to complete final engineering, design and permitting of the Resiliency Project. PGE shall retain ownership of all work product created by the Consultants.
5. Status Reporting. If County is awarded the Grant, PGE will submit monthly reports to the County in an agreed upon format, for compliance and project status update purposes, in accordance with the Grant requirements. All costs for the Resiliency Project shall be tracked and accounted for separately from any other PGE project.
6. PGE Funding Approvals. Upon completion of the final engineering and design for Stage 1 of the Resiliency Project as set forth in Section 2, PGE will seek PGE board approval to pay for the costs to complete the work set forth in the Final Design that are more than the total Grant award amount. In the event PGE does not obtain board approval, PGE may terminate this Agreement upon ten (10) days written notice to County.
7. County Obligation. In consideration for PGE's performance under this Agreement, the County agrees to take good faith efforts to pursue the Grant. If awarded the Grant, the County agrees to take good faith efforts to pursue a sole-source procurement with PGE, in accordance with applicable law, to enter into an agreement with PGE to perform the necessary infrastructure work described in the Grant. Such agreement will be subject to terms and conditions agreed to by the parties, and is expected to require PGE to maintain the infrastructure funded by the Grant in accordance with all applicable Grant requirements.
8. Dunns Corner Operating Agreement. During the Term, PGE will diligently and in good faith negotiate a renewal of the operating agreement for the Dunns Corner Portland Hydro 57kV line with the City of Portland.
9. Force Majeure. As used in the Agreement, an event of "Force Majeure" shall mean an event that prevents the affected Party from performing its obligations under the Agreement and is unforeseeable and beyond the reasonable control of the affected Party. Neither Party shall be liable for delays due to an event of Force Majeure. The Party incurring the delay shall within five (5) calendar days from the beginning of the delay, notify the other Party in writing of the causes of the delay and its probable extent. In the event of any such delay, the required completion date may be extended by a reasonable period not exceeding the time lost by reason of the delay; provided, however, that if the affected Party's performance is delayed for more than ninety (90) days, either Party may, at its option, terminate this Agreement.
10. Termination. Either Party may terminate this Agreement in the event the other Party materially breaches an obligation under this Agreement and such breach remains uncured after ten (10) days of receipt written notice of such breach. In the event the County is denied the Grant, the Grant application is withdrawn, or the funding under the Grant is otherwise reduced or withdrawn, either Party may terminate this Agreement upon ten (10) days written notice to the other Party. Upon a termination of this Agreement, neither Party shall have any further obligation to the other Party under this Agreement.

11. Disclaimer of Warranty. PGE MAKES NO REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW BY STATUTE OR OTHERWISE, AND PGE SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY AS TO THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.
12. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. Notices. All notices permitted or required to be given under the Agreement shall be in writing and shall be deemed given: (i) if delivered by courier, on receipt by the intended recipient or on the date of delivery (as confirmed by the records of such courier), (ii) if mailed, on the date of delivery as shown by the return receipt, or (iii) if by email, on the date officially recorded as delivered, according to return receipt or other record of delivery. Notices must be sent to the addresses set forth below or to such other addresses as a Party may from time to time specify by notice pursuant hereto:

To PGE:                   Portland General Electric Company  
                                  Attention: Brooke Brownlee  
                                  121 SW Salmon Street  
                                  Portland, OR 97204  
                                  Email: Brooke.Brownlee@pgn.com

To County:               Clackamas County Disaster Management  
                                  Attention: Daniel Nibouar  
                                  1710 Red Soils Court #225  
                                  Oregon City, OR 97045

14. Nonwaiver. No waiver of the nonperformance or violation of any term or condition of the Agreement or any default under the Agreement should be construed to be or operate as a waiver of any subsequent nonperformance, violation, or default. No waiver of any portion of the Agreement is effective unless made in writing.


15. Controlling Law and Venue. THE AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF OREGON WITHOUT REGARD TO CHOICE-OF-LAW PRINCIPLES. COUNTY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF OREGON OR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON FOR ANY ACTION, SUIT, OR PROCEEDING IN CONNECTION WITH THE AGREEMENT AND WAIVES ANY OBJECTION THAT COUNTY MAY NOW OR HEREAFTER HAVE REGARDING CHOICE OF FORUM.
16. Survival. Any and all provisions contained in the Agreement which by their nature or effect are required or intended to be observed, kept, or performed after termination of the Agreement will survive such termination of the Agreement.
17. Severability. If any provisions of the Agreement are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the Agreement should be construed to give effect as nearly as possible to the intent of the Parties. The Parties agree to work together to replace such invalid, illegal or unenforceable provision as promptly as possible with a provision that is valid, legal and enforceable
18. Amendment; Assignment. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written amendment signed by both Parties. Neither Party may assign or transfer this Agreement, in whole or in part, without the written consent of the other Party.
19. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any liability to or any benefit for any person not a party to the Agreement.
20. Complete Agreement. This Agreement constitutes the complete agreement between PGE and County and supersedes all prior negotiations, representations or agreements, whether oral or written, related to the subject matter of the Agreement.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, have executed this Agreement as of the Effective Date.

CLACKAMAS COUNTY

PORTLAND GENERAL ELECTRIC CLL  
COMPANY CL

By: \_\_\_\_\_  
Title: \_\_\_\_\_

  
Maria Pope (Jan 12, 2022 12:52 PST)  
By: Maria Pope  
Title: President & Chief Executive Officer










# Clackamas County Cooperation Agreement (PGE 1-12-22)

Final Audit Report

2022-01-12

Created:	2022-01-12
By:	Ingrid Campbell (ingrid.campbell@pgn.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyNBb41sMAOH90DPIZ0zA7qWkYRFZDdod

## "Clackamas County Cooperation Agreement (PGE 1-12-22)" History

-  Document created by Ingrid Campbell (ingrid.campbell@pgn.com)  
2022-01-12 - 8:37:07 PM GMT- IP address: 163.116.132.118
-  Document emailed to Crystal Lindquist (crystal.lindquist@pgn.com) for approval  
2022-01-12 - 8:38:37 PM GMT
-  Email viewed by Crystal Lindquist (crystal.lindquist@pgn.com)  
2022-01-12 - 8:45:14 PM GMT- IP address: 163.116.132.117
-  Crystal Lindquist (crystal.lindquist@pgn.com) has agreed to the terms of use and to do business electronically with PORTLAND GENERAL ELECTRIC CO  
2022-01-12 - 8:45:40 PM GMT- IP address: 163.116.132.117
-  Document approved by Crystal Lindquist (crystal.lindquist@pgn.com)  
Approval Date: 2022-01-12 - 8:45:40 PM GMT - Time Source: server- IP address: 163.116.132.117
-  Document emailed to Maria Pope (maria.pope@pgn.com) for signature  
2022-01-12 - 8:45:42 PM GMT
-  Email viewed by Maria Pope (maria.pope@pgn.com)  
2022-01-12 - 8:52:39 PM GMT- IP address: 163.116.132.115
-  Maria Pope (maria.pope@pgn.com) has agreed to the terms of use and to do business electronically with PORTLAND GENERAL ELECTRIC CO  
2022-01-12 - 8:52:49 PM GMT- IP address: 163.116.132.115
-  Document e-signed by Maria Pope (maria.pope@pgn.com)  
Signature Date: 2022-01-12 - 8:52:49 PM GMT - Time Source: server- IP address: 163.116.132.115

✔ Agreement completed.

2022-01-12 - 8:52:49 PM GMT



**Daniel Nibouar**  
Interim Director

Disaster Management  
1710 Red Soils Ct., Ste. 225  
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T 503-655-8378

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January 20, 2022

Board of County Commissioners  
Clackamas County

**Approval of Maintenance Assurance Letter for Federal Emergency Management Agency (FEMA) 2021 Building Resilient Infrastructure and Communities (BRIC) Grant with Portland General Electric (PGE) County General Funds are/are not involved.**

<b>Purpose/Outcome</b>	Approval of Maintenance Assurance Letter for FEMA BRIC grant.
<b>Dollar Amount and Fiscal Impact</b>	No direct fiscal impact.
<b>Funding Source</b>	Not applicable
<b>Duration</b>	Not applicable
<b>Previous Board Action/Review</b>	The Board approved the ability to apply for the FEMA BRIC program for 2021 on September 23, 2020, Item F. 2.
<b>Strategic Plan Alignment</b>	1. This item will foster community resilience through planning and preparedness. 2. This item will support long-term investments in strong and affordable infrastructure that will help ensure the safety, and security of our residents.
<b>Counsel Review</b>	Andrew Naylor on 1/12/22
<b>Procurement Review</b>	Procurement review is not required
<b>Contact Person</b>	Jay Wilson, 503-723-4848

**BACKGROUND:** The Director of the Department of Disaster Management respectfully requests that the Clackamas County Board of Commissioners approve and sign the Maintenance Assurance Letter that is a standard requirement for the acceptance of federal mitigation grant funds from FEMA.

This letter acknowledges the County's understanding of its responsibility for the routine maintenance of the project's infrastructure but also references that the County will ensure the performance of this obligation through an agreement with a third party (PGE) to perform the necessary work, if we are awarded the grant.

These maintenance assurance letters are standard requirements for all FEMA mitigation grant awards and can usually be signed at the staff level. As this project is unique, as a Public Private Partnership with PGE and the County seeking federal grant funds as the grant sponsor, we are requesting that the Board approve of this maintenance letter for the BRIC grant sub-application.

**RECOMMENDATION:** Staff recommends approval of this letter for inclusion in the FEMA BRIC grant application.

Respectfully submitted,

Daniel Nibouar  
Interim Director  
Disaster Management





**BOARD OF COUNTY COMMISSIONERS**

**PUBLIC SERVICES BUILDING**

2051 KAEN ROAD | OREGON CITY, OR 97045

Anna Feigum  
State Hazard Mitigation Officer  
Oregon Office of Emergency Management  
3225 State St, Room 115  
Salem, OR 97301  
[shmo@mil.state.or.us](mailto:shmo@mil.state.or.us)

January 12, 2022

Re: Safeguarding Energy – Mt. Hood Corridor Resiliency Project, Maintenance Agreement

Dear Anna Feigum:

Clackamas County hereby agrees that if it receives any Federal funding as a result of the attached project application, it will accept responsibility, at its own expense if necessary, for routine maintenance of any real property, structures, electrical installations and equipment obtained as a result of such Federal funding, for at least the life of the project. Clackamas County will ensure performance of this obligation through an agreement with a third party to perform the work contemplated by the Federal funding agreement.

The purpose of this agreement is to make clear that the sub-grantee's maintenance responsibilities following project award and to show the sub-grantee's acceptance of these responsibilities. It does not replace, supersede, or add to any other maintenance responsibilities imposed by Federal law or regulation and which are in force on the date of project award.

Sincerely,

Clackamas County Board of County Commissioners