



Daniel Nibouar

Director

Disaster Management
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Oregon City, OR 97045

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September 19, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Grant Application to the Federal Emergency Management Agency Building Resilient Infrastructure for Communities Program. Total grant value is \$50,000,000. Funding is through the federal grant with matching funds from Portland General Electric. No County General Funds are involved.

Table with 4 rows: Previous Board Action/Review, Performance Clackamas, Counsel Review, Contact Person. Includes details of FEMA BRIC program approvals and contact information for Jay Wilson.

EXECUTIVE SUMMARY: The County is partnering with PGE on a project to underground overhead lines up Highway 26. As a private utility, PGE is not eligible to apply for the BRIC grant, but the County is eligible. The County's 2024 Multi-Jurisdictional Natural Hazard Mitigation Plan has existing goals and actions already identified to support public-private partnerships and encourage utilities to underground critical infrastructure.

This application is for the first stage that will underground seventeen miles of 57kV and 13kV overhead lines and set up the infrastructure for further stages. PGE estimates that the full project, including future stages will cost between \$400 million to \$600 million. The County and PGE can apply for future BRIC grants in additional stages. PGE will cover the 25% local match. The County is including project administration and indirect costs to the County in the application.

The County and PGE have applied for this grant in 2021, 2022, and 2023. While the project was not selected, FEMA and the Oregon Department of Emergency Management support the project and encouraged the County to apply again. FEMA provided an excellent debrief on how to strengthen the application.

RECOMMENDATION:

Staff respectfully recommends the approval to apply for the 2024 BRIC grant.

Respectfully submitted,

[Handwritten signature of Daniel Nibouar]

Daniel Nibouar, Director

Attachments:
2021 Clackamas County and PGE Cooperation Agreement with 2022 Amendment

For Filing Use Only

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

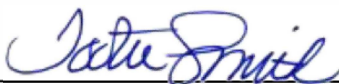
To County: Clackamas County Disaster Management
 Attention: Daniel Nibouar
 1710 Red Soils Court #225
 Oregon City, OR 97045

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



By: Tootie Smith
Title: Chair

PORTLAND GENERAL ELECTRIC CL
COMPANY CL


Maria Pope (Jan 12, 2022 12:52 PST)

By: Maria Pope
Title: President & Chief Executive Officer

**EXTENSION AND AMENDMENT OF COOPERATION AGREEMENT BETWEEN PORTLAND
GENERAL ELECTRIC COMPANY AND CLACKAMAS COUNTY
MT. HOOD CORRIDOR RESILIENCY PROJECT**

THIS EXTENSION AND AMENDMENT OF THE COOPERATION AGREEMENT REGARDING THE MT. HOOD CORRIDOR RESILIENCY PROJECT ("Extension"), effective upon execution of both parties, is by and between PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation ("PGE") and CLACKAMAS COUNTY ("County"), an Oregon municipality.

RECITALS

A. PGE and the County are parties to a certain Cooperation Agreement entered into on January 12, 2022 (the "Agreement"), pursuant to which PGE and the County committed to certain obligations in collaborating on the Mt. Hood Corridor Resiliency Project.

B. To further extend and clarify that Agreement, the PGE and the County wish to amend the Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Recitals.** The fourth paragraph of the RECITALS section of the Agreement is hereby amended to provide in its entirety as follows:

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 ("Stage 1"), which is the primary drinking water supply for nearly one million people; and

2. **Term.** Section 1 "Term" is hereby amended to provide in its entirety as follows:

This Agreement will commence on the Effective Date and expire on December 31, 2026 (the "Term") unless earlier terminated in accordance with the provisions of this Agreement.

3. **PGE Funding Approvals.** Section 6. "PGE Funding Approvals" is hereby amended to provide in its entirety as follows:

Upon completion of the final engineering and design for Stage 1 of the Resiliency Project as set forth in Section 3 and 4, PGE will seek PGE board approval to pay for the costs to complete the work set forth in the final engineering, design and permitting for Stage 1 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.

IN WITNESS WHEREOF, the undersigned have entered into this Extension as of the date first written above.

CLACKAMAS COUNTY



By: _____
Name: Tootie Smith
Title: Chair, Board of Commissioners

PORTLAND GENERAL ELECTRIC COMPANY

By:  _____
Name: Marie Pope
Title: President and Chief Executive Officer

Financial Assistance Application Lifecycle Form

Use this form to track your potential award from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

If renewal or direct appropriation, complete sections I, II, IV & V only. Section III is not required.

If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

****CONCEPTION****

Section I: Funding Opportunity Information - To Be Completed by Requester

Direct Appropriation (no application)
Award type: Subrecipient Award Direct Award

Award Renewal? Yes No

| | |
|-------------------------------------|--|
| Lead Fund # and Department: | |
| Name of Funding Opportunity: | |

Funding Source: Federal – Direct Federal – Pass through State Local

| | |
|--|--|
| Requestor Information: (Name of staff initiating form) | |
| Requestor Contact Information: | |
| Department Fiscal Representative: | |
| Program Name & Prior Project #: (please specify) | |

Brief Description of Project:

Name of Funding Agency:

Notification of Funding Opportunity Web Address:

OR

Application Packet Attached: Yes No

Completed By: Date:

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To Be Completed by Department Fiscal Rep

Competitive Application Non-Competing Application Other

| | | | |
|---|--|---|--|
| Assistance Listing Number (ALN), if applicable: | | Funding Agency Award Notification Date: | |
| Announcement Date: | | Announcement/Opportunity #: | |
| Grant Category/Title | | Funding Amount Requested: | |
| Allows Indirect/Rate: | | Match Requirement: | |
| Application Deadline: | | Total Project Cost: | |
| Award Start Date: | | Other Deadlines and Description: | |
| Award End Date | | | |
| Completed By: | | Program Income Requirements: | |
| Pre-Application Meeting Schedule: | | | |

Additional funding sources available to fund this program? Please describe:

How much General Fund will be used to cover costs in this program, including indirect expenses?

How much Fund Balance will be used to cover costs in this program, including indirect expenses?

In the next section, limit answers to space available.

Section III: Funding Opportunity Information - To Be Completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. *How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?*

2. *Who, if any, are the community partners who might be better suited to perform this work?*

3. *What are the objectives of this funding opportunity? How will we meet these objectives?*

4. *Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?*

Organizational Capacity:

1. *Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?*

2. *Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?*

3. *If this is a pilot project, what is the plan for sun setting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?*

4. *If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?*

Collaboration

1. List County departments that will collaborate on this award, if any.

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

3. What are the fiscal reporting requirements for this funding?

Fiscal

1. Are there other revenue sources required, available, or will be used to fund the program? Have they already been secured? Please list all funding sources and amounts.

2. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, local grant, etc.)?

3. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are those sources?

Other information necessary to understand this award, if any.

Program Approval:

| | | |
|----------------------|------|---|
| | |  |
| Name (Typed/Printed) | Date | Signature |

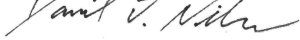
| |
|--|
| ** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ** |
| **ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN** |

Section IV: Approvals

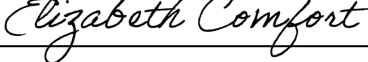
DIVISION DIRECTOR (or designee, if applicable)

| Name (Typed/Printed) | Date | Signature |
|----------------------|------|-----------|
|----------------------|------|-----------|

DEPARTMENT DIRECTOR (or designee, if applicable)

| Daniel Nibouar | 09/10/2024 |  |
|----------------------|------------|---|
| Name (Typed/Printed) | Date | Signature |

FINANCE ADMINISTRATION

| Elizabeth Comfort | 09.10.2024 |  |
|----------------------|------------|--|
| Name (Typed/Printed) | Date | Signature |

EOC COMMAND APPROVAL **WHEN NEEDED FOR DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY**

| Name (Typed/Printed) | Date | Signature |
|----------------------|------|-----------|
|----------------------|------|-----------|

Section V: Board of County Commissioners/County Administration

(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)

For applications \$150,000 and below:

| COUNTY ADMINISTRATOR | Approved: | Denied: |
|----------------------|-----------|-----------|
| Name (Typed/Printed) | Date | Signature |

For applications up to and including \$150,000 email form to BCC staff at CA-Financialteam@clackamas.us for Gary Schmidt's approval.

For applications \$150,000.01 and above, email form with Staff Report to the Clerk to the Board at ClerktotheBoard@clackamas.us to be brought to the consent agenda.

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department at and Grants Manager at financegrants@clackamas.us when fully approved.

Department: keep original with your grant file.