



RESOLUTION 2022-074

AUTHORIZING CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO PURSUE LITIGATION AGAINST THE STATE CONCERNING THE ADOPTION OF ADMINISTRATIVE RULES

WHEREAS, following the Governors Executive Order 20-04 adopted March 10, 2020, the Department of Land Conservation and Development adopted administrative rules addressing the climate and equity; and

WHEREAS, the City has concerns that the rules were not adopted properly, are too restrictive and do not provide enough flexibility for individual cities to address these important concerns; and

WHEREAS, other cities across the State share these concerns are seeking legal action to address these concerns; and

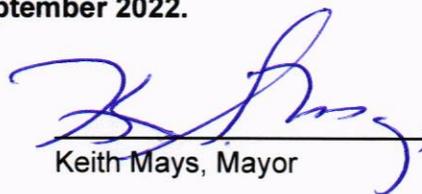
WHEREAS, in order to share costs for this legal action, the parties have developed an Intergovernmental Agreement (IGA).

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City authorizes the City Administrator to sign the IGA attached as Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th day of September 2022.



Keith Mays, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

**INTERGOVERNMENTAL AGREEMENT
JOINT LITIGATION OF
CLIMATE FRIENDLY & EQUITABLE COMMUNITIES RULES**

This agreement is made by and between the following local governmental units in Oregon: City of Springfield, City of Medford, City of Keizer, City of Happy Valley, City of Cornelius, City of Hillsboro, City of Troutdale, City of Gresham, City of Tualatin, City of Grants Pass and any other city within the state of Oregon that executes this Agreement after its effective date ("Parties").

EFFECTIVE DATE: September 2, 2022

RECITALS

A. ORS 190.010 provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the agreement, its officers, or agents have authority to perform. This agreement is not intended to form an intergovernmental entity under ORS 190.010(5).

B. On July 21, 2022 the Land Conservation and Development Commission adopted amendments to the Oregon Administrative Rules Chapter 660, divisions 8, 12 and 44, commonly referred to as the Climate Friendly and Equitable Communities Rules ("Rules"), which impose mandates upon each of the parties, although the extent of those mandates and applicability of specific provisions in the Rules may vary among the parties.

C. The Parties' governing bodies have approved hiring special legal counsel to petition the Oregon Court of Appeals for legal review of the Rules on behalf of the parties ("Litigation"). The Parties and their legal counsel believe that the Litigation presents legal and factual issues that are common to the Parties and that the Parties have a mutual joint interest in seeking joint legal review of the Rules.

D. The Parties and their legal counsel believe that it is in their best interests to hire special legal counsel to jointly represent the parties in the Litigation. The parties believe that it is in their best interest to confidentially share documents, factual information, mental impressions, legal analysis, and other information that may be subject to attorney-client privilege, work product doctrine, or other privilege or rule of confidentiality. When shared confidentially between Parties to this Agreement in furtherance of their joint interests, this information shall be defined as "Joint Litigation Information" under this Agreement.

E. The Parties acknowledge that they have previously engaged in confidential communications or have confidentially shared information in connection with the Litigation that constitutes Joint Litigation Information. The Parties intend that such information is Joint Litigation Information and will be protected under this Agreement.

F. The parties intend to maintain confidentiality of Joint Litigation Information and that sharing Joint Litigation Information does not waive any privilege, protection, or immunity that might otherwise apply to such Joint Litigation Information pursuant to the "common interest" doctrine in ORS 40.225(2)(c)).

G. The Parties intend to enter into a representation agreement with the law firm Northwest Resource Law to act as special counsel to the parties in the Litigation ("Special Counsel"). The City of Springfield will coordinate payments to the Special Counsel. The parties intend to reimburse the City of Springfield for costs arising out of the Litigation according to the proportional size of each party's general operating expenses for the last two fiscal years, as represented in Exhibit A.

H. The Parties further intend to coordinate their public communications strategy regarding the Litigation and intend to contract with a communications consultant Anna Richter Taylor of ART Public Affairs for that purpose ("Public Communications Consultant"). The costs associated with communications consultant will also be allocated to each Party based on the share assigned to each party in Exhibit A.

NOW, THEREFORE, in consideration of the foregoing recitals, which are expressly made a part of this Agreement, the parties agree as follows:

1. Joint Communications Strategy. Each party agrees to coordinate their communications with third parties through a Public Communications Consultant. Such third parties may include but are not limited to members of the news media or the Oregon legislature.

2. Joint Litigation. Each party agrees to be named as petitioner in petitioning for review of the Rules with the Oregon Court of Appeals. Each party agrees to use reasonable efforts to support the Litigation, consistent with this Agreement. Each party further agrees to maintain confidentiality of Joint Litigation Information and that sharing Joint Litigation Information does not waive any privilege, protection, or immunity that might otherwise apply to such Joint Litigation Information pursuant to the "common interest" doctrine in ORS 40.225(2)(c)).

3. Parties Responsibilities.

a. The City of Springfield will:

- i. Process and pay Special Counsel an initial retainer and any subsequent legal expenses and costs related to the Litigation on behalf of all parties;
- ii. Within 30 days of paying the initial retainer and any subsequent legal expenses and costs, invoice each other party for its portion of the legal expenses and costs based on the share assigned to each party in Exhibit A;
- iii. Process and pay a Public Communications Consultant on behalf of all parties, to provide the scope of services outlined in Exhibit B;
- iv. Within 30 days of paying an invoice from the Public Communications Consultant, invoice each other party of its portion of the cost for services based on the share assigned to each party in Exhibit A.

b. Other local government parties will:

- i. Pay City of Springfield within 30 days of its invoice for legal expenses and costs for the Litigation based on the share assigned to each party in Exhibit A; and

- ii. Pay City of Springfield within 30 days of its invoice for Public Communications Consultant services as described in Exhibit B based on the share assigned to each party in Exhibit A.
 - c. All parties will:
 - i. Designate a city attorney from each party who will meet together, as needed, as a joint legal advisory committee to advise Special Counsel on matters related to the Litigation;
 - ii. Designate one representative from each party who will meet together, as needed, as a joint communications advisory committee to advise the Public Communications Consultants on matters regarding public relations and legislative strategies; and
 - iii. Act consistently with the joint public relations and legislative strategies for any Party's individual public communications and communications with the legislature regarding the Rules or Litigation.
 - iv. The joint communications advisory committee and joint legal advisory committees will keep each other apprised of significant aspects of the legal and communications strategies related to the Litigation.
- 4. Term. This agreement is effective as of September 1, 2022 until conclusion of the Litigation, including but not limited to any subsequent appeals to the Oregon Supreme Court following a decision by the Oregon Court of Appeals.
- 5. Non-Disclosure of Confidential Information.
 - a. A Party who receives Joint Litigation Information pursuant to this Agreement shall not disclose the Joint Litigation Information to anyone, without the written consent of the Party to this Agreement who was the source of the Joint Litigation Information. However, Joint Litigation Information may be freely exchanged between and among a Party's employees, agents, and elected officials; Party's counsel and employees of the law firm of that Party's counsel; a Party's lobbyist and employees of the lobbyist firm; Special Counsel and employees of the law firm of Special Counsel; and the Public Communications Consultant. This agreement does not obligate a Party to disclose or exchange Joint Litigation Information with any other Party.
 - b. If any person or entity requests Joint Litigation Information from a Party that was supplied by another Party, through discovery procedures, by subpoena, public records request, or in any other manner, then the Party receiving the request shall promptly notify the Party who supplied the Joint Defense Information of such request. The Party who receives the request shall assert, or permit other Parties to assert, all privileges, protections, records exemptions, and immunities with respect to the requested Joint Defense Information.
 - c. Nothing in this Agreement prevents a Party from disclosing information obtained independently from a source other than Joint Litigation Information, such as information obtained from a source other than a Party to this Agreement. Nothing

in this Agreement prevents a Party from disclosing information properly obtained through discovery even if the information had been designated as "Confidential" under this Agreement.

- d. The Parties or their counsel shall take reasonable precautions to ensure that anyone permitted access to Joint Litigation Information will abide by the terms of this Agreement prior to receiving such access and that such person is further advised that such information is privileged, confidential and subject to the terms of this Agreement.

6. No New Attorney-Client Relationships Created. The Parties acknowledge that actual or potential conflicts of interest may exist among them. The Parties do not intend for this Agreement to create an attorney-client relationship or fiduciary relationship between any Party and counsel for another Party, except for Special Counsel (subject to a separate representation agreement between the Parties and Special Counsel). The fact that counsel for a Party is subject to this Agreement shall not be used as a basis for seeking to disqualify such counsel from representing any Party or anyone else in this or any other proceeding. No counsel who is subject to this Agreement shall be disqualified from examining or cross-examining any person, including Parties to this Agreement, because of the terms of this Agreement or information received pursuant to this Agreement.

7. Withdrawal/Termination.

- a. Voluntary Withdrawal. A Party may voluntarily withdraw from this Agreement at any time and for any reason, upon 60 days' notice in writing to the other parties.
- b. Mandatory Withdrawal. A Party and that Party's counsel shall promptly withdraw from this Agreement upon their determination that there no longer exists a common interest between the withdrawing party and the other Parties to this Agreement. Upon such determination, the Party and counsel subject to mandatory withdrawal shall no longer solicit, participate in, review or otherwise gather or use Joint Litigation Information, and shall promptly provide written notice of the Party's withdrawal to all other Parties to this Agreement.
- c. Agreement Continues in Effect. A Party who has withdrawn from this Agreement remains subject to the obligations described in this Agreement with respect to Joint Litigation previously exchanged or disclosed and for payment of legal or consultant expenses incurred prior to that party's withdrawal. The remaining parties will agree to confer on a written amendment to Exhibit A to reallocate expenses incurred after a party's withdrawal. A Party's withdrawal from this Agreement shall not constitute a waiver of any privilege, immunity, or protection from discovery with respect to Joint Litigation Information.
- d. Waiver of Potential Conflicts. All Parties agree that if any Party chooses to withdraw from this Agreement and/or from representation by Special Counsel, as a result of a potential conflict or otherwise, they will waive conflicts so as to permit Special Counsel to continue to represent the remaining Parties to this Agreement.
- e. Return or Destruction of Joint Litigation Information. A Party who has withdrawn from this Agreement shall promptly return to the other Parties all Joint Litigation Information, or promptly provide written confirmation that all Joint Litigation

Information has been destroyed, at the option of the other Parties. This paragraph is subject to and modified by the terms of any protective order entered by the court and any applicable requirements of the Oregon Public Records Law.

8. Modifications/Additional Parties. Any modifications to this Agreement must be mutually agreed upon in writing and signed by all parties. Additional local government parties may be added to this Agreement by written amendment to the proportional cost shares in Exhibit A.
9. Administration. Each party designates the person listed on the signature page as its representative for purposes of administering this Agreement. Either party may change its designated representative by giving written notice to the other parties.
10. Assignment. No party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the written approval of all other parties.
11. Compliance with Laws and Regulations. Every party shall comply with all applicable federal, state, and local laws, rules, ordinances, and regulations at all times, including but not limited to applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. and Section 504 of the Rehabilitation Act of 1973.
12. Notices. Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to the representative designated in Paragraph 4. Either party may change its address by notice given to the other in accordance with this paragraph.
13. Integration. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all prior communications, representations, agreements, either oral or written, between the parties.
14. Waiver. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by either party of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.
15. Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.
16. Indemnification. To the extent legally possible and subject to the limits of the Oregon Tort Claims Act, each of the parties must indemnify and hold the other parties, their officers, agents, and employees, harmless from and against any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or in any way related to any act or failure to act by the indemnifying party's officers, agents, and employees.
17. Status. In providing the services specified in this Agreement (and any associated services) the parties are public bodies and maintain their public body status as specified in ORS 30.260. The parties understand and acknowledge that each party retains all immunities and privileges granted them by the Oregon Tort Claims Act (ORS 30.260 through 30.300) and any and all other statutory rights granted as a result of their status as local public bodies.

18. Construction of Agreement. This Agreement shall not be construed more favorably to any party due to the preparation of this Agreement or a portion of the agreement by that party. The headings and subheadings in this Agreement are for convenience, do not form a part of this Agreement, and shall not be used in construing this Agreement.

19. Multiple Counterparts. This Agreement any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed will constitute an original.

[SIGNATURES ATTACHED SEPARATELY]

EXHIBIT A
 Cost Sharing

The City of Springfield serves as billing agent for the Special Counsel and for Public Communications Consultant Services among the Parties.

The City of Springfield will invoice each party for services based on the Cost Shares column below. Each Party's cost share is based upon the total budgeted operating expenses for the jurisdiction's last two fiscal years, less any funds in the budget that are pass-through funds not reflective of actual operating expenses, and less any funds deriving from the American Rescue Plan Act of 2021. In consideration for the City of Springfield serving as billing agent, Springfield's costs are offset by 5%. The "Population" and "Initial Retainer" columns are provided for reference only; the Initial Retainer is based upon an initial retainer of \$40,000 paid to Special Counsel by City of Springfield.

CITY	POPULATION (2020)	LAST TWO YEARS OPERATING BUDGET	COST SHARE	INITIAL RETAINER
SPRINGFIELD	62,729	\$187,694,348	13.0%	\$5,200
KEIZER	39,408	\$36,482,508	2.6%	\$1,060
MEDFORD	82,098	\$198,266,539	14.4%	\$5,757
HAPPY VALLEY	22,049	\$35,543,960	2.6%	\$1,032
CORNELIUS	12,767	\$25,428,458	1.8%	\$739
GRESHAM	110,456	\$274,208,200	19.9%	\$7,961
HILLSBORO	108,026	\$382,155,343	27.7%	\$11,095
TROUTDALE	16,433	\$26,338,567	1.9%	\$765
TUALATIN	27,601	\$72,767,900	5.3%	\$2,113
GRANTS PASS	37,938	\$148,761,656	10.8%	\$4,319

EXHIBIT B
Scope of Public Communications Services

On behalf of all Parties, the City of Springfield will contract with Anna Richter Taylor of ART Public Affairs to provide the following services related to the Parties' appeal of the Rules:

- Lead the public affairs strategy and plan development with city representatives and legal counsel. The plan will include goals, strategy, tactics, audiences, roles/responsibilities, and a timeline aligned with legal goals and timelines.
- Create communications collateral in coordination with joint communications advisory committee and legal counsel for use with city officials, state officials, media, and other stakeholders.
- Manage weekly meetings of the joint communications advisory committee and, when appropriate, support coordination between joint communications advisory committee and joint legal advisory committee, before the lawsuit is filed and throughout the legal process.
- Support proactive media relations engagement as part of the overall strategy and crisis communications response.
- As necessary, support legislative strategy leading up to and during the session.