

RESOLUTION NO. 2022-62

**RESOLUTION AUTHORIZING THE CITY OF FOREST GROVE TO JOIN A
COALITION OF CITIES CHALLENGING THE STATE'S CLIMATE FRIENDLY AND
EQUITABLE COMMUNITIES RULE**

WHEREAS, the City of Forest Grove is committed to implementing measures that will promote as well as create progress on addressing climate change and achieving equity through our comprehensive plan and other city-wide initiatives; our accomplishments, progress, and goals in these areas are all discoverable through the City's public website; and

WHEREAS, on July 21, 2022, in response to Executive Order 20-04, the Land Conservation and Development Commission ("LCDC") 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 the City that will result in a significant amount of unfunded work; and

WHEREAS, the Rules were intended to address issues of climate change and equity, but LCDC's rulemaking process has failed to reach its objectives, and the Rules, as adopted, will adversely affect communities, and fail to promote equity; and

WHEREAS, the Rules are overly prescriptive, conflict with other statutes and rules, do not recognize field constraints, and ignore the context of the use and surrounding site to which they apply; and

WHEREAS, the prescriptive nature of the Rules will not provide sufficient flexibility to address community feedback which may negatively impact trust between communities and local government; and

WHEREAS, the City believes that significant issues arise from the use of the Governor's executive authority to create policies that curtail the ability of cities to make a determination as to the policies and codes that will best govern their own communities; and

WHEREAS, the City believes that additional time is needed to resolve the significant technical issues that affect implementation in the Rules in order to achieve the shared goals of Executive Order 20-04; and

WHEREAS, a coalition of local governments has been formed to challenge the Rules through the use of a common attorney as any challenge to the Rules presents legal and factual issues that are common to all local governments; and

WHEREAS, the City finds that it has a mutual joint interest in seeking joint legal review of the Rules with other local governments; and

WHEREAS, an Intergovernmental Agreement will permit the coalition of local governments to jointly challenge the Rules and coordinate public communications strategies related to the litigation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The City Council hereby authorizes the City Manager to join the coalition of cities challenging the Rules, including executing an Intergovernmental Agreement for this purpose subject to City Attorney approval, and such other steps as the City Manager determines are necessary and appropriate.

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 24th day of October, 2022.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 24th day of October, 2022.



Peter B Truax, Mayor

**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 Tualatin, City of Grants Pass and any other city or county within the state of Oregon that executes this Agreement after its effective date ("Parties").

EFFECTIVE DATE: September 8, 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	14.7%	\$5,872
KEIZER	39,408	\$36,482,508	3.03%	\$1,212
MEDFORD	82,098	\$198,266,539	16.5%	\$6,584
HAPPY VALLEY	22,049	\$35,543,960	3.0%	\$1,181
CORNELIUS	12,767	\$25,428,458	2.1%	\$845
HILLSBORO	108,026	\$382,155,343	31.7%	\$12,690
TROUTDALE	16,433	\$26,338,567	2.2%	\$875
TUALATIN	27,601	\$72,767,900	6.0%	\$2,417
GRANTS PASS	37,938	\$148,761,656	12.3%	\$4,940
SHERWOOD	19,745	\$101,116,472	8.4%	\$3,360

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.

CITY OF SPRINGFIELD

Agreement Administration/Attorney Contact:

Kristina Kraaz, Assistant City Attorney
225 Fifth Street, Suite 510
Springfield, OR 97477
541-744-4062
kskraaz@springfield-or.gov

Communications Contact:

Kylie Grunow, Meriwether Strategies
(503) 707-9653
kylie@meriwetherstrategies.com

Executed By:

By Nancy Newton

Digitally signed by Nancy Newton
DN: cn=Nancy Newton, o=CITY OF SPRINGFIELD, cn=Nancy Newton,
email=NancyNewton@springfield-or.gov
Reason: I agree to the terms defined by the placement of my signature in
this document
Location: your signing location here
Date: 2022.09.08 07:48:40
EcoSoft/FreeSignPDF, Version: 10.0.1

Nancy Newton

Title City Manager

Date September 8, 2022

CITY OF MEDFORD

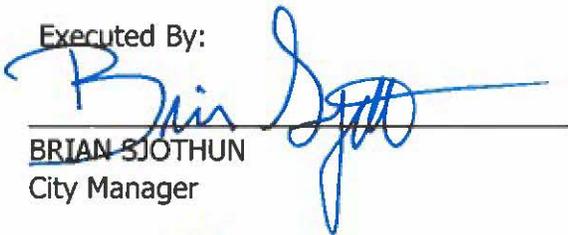
Agreement Administration/Attorney Contact:

Eric B. Mitton, City Attorney
411 West 8th Street, Room 260
Medford, OR 97501
541-774-2020
eric.mitton@cityofmedford.org

Communications Contact:

Kristina Wilson, Communications and Marketing Manager
541-774-2087
kristina.johnsen@cityofmedford.org

Executed By:



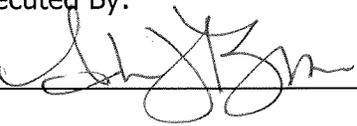
BRIAN SJOTHUN
City Manager

Dated this 28 day of September, 2022.

CITY OF KEIZER

Adam J. Brown, City Manager
PO Box 21000
Keizer, OR 97307
503-856-3414
BrownA@keizer.org

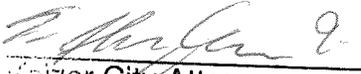
Executed By:

By  _____

Title City Manager

Date 9/26/22

Approved as to form:

 9-26-22

Keizer City Attorney

CITY OF HAPPY VALLEY

CONTACTS

Jason Tuck, City Manager
16000 SE Misty Drive
Happy Valley, OR 97086
503-783-3833
jasont@happyvalleyor.gov

Ben Bryant, Assistant City Manager
16000 SE Misty Drive
Happy Valley, OR 97086
503-783-3840
benb@happyvalleyor.gov

Chris Crean, City Attorney
1804 NE 45th Ave
Portland, OR 97213
503-226-7191
chris@gov-law.com

Executed By:

By 
Title City Manager
Date 9/26/2022

CITY OF CORNELIUS, OREGON

Rob Drake, City Manager
1355 N. Barlow, Cornelius, OR 97113
503-357-9112
rob.drake@corneliusor.gov

Executed By:

By 
Title City Manager
Date 9/12/2022



CITY OF HILLSBORO

CONTACT FOR AGREEMENT

Andy Smith, Government Relations Manager
150 E Main Street
Hillsboro, OR 97301
503-616-6675
Andy.smith@hillsboro.oregon.gov

CONTACT FOR ATTORNEY

Chris Crean, City Attorney
1750 S Harbor Way #380
Portland, OR 97201
503-226-7191
chris@gov-law.com

CONTACT FOR COMMUNICATIONS

Andy Smith
150 E Main Street
Hillsboro, OR 97301
503-616-6675
Andy.smith@hillsboro.oregon.gov

Executed By:

By: Robby Hammond

A handwritten signature in black ink, appearing to be 'Robby Hammond', written over a horizontal line.

Title: City Manager

Date: September 22, 2022

CITY OF TROUTDALE

Agreement Administration/Attorney Contact

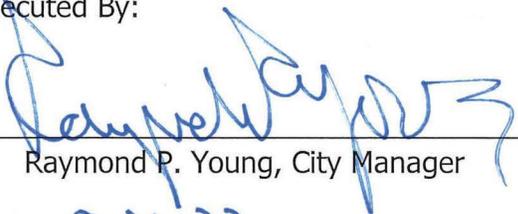
Edward H Trompke
Jordan Ramis PC
2 Centerpointe Dr 6th Fl
Lake Oswego OR 97035
503-598-5532
Ed.trompke@jordanramis.com

With a Copy of Invoices to:
Erich Mueller, Troutdale Finance Director
219 E Historic Columbia River Hwy
Troutdale, OR 97060
503-674-7231
Erich.mueller@troutdaleoregon.gov

Communications Contact

Ray Young, City Manager
219 E Historic Columbia River Hwy
Troutdale, OR 97060
503-674-7233
Ray.Young@troutdaleoregon.gov

Executed By:



Raymond P. Young, City Manager

Date 9.22.22

CITY OF TUALATIN, OREGON

Contact for AGREEMENT:
Sherilyn Lombos, City Manager
18880 SW Martinazzi Ave.,
Tualatin OR 97062
503-691-3010
slombos@tualatin.gov

Contact for COMMUNICATIONS:
Steve Koper, Assistant Community Development Director
10699 SW Herman Road
Tualatin OR 97062
503-691-3028
skoper@tualatin.gov

Executed By:

A handwritten signature in black ink that reads "Sherilyn Lombos". The signature is written in a cursive style with a long, sweeping underline.

By: Sherilyn Lombos

Title: City Manager

Date: September 12, 2022

CITY OF GRANTS PASS

Aaron Cubic, City Manager
101 NW A Street, Grants Pass, OR 97526
541-450-6000
acubic@grantspassoregon.gov

Augustus C. Ogu, City Attorney
101 NW A Street, Grants Pass, OR 97526
541-450-6003
aogu@grantspassoregon.gov

Executed By:

By Aaron K Cubic

Title City Manager

Date 092722

CITY OF SHERWOOD, OR

Keith D. Campbell, City Manager
22560 SW Pine Street,
Sherwood, OR, 97140
503-625-4200
campbellk@sherwoodoregon.gov

Executed By:

By  _____

Title CITY MANAGER

Date 9-29-2022

**FIRST AMENDMENT OF THE
INTERGOVERNMENTAL AGREEMENT
FOR JOINT LITIGATION OF
CLIMATE FRIENDLY & EQUITABLE COMMUNITIES RULES**

EFFECTIVE DATE: October 10, 2022

The Parties hereby agree that the Intergovernmental Agreement for Joint Litigation of the Climate Friendly and Equitable Communities Rules, effective September 8, 2022 ("IGA"), is amended for the first time to replace Exhibit A with the version attached hereto.

The purpose of this amendment is to add Marion County and the City of Oregon City as parties to the IGA with a cost share as provided in the attached exhibit. By executing a copy of this amendment, Marion County and the City of Oregon City agree to all terms and conditions provided in the IGA. Except as amended herein, all other terms and conditions of the IGA remain in full force and effect.

CITY OF SPRINGFIELD

By: _____
Title: _____
Date: _____

CITY OF MEDFORD

By: _____
Title: _____
Date: _____

CITY OF HILLSBORO

By: _____
Title: _____
Date: _____

CITY OF KEIZER

By: _____
Title: _____
Date: _____

CITY OF HAPPY VALLEY

By: *Jessie Tull*
Title: City Manager
Date: 10/11/2022

CITY OF CORNELIUS

By: _____
Title: _____
Date: _____

CITY OF TROUTDALE

By: _____
Title: _____
Date: _____

CITY OF TUALATIN

By: _____
Title: _____
Date: _____

CITY OF GRANTS PASS

By: _____
Title: _____
Date: _____

CITY OF SHERWOOD

By: _____
Title: _____
Date: _____

MARION COUNTY:

Contact Information

Administration and Communications:

TBD

Attorney:

Jane E. Vetto, County Counsel
Marion County Office of Legal Counsel
555 Court St NE
PO Box 14500
Salem OR 97309
Email: jvetto@co.marion.or.us
Phone: 503-588-5220

Executed:

By: _____

Title: _____

Date: _____

CITY OF OREGON CITY:

Contact Information

Administration and Communications:

Tony Konkol, City Manager
625 Center Street
Oregon City, OR 97045
(503) 496-1582
tkonkol@orcite.org

Attorney:

Carrie Richter
Bateman Seidel et al
1000 SW Broadway Ste 1910
Portland OR 97205
503 972-9920
crichter@batemanseidel.com

Executed:

By: _____

Title: _____

Date: _____

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. Provided, however, the following special circumstances apply:

- A. The City of Oregon City's total contribution is capped at not to exceed \$10,000; remaining costs shall be automatically reapportioned to the remaining parties to this agreement at such time as Oregon City has met its total contribution cap.
- B. Marion County's contribution will be based on their Operation Budget excluding those programs that are the exclusive jurisdiction of counties in Oregon, including but not limited to operating expenses for public health programs and services, property assessments and taxation, and deeds and records programs and services, and then further reduced proportionally based upon the population in Marion County within the "urban areas" that are subject to the Rules.
- C. 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.

LOCAL GOVERNMENT	POPULATION (2020)	LAST TWO YEARS OPERATING BUDGET (MILLIONS)	COST SHARE	INITIAL RETAINER
SPRINGFIELD	62,729	\$187.7	12.8%	\$5,136
KEIZER	39,408	\$36.5	2.65%	\$1,059
MEDFORD	82,098	\$198.3	14.4%	\$5,752
HAPPY VALLEY	22,049	\$35.5	2.6%	\$1,032
CORNELIUS	12,767	\$25.4	1.8%	\$738
HILLSBORO	108,026	\$382.2	27.7%	\$11,087
TROUTDALE	16,433	\$26.3	1.9%	\$765
TUALATIN	27,601	\$72.8	5.3%	\$2,112
GRANTS PASS	37,938	\$148.8	10.8%	\$4,316
SHERWOOD	19,745	\$101.0	7.3%	\$2,920
OREGON CITY	37,057	\$155.0	11.2%	\$4,480
MARION CO.	40,678*	\$19.1	1.4%	\$560

* Urban area population within Marion County



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	<u>F. 2.</u>
MEETING DATE:	<u>10/24/2022</u>
FINAL ACTION:	<u>RESO 2022-62</u>

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*
Chris Crean, City Attorney's Office {00819881; 1}

MEETING DATE: *October 24, 2022*

PROJECT TEAM: *Bryan Pohl, Community Development Director*

SUBJECT TITLE: Resolution authorizing the City of Forest Grove to join a coalition of cities challenging the State's Climate Friendly and Equitable Communities Rule

ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	Motion	Informational

X all that apply

BACKGROUND:

On March 10, 2020, Governor Brown issued Executive Order (EO) 20-04, which directed State Agencies to reduce and regulate greenhouse gas emissions (GHG). EO 20-04 specifically directed the Department of Land Conservation and Development (DLCD) to include establishment of GHG emissions reduction metrics and amendments to the Transportation Planning Rule applicable to Oregon's eight metropolitan areas in the Statewide Transportation Strategy.

In response to EO 20-04, DLCD initiated rulemaking in September, 2020 and assigned the rulemaking the title of Climate Friendly and Equitable Communities (CFEC). DLCD convened a Rulemaking Advisory Committee (RAC) and held a total of 11 meetings, but did not publish a full draft of proposed administrative rules until October 2021.

In the months that followed, DLCD held a series of meetings to address the highly technical work associated with the significant amendments to existing land use and transportation planning rules. Given the complexity of the proposed rule amendments and the short timelines to review meeting materials, this process did not succeed in fully vetting and resolving the technical concerns raised by local government participants. Requests from local governments for more time to resolve implementation issues were denied.

At its May 19, 2022 meeting, DLCD adopted temporary rules and adopted permanent rules at their July 21st meeting. DLCD did not accept public comment on the permanent rules which included a significant change from the temporary rule, notably, prescribing and

requiring an extensive alternative analysis and public outreach process applicable to previously adopted projects.

Shortly after DLCD adopted the permanent rule on July 21, 2022, the Springfield City Council authorized the hiring of outside counsel to initiate litigation. Following Springfield, ten other cities and one county have joined to declare an intent to litigate.¹ As a result, the City of Springfield has developed an IGA to share legal and communications support costs amongst the coalition. The IGA commits to joint funding for the litigation, with costs allocated to the participating cities and county based on their relative operating budgets. The IGA also allows the parties to share confidential information and communications without waiving confidentiality. This allows open communication between the parties and their attorneys regarding the litigation. Finally, the IGA provides a system for coordinating billing and payments.

RULE IMPACT:

To briefly summarize the Rules, the City would be required to pass an entirely new package of development code amendments over the next three years. By January 1, 2023, the Rules would require the City to remove any and all parking requirements as a condition of new development within the Town Center. The Rules would also require the same within a ½ mile of a frequent transit line. Line 57 would qualify, meaning that in a one-mile wide swath of Forest Grove, from Cornelius to the Town Center, the City would be prohibited from requiring developers to provide parking in any development.

This one-mile swath includes almost all of Forest Grove’s commercially-zoned properties. Added to this provision, the City would also be precluded from requiring parking at any daycare facilities, small units, affordable units, facilities for people with disabilities, and shelters. It should be noted here that in any development that does not provide any parking, the City also would have no codified means, nor any ability to codify a means, by which to require parking in accordance with the Americans with Disabilities Act (ADA).

The Rules also focus on a second phase of parking-focused mandates that could include a repeal of all parking requirements city-wide by July, 2023. After the parking rules are implemented, cities are required to perform transportation modeling that may significantly alter local transportation plans, followed by a new Housing Needs Analysis in 2025.

While staff can understand and appreciate the desire to create dense and walkable communities, and reducing parking is one way to achieve such a desirable outcome, it has been traditionally left to individual jurisdictions to accomplish that objective. These “one-size-fits-all” rules do not account for community differences in density, transportation networks, transportation options (i.e., transit, bicycle, and pedestrian options), and funding.

¹ These include Springfield, Medford, Grants Pass, Keizer, Wood Village, Troutdale, Happy Valley, Oregon City, Tualatin, Hillsboro, Cornelius and Marion County.

In sum, the Rules will require outside consultants, intensive staff time, and potentially new staff to be implemented. City staff anticipates the cost to amend the Forest Grove Development Code to exceed \$100,000. Transportation modeling and outside consultants will add considerably to this expense. At present, this is an unfunded mandate as there is no direct funding available to cities to implement these Rules. Cities across the state subject to these rules are similarly impacted.

FISCAL IMPACT:

Costs to enter into the Intergovernmental Agreement (IGA) will be shared proportionally amongst the jurisdictions who sign on. The City Attorney's office anticipates the cost to join the lawsuit at approximately \$1,700 with the total cost likely to remain under \$10,000.

RECOMMENDATION:

Staff recommends Council consider adopting the attached Resolution authorizing the City of Forest Grove to join a coalition of cities in litigation against the Land Conservation and Development Commission (LCDC).

ATTACHMENT(s):

Attachment A: Resolution
Attachment B: Joint Litigation Intergovernmental Agreement (IGA)