

COMMON INTEREST AGREEMENT TERMS AND CONDITIONS

The League of California Cities (“Cal Cities”) and the Amicus Requestor have entered into a Common Interest Agreement subject to these Terms and Conditions as of the Effective Date as defined below.

1. **Common Interest.** To further the purposes of the Cal Cities Legal Advocacy Program and the Amicus Requestor’s purposes in seeking Cal Cities’ participation in the Litigation set forth in the Amicus Requestor’s amicus request, the Parties to this Agreement agree that it is appropriate to coordinate certain efforts, exchange certain information, and to consult with appropriate Allied Organizations regarding Cal Cities’ participation in the litigation as an amicus curiae.
2. **Definitions.**
 - a. **Allied Organizations.** Allied Organizations are organizations that either Party has determined may have a common interest in joining an Amicus Filing submitted by Cal Cities.
 - b. **Amicus Filing.** An Amicus Filing is a letter or brief filed with the court in which the Litigation is being litigated for the purpose of Cal Cities’ amicus participation in the Litigation.
 - c. **Amicus Requestor.** The Amicus Requestor is the party or parties, by and through its legal counsel, submitting a request for Cal Cities’ amicus participation in the Litigation as evidenced by the amicus request submitted by the Amicus Requestor through the Cal Cities online amicus request form.
 - d. **Common Interest Information.** Common Interest Information means any information, including any confidential or privileged information, shared between the Parties to facilitate the purposes of this Agreement, including, without limitation, any information generated by Allied Organizations that is disclosed or shared among the Parties, the amicus request form submitted by the Amicus Requestor, any documentation provided by the Amicus Requestor in support of the amicus request, and any information exchanged by the Parties after the amicus request was submitted to Cal Cities. Common Interest Information does not include any publicly available information.
 - e. **Effective Date.** The Effective Date of this Agreement is the date of the written acceptance by Cal Cities of the Amicus Requestor’s offer to enter into a Common Interest Agreement related to the Litigation.
 - f. **Litigation.** Litigation means the litigation matter or matters set forth in Cal Cities’ online amicus request form submitted by the Amicus Requestor.
 - g. **Parties.** Parties mean Cal Cities and the Amicus Requestor and their governing boards and councils, legal and other advisory committees, employees, and legal counsel, including outside legal counsel retained by a Party. “Party” means one of the Parties.
3. **Confidentiality and Use of Common Interest Information.**
 - a. **Disclosure.** Each Party may, in its discretion, disclose Common Interest Information to the other Party to this Agreement or to an Allied Organization identified by either Party. Common Interest Information may be disclosed orally or in writing.

- b. **Confidentiality.** Common Interest Information shall be held in strict confidence by the Parties and will be disclosed only to Parties and Allied Organizations. Prior to disclosure of Common Interest Information to any Allied Organization, the Allied Organization shall agree to be bound by the confidentiality terms in this Agreement.
- c. **Protection.** Each Party shall take all reasonable and appropriate measures necessary to protect Common Interest Information from disclosure to third parties not subject to this Agreement, including if Common Interest Information is subpoenaed or sought in a California Public Records Act request.
- d. **Discovery.** The Parties further intend that all Common Interest Information exchanged in connection with this Agreement shall be protected from discovery by the doctrine recognized in *Oxy Resources California LLC v. Superior Court*, 115 Cal.App.4th 874 (2004) and *Waller v. Financial Corp. of America*, 828 F.2d 579, 583 n. 7 (9th Cir. 1987) (“The joint defense privilege, which is an extension of the attorney client privilege, has been long recognized by this circuit.”) (See also, *Raytheon v. Superior Court*, 208 Cal.App.3d 683, 687-88 (1989) (“[A] disclosure in confidence of a privileged communication is not a waiver of the privilege ‘when such disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer . . . was consulted. . . .’” quoting Evidence Code section 912(d)); *Insurance Co. of North America v. Superior Court*, 108 Cal.App.3d 758, 771 (1980); and California Evidence Code Sections 912(d), 952.)
- e. **Limitation on Use.** No Party shall use Common Interest Information that it has received from another Party for any purpose other than the common interest purposes outlined in this Agreement.

4. **Additional Terms and Conditions.**

- a. **No Attorney-Client Relationship.** Neither this Agreement nor the actions of any Party or counsel to a Party shall create any attorney-client relationship between any counsel and any Party that have not otherwise entered into an attorney-client relationship.
- b. **Conflict Waiver.** Each of the Parties waives any conflict of interest that might arise by virtue of its and the other Parties’ participation in this Agreement.
- c. **No Disqualification.** Each of the Parties waives any right to seek the disqualification of any counsel for any of the Parties based upon a communication of Common Interest Information under this Agreement.
- d. **No Compensation.** Unless expressly agreed to in writing by the Parties, no Party shall be entitled to any compensation or reimbursement from any other Party for the participation of the other Party’s employees, officers, agents, servants, experts or attorneys in connection with the Litigation. Each Party shall bear its own attorneys’ fees and costs incurred in connection with the Litigation, even if the attorneys’ fees or costs incurred by a Party provide benefit to other Parties.
- e. **Independent Legal Advice and Investigation.** The Parties acknowledge that they have made such investigation of the facts pertaining to this Agreement and all matters contained herein as they deem necessary, desirable or appropriate. In entering into this Agreement, each Party acknowledges that it has received independent legal advice from its own counsel and has relied on its own investigation and upon the advice of its own

attorney with respect to the advisability of making this Agreement. The Parties acknowledge that they have read the Terms and Conditions of this Agreement, that they have had it fully explained by their counsel, and are fully aware of the contents of this Agreement and its legal effect. This Agreement is entered into voluntarily by each Party and without any coercion by or undue influence on the part of any person, firm or corporation.

- f. **Survival.** The obligations of the Parties under Section 3 shall survive the termination of this Agreement and shall remain in full force and effect without regard to whether an Amicus Filing is filed and without regard to whether either Party withdraws from this Agreement.
- g. **Authority.** Each Party warrants and represents that they have taken all steps necessary to obtain, and have in fact obtained, full authority to bind the Party to all the Terms and Conditions of this Agreement.
- h. **No Indemnity.** None of the Parties nor their counsel, nor any officer or employee thereof, shall, by reason of this Agreement, be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under, or in connection with, any work, authority of jurisdiction delegated to the other Party under this Agreement.