

PRIVILEGED AND CONFIDENTIAL

**COMMON INTEREST AGREEMENT REGARDING INVESTIGATION AND
POTENTIAL ENFORCEMENT AGAINST UNLICENSED CANNABIS
CULTIVATORS IN LAKE COUNTY**

1. **Parties.** This Common Interest Agreement (“Agreement”) is entered into by the California State Water Resources Control Board, the California Central Valley Regional Water Quality Control Board, and the County of Lake, California (each individually a “Party,” and collectively the “Parties”).

2. **Matter.** The Parties are investigating unlicensed commercial cannabis cultivation within Lake County, regarding violations of applicable State law and local regulations, including but not limited to California Water Code sections 1052, 1847, 13260, 13264, 13272, 13350, 13385, and 13385 (the “Matter”).

3. **Common Interest.** The Parties share common interest in the Matter and reasonably anticipate litigation to address violations and seek remedies from responsible parties. The sharing and disclosure of confidential and/or privileged information among the Parties, both in preparation for and during litigation, while maintaining such confidentiality and/or privilege, is essential to further the Parties’ common interest, as recognized in cases and legal publications such as *United States v. Gonzalez*, 669 F.3d 974, 977-78 (9th Cir. 2012), *OXY Resources Ca. LLC v. Superior Court*, 115 Cal. App. 4th 874, 888-90 (Cal. Ct. App. 2004), and the Restatement (Third) of the Law Governing Lawyers § 76.

4. **Purpose.** The purpose of this Agreement is to ensure that the privileged and/or confidential information shared hereunder will be used in preparing for litigation and developing effective legal positions by some or all of the Parties, including development of enforcement or litigation strategy and the preparation of legal briefs and other court filings, and that privileged and/or confidential information will not be disclosed to third parties or otherwise disclosed such that any applicable privilege or other basis for confidentiality is waived.

5. **“Covered Information”** includes, but is not limited to: (a) any and all documents, materials, and communications regarding the Matter, whether oral or written, electronic or paper, exchanged among the Parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel that (b) is protected from disclosure to third parties by one or more privilege, and (c) is so designated by the disclosing Party in accordance with this Agreement. Covered Information does not include: (a) information that is received from any person who is not a Party; (b) information that is or becomes public knowledge without violation of this Agreement; (c) information that is sought or obtained by the Parties to the Agreement in accordance with applicable discovery procedures, formal or informal, as may be agreed to the Parties; or (d) information that is subject to disclosure pursuant to the California Public Records Act, Cal. Gov’t Code § 7920.000 et seq. The Parties’ privileges with respect to Covered Information, and the confidences attached thereto, have not and will not be waived except as provided herein.

6. **Designation of Covered Information.** To avoid misunderstandings or inadvertent disclosure, all Covered Information exchanged pursuant to this Agreement should bear the legend “**Confidential – Protected by Common Interest Privilege**” or words to that effect.

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However, the inadvertent failure to include such a legend shall not waive any privilege or protection available under this Agreement or otherwise. In addition, any Party may, where appropriate, also label documents exchanged pursuant to this Agreement with other appropriate legends, such as, for example, “**Attorney-Client Privileged**” or “**Attorney Work Product.**” Oral communications among the Parties shall be deemed confidential and protected under this agreement when discussing alleged violations at issue in this Matter.

7. **Protection of Covered Information.** The Parties shall protect all Covered Information exchanged among them, regardless of whether such exchanges occurred before or after the effective date of this Agreement, as confidential and privileged. This protection applies to the maximum extent allowable under applicable law and incorporates all applicable privileges including, but not limited to, the attorney-client privilege, the work-product doctrine, the joint defense privilege, and governmental privileges including, but not limited to, the deliberative process and investigative privileges. The Party receiving Covered Information shall take measures to maintain confidentiality and privilege including, but not limited to (a) storing Covered Information in separate files from non-privileged documents, (b) restricting access to Covered Information to the receiving party’s attorneys or other legal or technical staff or consultants working on the Matter, (c) requiring the Parties’ employees and consultants to maintain the confidentiality of any Covered Information, (d) giving reasonable notice to the party who provided the Covered Information if disclosure of any Covered Information is requested by any person who is not a Party to this agreement, and (e) asserting the appropriate privilege(s) to decline any requested disclosure of such Covered Information to any person who is not a party to this Agreement.

8. **Non-Waiver.** No Party is authorized to unilaterally waive this privilege with respect to any Covered Information exchanged pursuant to this Agreement. By exchanging Covered Information under this Agreement, the Parties do not waive any Privileges, immunity, or other basis for confidentiality that otherwise apply to the Covered Information. The failure of any Party to require performance by another Party of the provisions of this Agreement will not be deemed a waiver of that provision or a waiver of any other provision of this Agreement.

9. **Use.** Covered Information is to be used by the recipient of the information solely in connection with investigating, pursuing litigation, or settlement to address and seek remedies for the alleged violations at issue in the Matter, and only in accordance with the terms of this Agreement. Notwithstanding any other provisions of this Agreement, unless the Party that creates or originally conveys the Covered Information expressly consents, no Covered Information shall be offered in evidence or disclosed for any purpose in any trial, hearing, deposition, or other legal proceeding, unless the disclosure is required by law. Any Party may release, disclose, discuss, or make available Covered Information to or with its governing body, staff, management, consultants, experts, clients, and/or counsel who have a need for such information as part of their responsibilities associated with oversight, regulation, and enforcement provided that any such persons are familiar with the terms and obligations of this Agreement.

10. **Non-Disclosure.** Covered Information may not be shared by a recipient with any nonparty to this Agreement without prior written waiver from all Parties to this Agreement,

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unless the relevant Party determines that disclosure is: a) required by applicable law; and b) not otherwise covered by this Agreement.

11. Inadvertent Disclosure. Any inadvertent disclosure of Covered Information that is inconsistent with this Agreement shall not waive the confidentiality of such Covered Information. The Parties must take reasonable steps to remedy any inadvertent disclosure, including by exercising any opportunity to claw back inadvertently produced documents.

12. Voluntary Disclosures. This Agreement does not require any Party to disclose information to any other Party or Parties.

13. Public Records Laws. The Parties are subject to the California Public Records Act, Cal. Gov't Code §7920.000 et seq., and other laws, but certain documents and information that may be exchanged under this Agreement may be exempt from disclosure. Nothing in this Agreement is intended to alter or limit the applicable requirements of any of these laws. Furnishing Covered Information pursuant to this Agreement does not invalidate any applicable exemption.

14. Requests for Release and/or Disclosure. A Party who receives a request from a nonparty to release, disclose, discuss, or obtain access to any information, including Covered Information, whether by way of a subpoena, discovery request, or request under any federal or state statute, shall notify the other Parties of such request prior to the date on which a response to such a request is due, with the goal of providing such notification at least ten calendar days before the response deadline, except for requests under the California Public Records Act, or any other similar law. When subject to a request under the California Public Records Act, or any other similar law, the governmental entity subject to such request agrees to use its best efforts, as permitted by applicable law, to notify the other Parties of the request a reasonable time before releasing documents pursuant to the request. Unless the other Parties consent to disclosure or release of Covered Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders all relevant and applicable privileges and other objections to the disclosure of such information.

15. Disclosure by Agreement. As allowed by applicable law, Parties may disclose Covered Information to non-parties with the express, written permission of the authorized representative of the Party who provided the information and the consent of the other Parties, or as required by court order, or as otherwise required by law.

16. Authorized Persons. The Parties shall maintain a list of individuals (by name and job title) within their respective agencies who will be permitted to share and obtain Covered Information to and from the other Parties pursuant to this Agreement. Pursuant to California Government Code section 7921.505, subdivision (c)(5), the persons authorized to share and obtain Covered Information are listed in Exhibit 1 attached hereto. Each Party may modify the list of authorized persons they designate on behalf of their agency. Each Party shall share its current list with each of the other Parties to this Agreement within three days of request.

17. No Agency or Additional Attorney-Client Relationships. This Agreement shall not create any agency or similar relationship among the Parties, nor alter any existing attorney-client

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relationships among the Parties. No Party shall have authority to waive any applicable privilege or other confidentiality protection on behalf of any other Party, nor shall any waiver of an applicable privilege or protection by the conduct of any Party be construed to apply to any other Party. Nothing in this Agreement is intended or shall be construed to obligate any of the Parties to disclose or share any information or material relating to this Matter.

18. Survival of Confidentiality. The obligations of this Agreement shall survive termination of the Matter, whether terminated by settlement or by final judgment after any rights of appeal have been exercised or waived.

19. Enforcement. Any breach of a provision of this Agreement by a Party may cause irreparable harm to the other Parties and therefore injunctive relief is the appropriate means to enforce this Agreement. No Party shall be subject to any claim for damages as a result of a breach of this Agreement.

20. Modification. Any modifications to this Agreement shall be in writing and signed by all Parties. No other party may join this Agreement unless all Parties agree in writing.

21. Integration. This Agreement memorializes the entirety of the Parties' pre-existing oral agreement regarding the confidentiality of their communications. It is agreed that this Agreement itself, any amendments thereto, and all discussions among the Parties related to the Agreement are themselves subject to the attorney-client privilege, common interest privilege, and work-product doctrine.

22. Termination or Withdrawal. Any Party may terminate or withdraw from this Agreement upon written notice to the other Parties. In such instance, the terminating Party and its counsel will continue to be bound by this Agreement with regard to any Covered Information received prior to the termination. Within 10 business days after sending the written notice of withdrawal from this Agreement, the withdrawing Party must return all Covered Information that it received, and all copies thereof, excepting any Covered Information that the Party created or originally conveyed. If the remaining Parties to the Agreement consent and the law so provides, the withdrawing Party may destroy all copies of Covered Information exchanged instead of returning them.

23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, in whole or in part, such determination shall not affect the validity of any other provision of this Agreement.

24. Nondisqualification Agreement. No Party may attempt to use, in any other legal proceeding or cause, which is not related to the subject matter of this Agreement, either the fact of the Agreement or any information learned as a result of this Agreement as a reason to disqualify any lawyer or law firm acting as counsel in any other legal matter or proceeding. Nothing in this Agreement diminishes or waives in any way the ability of a Party thereto to formulate its own positions in any legal proceeding this Matter.

25. Authority to Sign. Each of the undersigned persons represents and warrants that he

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or she is fully authorized to enter into the terms and conditions of this Agreement, and execute this Agreement on his or her own behalf and on behalf of the Party or Parties he or she represents and further represents that he or she has explained this Agreement to the Party or Parties he or she represents and has obtained the agreement of each such Party to abide by the term and conditions of this Agreement.

26. Counterparts. This Agreement may be executed in counterparts.

27. Effective Date, This Agreement becomes effective as to a Party upon the date of execution made on behalf of the Party. All of the Parties' communications with each other and sharing of Covered Information concerning expected litigation in pursuit of the Parties' common interest made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

FOR THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

Date: _____
Eileen Sobeck
Executive Director

FOR THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD:

Date: _____
Clint Snyder
Assistant Executive Officer

FOR THE COUNTY OF LAKE:

Date: _____
[Name and Title]

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EXHIBIT 1

PERSONS AUTHORIZED TO ACCESS AND SHARE COVERED INFORMATION

The below listed individuals/job titles are the Parties' personnel authorized to send and receive Covered Information as defined by this Agreement.

STATE WATER RESOURCES CONTROL BOARD

| Name | Job Title |
|----------------------|------------------------------------------------------------------|
| Yvonne West | Director, Office of Enforcement |
| Mayumi Okamoto | Assistant Chief Counsel, Office of Enforcement |
| Andrew Tauriainen | Attorney, Office of Enforcement |
| Taro Murano | Environmental Program Manager I, Division of Water Rights |
| Stormer Feiler | Senior Environmental Scientist (Sup), Division of Water Rights |
| Anthony Southwood | Environmental Scientist, Division of Water Rights |
| Chris Van de Wyngard | Water Resources Control Engineer |
| Scott Shironaka | Associate Governmental Program Analyst, Division of Water Rights |

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

| Name | Job Title |
|-----------------|----------------------------------|
| Clint Snyder | Assistant Executive Officer |
| Jason Schroeder | Sr. Engineering Geologist (Sup) |
| Ryan Cornwall | Water Resources Control Engineer |
| Nathan Cullen | Environmental Scientist |
| Janae Fried | Engineering Geologist |

COUNTY OF LAKE

| Name | Job Title |
|--------------------------|--------------------------------------------|
| Mireya Turner | Director, Community Development |
| Shannon Walker-Smith | Deputy Community Development Administrator |
| Andrew Amelung | Cannabis Program Manager |
| Mary Claybon | Assistant Planner II |
| Marcus Beltramo | Code Manager |
| Linda Rosas-Bill | Cannabis Code Enforcement Officer |
| Antonio Anguiano- Chavez | Cannabis Code Enforcement Officer |
| Terre Logsdon | Chief Climate Resiliency Officer |

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