

PRIVILEGED & CONFIDENTIAL

CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The parties to this confidentiality agreement (the “Agreement”), specifically the States of California, Delaware, Maryland, New York, Oregon, Washington and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively “Parties”), have an interest in or are counsel for entities that have an interest in one or more cases brought in U.S. District Court for the Northern District of California, and possibly other courts, in which various entities have filed actions against fossil fuel producers for remedies, including abatement of a public nuisance, due to present and future harm related to climate change. Together, these cases are referred to herein as the “Litigation.” The Litigation includes, but may not be limited to, *City of Oakland, et al. v. BP P.L.C. et al.* (N.D. Cal. 17-cv-06011), *City and County of San Francisco, et al. v. BP P.L.C., et al.* (N.D. Cal. 17-cv-06012) and *San Mateo v. Chevron Corp.* (N.D. Cal. 17-cv-04929), and any appeals arising from those matters.

The Parties to this Agreement have a common interest in ensuring the proper application of the federal and/or state common law of public nuisance arising from the effects of climate change, including sea level rise. This common interest has required and will continue to require the sharing of information, legal analyses, draft briefs and other draft court filings, and other documents among the Parties. The Parties wish to pursue their common interest throughout the preparations for, and the course of, any aspect of the Litigation, including the filing of amicus curiae briefs, by exchanging privileged materials, while avoiding any waiver of the confidentiality of those privileged materials. The Parties agree to share information for the purpose of advancing their common interest, to keep such information and materials confidential, and to protect any privileges attaching to such information and materials to the extent authorized by law. The Parties also agree that the sharing of information, both written and oral, among their governing boards, staff, management, consultants, experts, clients, and counsel will further their common objectives.

Both federal and state law provide for the sharing of confidential and/or privileged information¹ among those with common interests during the course of and in anticipation of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the parties may be thoroughly investigated and prepared without giving undue advantage to the opposing side. Maintaining such confidentiality is necessary for the accomplishment of the Parties’ objectives with respect to the Litigation. This document sets forth the agreement under which the Parties and their respective governing boards, staff, management, consultants, experts, clients, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparation for, and during the course of, the Litigation.

¹ “Information,” as used in this Agreement, is defined below.

THEREFORE, the Parties to this Agreement, through their duly authorized undersigned counsel, hereby agree to the following, effective as of the date below, regardless of when signed.

1. **Parties.** The Parties to this Agreement are the States of California, Delaware, Maryland, New York, Oregon, Washington, and any other State, municipality, or other governmental entity that joins this Agreement by executing the attached Addendum and circulating a copy to all Parties, as set forth in paragraph 11.

2. **Purpose.** The Parties share common interests and goals in ensuring the proper application of the federal and/or state common law of public nuisance arising from the effects of climate change, including sea level rise, in the Litigation, and their participation in the Litigation presents common issues of fact and law. The Parties recognize that the sharing and disclosure of privileged and confidential information among them is essential in the Litigation. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used for developing efficient joint participation in the Litigation, including development of litigation strategy and the preparation of legal briefs, and that this privileged and/or confidential information will not be disclosed to third parties or otherwise disclosed such that any privileges or other basis for confidentiality attached to these communications and documents are waived.

3. **“Information,”** as used in this Agreement, refers to any and all documents, materials, information, and communications, whether oral or written, electronic or paper. “Information” includes, but is not limited to, documents, materials, information, and communications exchanged among the Parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel.

4. **“Confidential and/or privileged information”** is information provided by or exchanged between one Party and another with the expectation of confidentiality and which is subject to one or more applicable privileges, protections, immunities, or exemptions from disclosure, including but not limited to, the attorney-client, attorney work product, deliberative process, and official information privileges and protections. “Confidential and/or privileged information” shall include information provided by or exchanged between the Parties prior to the execution of this agreement. The signing of this Agreement shall not waive any applicable privilege, protection, immunity or exemption from disclosure or otherwise affect the status of “confidential and/or privileged information” exchanged prior to the signing of this Agreement by the Parties.

5. **“Common Interest Privilege,”** as used in this agreement means the privilege arising from the common interests of the Parties in participating in the Litigation, including but not limited to the common interest privilege recognized in cases such as *Waller v. Financial Corp. of America*, 828 F.2d 579, 583, n.7 (9th Cir. 1987); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); and in Fed. R. of Evid. 501.

To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this agreement should bear the legend **“Confidential – Protected by Common**

Interest Privilege” or words to that effect. 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 matters related to the Litigation.

6. **Confidentiality Statement.** The Parties agree to protect all communications and documents exchanged among them regarding the Litigation, regardless of whether such communications or document exchanges occurred before or after the effective date of this Agreement, as confidential and privileged to the maximum extent allowable under applicable law, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege where applicable (hereinafter “Protected Information”). Pursuant to this Agreement, rights in the confidentiality of Protected Information, and the confidences attached thereto, have not and will not be waived except as provided in paragraph 7 of the Agreement. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive the confidentiality of such Protected Information.

7. **Non-disclosure.** Protected Information is to be used by the recipient of the information solely in connection with preparing and presenting the Parties’ positions regarding the Litigation. Protected Information may not be shared by a recipient with any non-party to this agreement without prior written waiver from all parties to this Agreement, unless the relevant party determines that disclosure is required by applicable law. In the event that the relevant party determines that disclosure is required by applicable law, it agrees to use its best efforts, as permitted by applicable law, to provide notice, at least seven calendar days in advance, to all parties to this Agreement prior to disclosure. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Parties from distributing drafts briefs, draft motions, responses, or other draft court filings with plaintiffs in the Litigation, as the Parties shall deem necessary and appropriate for proper coordination.

8. **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 Protected Information (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts, as permitted by applicable law, to provide notice, at least seven calendar days prior to the date on which response to such request is due, to all parties to this Agreement. Unless the other Parties consent to disclosure or release of Protected 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.

9. **No Agency or Additional Attorney-Client Relationships.** This Agreement shall not create any agency or similar relationship among the Parties. Nor shall this Agreement alter the existing attorney-client relationships among the Parties or

create any new attorney-client relationships. 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 the Litigation.

10. **Enforcement.** The Parties agree that a breach of a provision of this Agreement by a Party may cause irreparable harm to the other Parties and therefore agree that 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.

11. **Modification.** It is agreed that any modifications to this Agreement shall be in writing and signed by all Parties. The inclusion of additional states, municipalities, or other governmental entities to this Agreement shall not be considered a modification and shall be accomplished by having the new party execute the attached Addendum and distribute a copy to all Parties.

12. **Integration.** This written 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.

13. **Termination.** Any Party to the Agreement may terminate 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 Protected Information received prior to the termination.

14. **Nondisqualification Agreement.** The Parties agree that no Party or attorney for a Party to this Agreement may attempt to use, in any other legal proceeding or cause, either the fact of the Agreement or any information learned as a result of this Agreement as a reason to disqualify any other lawyer or law firm acting as counsel in the above-captioned case from acting as legal counsel in any other legal matter or proceeding.

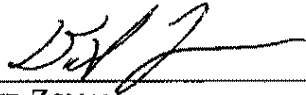
15. **Counterparts.** This Agreement may be executed in counterparts.

16. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to any additional party on the date such party executes the attached Addendum. All of the Parties' communications with each other concerning the Litigation made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

Dated: April 25, 2018

STATE OF CALIFORNIA



DAVID ZONANA
Supervising Deputy Attorney General
California Department of Justice
1515 Clay St.
Oakland, CA 94602
David.Zonana@doj.ca.gov

Dated: April __, 2018

STATE OF DELAWARE

VALERIE EDGE
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904
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valerie.edge@state.de.us

16. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to any additional party on the date such party executes the attached Addendum. All of the Parties' communications with each other concerning the Litigation made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

Dated: April __, 2018

STATE OF CALIFORNIA

DAVID ZONANA
Supervising Deputy Attorney General
California Department of Justice
1515 Clay St.
Oakland, CA 94602
David.Zonana@doj.ca.gov

Dated: April 27, 2018

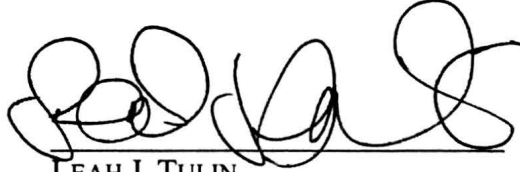
STATE OF DELAWARE



VALERIE EDGE
Deputy Attorney General
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valerie.edge@state.de.us

Dated: April 26, 2018

STATE OF MARYLAND



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Assistant Attorney General

Maryland Office of the Attorney General

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Dated: April __, 2018

STATE OF NEW YORK

MICHAEL J. MYERS

Assistant Attorney General

Environmental Protection Bureau

The Capitol

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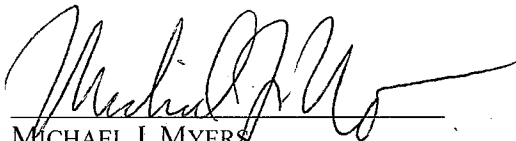
Dated: April __, 2018

STATE OF MARYLAND

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Jsegal@oag.state.md.us

Dated: April 26, 2018

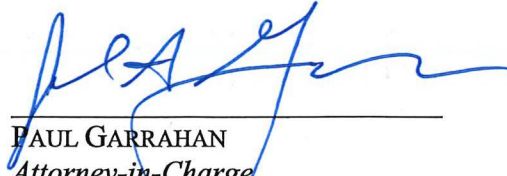
STATE OF NEW YORK



MICHAEL J. MYERS
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
Tel. (518) 776-2382
michael.myers@ag.ny.gov

Dated: April 25, 2018

STATE OF OREGON



PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Tel. (503) 947-4593
paul.garrahan@doj.state.or.us

Dated: April __, 2018

STATE OF WASHINGTON

WILLIAM SHERMAN
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Washington State Attorney General's Office
800 5 Ave. Suite 2000, TB-14
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Bill.Sherman@atg.wa.gov

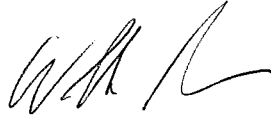
Dated: April __, 2018

STATE OF OREGON

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paul.garrahan@doj.state.or.us

Dated: April 25, 2018

STATE OF WASHINGTON



WILLIAM SHERMAN
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Bill.Sherman@atg.wa.gov

ADDENDUM

TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The Commonwealth of Massachusetts, by and through the office of the Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the Commonwealth, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 4/26/18

NAME OF PARTY: Commonwealth of Massachusetts

By: 

Name: Christophe Courchesne

Title: Chief, Environmental Protection Division, Office of the Attorney General

Address: 1 Ashburton Place, 18th Floor

Boston, MA 02108

christophe.courchesne@state.ma.us

617 963 2423

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The State of New Jersey, by and through the Office of the New Jersey Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of New Jersey agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: April 30, 2018

NAME OF PARTY:

State of New Jersey

By: 

Name: Aaron A. Love

Title: Deputy Attorney General

Address: R.J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08265

ADDENDUM

TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION

The State of Rhode Island by and through Attorney General
Peter F. Kil Martin, desires to become a Party to the
attached Agreement.

Now, therefore, counsel for Peter F. Kil Martin agrees to the terms of the
Agreement and to deliver copies of this executed Addendum to all Parties to the
Agreement within five business days.

DATED: 4/30/2018

NAME OF PARTY:

By: Gregory S. Schultz
Name: Gregory S. Schultz
Title: Special Assistant Attorney General
Address: 150 South Main Street
Providence, RI 02908
Tel. (401) 274-4400
gschultz@riag.ri.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The State of Vermont, by and through the office of Attorney General Thomas J. Donovan, Jr., desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Vermont, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: April 30, 2018

NAME OF PARTY: State of Vermont

By: 

Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186
nick.persampieri@vermont.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The State of Connecticut, by and through the Office of the Attorney General of Connecticut, William Tong, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Connecticut, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: March 6, 2019

NAME OF PARTY: State of Connecticut

By: 

Daniel M. Salton
Assistant Attorney General
Office of the Attorney General of Connecticut
55 Elm Street
Hartford, CT 06106
(860) 808-5250
Daniel.Salton@ct.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The State of Minnesota, by and through the Office of Minnesota Attorney General Keith Ellison, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Minnesota agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: March 8, 2019

NAME OF PARTY: State of Minnesota

KEITH ELLISON
Attorney General
State of Minnesota



MAX KIELEY
Assistant Attorney General

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
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(651) 297-4139 (Fax)
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ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The State of North Carolina, by and through the office of Attorney General Joshua H. Stein, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of North Carolina agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: August 28, 2019

NAME OF PARTY: State of North Carolina

By: 

Blake W. Thomas
Deputy General Counsel
North Carolina Department of Justice
114 W. Edenton St.
Raleigh, NC 27602
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BThomas@ncdoj.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The District of Columbia, by and through the office of Attorney General Karl Racine, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the District of Columbia, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: November 7, 2019

NAME OF PARTY: District of Columbia

By:


DAVID HOFFMANN

Assistant Attorney General

Office of the Attorney General for the District of Columbia

One Judiciary Square

441 4th Street, N.W., Suite 650 North

Washington, D.C. 20001

David.Hoffmann@dc.gov

(202) 442-9889

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The Commonwealth of Pennsylvania, by and through the office of Attorney General Josh Shapiro, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the Commonwealth of Pennsylvania, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: November 25, 2019

NAME OF PARTY: Commonwealth of Pennsylvania

By:  _____

AIMEE D. THOMSON
Deputy Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
(267) 940-6696
athomson@attorneygeneral.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN
CLIMATE CHANGE PUBLIC NUISANCE LITIGATION**

The State of Hawaii, by and through the office of Attorney General Clare E. Connors, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Hawaii, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: December 4, 2019

NAME OF PARTY: State of Hawaii

By: 

WILLIAM F. COOPER

Deputy Attorney General

333 Queen St., Rm. 905

Honolulu, HI 96813

(808) 586-4070

Bill.F.Cooper@hawaii.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The State of New Mexico, by and through the office of Attorney General Hector Balderas, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of New Mexico, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: December 5, 2019

NAME OF PARTY: State of New Mexico

By: Anne E. Minard

Anne Minard
Special Assistant Attorney General
State of New Mexico Office of the Attorney General
408 Galisteo Street
Santa Fe, NM 87501
505-490-4045
aminard@nmag.gov

ADDENDUM

**TO CONFIDENTIALITY AGREEMENT REGARDING PARTICIPATION IN CLIMATE
CHANGE PUBLIC NUISANCE LITIGATION**

The State of Maine, by and through the office of Attorney General Aaron M. Frey, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Maine agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: December 11, 2019

NAME OF PARTY: State of Maine

By: 

Laura E. Jensen
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
August, ME 04333
(207) 626-8868
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