

## **Joint Defense Agreement**

The undersigned counties (“the Counties”), and county counsel for the Counties (collectively, “the Parties”) hereby enter into this Joint Defense Agreement (“Agreement”). It is in the Counties’ common interest to be represented by litigation counsel Olson Remcho, LLP as co-defendants in litigation challenging the ad valorem property tax rate applied to Plaintiff’s property on the unitary tax rate, *BNSF Railway Company v. Alameda County, et al.*, U.S. Dist. N.D. Cal., Case No. 19-cv-07230 (“the Litigation”). Mutual cooperation and the confidential disclosure of information among the Counties and their counsel regarding the Litigation is essential to the effective defense of the case. The Counties share a mutuality of interest in maintaining the confidentiality of communications and documents, and preserving all applicable privileges, in connection with the Litigation.

In this regard, the Parties wish to pursue their common legal and strategic interests in the Litigation while avoiding any waiver of the confidentiality of privileged communications in documents, verbal or written communication, or work product, or any other interaction between counsel and their respective clients, agents, or staff. The Parties therefore agree as follows:

1. The Parties have concluded that, from time to time, their mutual interest will be best served by sharing relevant or related information, which may include but is not limited to factual material, mental impressions, documents, correspondence, written communications, memoranda, drafts, notes, analyses, summaries, interview reports, expert reports, opinions, advice and other matters, including the confidences of each county, all of which will be referred to as “litigation materials.” Such litigation materials are privileged from disclosure to adverse or other third parties as a result of the attorney-client privilege, the attorney work product doctrine, and/or other applicable doctrines and privileges. It is the purpose of this Agreement to ensure that the exchange and disclosure of Litigation materials between and among the Counties and their counsel does not diminish in any way the confidentiality of the Litigation materials and does not constitute a waiver of any privilege otherwise available.

2. The following verbal and written communications are confidential and are protected from disclosure to any third party by all applicable privileges, including the attorney-client privilege and work product doctrine:

- a. All communications concerning the Litigation among the undersigned counsel and their agents;
- b. All communications concerning the Litigation between the undersigned counsel and any client, prospective witness, witness, expert, or consultant, whether joint or individual; and
- c. The exchange of litigation materials between counsel, clients, prospective witnesses, witnesses, experts or consultants.

3. Verbal and written communications concerning the Litigation between and among any of the undersigned counsel and their agents shall remain confidential and be protected from disclosure to any third party, except as otherwise provided in this Agreement. It is further understood and agreed that any Litigation materials exchanged between or among counsel, and

any other confidences exchanged between or among counsel, shall be used solely in connection with the Litigation. Except as provided otherwise in this Agreement, it is further agreed that neither counsel nor their clients will disclose communications or Litigation materials received from each other to anyone except their respective clients, attorneys representing the Counties, or the Counties' employees or agents, without first obtaining the consent of all Parties who may be entitled to claim any privilege with respect to such materials, and/or the consent of their counsel.

4. Except as otherwise provided in this Agreement, no communications or Litigation materials exchanged under this Agreement may be used by a Party to this Agreement in any proceeding other than the Litigation if that communication or Litigation material involves another Party to this Agreement who may be entitled to claim any privilege with respect to such communications or Litigation materials without the express written consent of such Party's counsel. This Agreement shall not limit the right of any county counsel to disclose any documents or information obtained solely from that counsel's client or any information that has been independently obtained by such counsel.

5. If a Party received a request or demand, by subpoena, Public Records Act request, or otherwise, for any Litigation materials received from other Parties or obtained by any one or more Parties on behalf of all undersigned Parties, that Party will immediately notify Litigation Counsel and the Party or Parties with rights in these materials through their counsel. Each Party shall cooperate in opposing any requests for, or motions to compel, production of communications or Litigation materials, or, when appropriate, seeking a protective order to prevent the disclosure of such communications or Litigation materials. Each Party will take all steps necessary to permit the other Parties and Litigation Counsel to assert all applicable rights and privileges with respect to these Litigation materials and shall assist and cooperate fully with all other Parties to protect all applicable privileges in any judicial proceeding related to the disclosure of Litigation materials.

6. Nothing in this Agreement shall be construed as giving rise to any obligation on behalf of any Party to share any communications or Litigation materials with any other Party.

7. Each Party may, with advance written notice to all other Parties, withdraw prospectively from this Agreement. The withdrawing Party agrees to remain bound to this Agreement with respect to communications or Litigation materials exchanged prior to the time of its withdrawal. If requested by the originating county, the withdrawing Party shall promptly return to the originating county all copies of Litigation materials provided under this Agreement.

8. The Parties agree that irreparable damage would result from breach of this Agreement by any Party, and further agree that a non-breaching Party would have no adequate remedy at law to address such a breach. Therefore, the Parties agree that, in the event of a breach, specific performance and/or injunctive relief is the appropriate remedy to a breach of this Agreement without the need to prove actual damages.

9. In preparation for this Litigation, the Counties and their counsel have engaged in privileged communications and exchanged Litigation materials. The Parties agree that all previously privileged communications, and all Litigation materials previously exchanged, between the undersigned concerning the issues underlying the Litigation are subject to this Agreement.

10. This Agreement shall survive any settlement or dismissal of any county from the Litigation, or the withdrawal of any county from the representation. The Parties further agree to remain bound by this Agreement with respect to communications or Litigation materials exchanged prior to settlement, dismissal of any or all Parties, or resolution of the Litigation.

11. By signing this Agreement, all counsel certify that he or she has explained the contents of this Agreement to each of counsel's county clients and that each client agrees to be bound by the undertakings herein.

12. Additional counties may join the Litigation at a later date. Such counties and their counsel may join this Joint Defense Agreement by signing a copy of this Agreement. The original and later-joining Parties shall be bound by the terms and conditions of this Agreement as if the later-joining Parties had executed the Agreement initially.

13. There shall be no modification to this Agreement unless made in writing and signed by all original and later-joining Parties.

14. This Agreement may be executed in counterparts in original, facsimile, or electronic signature.

DATED: January \_\_\_, 2020

DONNA R. ZIEGLER  
County Counsel, County of Alameda

By: \_\_\_\_\_

FARAND C. KAN  
(State Bar No. 203980)  
Deputy County Counsel, County of Alameda  
1221 Oak Street, Suite 450  
Oakland, California 94612  
Telephone: (510) 272-6700  
Facsimile: (510) 272-5020  
farand.kan@acgov.org

*Attorneys for Defendant County of Alameda*

DATED: January \_\_\_, 2020

SHARON L. ANDERSON  
Contra Costa County Counsel

By: \_\_\_\_\_

Rebecca J. Hooley  
(State Bar No. 212881)  
Deputy County Counsel, Contra Costa County  
651 Pine Street, 9<sup>th</sup> Floor  
Martinez, CA 94553  
Telephone: (925) 335-1854  
Facsimile: (925) 646-1078  
rebecca.hooley@cc.cccounty.us

*Attorneys for Defendant County of Contra  
Costa*

DATED: January \_\_\_, 2020

COUNTY COUNSEL, COUNTY OF FRESNO

By: \_\_\_\_\_

Daniel C. Cederborg  
(State Bar No. 124260)  
County Counsel, County of Fresno  
2220 Tulare Street, Room 500  
Fresno, CA 93721  
Telephone: (559) 600-3479  
Facsimile: (559) 600-3480 (fax)  
dcederborg@fresnocountyca.gov

*Attorneys for Defendant County of Fresno*

DATED: January \_\_\_, 2020

MARGO A. RAISON

County Counsel, Kern County

By: \_\_\_\_\_

Jerri S. Bradley  
(State Bar No. 180341)  
Deputy County Counsel, County of Kern  
1115 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301  
Telephone: (661) 868-3819  
Facsimile: (661) 868-3809  
jbradley@kerncounty.com

*Attorneys for Defendant County of Kern*

DATED: January \_\_, 2020

LEE BURDICK

County Counsel, County of Kings

By: \_\_\_\_\_

Diane Walker Freeman  
(State Bar No. 264330)  
Deputy County Counsel  
County of Kings  
1400 W. Lacey Blvd., Bldg #4  
Hanford, CA 93230  
Telephone: (559)852-2445  
Facsimile: (559)584-0865  
diane.freeman@co.king.ca.us

*Attorneys for Defendant County of Kings*

DATED: January \_\_, 2020

COUNTY COUNSEL, COUNTY OF MADERA

By: \_\_\_\_\_

Michael R. Linden  
(State Bar No. 192485)  
Deputy County Counsel, County of Madera  
7404 N Spalding Ave.  
Fresno, CA 93720  
Telephone: (559) 431-5600  
Facsimile: (559) 261-9366  
mlinden@lozanosmith.com

*Attorneys for Defendant County of Madera*

DATED: January \_\_, 2020

COUNTY COUNSEL, MERCED COUNTY

By: \_\_\_\_\_

Forrest W. Hansen  
(State Bar No. 235432)  
Assistant County Counsel  
Merced County Counsel  
2222 M Street, Room 309  
Merced, CA 95340  
Telephone: (209) 385-7564  
Facsimile: (209) 726-1337  
forrest.hansen@countyofmerced.com

*Attorneys for Defendant County of Merced*

DATED: January \_\_, 2020

COUNTY COUNSEL, ORANGE COUNTY

By: \_\_\_\_\_

Steven C. Miller  
(State Bar No. 112951)  
Senior Deputy County Counsel  
County of Orange  
333 West Santa Ana Blvd., 4th Floor  
Santa Ana, CA 92701  
Telephone: (714) 834-3304  
steven.miller@coco.ocgov.com

*Attorneys for Defendant County of Orange*

DATED: January \_\_\_, 2020

COUNTY COUNSEL, PLUMAS COUNTY

By: \_\_\_\_\_

Gretchen Stuhr  
(State Bar No. 236869)  
Deputy County Counsel III  
520 Main Street, Room 302  
Quincy, CA 95971  
Telephone: (530) 283-6240  
GretchenStuhr@countyofplumas.com

*Attorneys for Defendant County of Plumas*

DATED: January \_\_\_, 2020

COUNTY COUNSEL, RIVERSIDE COUNTY

By: \_\_\_\_\_

Ronak N. Patel  
(State Bar No. 249982)  
Deputy County Counsel, Riverside County  
3960 Orange Street, Ste. 500  
Riverside, CA 92501  
Telephone: (951) 955-6321  
Facsimile: (951) 955-6363  
RPatel@rivco.org

*Attorneys for Defendant County of Riverside*



DATED: January \_\_\_, 2020

MICHELLE D. BLAKEMORE

By: \_\_\_\_\_

Kristina M. Robb  
(State Bar No. 239353)  
Deputy County Counsel  
San Bernardino County  
385 N. Arrowhead Ave., Fl. 4  
San Bernardino, CA 92415  
Telephone: (909) 387-5436  
KRobb@cc.sbcounty.gov

*Attorneys for Defendant County of San Bernardino*

DATED: January \_\_\_, 2020

COUNTY COUNSEL, SAN JOAQUIN  
COUNTY

By: \_\_\_\_\_

Richard Flores  
(State Bar No. 99281)  
Assistant County Counsel, County of San  
Joaquin  
44 N. San Joaquin St., Ste. 679  
Stockton, CA 95202  
County: San Joaquin County  
Telephone: (209) 468-2980  
Facsimile: (209) 468-0315  
rflores@sjgov.org

*Attorneys for Defendant County of San Joaquin*

DATED: January \_\_, 2020

THOMAS E. BOZE

Stanislaus County Counsel

By: \_\_\_\_\_

Daniel Solish  
(State Bar No. 279446)  
Deputy County Counsel  
County of Stanislaus  
1010 10th Street, Suite 6400  
Modesto, CA 95354  
Telephone: (209) 525-6376  
Facsimile: (209) 525-4473  
solishd@stancounty.com

*Attorneys for Defendant County of Stanislaus*

DATED: January \_\_, 2020

COUNTY COUNSEL, TULARE COUNTY

By: \_\_\_\_\_

Kathleen A. Taylor  
(State Bar No. 131100)  
Tulare County Counsel  
2900 W. Burrell Avenue  
Visalia, CA 93230  
Telephone: 559-636-4950  
Facsimile: 559-737-4319  
ktaylor@co.tulare.ca.us

*Attorneys for Defendant County of Tulare*