



1 other incapacity of any of the foregoing key persons, ATTORNEY shall provide a replacement  
2 of at least equal professional ability and experience as the key person replaced.

3           A.     Scope of Work: From time to time, SJVIA Counsel, or his designee,  
4 may request ATTORNEY to perform specialized legal services in connection with issues  
5 confronting the SJVIA related to the following types of matters (hereinafter collectively  
6 referred to as the "Services"):

7                   (1)     Advice and representation regarding obligations under the Ralph M.  
8                             Brown Act, California Public Records Act, the California Political  
9                             Reform Act, and the SJVIA's governing documents.

10                   (2)     Revision of SJVIA's governing documents.

11                   (3)     Assist the SJVIA with advice on litigation management and risk  
12                             avoidance planning.

13                   (4)     Represent the SJVIA in litigation in judicial and/or administrative  
14                             proceedings, which may include arbitration, civil trials, and appeals  
15                             (a "Litigation Proceeding").

16                   (5)     Assist and advise the SJVIA regarding applicable federal and state  
17                             insurance law and medical privacy laws.

18 Upon SJVIA Counsel's, or its designee's, written request to perform such Services, and  
19 ATTORNEY's written acknowledgment that ATTORNEY will provide such Services,  
20 ATTORNEY shall perform such Services pursuant to the terms and conditions of this  
21 Agreement. Notwithstanding the foregoing provisions of this subparagraph 1.A., in the event  
22 of exigent circumstances, SJVIA Counsel may make such request orally, and SJVIA Counsel  
23 and ATTORNEY shall within a reasonable time thereafter document such request for Services  
24 and acknowledgment thereof.

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2 B. Authorization to Proceed With Work: For each project, ATTORNEY shall  
3 commence performance of Services upon receiving authorization to proceed with work from  
4 the SJVIA Counsel, or its designee.

5 2. Performance by Attorney: ATTORNEY agrees to timely perform all Services  
6 provided under this Agreement. ATTORNEY agrees to avoid unnecessary duplicative efforts  
7 on the part of ATTORNEY and ATTORNEY's partners, associate lawyers, and staff members  
8 in ATTORNEY's performance of Services for the SJVIA hereunder.

9 SJVIA shall not be obligated to compensate ATTORNEY for intra-office conferences  
10 between or among ATTORNEY's partners, associate lawyers, and staff members, unless such  
11 intra-office conferences promote efficiency in the performance of ATTORNEY's work on a  
12 matter, or a reduction in the cost of compensation paid or reimbursement made for related,  
13 reasonable and necessary, out-of-pocket expenses to ATTORNEY, or both.

14 In the performance of the Services identified in paragraph 1 under this Agreement,  
15 ATTORNEY shall provide only those tasks which are necessary to carry out such Services in  
16 an efficient and effective manner.

17 ATTORNEY shall provide lawyers who possess the following qualities and skills:

18 A. the lawyer has specialized legal expertise in the particular matter on  
19 which he or she is providing the Services;

20 B. the lawyer efficiently and timely completes assigned tasks;

21 C. the lawyer is reasonably available when SJVIA Counsel, or his designee,  
22 needs to consult with the lawyer on short notice; and

23 D. the lawyer anticipates potential problems and advises SJVIA Counsel  
24 regarding same.

25 3. Compensation of ATTORNEY: SJVIA shall be obligated to compensate  
ATTORNEY pursuant to the terms and conditions of this Agreement only for the performance

1 of those tasks to the reasonable satisfaction of SJVIA, which are related to the subject matter of  
2 this Agreement. It is understood that SJVIA shall **not** be obligated to compensate  
3 ATTORNEY for any work, efforts, or functions performed by ATTORNEY: (i) in seeking to  
4 obtain SJVIA's business or negotiating with SJVIA to enter into this Agreement, or (ii) in  
5 providing SJVIA with documentation, explanations, or justifications concerning the adequacy  
6 or accuracy of ATTORNEY's invoices for the performance of Services under this Agreement  
7 and resolving same to the reasonable satisfaction of SJVIA.

8 SJVIA agrees to pay and ATTORNEY agrees to accept as full compensation for  
9 performance of Services under this Agreement the following sum per hour per person:

10	Jeffrey M. Reid, Esq.	\$275.00
11	James P. Wagoner, Esq.	\$350.00
12	Ruby D. Helsley, Esq.	\$275.00
13	Kenneth A. Baldwin, Esq.	\$275.00
14	Joseph Doerr, Esq.	\$225.00

15 Upon prior written approval of SJVIA's counsel, ATTORNEY may, from time to time,  
16 consult with such of ATTORNEY's other lawyers, if any, on a limited basis as ATTORNEY  
17 reasonably deems prudent and necessary under the circumstances, and ATTORNEY may also,  
18 upon the written approval of SJVIA Counsel, or his or her designee, provide additional  
19 members of, or associate lawyers employed by its firm, if any, to perform significant work  
20 under this Agreement, provided that such additional persons who are consulted or who provide  
21 significant work are compensated by SJVIA for performance of tasks under this Agreement at  
22 a rate not to exceed each such person's customary billing rate per hour for local governmental  
23 entities.

24 In addition, if SJVIA desires to have ATTORNEY represent SJVIA in a Litigation  
25 Proceeding, then notwithstanding the preceding paragraph, such services may be provided by



1 other attorneys employed by the firm who have relevant experience based on the particulars of  
2 the matter. Other lawyers who have been preliminarily identified as having substantial  
3 experience in representing public entities in litigation include Marshall Whitney, Timothy  
4 Thompson, Marty Oller and Greg Mason. Upon engagement for a Litigation Proceeding, the  
5 designated attorneys and their hourly rate, shall be established by a subsequent writing  
6 executed by ATTORNEY's and SJVIA.

7 In addition, ATTORNEY shall be reimbursed for reasonable and necessary out-of-  
8 pocket expenses directly related to the Services as follows: courier charges; postage charges;  
9 and printing and reprographic reproduction expenses. ATTORNEY is not authorized to travel,  
10 and will not be reimbursed for any travel expenses it may incur, unless authorized in writing to  
11 do so by SJVIA Counsel, or his or her designee. The exception for exigent circumstances  
12 described in paragraph 1, subparagraph B, above, shall not apply to travel and travel expenses.

13 It is understood that ATTORNEY shall not be reimbursed for any secretarial or clerical  
14 services (including overtime hours worked), or normal office operating expenses, with the  
15 exception of those charges and expenses stated in the immediately preceding paragraph of this  
16 Agreement, regardless of whether such services are performed, or such operating expenses are  
17 incurred, by ATTORNEY's members, associate lawyers, or employees, if any, or by third-  
18 party service providers.

19 Under no circumstances shall SJVIA compensate ATTORNEY for secretarial or  
20 clerical work performed by paralegals. Furthermore, SJVIA shall not compensate  
21 ATTORNEY for work performed by paralegals where such work ordinarily is performed by  
22 licensed attorneys, including legal research and legal document drafting.

23 4. Payment and Record-keeping: Subject to paragraph 3 hereof, payment of  
24 compensation for the Services provided under this Agreement and reimbursement for related,  
25 reasonable and necessary, out-of-pocket expenses incurred shall be made by SJVIA after

1 submission of an itemized invoice by ATTORNEY to SJVIA no later than the thirtieth (30th)  
2 day following the end of the month in which the final and satisfactory delivery of such  
3 Services was completed. All payments of compensation and reimbursement for expenses  
4 incurred in connection herewith shall be made by SJVIA no later than forty-five (45) days  
5 following the date that SJVIA receives a properly completed invoice requesting the payment  
6 for such Services rendered and expenses incurred.

7 All of ATTORNEY's invoices shall reflect accurately the tasks performed by  
8 ATTORNEY under this Agreement. In addition, all such invoices shall have sufficient detail  
9 as may be required by SJVIA's Auditor-Treasurer. In addition to the requirements of this  
10 paragraph 4, each invoice shall set forth a summary of hours worked by each member,  
11 associate lawyer and staff, if any, for the applicable billing period.

12 In preparing its invoices, ATTORNEY shall document tasks performed on a daily  
13 basis. If requested by SJVIA, or SJVIA's designee, ATTORNEY shall not combine unrelated  
14 tasks as a single entry in lieu of setting forth the hours of work performed on each specific  
15 task.

16 ATTORNEY shall prepare its invoices in an organized manner that facilitates an  
17 efficient review of the work performed and the expenses incurred in order to provide SJVIA  
18 with a clear and complete understanding of how much time was devoted to specific tasks, and  
19 the fees and cost associated therewith.

20 ATTORNEY shall keep complete records of the Services provided, as described in this  
21 paragraph 4, together with all related reasonable and necessary, out-of-pocket expenses  
22 applicable to the work provided under this Agreement. SJVIA's Auditor- Treasurer, or his or  
23 her duly authorized representatives, shall be given reasonable access to all of these records for  
24 the purposes of an audit of this Agreement.

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1           In addition, ATTORNEY shall be subject to the examination and audit of such records  
2 by the Auditor General for a period of three (3) years after final payment under this Agreement  
3 (Gov. Code, § 8546.7).

4           5.     Term of Agreement: This Agreement shall be effective as of upon execution by  
5 all parties. This Agreement shall continue in full force and effect, unless the Agreement is  
6 earlier terminated by one of the parties. Either party may terminate this Agreement at any  
7 time, either in whole or in part, by providing written notice of such termination to the other  
8 party. However, if ATTORNEY elects to terminate this Agreement, SJVIA's rights under any  
9 pending matter which may arise from ATTORNEY's Services hereunder shall not be  
10 prejudiced due to such termination as required by the Rules of Professional Conduct of the  
11 State Bar of California. ATTORNEY shall be paid for all Services performed pursuant to this  
12 Agreement up to the date of such termination.

13           6.     Independent Contractor: In performance of the work, duties and obligations  
14 assumed by ATTORNEY under this Agreement, it is mutually understood and agreed that  
15 ATTORNEY, including any and all of ATTORNEY's officers, agents, and employees, if any,  
16 will at all times be acting and performing as an independent contractor, and shall act in an  
17 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or  
18 associate of SJVIA. Furthermore, SJVIA shall have no right to control or supervise or direct  
19 the manner or method by which ATTORNEY shall perform its obligations under this  
20 Agreement. However, SJVIA shall retain the right to administer this Agreement so as to verify  
21 that ATTORNEY is performing its obligations in accordance with the terms and conditions  
22 hereof. ATTORNEY and SJVIA shall comply with all applicable provisions of law and the  
23 rules and regulations, if any, of governmental authorities having jurisdiction over matters of  
24 the subject hereof.

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1           Because of its status as an independent contractor, ATTORNEY shall have absolutely  
2 no right to employment rights and benefits available to SJVIA employees. ATTORNEY shall  
3 be solely liable and responsible for providing to, or on behalf of, its employees, if any, all  
4 legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and  
5 save SJVIA harmless from all matters related to payment of ATTORNEY's employees,  
6 including compliance with social security, withholding, and all other regulations governing  
7 such matters. It is acknowledged that during the term of this Agreement, ATTORNEY may be  
8 providing services to others unrelated to SJVIA or to this Agreement.

9           7.     Insurance: Without limiting SJVIA's rights herein, or against any third parties,  
10 ATTORNEY, at its sole expense, shall maintain in full force and effect the following insurance  
11 policies throughout the entire term of this Agreement:

12           A.     Minimum Scope & Limits of Insurance

13           (i).    A policy of professional liability insurance with limits of coverage of  
14 not less than One Million and No/100s Dollars (\$1,000,000.00) per claim made, with a Two  
15 Million and No/100s Dollars (\$2,000,000.00) policy aggregate;

16           (ii).   A policy of comprehensive general liability insurance with limits of  
17 coverage of not less than One Million and No/100s Dollars (\$1,000,000.00) per occurrence. If  
18 an annual aggregate applies it must be no less than \$2,000,000;

19           (iii).  ATTORNEY shall maintain automobile liability insurance with limits of  
20 coverage of not less than One Million and No/100s Dollars (\$1,000,000.00) per claim made,  
21 with a Two Million and No/100s Dollars (\$2,000,000.00) policy aggregate; and

22           (iv).   Workers' Compensation insurance as required by the State of California,  
23 with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000  
24 per accident for bodily injury or disease.

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1           B.     Specific Provisions of the Certificate

2                     ATTORNEY must submit endorsements to the General Liability and  
3 Auto Liability reflecting the following provisions:

4                     (i). The SJVIA, its officers, agents, officials, employees and volunteers are to be  
5 covered additional insureds as respects: liability arising out of work or operations performed by  
6 or on behalf of the ATTORNEY; or automobiles owned, leased, hired or borrowed by the  
7 ATTORNEY.

8                     (ii)     For any claims related to this project, the ATTORNEY's insurance  
9 coverage shall be primary insurance as respects the SJVIA, its officers, agents, officials,  
10 employees and volunteers. Any insurance or self-insurance maintained by the SJVIA, its  
11 officers, agents, officials, employees or volunteers shall be excess of the ATTORNEY's  
12 insurance and shall not contribute with it.

13                    (iii)     Each insurance policy required by this agreement shall be endorsed to  
14 state that coverage shall not be canceled by either party, except after thirty (30) days prior  
15 written notice has been provided to the SJVIA.

16                    (iv)     Waiver of Subrogation. The workers' compensation policy shall be  
17 endorsed with a waiver of subrogation in favor of the SJVIA for all work performed by the  
18 ATTORNEY, its employees, agents and sub-contractors. ATTORNEY waives all rights against  
19 the SJVIA and its officers, agents, officials, employees and volunteers for recovery of  
20 damages to the extent these damages are covered by the workers' compensation and  
21 employer's liability.

22           C.     Deductibles and Self-Insured Retentions

23                     The SJVIA's Human Resources Director must approve any deductible or self-insured  
24 retention that exceeds \$100,000.

1 D. Acceptability of Insurance

2 Insurance must be placed with insurers with a current rating given by A.M. Best and  
3 Company of no less than A(-):VII and a Standard & Poor's Rating (if rated) of at least BBB and  
4 from a company approved by the Department of Insurance to conduct business in California.  
5 Any waiver of these standards is subject to approval by the SJVIA Human Resources Director.

6 E. Verification of Coverage

7 Prior to approval of this Agreement by the SJVIA, the ATTORNEY shall file with the  
8 submitting department, certificates of insurance with original endorsements effecting coverage  
9 and a copy of the declarations page from the policy in effect in a form acceptable to the SJVIA.  
10 Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer.  
11 The SJVIA reserves the right to require certified copies of all required insurance policies at any  
12 time.

13 In addition to its obligations set forth hereinabove, ATTORNEY agrees that it shall  
14 maintain, at its sole expense, in full force and effect for a period of three (3) years following  
15 the termination of this Agreement a policy of professional liability insurance with limits of  
16 coverage of not less than One Million and No/100s Dollars (\$1,000,000.00) per claim made,  
17 with a Two Million and No/100s Dollars (\$2,000,000.00) policy aggregate; provided, however,  
18 in event that ATTORNEY does not maintain such policy of insurance for such entire three (3)  
19 year period, ATTORNEY shall maintain, at its sole expense, in full force and effect extended  
20 claims reporting coverage insurance in lieu thereof in the amount of not less than One Million  
21 and No/100s Dollars (\$1,000,000.00) per claim made, with a Two Million and No/100s Dollars  
22 (\$2,000,000.00) policy aggregate.

23 8. Agreement is Binding Upon Successors: This Agreement shall be binding upon  
24 SJVIA and ATTORNEY and their successors, executors, administrators, legal representatives,  
25 and assigns with respect to all the covenants and conditions set forth herein.





1 Any and all notices between SJVIA and ATTORNEY provided for or permitted under  
2 this Agreement or by law shall be in writing and shall be deemed duly served when personally  
3 delivered to one of the parties, or in lieu of such personal service, when deposited in the United  
4 States Mail, postage prepaid, addressed to such party, provided however, any notice of  
5 termination of this Agreement shall be deemed duly served when it is received. Any notices to  
6 be given or provided for under this Agreement are not modifications or changes of this  
7 Agreement.

8 15. Venue and Governing Law: The parties agree that, for purposes of venue,  
9 performance under this Agreement is to be in Fresno County, California. The rights and  
10 obligations of the parties and all interpretations and performance of this Agreement shall be  
11 governed in all respects by the laws of the State of California.

12 16. Entire Agreement: This Agreement constitutes the entire agreement between  
13 SJVIA and ATTORNEY with respect to the Services to be provided herein and supersedes any  
14 previous agreement concerning the subject matter hereof, as well as supersedes any  
15 negotiations, proposals, commitments, writings, or understandings of any nature whatsoever  
16 unless expressly included in this Agreement. If any part of this Agreement is found violative of  
17 any law or is found to be otherwise legally defective, ATTORNEY and SJVIA shall use their  
18 best efforts to replace that part of this Agreement with legal terms and conditions most readily  
19 approximating the original intent of the parties.

20 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
21 executed as of the day and year first above written.

22 **ATTORNEY:**

23 McCORMICK, BARSTOW, SHEPPARD,  
24 WAYTE & CARRUTH LLP.

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

Jeffrey M. Reid, Esq.

**SJVIA:**

SAN JOAQUIN VALLEY INSURANCE  
AUTHORITY, a joint powers agency

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

Peter Vander Poel, President  
SJVIA Board of Directors



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REVIEWED & RECOMMENDED FOR APPROVAL

By:   
Paul Nerland, SJVIA Manager