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AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into this 9th day of November, 2012, by and between the SAN JOAQUIN VALLEY INSURANCE AUTHORITY, a joint powers agency (hereinafter "SJVIA"), and the law firm of McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP (hereinafter "ATTORNEY").

WITNESSETH:

WHEREAS, since its inception, legal services for the SJVIA have been provided by the County Counsels' Offices for the County of Fresno and the County of Tulare ("SJVIA Counsel");

WHEREAS, the SJVIA has determined that it needs to retain private legal counsel to complement the services provided by SJVIA Counsel;

WHEREAS, ATTORNEY represents that it possesses special legal training and expertise to provide these desired services.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto agree as follows:

1. Engagement of ATTORNEY: SJVIA hereby engages ATTORNEY as an independent contractor through the services of the following key persons: Jeffrey M. Reid, James P. Wagoner, Ruby D. Helsley, Kenneth A. Baldwin and Joseph Doerr; and, such additional staff members employed by ATTORNEY as ATTORNEY deems necessary, and which SJVIA Counsel, or his designee, approves pursuant to paragraph 3 of this Agreement, except that the foregoing key persons may, from time to time, consult with such of ATTORNEY's other lawyers on a "limited basis" (as hereinafter defined) as ATTORNEY reasonably deems prudent and necessary under the circumstances. It is understood that ATTORNEY may not replace any of the aforementioned key persons named above without the

1 prior, express, written approval of SJVIA Counsel, or his designee. In case of death, illness or
2 other incapacity of any of the foregoing key persons, ATTORNEY shall provide a replacement
3 of at least equal professional ability and experience as the key person replaced.

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

- 8 (1) Advice and representation regarding obligations under the Ralph M.
9 Brown Act, California Public Records Act, the California Political
10 Reform Act, and the SJVIA's governing documents.
- 11 (2) Revision of SJVIA's governing documents.
- 12 (3) Assist the SJVIA with advice on litigation management and risk
13 avoidance planning.
- 14 (4) Represent the SJVIA in litigation in judicial and/or administrative
15 proceedings, which may include arbitration, civil trials, and appeals
16 (a "Litigation Proceeding").
- 17 (5) Assist and advise the SJVIA regarding applicable federal and state
18 insurance law and medical privacy laws.

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

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

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

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

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

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

- A. the lawyer has specialized legal expertise in the particular matter on which he or she is providing the Services;
- B. the lawyer efficiently and timely completes assigned tasks;
- C. the lawyer is reasonably available when SJVIA Counsel, or his designee, needs to consult with the lawyer on short notice; and
- D. the lawyer anticipates potential problems and advises SJVIA Counsel regarding same.

3. Compensation of ATTORNEY: SJVIA shall be obligated to compensate

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

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

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

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

25 In addition, if SJVIA desires to have ATTORNEY represent SJVIA in a Litigation

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

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

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

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

24 4. Payment and Record-keeping: Subject to paragraph 3 hereof, payment of
25 compensation for the Services provided under this Agreement and reimbursement for related,

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

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

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

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

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

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.

25

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 than One Million and No/100s Dollars (\$1,000,000.00) per claim
21 made, 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.

25

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 as additional insureds as respects: liability arising out of work or operations performed
6 by 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 The Workers' Compensation policy shall be endorsed with a waiver of
17 subrogation in favor of the SJVIA for all work performed by the ATTORNEY, its employees,
18 agents and ATTORNEYS.

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

25 C. Deductibles and Self-Insured Retentions

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

3 D. Acceptability of Insurance

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

8 E. Verification of Coverage

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

15 In addition to its obligations set forth hereinabove, ATTORNEY agrees that it shall
16 maintain, at its sole expense, in full force and effect for a period of three (3) years following
17 the termination of this Agreement a policy of professional liability insurance with limits of
18 coverage of not less than One Million and No/100s Dollars (\$1,000,000.00) per claim made,
19 with a Two Million and No/100s Dollars (\$2,000,000.00) policy aggregate; provided, however,
20 in event that ATTORNEY does not maintain such policy of insurance for such entire three (3)
21 year period, ATTORNEY shall maintain, at its sole expense, in full force and effect extended
22 claims reporting coverage insurance in lieu thereof in the amount of not less than One Million
23 and No/100s Dollars (\$1,000,000.00) per claim made, with a Two Million and No/100s Dollars
24 (\$2,000,000.00) policy aggregate.

25 8. Agreement is Binding Upon Successors: This Agreement shall be binding upon

1 SJVIA and ATTORNEY and their successors, executors, administrators, legal representatives,
2 and assigns with respect to all the covenants and conditions set forth herein.

3 9. Assignment and Subcontracting: Notwithstanding anything stated to the
4 contrary in paragraph 8 hereof, neither party hereto shall assign, transfer, or sub-contract this
5 Agreement nor its rights or duties hereunder without the written consent of the other.

6 10. Amendments: This Agreement may only be amended in writing signed by the
7 parties hereto.

8 11. Conflict of Interest: ATTORNEY promises, covenants, and warrants that, after
9 having performed a reasonable investigation, the performance of its services and representation
10 to SJVIA under this Agreement do not result in a “conflict of interest” as that term is used in
11 the Rules of Professional Conduct of the State Bar of California. In the event a “conflict of
12 interest” occurs, ATTORNEY will request SJVIA’s Board of Supervisors to waive such
13 “conflict of interest” on a case-by-case basis.

14 12. Further Assurances by ATTORNEY: ATTORNEY represents that it has read
15 and is familiar with Government Code §§ 1090 et seq. and §§ 87100 et seq. Further,
16 ATTORNEY promises, covenants, and warrants that, after having performed a reasonable
17 investigation, the performance of its services under this Agreement shall not result in or cause
18 a violation by it of Government Code §§ 1090 et seq. and §§ 87100 et seq.

19 13. Compliance With Laws: ATTORNEY shall comply with all federal, state, and
20 local laws and regulations applicable to the performance of its obligations under this
21 Agreement.

22 14. Notices: The persons and their addresses having authority to give and receive
23 notices under this Agreement include the following:

24	<u>SJVIA</u>	<u>ATTORNEY</u>
25	Paul Nerland, SJVIA Manager 2220 Tulare St, Suite 1400	Jeffrey M. Reid c/o McCormick Barstow et al

1 **Fresno, CA 93721**

**5 River Park Place East
Fresno, CA 9372**

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

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

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

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

23 WAYTE & CARRUTH LLP.

24 **ATTORNEY:**
25 McCORMICK, BARSTOW, SHEPPARD,

By: _____
Jeffrey M. Reid, Esq.

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SJVIA:

SAN JOAQUIN VALLEY INSURANCE
AUTHORITY, a joint powers agency

By: _____
Peter Vander Poel, President
SJVIA Board of Directors

REVIEWED & RECOMMENDED FOR
APPROVAL

By: _____
Paul Nerland, SJVIA Manager