

EXHIBIT A

SJVIA CONSULTANT AGREEMENT

This agreement is dated [REDACTED] and is between [NAME OF CONSULTANT], a [type of entity] (“Consultant”), and the SAN JOAQUIN VALLEY INSURANCE AUTHORITY, a joint powers agency (“SJVIA”).

The SJVIA is a joint exercise of powers authority that negotiates, purchases, or otherwise funds health, pharmacy, vision, dental, and life insurance (each an “Insurance Program,” and collectively “Insurance Programs”). The SJVIA makes Insurance Programs available to participating entities, subject to the terms and conditions of an agreement by each participating entity to pay for its respective costs for the Insurance Programs in which it participates.

The SJVIA desires to retain the services of a consultant for health benefits consultation and administration services with specific experience in the public sector, risk-sharing pools, underwriting, self-funded health benefit plans, and the Affordable Care Act.

The Consultant represents and warrants to the SJVIA that it is ready, willing, and able to provide the services desired by the SJVIA subject to the terms and conditions of this agreement, and in cooperation with and under the direction of the SJVIA Board of Directors and SJVIA management.

The parties therefore agree as follows:

**Article 1
Consultant’s Obligations**

1.1 **Scope of Services.** The Consultant shall provide the services described in Exhibit A to this agreement, which is attached.

1.2 **Additional Services.** The Consultant may provide additional services as the SJVIA and the Consultant mutually agree in writing.

1.3 **Key Persons.** The Consultant shall provide all services under this agreement through the following key persons: [names and titles].

1.4 **Cooperation with Management.** The Consultant shall at all times cooperate with SJVIA management, which includes the SJVIA Manager, the SJVIA Assistant Manager, the SJVIA Auditor-Treasurer, any employee of the County of Fresno or the County of Tulare who is designated by one of those persons to administer the business and activities of the SJVIA, and counsel to the SJVIA. That cooperation includes reporting promptly to the SJVIA Manager and the SJVIA Assistant Manager any material oral or written communications received by the Consultant from a participating entity, prospective participating entity, or contractor of the SJVIA.

1.5 **Communications to Participating Entities.** The Consultant shall provide to SJVIA management contemporaneous copies of all written communications of the Consultant on behalf of the SJVIA with any participating entity or prospective participating entity. The Consultant shall maintain written records of oral communications by the Consultant on behalf of

EXHIBIT A

the SJVIA to any participating entity or prospective participating entity and shall, promptly upon request by SJVIA management, provide copies of those records.

1.6 **Confidentiality.** The Consultant acknowledges that certain confidential information may be furnished by the SJVIA to the Consultant in connection with the services provided by the Consultant under this agreement (“Confidential Information”). The Consultant agrees that it will disclose Confidential Information only to persons who, in the Consultant’s reasonable determination, need to know such information in order for the Consultant to provide services under this agreement. Disclosure by the Consultant of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency, or by a legislative body or committee is not a violation of this agreement. Confidential Information does not include information that:

(A) Is in the possession of the Consultant prior to its receipt of such information from the SJVIA;

(B) Is or becomes publicly available other than as a result of a breach of this agreement by the Consultant; or

(C) Is or can be independently acquired or developed by the Consultant without violating any of its obligations under this agreement.

1.7 **Compliance with Laws.** The Consultant shall, at its own cost, comply with all applicable federal, state, and local laws in performance of its services under this agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

Article 2 SJVIA’s Obligations

2.1 **Information and Data.** Subject to the terms of this agreement, the SJVIA will provide, or authorize the vendors of its Insurance Programs to provide, the Consultant with data and information that is necessary to the Consultant’s provision of services under this agreement.

2.2 **Insurance Program Premiums.** The SJVIA acknowledges that it is responsible for payment of premiums for all Insurance Programs.

Article 3 Compensation, Invoices, and Payments

3.1 **Compensation.** The SJVIA agrees to pay, and the Consultant agrees to receive, compensation as described in Exhibit B to this agreement, which is attached.

3.2 **Invoices.** The Consultant shall submit monthly invoices to the SJVIA.

3.3 **Payment.** The SJVIA shall pay all timely-submitted invoices within 30 days of receipt.

EXHIBIT A

3.4 **Incidental Expenses.** The Consultant is solely responsible for all expenses that are incidental to its performance under this agreement.

Article 4 Term and Termination

4.1 **Term.** This agreement is effective on _____ and terminates on _____. The term of this agreement may be extended for no more than two additional one-year terms by modification as provided in section 11.1 of this agreement.

4.2 **Termination for Non-Allocation of Funds.** Both parties' obligations under this agreement are contingent on the approval of funds by the appropriating government agency or agencies. If sufficient funds are not allocated, then the SJVIA, upon 30 days advance written notice to the Consultant, may:

(A) Modify either or both of the parties' obligations under this agreement; or

(B) Terminate this agreement.

4.3 **Termination for Breach; Reinstatement.**

(A) Upon determining that a breach (as defined below) has occurred, the SJVIA Manager may give written notice of the breach to the Consultant. The written notice may suspend performance under this agreement, and shall provide a reasonable time for the Consultant to cure the breach.

(B) If the Consultant fails to cure the breach within the reasonable time stated in the written notice, the SJVIA may terminate this agreement.

(C) For purposes of this section, a breach occurs when the Consultant has:

(1) Used funds illegally or improperly;

(2) Failed to comply with any part of this agreement;

(3) Submitted a substantially incorrect or incomplete report to the SJVIA; or

(4) Performed improperly as determined by the SJVIA.

4.4 **Termination for HIPAA Violation.** The SJVIA may terminate this agreement as provided in Article 8 of this agreement.

4.5 **Termination without Cause.** In circumstances other than those set forth above, the SJVIA may terminate this agreement by giving 30 days advance written notice to the Consultant.

EXHIBIT A

Article 5 Independent Contractor

5.1 **Status.** In performing under this agreement, the Consultant, including its officers, agents, and employees, is at all times acting and performing as an independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the SJVIA.

5.2 **Supervision.** The SJVIA has no right to control, supervise, or direct the manner or method of the Consultant's performance under this agreement, but the SJVIA may verify that the Consultant is performing according to the terms and conditions of this agreement (for example by requesting records of communications under section 1.5 of this agreement).

5.3 **Benefits.** Because of its status as an independent contractor, the Consultant has no right to employment rights or benefits. The Consultant is solely responsible for providing to its own employees all employee benefits required by law. The Consultant shall save the SJVIA harmless from all matters relating to the payment of the Consultant's employees, including compliance with Social Security withholding and all related regulations.

Article 6 Notices

6.1 **Contact Information.** The persons and their addresses having authority to give and receive notices provided for or permitted under this agreement include the following:

For the SJVIA:

SJVIA Manager
SAN JOAQUIN VALLEY INSURANCE AUTHORITY
[Street Address]
[City, State ZIP]
[Fax Number]

For the Consultant:

[Name if Desired]
[Title]
[CONSULTANT ENTITY]
[Street Address]
[City, State ZIP]
[Fax Number]

6.2 **Method of Delivery.** All notices between the SJVIA and the Consultant provided for or permitted under this agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission.

(A) A notice delivered by personal service is effective upon service to the recipient.

EXHIBIT A

(B) A notice delivered by first-class United States mail is effective three SJVIA business days after deposit in the United States mail, postage prepaid, addressed to the recipient

(C) A notice delivered by an overnight commercial courier service is effective on County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

(D) A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of SJVIA business hours, then such delivery shall be deemed to be effective at the next beginning of a SJVIA business day), provided that the sender maintains a machine record of the completed transmission.

6.3 Claims Presentation. For all claims arising from or related to this agreement, nothing in this agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

Article 7 Audits, Inspections, and Public Records

7.1 On-Site Audits and Inspections. The Consultant shall at any time during business hours, and as often as the SJVIA may deem necessary for any reason, make available to the SJVIA for examination all of its records and data with respect to the matters covered by this agreement.

7.2 Document Requests. The Consultant shall at any time, and as often as the SJVIA may deem necessary for any reason, provide copies of any records or data with respect to the matters covered by this agreement as the SJVIA may request.

7.3 Public Records Act Requests. If the SJVIA receives a request under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA") or a similar law to disclose any document that is in the Consultant's possession but which the SJVIA may review, request, or obtain from the Consultant under sections 7.1 or 7.2 of this agreement, then the SJVIA will promptly notify the Consultant and request the responsive documents that may be in the possession of the Consultant. The notification shall be in writing, which may include but is not limited to email addressed to the appropriate key person or persons. Upon receiving that notification, the Consultant has five business days in which to provide responsive documents, use the procedure provided in section 7.4 of this agreement, or both. The Consultant shall promptly inform the SJVIA if the Consultant believes that five business days are not sufficient time in which to respond. The Consultant shall indemnify the SJVIA for any award of costs or attorney's fees under the CPRA that results from the Consultant's use of the procedure provided in section 7.4 of this agreement.

EXHIBIT A

7.4 **Withholding and Redacting.** If the SJVIA for any reason requests any records, data, or documents from the Consultant and the Consultant believes that the responsive documents contain trade secrets, proprietary information, or other information that is subject to legal privilege or separate legally-enforceable obligation of the Consultant to withhold, then the Consultant may do the following:

(A) The Consultant may redact the records or data before providing them, if that is practicable, or withhold the records or data if redaction is not practicable.

(B) If the Consultant redacts or withholds any documents, it shall provide a privilege log describing what has been redacted or withheld and identifying the legal privilege or legally-enforceable obligation that is the reason for the redaction or withholding.

(C) If the SJVIA requests documents because of a CPRA request and the Consultant redacts or withholds any documents, the Consultant shall also identify the specific provision of the CPRA (by citation to the California Government Code) which the Consultant believes would authorize the SJVIA to redact or withhold the documents requested.

7.5 **State Audit Requirements.** If this agreement exceeds \$10,000, the Consultant is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this agreement. The obligations under this section survive the termination of this agreement.

Article 8 Health Insurance Portability and Accountability Act

8.1 The parties shall be in strict conformance with all applicable federal and State of California laws and regulations, including but not limited to: Sections 5328, 10850, and 14100.2 et seq. of the California Welfare and Institutions Code; Sections 2.1 and 431.300 et seq. of Title 42, Code of Federal Regulations (CFR); Section 56 et seq. of the California Civil Code; Sections 11977 and 11812 of Title 22 of the California Code of Regulations; the Health Insurance Portability and Accountability Act, as amended, including but not limited to Section 1320 D et seq. of Title 42, United States Code, and its implementing regulations, including but not limited to Title 45, CFR, Parts 142, 160, 162, and 164 (collectively, HIPAA); the Health Information Technology for Economic and Clinical health Act, as amended (HITECH), regarding the confidentiality and security of patient information; and the Genetic Information Nondiscrimination Act of 2008, as amended (GINA), regarding the confidentiality of genetic information.

8.2 Except as otherwise provided in this agreement, the Consultant, as a business associate of the SJVIA, may use or disclose Protected Health Information (PHI) to perform functions, activities, or services for or on behalf of the SJVIA, as specified in this agreement provided that such use or disclosure does not violate HIPAA. The uses and disclosures of PHI may not be more expansive than those applicable to SJVIA, as the covered entity under the HIPAA Privacy Rule (45 CFR § 164.500 et seq.), except as authorized for management, administrative, or legal responsibilities of the business associate.

EXHIBIT A

8.3 The Consultant, including its authorized subcontractors and employees, shall protect from unauthorized access, use, or disclosure the names and other identifying information, including genetic information, concerning persons receiving services under the Insurance Programs, except where permitted in order to carry out data aggregation for purposes of health care operations (45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A), and 164.504(e)(4)(i)). This requirement applies to electronic PHI. The Consultant shall not use such identifying information or genetic information for any purpose other than carrying out the Consultant's obligations under this agreement.

8.4 The consultant, including its authorized subcontractors and employees, shall not disclose any such identifying information or genetic information to any person or entity, except as otherwise specifically permitted by this agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the Secretary, or authorized by the client or patient in writing. In using or disclosing PHI that is permitted by this agreement or authorized by law, the Consultant shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

8.5 For the purposes of the above sections, identifying information includes, but is not limited to, name, identifying number, symbol, or other identifying particular assigned to an individual, such as a finger- or voiceprint, or photograph.

8.6 For purposes of the above sections, genetic information includes, but is not limited to, genetic tests of an individual or family members of the individual, manifestation of disease or disorder of an individual or family members of the individual, or any request for or receipt of genetic services by an individual or family members of the individual. Family member means a dependent or any person who is a first, second, third, or fourth degree relative.

8.7 At the request of the SJVIA, and in the time and manner specified by the SJVIA, the Consultant shall provide, to the SJVIA or to an individual, PHI in a designated record set (as defined in 45 CFR § 164.501) in order to meet the requirements of 45 CFR § 164.524 regarding access by individuals to their PHI. With respect to individual requests, the Consultant shall provide access within 30 days of the request. That deadline may be extended if the Contractor cannot provide access and provides the reasons for the delay and the reasonable date when access may be granted. The consultant shall provide PHI in the form and format requested by the SJVIA or the individual.

8.8 The Contractor shall make amendment or amendments to PHI in a designated record set in accordance with 45 CFR § 164.526.

8.9 The Contractor shall provide to the SJVIA or to an individual, in the time and manner specified by the SJVIA, information collected in accordance with 45 CFR § 164.528, to permit the SJVIA to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

8.10 The Contractor shall, immediately and without unreasonable delay and in no case later than two business days after discovery, report to the SJVIA's Privacy Officer, in writing,

EXHIBIT A

any knowledge or reasonable belief that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of unsecured PHI not permitted by this agreement of which it becomes aware. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached. The Consultant shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and State of California laws and regulations. The Consultant shall investigate such breach and is responsible for all notifications required by law, regulation, or both, or deemed necessary by the SJVIA, and shall provide a written report of the investigation and reporting required to the SJVIA's Privacy Officer. This written investigation and description of any reporting necessary shall be postmarked as mailed to the SJVIA's Privacy Officer within 30 working days of the discovery of the breach.

8.11 The Consultant shall make its internal practices, books, and records relating to the use and disclosure of PHI received from SJVIA, or created or received by the Consultant on behalf of the SJVIA, in compliance with the HIPAA Privacy Rule, including but not limited to the requirements set forth in 45 CFR Parts 160 and 164. The Consultant shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the SJVIA, or created or received by the Consultant on behalf of the SJVIA, available to the United States Department of Health and Human Services upon demand.

8.12 The Consultant shall cooperate with the compliance and investigation reviews conducted by the Secretary. The Consultant must provide PHI access to the Secretary during the Consultant's normal business hours, but upon exigent circumstances shall also grant access at any time. Upon the Secretary's compliance or investigation review, if PHI is unavailable to the Consultant and in possession of a subcontractor, the Consultant must certify to the Secretary its efforts to obtain the information.

8.13 **Safeguards.** The Consultant shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR Part 164, that reasonably and appropriately protects the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of the SJVIA and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this agreement. The Consultant shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity and availability of electronic PHI. The Consultant shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Consultant's operations and the nature and scope of its activities. Upon the SJVIA's request, the Consultant shall provide the SJVIA with information concerning such safeguards.

8.14 **Security Safeguards and Precautions.** The Consultant shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only.

EXHIBIT A

8.15 **Password Controls.** Those safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data.

(A) Passwords must not be:

(1) Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

(2) A dictionary word; or

(3) Stored in clear text

(B) Passwords must be:

(1) Eight characters or more in length;

(2) Changed every 90 days;

(3) Changed immediately if revealed or compromised; and

(4) Composed of characters from at least three of the following four groups from the standard keyboard: (i) upper case letters (A-Z); (ii) lowercase letters (a-z); (iii) Arabic numerals (0 through 9); and (iv) non-alphanumeric characters (punctuation symbols).

8.16 **Security Controls.** The Consultant shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

(A) Network-based firewall and/or personal firewall;

(B) Continuously updated anti-virus software; and

(C) Patch management process including installation of all operating system/software vendor security patches.

8.17 **Encryption.** The Consultant shall use a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

8.18 **Data Transmission.** The Consultant shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. The Consultant must apply appropriate sanctions against its employees who fail to comply with these safeguards. The Consultant must adopt procedures for terminating access to PHI when employment of employee ends.

EXHIBIT A

8.19 **Mitigation of Harmful Effects.** The Consultant shall mitigate, to the extent practicable, any harmful effect that is suspected or known to the Consultant of an unauthorized access, viewing, use, disclosure, or breach of PHI by the Consultant or its subcontractors in violation of the requirements of this Article 8. The Consultant must document suspected or known harmful effects and the outcome of any mitigation.

8.20 **Consultant's Subcontractors.** The Consultant shall ensure that each of its contractors, including subcontractors, if applicable, to whom the Consultant provides PHI received from or created or received by the Consultant from or on behalf of the SJVIA, agrees to the same restrictions, safeguards, and conditions that apply to the Consultant with respect to such PHI and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract or sub-award to such agents or subcontractors.

8.21 **Employee Training and Discipline.** The Consultant shall train and use reasonable measures to ensure compliance with the requirements of the provisions of this Article 8 by employees who assist in the performance of functions or activities on behalf of the SJVIA under this agreement and use or disclose PHI and discipline such employees who intentionally violate any provisions of these provisions, including termination of employment.

8.22 **Termination for Breach.** Upon the SJVIA's knowledge of a material breach of these provisions by the Consultant, the SJVIA shall either:

(A) Provide an opportunity for the Consultant to cure the breach or end the violation, and terminate this agreement if the Consultant does not cure the breach or end the violation within the time specified by the SJVIA; or

(B) Immediately terminate this agreement if the Consultant has breached a material term of these provisions and cure is not possible.

(C) If neither cure nor termination is feasible, the SJVIA's Privacy Officer shall report the violation to the Secretary.

8.23 **Termination after Judicial or Administrative Proceedings.** The SJVIA may terminate this agreement if: (1) the Consultant is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation that the Consultant has violated a privacy or security standard or requirement of the HITECH Act, HIPAA, or other security or privacy laws in an administrative or civil proceeding in which the Consultant is a party.

8.24 **Obligations upon Termination.** Upon termination or expiration of this agreement for any reason, the Consultant shall return or destroy all PHI received from the SJVIA (or created or received by the Consultant on behalf of SJVIA) that the Consultant still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, the Consultant shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision applies to PHI that is in the possession of subcontractors or agents, if

EXHIBIT A

applicable, of the Consultant. If the Consultant destroys the PHI data, the Consultant shall provide to the SJVIA a certification of date and time of destruction

8.25 **Disclaimer.** The SJVIA makes no warranty or representation that compliance by the Consultant with the provisions of this Article 8, HIPAA, or HITECH will be adequate or satisfactory for the Consultant's own purposes or that any information in the Consultant's possession or control, or transmitted or received by the Consultant, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. The Consultant is solely responsible for all decisions made by the Consultant regarding the safeguarding of PHI.

8.26 **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of these provisions may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to amend this agreement in order to implement the standards and requirements of HIPAA, HITECH, and other applicable laws relating to the security or privacy of PHI. The SJVIA may terminate this agreement upon 30 days written notice if the Consultant does not enter into an amendment providing assurances regarding the safeguarding of PHI that the SJVIA in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.

8.27 **Interpretation.** The terms of this Article 8 shall be interpreted as broadly as necessary to implement and comply with HIPAA and applicable State of California laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA.

8.28 **Regulatory References.** Any reference in this agreement to a law or regulation means the law or regulation as in effect or as amended.

8.29 **Survival.** The obligations of the Consultant as provided in this Article 8 survive the termination or expiration of this agreement.

8.30 **Definitions.** For purposes of this Article 8:

(A) The SJVIA's Privacy Officer is the SJVIA Manager.

(B) The Secretary is as defined in 45 CFR § 160.103

Article 9 Indemnity

9.1 **Indemnification.** Each party ("Indemnifying Party") will promptly defend, indemnify, and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses, or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this agreement.

EXHIBIT A

9.2 **Limitation of Liability.** Notwithstanding any other term of this agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential, or punitive damages. Further, the aggregate liability under this agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

Article 10 Insurance

10.1 **Policy and Coverage Requirements.** Without limiting the SJVIA's right to obtain indemnification from the Consultant or any third parties, the Consultant, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, which may include an insurance pooling arrangement, throughout the term of this agreement. All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

10.2 **Commercial General Liability.** The Consultant shall maintain a commercial general liability policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy must be issued on a per occurrence basis. The SJVIA may require specific coverages including completed operations, products liability, contractual liability, explosion-collapse-underground, fire legal liability, or another liability insurance deemed necessary because of the nature of this contract.

10.3 **Automobile Liability.** The Consultant shall maintain a comprehensive automobile liability policy with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident, and for property damages of not less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage must include owned and non-owned vehicles used in connection with this agreement.

10.4 **Professional Liability.** The Consultant shall maintain professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.

10.5 **Workers Compensation.** The Consultant shall maintain a workers compensation insurance policy as may be required by the California Labor Code.

10.6 **Endorsements.** The Consultant shall obtain endorsements to the commercial general liability insurance naming the SJVIA, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this agreement are concerned.

(A) Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the SJVIA, its officers, agents, and employees shall be excess only and not contributing with insurance provided under the Consultant's policies required by this agreement.

EXHIBIT A

(B) This insurance shall not be cancelled or changed without a minimum of 30 days advance written notice to the SJVIA.

(C) Any insurance proceeds available to the Consultant under its Commercial General Liability insurance in excess of the minimum coverage and limits specified for that policy in this agreement shall be available to the additional insured under the endorsement required by this agreement. If the SJVIA permits the Consultant to sub-contract any of its duties under this agreement, the Consultant shall require all sub-contractors to obtain endorsements to their Commercial General Liability insurance naming the SJVIA as additional insured with coverage at least as broad as that provided by Insurance Services Office (ISO) form number CG 20 38 04 13.

10.7 Certificates of Insurance. Within 30 days from the date the Consultant signs this agreement, the Consultant shall provide certificates of insurance and endorsement as stated above, for all of the policies required above, to the SJVIA Manager, stating all of the following:

(A) that such insurance coverages have been obtained and are in full force;

(B) that the SJVIA, its officers, agents, and employees will not be responsible for any premiums on the policies;

(C) that the commercial general liability policy names the SJVIA, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as operations under this agreement are concerned;

(D) that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the SJVIA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the Consultant's policies required under this agreement; and

(E) that this insurance shall not be cancelled or changed without a minimum of 30 days advance written notice to the SJVIA.

10.8 Failure to Maintain. If the Consultant fails to keep in effect at all times the insurance policies and coverages required under this agreement, the SJVIA may, in addition to any other remedies it may have, suspend or terminate this agreement upon the occurrence of that event.

Article 11 General Provisions

11.1 Modification. This agreement may not be modified, and no waiver is effective, except by another written agreement that is signed by both parties.

11.2 Non-Assignment. Neither party may assign its rights or delegate its obligations under this agreement without the prior written consent of the other party.

11.3 Governing Law. The laws of the State of California govern all matters arising from or related to this agreement.

EXHIBIT A

11.4 **Jurisdiction and Venue.** This agreement is signed and performed in Fresno County, California. The Consultant consents to California jurisdiction for actions arising from or related to this agreement, and, subject to the Government Claims Act, all such actions must be brought and maintained in the Fresno County Superior Court.

11.5 **Construction.** The final form of this agreement is the result of the parties' combined efforts. If anything in this agreement is found by a court of competent jurisdiction to be ambiguous, that ambiguity is to be resolved by construing the terms of this agreement according to their generally accepted meaning, and not by construing the terms of this agreement for or against either party.

11.6 **Headings.** The headings and section titles in this agreement are for convenience only and are not part of this agreement.

11.7 **Severability.** If anything in this agreement is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this agreement remains in effect.

11.8 **No Waiver.** Payment, change, waiver, or discharge of any liability or obligation of the Consultant under this agreement on any one or more occasions is not a waiver of performance of any continuing or other obligation and does not prohibit enforcement by the SJVIA of any obligation on any other occasion.

11.9 **Entire Agreement.** This agreement is the entire agreement between the Participating Entity and the SJVIA with respect to the subject matter of this agreement, and it supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature unless those things are expressly included in this agreement.

11.10 **Third-Party Beneficiaries.** This agreement does not and is not intended to create any rights or obligations for any person or entity except for the parties.

11.11 **Authorized Signatures.** The Participating Entity represents and warrants to the SJVIA that:

(A) The Participating Entity is duly authorized and empowered to sign and perform its obligations under this agreement.

(B) The individual signing this agreement on behalf of the Participating Entity is duly authorized to do so and his or her signature on this agreement will legally bind the Participating Entity to the terms of this agreement.

11.12 **Counterparts.** This agreement may be signed in counterparts, each of which is an original, and all of which together constitute this agreement.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

The parties are signing this agreement on the date stated in the introductory clause.

CONSULTANT

SAN JOAQUIN VALLEY INSURANCE
AUTHORITY

(Authorized signature)

[Name of President]

(Print name and title)

President, Board of Directors

Reviewed and recommended for approval.

SJVIA Manager

SAMPLE