

REQUEST FOR PROPOSAL

**CONSULTANT SERVICES
FOR**



RELEASE DATE: November 4, 2016

DUE DATE: November 23, 2016 by 5:00 pm PST

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OVERVIEW

The San Joaquin Valley Insurance Authority (SJVIA) was originally formed by the County of Fresno and County of Tulare on October 6, 2009 for the purpose of achieving greater critical mass for health insurance volume purchasing and reduced administrative costs. The SJVIA has since welcomed additional public entities. The SJVIA is a joint exercise of powers authority (JPA) established under California law to purchase health, pharmacy, vision, dental, and life insurance programs that are made available to governmental entities, primarily Counties, Cities and Special Districts, by contract. The Central San Joaquin Valley Risk Management Authority joined Fresno and Tulare Counties as a member of the JPA via amendment effective July 1, 2013. (The two original counties and the CSJVRMA are the only members of the JPA. All other entities participate in insurance programs by separate contract.) For Plan Year 2017, 9 government entities will be participating in the SJVIA. They include:

ENTITY	EMPLOYEE TOTAL	MEMBER TOTAL
County of Fresno	5,577	10,893
County of Tulare	2,613	3,465
City of Ceres	106	268
City of Marysville	55	153
City of Reedley	120	336
City of Riverbank	44	128
City of Wasco	60	170
City of Waterford	16	70
Sutter County	911	2,357

The SJVIA, pursuant to the Joint Exercise of Powers Act, is a separate entity and is governed by a seven-member Board of Directors, four of whom are appointed by the County of Fresno and three of whom are appointed by the County of Tulare. Directors are members of the Board of Supervisors from each respective county.

The SJVIA will be beginning its eighth year of operation on January 1, 2017. The majority of plan participants reside in Fresno, Tulare, and surrounding counties. There are two medical network options that are available through the SJVIA in 2017: Anthem Blue Cross and Kaiser Permanente. The SJVIA also offers dental, vision and prescription plans to its participating entities through Delta Dental, Vision Service Plan (VSP) and US Script. You can find more information about the SJVIA at www.sjvia.org and by reviewing the [Joint Exercise of Powers Agreement Creating the SJVIA](#).

The SJVIA is requesting proposals from qualified vendors in the area of 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 (ACA). The SJVIA has been in a contract with Gallagher Benefit Services since January 1, 2010 and the current contract is set to term on December 31, 2017. However, the SJVIA Board approved at their July 14, 2016 Board meeting moving from a “per employee per month” (PEPM) fee schedule to a flat fee arrangement with the SJVIA consultant. As this is a completely new model for the SJVIA, the Board directed that the SJVIA conduct an RFP for consultant services on a flat fee schedule. It is the SJVIA’s intent to contract with the successful bidder for a term of three (3) years with the option to renew for up to two (2) additional one (1) year periods. The SJVIA will retain the right to terminate the agreement upon giving thirty (30) days advance written notification to the contractor. The contractor must adhere to all HIPAA requirements as set forth in Exhibit A – Sample agreement.

KEY DATES

- **RFP Issue Date:** **November 4, 2016**
- **Vendor Questions Due:** **November 10, 2016 @ 5:00 pm PST**
E-mail to: SJVIA-Admin@co.fresno.ca.us
- **RFP Closing Date:** **November 23, 2016**
- **Finalist Interviews:** **December 8, 2016 - Tentative**
- **Successful Vendor Selected:** **February 17, 2017 (SJVIA Board Mtg.)**
- **Agreement Effective Date:** **March 1, 2017**

PROPOSAL IDENTIFICATION SHEET

RESPONDENT TO COMPLETE AND RETURN WITH PROPOSAL

Our proposal is attached and identified as: _____

The undersigned agrees to furnish the service stipulated at the prices and terms stated in the cost proposal.

Work services will commence within _____ calendar days after signing of the final contract.

Company: _____

Address: _____

_____ Zip: _____

Signed by: _____

_____ Print Name

_____ Print Title

() Telephone () Fax Number E-mail Address

Date: _____

TRADE SECRET ACKNOWLEDGEMENT

All proposals received by the SJVIA shall be considered "Public Record" as defined by Section 6252 of the California Government Code. This definition reads as follows:

"...Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975."

Each proposal submitted is public record and is therefore subject to inspection by the public per Section 6253 of the California Government Code. This section states that "every citizen has a right to inspect any public record".

The SJVIA will not exclude any proposal or portion of a proposal from treatment as a public record except in the instance that it is submitted as a trade secret as defined by the California Government Code. Information submitted as proprietary, confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

"Trade secrets" as defined by Section 6254.7 of the California Government Code are deemed not to be public record. This section defines trade secrets as:

"...Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data or compilation of information that is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it."

Information identified by bidder as "trade secret" will be reviewed by SJVIA's legal counsel to determine conformance or non-conformance to this definition. Examples of material not considered to be trade secrets are pricing, cover letter, promotional materials, etc. Such material should be submitted in a separate binder not marked "Trade Secret".

INFORMATION THAT IS PROPERLY IDENTIFIED AS TRADE SECRET AND CONFORMS TO THE ABOVE DEFINITION WILL NOT BECOME PUBLIC RECORD. THE SJVIA WILL SAFEGUARD THIS INFORMATION IN AN APPROPRIATE MANNER.

Information identified by bidder as trade secret and determined to be in conformance with the California Government Code definition shall be excluded from the proposal. Such information will be returned to the bidder at bidder's expense upon written request.

Trade secrets must be submitted in hard copy only in a separate binder that is plainly marked "Trade Secrets."

The SJVIA shall not in any way be liable or responsible for the disclosure of any proposals or portions thereof, if they are not (1) submitted in a separate binder that is plainly marked "Trade Secret" on the outside; and (2) if disclosure is required or allowed under the provision of law or by order of Court.

Vendors are advised that the SJVIA does not wish to receive trade secrets and that vendors are not to supply trade secrets unless they are absolutely necessary.

TRADE SECRET ACKNOWLEDGEMENT

I have read and understand the above "Trade Secret Acknowledgement."

I understand that the SJVIA has no responsibility for protecting information submitted as a trade secret if it is not delivered in a separate binder plainly marked "Trade Secret." I also understand that all information my company submits, except for that information submitted in a separate binder plainly marked "Trade Secret," are public records subject to inspection by the public. This is true no matter whether my company identified the information as proprietary, confidential or under any other such terms that might suggest restricted public access.

Enter company name on appropriate line:

_____ has submitted information identified as Trade
(Company Name) Secrets in a separate marked binder. **

_____ has not submitted information identified as Trade
(Company Name) Secrets.

ACKNOWLEDGED BY:

Signature () Telephone

Print Name and Title Date

Address

City State Zip

**Bidders brief statement that clearly sets out the reasons for confidentiality in conforming with the California Government Code definition.

DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS

In their proposal, the bidder is required to disclose if any of the following conditions apply to them, their owners, officers, corporate managers and partners (hereinafter collectively referred to as “Bidder”):

- Within the three-year period preceding the proposal, they have been convicted of, or had a civil judgment rendered against them for:
 - fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
 - violation of a federal or state antitrust statute;
 - embezzlement, theft, forgery, bribery, falsification, or destruction of records; or
 - false statements or receipt of stolen property.
- Within a three-year period preceding their proposal, they have had a public transaction (federal, state, or local) terminated for cause or default.

Disclosure of the above information will not automatically eliminate a Bidder from consideration. The information will be considered as part of the determination of whether to award the contract and any additional information or explanation that a Bidder elects to submit with the disclosed information will also be considered. If it is later determined that the Bidder failed to disclose required information, any contract awarded to such Bidder may be immediately voided and terminated for material failure to comply with the terms and conditions of the award.

Any Bidder who is awarded a contract must sign an appropriate Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Additionally, the Bidder awarded the contract must immediately advise the SJVIA in writing if, during the term of the agreement: (1) Bidder becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the system for award management (<http://www.sam.gov>); or (2) any of the above listed conditions become applicable to Bidder. The Bidder will indemnify, defend and hold the SJVIA harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its owners, officers, corporate managers and partners:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature:

(Printed Name & Title)

Date:

(Name of Agency/Company)

SCOPE OF SERVICES

The selected vendor will be expected to work closely with the SJVIA Board and staff to help manage the ongoing success of the JPA programs. This will include a wide range of services including benefits consulting, client service, financial analysis, actuarial modeling, contract renewals and negotiations, and ultimately program marketing and communication support. Ideally, the selected vendor will have at least 1 consultant dedicated to the SJVIA with additional support based specialty (e.g. – underwriting, marketing, wellness, compliance, legal review).

Subject to any changes and additions as may be mutually agreed by the parties in writing, the selected vendor will provide the SJVIA a wide range of services, including, but not limited to the following key support categories and services:

1. Strategic Planning

- Annual strategic planning meeting with SJVIA Board and staff
- Develop reporting outlining the agreed upon strategic initiatives
- Quarterly meetings covering the progress of strategic initiatives
- Ongoing meetings with current and potential participating entities
- Ongoing feedback covering benefit alternatives
- Author agenda items for SJVIA meetings and drive the preparation for the meetings
- Attend [SJVIA Board meetings](#) and present information and respond to questions
- Participate in weekly calls with SJVIA principals
- Provide timely and accurate updates regarding the Affordable Care Act

2. Financial Monitoring and Reporting

- Develop annual budgets for SJVIA programs
- Provide quarterly summary loss experience reports to JPA
- Provide quarterly reports covering actual versus budgeted costs
- Provide year-end financial reports on the programs in consultation with the SJVIA Auditor-Treasurer
- Work with the SJVIA to develop the annual financial report
- Provide other financial reporting including actuarial valuations
- Benchmark costs by specific line of coverage
- Provide underwriting for participating entities
 - Collect and present detailed claims/utilization results
- Data & claims analysis and reporting
- Develop and present Executive Claims Report at SJVIA Board meetings

3. Renewal Services:

- Annual renewal planning meeting with SJVIA to set objectives
- Renewal meetings with program carriers/vendors
- Preliminary renewal report to SJVIA
- Negotiations with all carriers/vendors regarding financial and benefit terms
- Market programs for viable alternatives as necessary
- Final renewal report to SJVIA with recommendations on actions
- Work with SJVIA to communicate renewals to all member agencies
- Clarify/confirm final renewal terms with SJVIA and all carriers/vendors
- Coordinate bids for stop-loss and actuarial audit (GASB 10)

4. Renewal Rate Setting:

- Review program rating models with the SJVIA Board and staff
- Develop initial renewal rates using actuarial models and performing the required actuarial valuations (see [SJVIA Underwriting Guidelines](#))
- Develop recommended final renewal rate action and individual participating entity rates
- Discuss rating methods and processes with members as needed
- Preliminary renewal report to SJVIA
 - Have preliminary renewal underwriting complete for presentation to the SJVIA Board at the annual July meeting
 - Gather all claims data for all participating entities
 - Determine loss ratio for SJVIA and participating entities
 - Project renewal costs based on established underwriting parameters
 - Review plan relative value differentials
- Review rating results and models as needed
 - Meet and discuss with SJVIA Underwriting Committee
- Project, review and adjust reserve requirements
 - Perform actuarial certification of anticipated rates and reserves
- Present final rating action to the SJVIA Board of Directors

5. Vendor Management:

- Work with the SJVIA to identify and address any vendor issues
- Work with vendors to address billing, claim payment, and other service issues
- Review and track vendor contracts and agreements for accuracy
- Work to develop performance agreements where appropriate
- Meet with vendor's senior management team to assure the highest level of service to the SJVIA members

6. Compliance Services:

- Review current programs with regard to overall compliance
- Provide compliance updates and alerts
- Recommend necessary compliance procedures to the SJVIA and member agencies
- Review the impact of proposed and enacted legislation on SJVIA programs
 - Recommend applicable plan modifications to comply with the ACA
 - Monitor legislative initiatives, regulatory developments, court cases and industry changes, and analyze their impact on the SJVIA
 - Evaluate the design of benefit plans and review relevant documents such as summary plan descriptions, required Summary of Benefit and Coverage, insurance contracts, and employee benefit communications

7. Member Agency Support Services:

- Assistance with difficult service/vendor issues
 - Dedicated Claims Manager/Advocate
- Assistance with member agency and employee level communication pieces
- Provide educational support to understand new program options developed by the SJVIA
- Prompt response to SJVIA staff on any day-to-day questions or issues requiring assistance
- Coordinate and host a weekly meeting and/or conference call regarding SJVIA operations
 - Prepare agenda and forward looking calendar
 - Ongoing contract management
 - Coordinate SJVIA legal issues
- SJVIA Wellness Program
 - Assist with all aspects of Health Management Programs, program launch and ongoing strategic account management and reporting
 - Help coordinate onsite Wellness Programs
 - Coordinate annual “Walking Works” challenge between all entities including sponsor/vendor communication, market materials, sponsor giveaways and daily reporting to participating entities

8. Program Marketing and Promotion:

- Develop communication materials that depict SJVIA programs and services offered to potential JPA members each year
- Underwriting of prospective new members

- Benchmark of plan data with other joint purchasing arrangements, JPAs, and Trust programs
- On-boarding new participating entities
 - Coordinate all contracts with new participating entities
 - Confirm and provide the following (but not limited to):
 - Client payment information
 - Final rate structure
 - Interface with eligibility vendor (currently Hourglass, Inc.)
 - Submit group structure to carriers

9. Day to Day Program Management

- Interface with eligibility reporting firms
- SJVIA Board meeting preparation
 - Prepare meeting agendas and agenda items/materials
 - Adhere to Brown Act and internal SJVIA timing issues for posting agenda items
 - Present items to SJVIA Board as directed by SJVIA staff
 - Record and distribute minutes of Board meetings

VENDOR RESPONSE SECTION

Vendor shall provide the following information in a separate section of their proposal entitled "Vendor Response Section". Vendors shall restate each question, and then provide the vendor response.

A. General Information:

- a. Describe your firm's specific capabilities and qualifications as they relate to providing employee benefits consultant services, including health, dental, prescription and vision.
- b. What is your firm's service philosophy? Does your firm view this relationship as project management or account management? How do you define the two relationships?
- c. Describe your firm's experience in managing and consulting with multi-employer purchasing pools? How many were Public Sector?
- d. Describe in detail your firm's approach to benefits consulting. Include an overview of your firm's strategic planning process and a comprehensive list of specific tasks, which would be provided under the broad area of benefits consulting as it relates to this proposal.
- e. The health industry sometimes creates scenarios where a consultant/firm represents multiple entities from different perspectives. How would you handle representing the SJVIA while simultaneously representing a current or potential prospective entity?
- f. Describe the issues and challenges, as you view them, facing the SJVIA plans in the upcoming year and describe how your organization can assist the SJVIA. What makes your organization different than other organizations that may submit proposals for the SJVIA's consideration?
- g. Describe your firm's approach to transparency.
- h. Describe your role in managing projects, like RFPs and those described in the Scope of Services.

B. Technical Questions:

- a. Please describe your approach to trend rates.
- b. Please describe your IBNR reserve philosophy.
- c. What is your opinion on the use of an actuarially certified reserve?
- d. Please describe your philosophy on holding reserves above the IBNR.
- e. What place does checks and balances play in your underwriting philosophy?

- f. Please describe your specific experience with large health insurance purchasing pools.
- g. How would you recommend that the SJVIA handle growth strategy prospectively?
- h. How would you approach demographic shifts in plans when underwriting new rates?
- i. Based on your knowledge of the SJVIA and recent challenges facing the JPA, what recommendations would you give to the SJVIA Board and staff?
- j. Are you willing to place a portion of your fee “at risk” which would be linked directly to performance objectives established mutually by the SJVIA and the consultant?
- k. What place does contribution strategy and dependent ratios play in your underwriting approach?

C. Specific Vendor Capabilities:

- a. Indicate your firm’s ability to meet face-to-face, at minimum 10 times annually, to assist in the coordination of SJVIA Board meetings and host and coordinate weekly conference calls and meetings.
- b. Describe your firm’s strategies for alerting clients of changes in legislative mandates and assistance in compliance. Specifically, what do you see as the biggest challenges for self-funded, risk sharing pools, like the SJVIA in complying with all aspects of the ACA?
- c. Describe your firm’s specific experience and resources in:
 - a. Pharmacy Benefit Management consulting
 - b. Wellness consulting
 - c. Actuarial services

D. Other Services Provided:

- a. Do you publish newsletters and other informative publications that are routinely provided to your clients? Have you prepared reviews of topics related to the health and actuarial fields that are routinely provided to your clients? Describe your publication and provide sample copies.
- b. Provide a description of any electronic or internet-based tools you provide to your clients.
- c. Are there any other relevant consulting services that are not listed that you will provide as part of your consulting services to the SJVIA?

INSURANCE REQUIREMENTS

Please refer to Exhibit A – Sample Contract for Insurance Requirements

COST PROPOSAL

1. Provide the monthly flat fee to provide consultant services, as outlined in the Scope of Services, to the SJVIA.
2. List all possible administrative fees and charges that would not be included in the flat fee structure.
3. List the portion of your fee that you will place at risk that will be linked directly to performance objectives established mutually by the consultant and the SJVIA.

PROPOSAL CONTENT REQUIREMENTS

It is important that the vendor submit their proposal in accordance with the format and instructions provided under this section. Doing so will facilitate the evaluation of the proposal. It will limit the possibility of a poor rating due to the omission or mis-categorization of the requested information. Responding in the requested format will enhance the evaluation team's item by item comparison of each proposal item. The vendor's proposal may be placed at a disadvantage if submitted in a format other than that identified below.

Bidders are requested to submit their proposals in a binder that allows for easy removal of pages with index tabs separating the sections identified. Each page should be numbered.

NUMBER OF COPIES: Submit one (1) original, with two (2) USB* flash drives enclosed, and two (2) copies of your proposal no later than the RFP closing date and time as stated in this RFP. The cover page of each document is to be clearly marked "Original" or "Copy". Proposals should be submitted to:

**SJVIA Admin Office – Employee Benefits
2220 Tulare St., 14th Floor
Fresno, CA 93721**

***Bidder shall submit two (2) USB Flash Drives containing PDF files of the complete proposal excluding trade secrets. Flash drives should accompany the original binder and should be either attached to the inside cover of the binder or inserted**

in an attached sleeve or envelope in the front of the binder to ensure the flash drives are not misplaced.

Merely offering to meet the specifications is insufficient and will not be accepted. Each bidder shall submit a complete proposal with all information requested. Supportive material may be attached as appendices. All pages, including the appendices, must be numbered.

Vendors are instructed not to submit confidential, proprietary and related information within the request for proposal. If you are submitting trade secrets, it must be submitted in hard copy only in a separate binder clearly marked “TRADE SECRETS” (see Trade Secret Acknowledgement section).

The content and sequence of the proposals will be as follows:

- I. COVER LETTER: A one-page cover letter and introduction including the company name and address of the bidder and the name, address and telephone number of the person or persons to be used for contact and who will be authorized to make representations for the bidder.
- II. TABLE OF CONTENTS
- III. CONFLICT OF INTEREST STATEMENT: The Contractor may become involved in situations where conflict of interest could occur due to individual or organizational activities that occur within the SJVIA. In this section, the bidder should address the potential, if any, for conflict of interest and indicate plans, if applicable, to address potential conflict of interest. This section will be reviewed by SJVIA Counsel for compliance with conflict of interest as part of the review process. The Contractor shall comply with all federal, state and local conflict of interest laws, statutes and regulations.
- IV. TRADE SECRET ACKNOWLEDGEMENT – Sign where required.
- V. CERTIFICATION – DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS
- VI. EXCEPTIONS: This portion of the proposal will note any exceptions to the requirements and conditions taken by the bidder. This portion should also include comments and proposed changes, if any, to the sample agreement (Exhibit A). If exceptions are not noted, the SJVIA will assume that the bidder's proposals meet those requirements.
- VII. VENDOR COMPANY DATA: This section shall include:
 - A. Qualifications and Related Experience:

1. Describe your company's organization, philosophy, management and provide a brief history. Describe your contractual relationships, if any, with organizations necessary to your proposal's implementation (e.g. actuarial services, data information services).
 2. Provide the name(s) and title of all staff to be assigned to perform the work for the SJVIA and a brief statement as to why each consultant is qualified to provide these services. The SJVIA understands that certain consultants will assist in certain areas of services, for example, consultants who perform a claims audit would not be expected to assist in the selection of vendors on which audits would be performed. Identify the area(s) of expertise for each consultant.
 3. Number and location of offices, and total number of employees. State whether any of the services described herein will be performed at any firm office outside California, and if so, what services will be performed outside the State and where these services will be performed.
 4. Confirm that you serve as a consultant or broker, independently, and are not affiliated with any insurance company, third party administrative agency or provider network.
- B. List California public agencies your firm has provided similar services within the past three (3) years. List the number of employees for each agency. Include the contact person and phone number for each agency listed.
- C. Current Workload: Providing a listing of your individuals/firms current and projected workload. The bidder shall include a graph or other informational diagram/format indicating the allocated and available man-hours. Indicate how the SJVIA account will fit into the total workload of the Consultant during the contract period.
- D. Any material (including letters of support or endorsement) indicative of the bidder's capability.
- E. Copies of the audited Financial Statements for the last three (3) years for the agency or program that will be providing the service(s) proposed. If audited statements are not available, compiled or reviewed statements will be accepted with copies of three years of corresponding federal tax returns. This information is to be provided after the RFP closes, if requested. **Do not provide with your proposal.**
- F. Describe all contracts that have been terminated within the last five (5) years, including:
1. Agency contract was with
 2. Date of original contract

3. Reason for termination
 4. Contact person and telephone number for agency
- G. Describe all lawsuit(s) or legal action(s) that are currently pending; and any lawsuit(s) or legal action(s) that have been resolved within the last five (5) years, including:
1. Location filed, name of court and docket number
 2. Nature of the lawsuit or legal action
- H. License Sanctions: List any regulatory or license agency sanctions within the past five (5) years.

VIII. VENDOR RESPONSE SECTION:

- A. Bidders shall use this section to respond to each of the specific points regarding the provision of consultation services. List each question and then provide your response after each question.

IX. SCOPE OF SERVICES:

- A. Bidders are to use this section to describe the essence of their proposal.
- B. This section should be formatted as follows:
1. A general discussion of your understanding of the project, the Scope of Work proposed and a summary of the features of your proposal.
 2. A detailed description of your proposal as it relates to each item listed under the Scope of Services section of this RFP. Bidder's response should be stated in the same order as are the Scope of Services items. Each description should begin with a restatement of the Scope of Services item that it is addressing. Bidders must explain their approach and method of satisfying each of the listed items.
- C. When reports or other documentation are to be a part of the proposal, a sample of each must be submitted. Reports should be referenced in this section and submitted in a separate section entitled "REPORTS."
- D. A complete description of any alternative solutions or approaches to accomplishing the desired results.

E. Bidders should include a proposed exhibit to the sample contract (Exhibit A) to define the scope of services under an agreement in that form.

X. **COST PROPOSAL:** Quotations will be prepared in the format requested. The SJVIA seeks a flat fee retainer for the consultation services requested. List the portion of your fee that you are willing to place at risk that will be linked directly to performance objectives established mutually by the consultant and the SJVIA. Additionally, include details and rates/fees for all services, materials, equipment, etc. to be provided or optional under the proposal. Bidders should include a proposed exhibit to the sample contract (Exhibit A) to define the compensation under an agreement in that form.

XI. **REFERENCE LIST**

AWARD CRITERIA

Respondents will be evaluated on the basis of their responses to all questions and requirements in this RFP and product cost. The SJVIA shall be the sole judge in the ranking process and reserves the right to reject any or all bids. False, incomplete or unresponsive statements in connection with this proposal may be sufficient cause for its rejection.

1. Cost:

A. Total services cost for the term as set forth in the proposal that is most advantageous to the SJVIA based on services provided and cost.

2. Capability and Qualifications:

A. The vendor has demonstrated that it has the qualifications, including staff, experience and resources to provide the consultation services requested by the SJVIA.

B. The service descriptions address all the areas identified in the RFP that will fulfill the SJVIA's consultation service needs in the following areas:

- i. Providing administrative services
- ii. Vendor relations

C. The vendor has demonstrated the ability to provide actuarial services as well as relative data reporting, such as tabulate, analyze and summarize pertinent data, including claims, trends and premiums, into actionable recommendations.

- D. The vendor has clearly explained its knowledge and understanding of the needs of the SJVIA associated with providing the services requested, including:
 - i. The broad landscape of employee health benefits;
 - ii. Employee Benefits product markets;
 - iii. Applicable laws, regulations, statutes; and
 - iv. Effective operating principles required to provide this consulting service.
- E. The vendor has current relevant experience in a comparable or similar public agency.

3. Management Plan:

- A. Is the organizational plan and management structure adequate and appropriate for comprehensive implementation of the requested consultation services?

REFERENCE LIST

**Provide a list of customers for whom you have recently provided similar services.
Be sure to include all requested information.**

Reference Name: _____ Contact: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No.: (_____) _____ Date: _____
Service Provided: _____

Reference Name: _____ Contact: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No.: (_____) _____ Date: _____
Service Provided: _____

Reference Name: _____ Contact: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No.: (_____) _____ Date: _____
Service Provided: _____

Reference Name: _____ Contact: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No.: (_____) _____ Date: _____
Service Provided: _____

Reference Name: _____ Contact: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone No.: (_____) _____ Date: _____
Service Provided: _____

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.

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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,

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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 confidentiality, 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.

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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.

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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 the 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

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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.

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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.

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(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