

**JOINT USE AGREEMENT**  
**Valley Water Stevens Creek West Levee**  
**Trail on Don Edwards San Francisco Bay National Wildlife Refuge Pond A2W East Levee**  
**Between Shoreline Regional Park and Edge of San Francisco Bay**

This JOINT USE AGREEMENT (this “**Agreement**”) is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as “**Valley Water**”, and the United States Fish and Wildlife Service’s Don Edwards San Francisco Bay National Wildlife Refuge, an agency in the Department of the Interior of the federal government of the United States of America, hereinafter referred to as “**Refuge**”. Valley Water and Refuge may be referred to individually as “Party” or collectively as the “Parties” or the “Parties to this Agreement”. This Agreement will become effective on the later of the last-signed signature date set forth below (the “**Effective Date**”).

**RECITALS:**

- A. Valley Water is the owner of certain real property (“**Premises**”) containing a portion of the east levee around Pond A2W (a former salt-production pond), adjacent to the lowermost section of Stevens Creek before it flows into San Francisco Bay, shown on Exhibit A, attached hereto.
- B. Refuge desires to use the Premises to provide public access from the current northern terminus of the Stevens Creek Trail to a viewpoint on Refuge lands on the edge of San Francisco Bay (“**Trail**”).
- C. Valley Water has been a supportive and involved partner with the Refuge and the other South Bay Salt Pond Restoration Project entities for over 20 years, including participating in the Project Management Team and providing technical review and funding support for the project’s activities. This agreement is being entered into in furtherance of the Phase 2 project at Pond A2W.
- D. The Refuge’s and the public’s use of the Premises for the Trail will not unreasonably interfere with Valley Water’s mission of flood protection, water resources management, and stream stewardship.
- E. The Parties find it to be in the public interest to provide for joint use of the Premises by means of this Agreement under the following terms and conditions.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1) **Incorporation of Recitals.** The recitals set forth above are incorporated herein by this reference.
- 2) **Scope of the License Grant to Refuge.** Subject to the terms and conditions of this Agreement, Valley Water hereby grants to Refuge a non-exclusive license to access and do any or all the following on the Premises:
  - a. To construct, operate, maintain, repair, replace, and remove improvements and other Trail

amenities for public recreational purposes on the Premises including, but not limited to, Trail designated for use by pedestrians, bicycles, and drivable by passenger vehicles for Refuge operations and maintenance, (collectively, “**Refuge Improvements**”). Any and all work related to construction, operations, and maintenance of the Trail will be completed in accordance with applicable federal, state, and local environmental regulations, including but not limited to the federal and state Migratory Bird Treaty Acts, Clean Water Act, federal and state Endangered Species Act, the California Fish and Wildlife Code, and the Porter-Cologne Act and any amendments thereto. All Refuge Improvements shall comply with all building and fire codes and other applicable legal requirements. If Valley Water approves the Refuge Improvements, Valley Water shall issue a permit to Refuge for the improvements (“**Valley Water Permit**”), which approval shall be in Valley Water’s sole discretion; provided that Valley Water’s approval shall not be unreasonably delayed, conditioned, or withheld.

b. To provide for public access such as bicycling, walking, jogging, hiking, and similar Trail uses in accordance with all applicable legal requirements to the extent such activities do not interfere with Valley Water’s mission of flood protection, water resource management, and stream stewardship.

c. To host special public recreational events (e.g., races, bike-to-work events, etc.) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as Valley Water issues Refuge a Valley Water Permit to host the event.

d. Subject to the conditions and restrictions contained in this Agreement, Refuge shall have full authority to restrict, control, regulate, and/or supervise public use of the Trail for recreation. Refuge may, at its discretion, consistent with Valley Water’s Superior Rights and Refuge’s Subordinate Rights described in Section 7, and without diminution of Valley Water’s ability to provide flood protection, stream stewardship, water resources management, including the operation and maintenance thereof, or hazardous materials cleanup on the Premises, take any measures of every kind that, in the opinion of Refuge, may be necessary for the health and safety of the public using the Premises. Refuge is responsible for any damage to either Valley Water improvements or Refuge Improvements that result from Refuge’s or the public’s use of the Premises. Refuge will be responsible for all costs for repair of damage to Valley Water or Refuge’s improvements caused by Refuge or the public.

**3) Prohibited Uses of Trail.** Refuge shall post Trail notices as appropriate in accordance with Refuge policies and practices notifying users that the following are prohibited:

- Entry of motor vehicles (except for Refuge staff and partners for operations and maintenance or repairs, emergency, enforcement vehicles and mobility devices otherwise allowed by law, researchers approved for work on Refuge lands, and PG&E staff and contractors for access to adjacent power lines and towers)
- Unleashed dogs
- Public access during Trail closures when maintenance equipment and vehicles and/or emergency vehicles are present

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, Refuge shall have the sole authority and responsibility to adopt Trail rules and regulations consistent with Federal, State, and local regulations to govern the public's use of the Premises that will not interfere with Valley Water's mission of flood protection, water resources management, and stream stewardship, as determined by Valley Water.

- 4) **Security.** Refuge personnel, partners, and/or volunteers supervised by Refuge shall patrol the Premises to provide the same level of public safety afforded to similar areas of the Refuge. Valley Water has no obligation whatsoever to provide or pay for such patrols.
- 5) **Encampments.** Refuge is responsible for abating any encampment which blocks Refuge access, interferes with Valley Water's mission of flood protection, water resources management, and stream stewardship on the Premises, is a safety threat or hazard to the public's use of the Premises, or otherwise adversely impacts the public's use of the Premises, as determined by Refuge.
- 6) **Public Complaints.** Refuge is responsible for responding to all public complaints and inquiries regarding Refuge Improvements, including the Trail, and to all complaints and inquiries regarding the public's use of the Premises.
- 7) **Construction, Maintenance, and Repairs.**

a. The terms and conditions of this Agreement will not in any way interfere with the absolute, free, and unrestricted right of Valley Water to operate and maintain, or to repair or construct any of its works, upon the Premises ("**Superior Rights**"). Refuge will have the right to build additional improvements on the Premises necessary or convenient to the enjoyment of this Agreement, provided that any such improvement is, in each case during the term of this Agreement, first approved by Valley Water by issuance of a Valley Water Permit in its sole, unfettered discretion ("**Subordinate Rights**"). Refuge acknowledges Valley Water's Superior Rights and that Refuge's rights are subordinate thereto.

iii) If Valley Water requires that any other Refuge Improvement be removed or relocated for any Valley Water purpose, Refuge will do so at its own expense within 90 days after receiving written notice from Valley Water.

iv) If removal or relocation of Refuge Improvements, including vegetation installed by Refuge, results in impacts requiring mitigation under the California Environmental Quality Act or as a regulatory permit requirement, Refuge will be responsible for all costs required to fulfill any required mitigation responsibilities, including providing lands to place mitigation and providing mitigation monitoring and reporting.

v) If Valley Water engages in any construction on the Premises, Valley Water will inform Refuge during preconstruction planning to minimize any adverse impact of Valley Water's project on Refuge Improvements.

vi) Valley Water agrees to exercise reasonable care during construction, operations, maintenance, and repair activities to minimize damage to Refuge Improvements. As of the effective date of this Agreement, the Parties understand that the Stevens Creek channel and its bordering marshes remain Valley Water property and are part of Valley Water's

system for flood management in the Stevens Creek watershed. They are in a condition that will require occasional rehabilitation or other improvement to maintain or increase their flood protection values and to provide or maintain stream stewardship values. Valley Water is not responsible for any damage to or replacement of Refuge Improvements that results from Valley Water's construction, operation, maintenance, or repair of flood protection or stream stewardship facilities located on or near the Premises, including, without limitation, any flood flows or inundation from Stevens Creek on the Premises, unless the damage to Refuge Improvements is caused by Valley Water's sole negligence or willful conduct.

vii) Any replacement of Refuge Improvements following Valley Water's construction, maintenance, or repairs on the Premises will be Refuge's responsibility and cost and shall require a Valley Water Permit under Section 2(a). Refuge is solely responsible for informing the public on the operational status of the Trail, including any plans to close the Trail temporarily or permanently.

viii) In non-emergencies, Refuge and Valley Water staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:

(a) Maintenance issues related to improvements;

(b) Non-emergency work requiring the use of heavy equipment, barricading, pedestrian detour plans, and/or restricting access to the Premises. Valley Water and Refuge further agree to notify one another's designated representative at least ten workdays prior to commencement of such work to minimize public impacts.

ix) In an emergency on or affecting the Premises, Valley Water may require removal or relocation of any Refuge Improvement without notice to Refuge.

b. Refuge has sole responsibility for:

i) the construction, operation, maintenance, and repair of all Refuge Improvements, including the following, which will be implemented as needed and up to the limits of the Refuge's appropriated funding and in accordance with the Anti-Deficiency Act and the Adequacy of Appropriations Act (41 U.S.C. 6301 et seq.):

- Trash and Litter Removal. Refuge will remove trash from the Premises that is likely to have been generated from public use of the Premises. Refuge will be responsible for maintaining, servicing, and emptying trash receptacles and for rubbish removal as reasonably necessary, including providing for lawful disposal of hazardous waste and/or biowaste.
- Vegetation Management. If existing vegetation or trees interfere with Refuge Improvements, the public's use of the Premises, or have been deemed hazardous and a danger to the safety of the public, Refuge is responsible for trimming or removal, as Refuge deems necessary, in accordance with applicable federal and state laws and Valley Water Permit requirements. Valley Water shall provide vegetation management as needed consistent with its management of comparable facilities. All vegetation management by Refuge or Refuge partners, volunteers, or contractors on the Premises must follow best management practices to avoid spread of invasive plants and plant pathogens. Herbicide use on the Premises must be performed by or under the direct supervision of a licensed Qualified Applicator Certificate/Qualified Applicator License (QAC/QAL) to ensure herbicides are only

applied on the Trail or Refuge Improvements, are suitable for the purpose and environment they are applied to, and do not drift onto adjacent Valley Water mitigation habitat, waters, or natural habitat. Refuge shall only use herbicides approved for aquatic use in all areas below top of bank of a creek, within 20 feet of top of bank of a creek, or where required by law.

- Graffiti Removal. Refuge will have the primary responsibility for removal of graffiti on the Premises reasonably attributed to use of the Trail. Refuge will provide graffiti removal in compliance with its own management and maintenance practices. No permit from Valley Water, nor any advance notice, will be required for Refuge to remove routine graffiti from any Refuge or Valley Water facility within the Premises. Any and all materials used by Refuge in the removal of graffiti within the limits of this Agreement shall be approved for use in the State of California and consist of environmentally safe products which will not harm the creek, marsh, or levee surface environment of the Premises in any way.

ii) maintenance and operation of all Refuge Improvements in usable and safe condition; and  
iii) the duty, cost, and expense of providing any security; preparation of traffic and pedestrian detour plans depicted on attached Exhibit A: PREMISES AND TRAIL MAPS, including installation of required appurtenances; public notices/communications/signage for Trail closures or detours; Trail amenities (including fencing); modifications or replacements; or other expenditure necessary to temporarily prohibit or control public access to the Premises that Valley Water would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision; and

iv) implementation of the Trail Maintenance Plan in Exhibit B.

**8) Water Level Fluctuations.** The level of water on or adjacent to the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the Premises. Refuge shall be responsible for the control of or limiting the public's use of the Premises to protect the health and safety of the public from fluctuation in water levels or flooding of the Premises.

**9) Signage.** Refuge has sole responsibility for providing signage pursuant to Section 7(b) to notify the public of Trail closures. The Parties will cooperate to create and install signage that benefits the programs of each Party such as Trail closure detour signage, maintenance vehicle warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer of Valley Water and the Refuge Manager or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage that serves the needs of both parties. All signs placed on the Premises by Refuge (except existing signs that identify the facility (e.g., Trail) by name) must include Valley Water's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all Refuge signs placed on the Premises or Refuge publications relating to the Trail that describe water resources must be developed in conjunction with Valley Water. Each Party is responsible for the maintenance and upkeep of its signage installed on the Premises.

- 10) Bird Nesting Season.** To the extent feasible, the Parties shall avoid construction or maintenance activities on the Premises during bird nesting season (generally between January 15th and August 31st). If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend that the Refuge implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible Party (Refuge or Valley Water, and/or their agents) performing said work.
- 11) Term of Agreement.** The term of this Agreement (including the rights and obligations contained herein), shall commence on the Effective Date and shall expire on the 25th anniversary of the Effective Date, unless either Party requests a renewal of and/or amendment to the agreement no less than 180 days prior to the expiration of the then-existing term. If either Party requests a renewal and/or amendment to the agreement, and a renewal and/or amendment has not been implemented prior to the expiration of this Agreement, then Refuge shall either close and prevent public access to the Premises until a new agreement is executed or, subject to written approval by Valley Water's Chief Executive Officer and upon written request by Refuge, this Agreement may be extended for no more than 1 year to maintain public access to the Premises while ongoing efforts are made to execute a new Agreement. In the event Valley Water transfers fee title of the Premises or the property boundary records for the relevant parcels are amended to place the Premises into U.S. Fish and Wildlife Service ownership, then this Agreement is terminated.
- 12) Termination of Agreement.** Either Party may terminate this Agreement after providing the other Party with at least 90 days prior written notice of its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, Refuge must remove all Refuge Improvements, except for the existing Trail, from the Premises and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. Notice of intent to terminate may be given by the Refuge Manager. Notice of intent to terminate may be given by Valley Water's Chief Executive Officer.
- 13) Indemnification by Refuge.** Refuge agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee or official volunteer of the United States in the performance of any service or operation arising out of this Agreement.

To the fullest extent permitted by law, Refuge hereby agrees to require all Refuge partners to indemnify, defend, and hold Valley Water, its officers, employees, agents, and volunteers harmless from any liability for damage or claims for damage for personal injury, including, but not limited to, death and/or property damage caused by negligent acts, errors, or omissions in performance of their services or operations under this Agreement, and to name Valley Water as an additional insured and provide Valley Water with the insurance requirements set forth in Exhibit C. For purposes of clarity, this paragraph does not apply to non-profit partners who are signed up as official volunteers and therefore, treated as employees of Refuge.

To the fullest extent permitted by law, Refuge hereby agrees to require its agents, non-profit partners that are not signed up with Refuge's "official volunteers", contractors, and subcontractors (collectively, "Contractors") to indemnify, defend, and hold Valley Water, its officers, employees, agents, and volunteers harmless from any liability for damage or claims for damage for personal injury, including, but not limited to, death and/or property damage resulting from negligent acts, errors, or omissions in performance of their services, maintenance, or operations under this Agreement, including but not limited to maintenance operations performed within the Premises by Refuge's Contractors or as the result of a Hazardous Materials Release arising or resulting from the activities of Contractors, and to name Valley Water as an additional insured and provide Valley Water with the insurance requirements set forth in Exhibit C. Valley Water shall cooperate reasonably in the defense of any action. Subcontractor(s) will not be required to comply with the indemnification provisions of this paragraph if the applicable contractor provides indemnification consistent with this paragraph for the subcontractor(s). Notwithstanding, and for clarification purposes, subcontractors shall be required to name Valley Water as an additional insured and provide Valley Water with the required insurance.

Non-profit partners who are signed up as official volunteers are treated as employees of Refuge for purposes of this agreement.

- 14) Indemnification by Valley Water.** Notwithstanding any other provision of this Agreement, Valley Water agrees to indemnify, defend, and hold harmless Refuge, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses, and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of and are caused by Valley Water's active or gross negligence or willful misconduct. This Agreement to defend, indemnify, and hold harmless Refuge will operate only to the extent that the basis of the claim, liability, loss, damage, or injury is a result of Valley Water's active or gross negligence or willful misconduct and not a result of or caused by any physical condition of Premises.
- 15) Insurance.** Refuge and Valley Water shall, throughout the duration of this Agreement, maintain and cause its contractors to maintain sufficient insurance and coverage as described in Exhibit C, attached hereto and incorporated herein. Refuge and Valley Water can meet the insurance requirements of this Section 15 through self-insurance which can be substantiated by issuance of a certificate of self-insurance.
- 16) Notices.** Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either Party in writing:

**Refuge:**

U.S. Fish & Wildlife Service – Don Edwards San Francisco Bay National Wildlife Refuge  
Attention: Refuge Manager  
1 Marshlands Road  
Fremont, CA, 94555

**Valley Water:**

Santa Clara Valley Water District  
Attention: Clerk of the Board  
5750 Almaden Expressway  
San Jose, CA 95118  
w/copy to Lands Management Program

- 17) **Successors and Assigns.** This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. Refuge will neither assign nor sublet this Agreement without the prior written consent of Valley Water.
- 18) **Choice of Law.** Choice of Law and Venue. This Agreement is governed by and enforced in accordance with the laws of the State of California and the United States of America, as applicable. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.
- 19) **Amendments.** This Agreement may not be modified or amended except in writing signed by the authorized representative of both parties and approved as required by applicable law.
- 20) **Compliance with Laws.** Each Party shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all applicable federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.
- 21) **Not Real Property Interest.** It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee, or other interest in a Party's real property to the other Party.
- 22) **Attorney's Fees.** In the event of a dispute between the Parties with respect to the terms or conditions of this Agreement, each Party is responsible for its own.
- 23) **Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in force without being impaired or invalidated in any way; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 24) **Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be provided, in writing, and shall apply to the specific instance expressly stated.
- 25) **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties concerning the public's use of the Premises and supersedes all prior written and oral understandings concerning the public's use of the Premises.

- 26) Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- 27) Electronic Signature.** Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.
- 28) No Third-Party Beneficiaries.** This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.
- 29) Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Refuge and Valley Water.
- 30) Entire Agreement and Incorporation of Exhibits.** This Agreement, together with all exhibits referenced herein and attached hereto, constitutes the entire agreement between the Parties and supersedes all prior written and oral understandings.

*signatures next page*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year last written below.

**"Refuge"**

U.S. Fish & Wildlife Service – Don Edwards San Francisco Bay National Wildlife Refuge  
A United States federal agency

**"Valley Water"**

SANTA CLARA VALLEY WATER DISTRICT,  
a Special District, created by the California Legislature

By: CHRISTOPHER BARR Digitally signed by CHRISTOPHER BARR  
Date: 2025.04.10 14:20:04 -07'00' Date: \_\_\_\_\_  
Christopher J. Barr  
Refuge Complex Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Melanie Richardson, P.E.  
Interim Chief Executive Officer

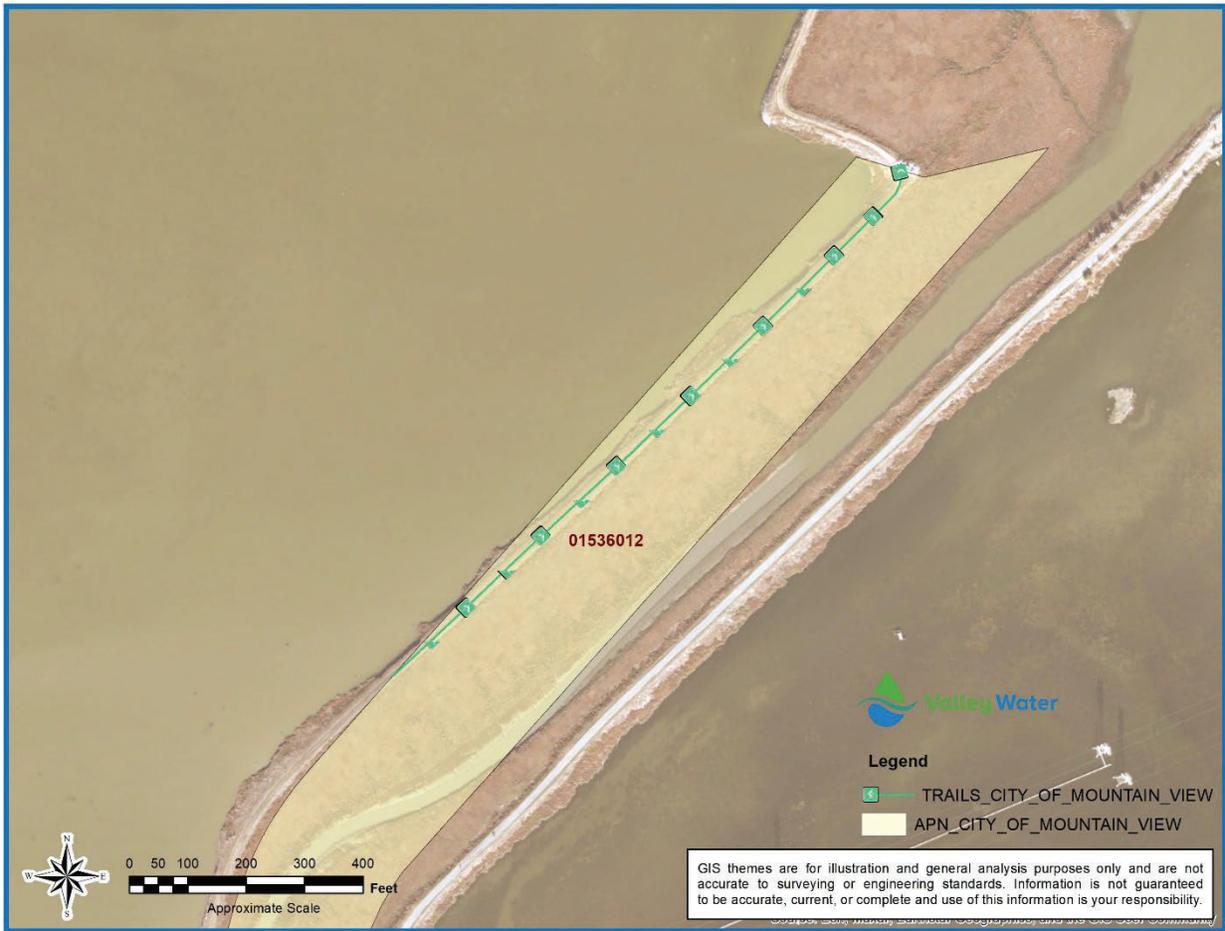
ATTEST:

\_\_\_\_\_  
Candice Kwok-Smith  
Clerk, Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Susana Inda  
Assistant District Counsel

EXHIBIT A - PREMISES AND TRAIL MAP



Document Name: Join Use Agreement MERGE

## EXHIBIT B—PARTNER AGENCY TRAIL MAINTENANCE PLAN

Planned trail maintenance activities will typically include the following:

- a. Annual survey and condition inspection of Trail and levee as part of routine Refuge operations and management.
- b. As necessary and within the limits of the resources provided by appropriated funds, perform operation and management of Trail and levee, including activities such as vegetation management, invasive species control, repair or replacement of surfacing, and removal of trash or graffiti.

## EXHIBIT C—INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("Valley Water") and the United States Fish and Wildlife Service Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions as listed below.

Contractor must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Contractor's insurance agent(s) and/or broker(s), who have been instructed by Contractor to procure the insurance coverage required herein.

In addition to certificates, Contractor must furnish Valley Water with copies of all original endorsements affecting coverage required by this Attachment. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by Valley Water.** In the event of a claim or dispute, Valley Water has the right to require Contractor's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Attachment insurance document.

If your insurance broker has any questions about the above requirements, please advise him/her to email Valley Water Risk Manager at [RiskManager@valleywater.org](mailto:RiskManager@valleywater.org).

### **CERTIFICATES OF INSURANCE**

Contractor shall furnish Valley Water with a Certificate of Insurance. The certificates will be issued on a standard ACORD Form.

Contractor shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the designated Valley Water Agreement Administrator and email a copy to [valleywater@ebix.com](mailto:valleywater@ebix.com).

The certificates will:

1. Identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term;
2. Include copies of all the actual policy endorsements required herein; and
3. In the "Certificate Holder" box include:

**Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118**

**and**

**U.S. Fish & Wildlife Service – Don Edwards San Francisco Bay National Wildlife Refuge  
1 Marshlands Road  
Fremont, CA, 94555**

In the Description of Operations/Locations/Vehicles/Special Items Box:

1. Certificate Holder shall be named as Additional Insured;
2. Valley Water agreement or project number shall appear;
3. The list of policies scheduled as underlying on the Umbrella policy shall be listed; and
4. Waiver of Subrogation must be indicated as endorsed to all policies.

**If Contractor receives any notice that any of the insurance policies required by this Exhibit C, Insurance may be cancelled or coverage reduced for any reason whatsoever, Contractor or insurer shall immediately provide written notice to the designated Valley Water Agreement Administrator that such insurance policy required by this Exhibit C Insurance is canceled or coverage is reduced.**

### **MAINTENANCE OF INSURANCE**

If Contractor fails to maintain such insurance as is called for herein, Valley Water, at its option, may suspend payment for work performed and/or may order Contractor to suspend all Contractor's work at Contractor's expense until a new policy of insurance is in effect.

### **RENEWAL OF INSURANCE**

Contractor will provide Valley Water with a current Certificate of Insurance and endorsements within Thirty (30) business days from the expiration of insurance.

Contractor shall instruct its insurance broker/agent to:

1. Submit all renewals of insurance certificates and required notices electronically in PDF format to:  
  
[valleywater@ebix.com](mailto:valleywater@ebix.com)
2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118**

Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

### **REQUIRED COVERAGES**

1. **Commercial General/Business Liability Insurance** with coverage as indicated:  
  
**\$500,000** per occurrence/**\$500,000** aggregate limits for bodily injury and property damage.  
  
**\$500,000** Products/Completed Operations aggregate (to be maintained for at least three (3) years following acceptance of the work by Valley Water.

General Liability insurance must:

- a. Be written on standard ISO forms, or inspected by Valley Water Risk Manager.
- b. Include coverage at least as broad as found in standard ISO form CG 0001.
- c. Include Premises and Operations.
- d. Include Contractual Liability expressly including liability assumed under this Purchase Order.
- e. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- f. Include Owners and Contractor's Protective liability.
- g. Include Severability of Interest.
- h. Include Explosion, Collapse and Underground Hazards, (X, C, and U).
- i. Include Broad Form Property Damage liability.
- j. Contain no restrictive exclusions (such as but not limited to CG 2153, CG 2144 or CG 2294).

Valley Water reserves the right to require certain restrictive exclusions be removed to ensure compliance with the above.

**2. Business Auto Liability Insurance** with coverage as indicated:

**\$500,000** combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

**Excess or Umbrella policies** may be used to reach the above limits for the General Liability and/or Business Auto Liability insurance limits, however all such policies must contain a primacy clause (See Section 2, General Conditions) and meet all other General Conditions below.

**3. Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for Valley Water.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

## GENERAL REQUIREMENTS

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s):** Contractor must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. **NOTE:** This section does not apply to the Workers' Compensation.
2. **Primacy Clause:** Contractor will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that Contractor's insurance is primary with respect to any other insurance which may be carried by Valley Water, its Directors, its officers, agents and employees, and Valley Water's coverage must not be called upon to contribute or share in the loss. **NOTE:** This section does not apply to the Workers' Compensation policies.
3. **Cancellation Clause:** Contractor will provide endorsements for all policies stating that the policy will not be cancelled without 30 days prior notification to Valley Water.
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Valley Water's Risk Manager. Non-Admitted companies may be substituted on a very limited basis at the Risk Manager's sole discretion.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by Valley Water. At the option of Valley Water, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Valley Water, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Contractor agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **Subcontractors:** The Contractor shall secure and maintain or shall be responsible for ensuring that all subcontractors performing the Contract Services secure and maintain all insurance coverages appropriate to their tier and scope of work in a form and from insurance companies reasonably acceptable to Valley Water.
7. **Amount of Liability Not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of Valley Water must not be deemed to release or limit any liability of Contractor. Damages recoverable by Valley Water for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** Except for Professional Liability, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Contractor agrees to waive subrogation against Valley Water to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy,

Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Contractor agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.

10. **Non-compliance:** Valley Water reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

### CHECKLIST OF DOCUMENTS NEEDED

<b>General Liability:</b>	A.	Limits ( <b>\$500,000</b> )	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
<b>Auto Liability:</b>	A.	Limits ( <b>\$500,000</b> )	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
<b>Umbrella:</b>	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
<b>Workers' Comp:</b>	A.	Limits ( <b>\$1,000,000</b> )	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	

Exhibit C, Joint Use Agreement GL/AL \$500K/WC\_11.26.2024

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