

**AGREEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF
THE MOFFETT PARK GREEN LINK BORDEAUX-
BORREGAS BRIDGE PROJECT**

THIS AGREEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF THE MOFFETT PARK GREEN LINK BORDEAUX-BORREGAS BRIDGE PROJECT (this “Agreement”) is made as of August 8, 2023 by and between Google LLC, a Delaware limited liability company (“Google”) and the Santa Clara Valley Water District (“Valley Water”), a special district of the State of California. Google and Valley Water are each sometimes referred to herein as a “Party” and, collectively, as the “Parties”.

RECITALS

- A. On September 9, 2014, Valley Water’s Board of Directors certified the Final Environmental Impact Report (SCH No. 2013012041) (the “Valley Water EIR”) and approved the Sunnyvale East and West Channels Flood Protection Project (“Valley Water Project”) as lead agency pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) (CEQA).
- B. The Valley Water Project is designed to protect certain areas within the City of Sunnyvale (“City”) against 100-year riverine flooding. As explained in the Valley Water EIR, the scope of the Valley Water Project includes vertical floodwalls to be constructed along existing maintenance roads, parallel to the channels, on either the inboard side (between the maintenance road and the channel) or outboard side (outside of the channel and the maintenance road), including the West Bank and East Bank Floodwalls proposed as part of the Google Project (defined below).
- C. Valley Water has considered the Valley Water EIR and the CEQA Determination (defined below) for the Google Project (defined below) prior to deciding whether or not to approve this Agreement.
- D. A portion of the Valley Water Project is located in the relevant part on the east and west banks of the Sunnyvale West Channel flood control channel (“West Channel”) adjacent to and across from 1212 Bordeaux Drive in the City (“Valley Water Property”), as depicted on **Exhibit A**, attached hereto.
- E. Google is the owner of certain real property adjacent to and on both sides of the Valley Water Property, Assessor Parcel Nos. 110-25-040 and 110-35-031 (“Google Property”), also as depicted on **Exhibit A**.
- F. Google proposes to make certain improvements on Valley Water Property and Google Property, including the installation of (i) the Google Trails (defined below); (ii) a new bridge crossing the West Channel on Valley Water Property for use by pedestrians and bicyclists (“Channel Bridge”), including associated headwalls (“Channel Bridge Headwalls”); (iii) a new raised floodwall on the west bank of



the West Channel between the Channel Bridge and the existing floodwall constructed as part of the Moffett Place Development Channel Improvement Project (“**West Bank Floodwall**”) for a span of approximately 430 feet and a new raised floodwall on the east bank of the West Channel between the Channel Bridge and the existing floodwall constructed as part of the Moffett Place Development Channel Improvement Project (“**East Bank Floodwall**”) for a span of approximately 195 feet (collectively, “**West Bank and East Bank Floodwalls**”); (iv) in-situ walls to negate the need for in-channel work; (v) native plantings and an associated irrigation system adjacent to the Channel Bridge; and (vi) other appurtenant improvements (collectively, “**Google Project**” or “**Google Project Improvements**”), in the general location shown (subject to refinement after geotechnical investigation and completion of all design/engineering plans) and as schematically depicted on “**Google Project Area and Google Project Improvements**”, attached hereto as **Exhibit B**.

- G. As depicted on the “**Operation and Maintenance Responsibility Diagram**” attached hereto as **Exhibit C**, the West Bank and East Bank Floodwalls include three structural components: (i) Channel Bridge abutments, which will support the Channel Bridge and will function as flood walls (“**Bridge Abutments**”); (ii) wingwalls, which will be attached to the Bridge Abutments, will also support the Channel Bridge, and will function as floodwalls (“**Wingwalls**”); and (iii) floodwalls that will extend from the Wingwalls (“**Valley Water Floodwalls**”). The Channel Bridge, Channel Bridge Headwalls, Bridge Abutments and Wingwalls are referred to collectively herein as the “**Google Bridge Structures**”.
- H. If removal of the Channel Bridge and Channel Bridge Headwalls is required under Section 5.4.2 below, infill walls for FEMA flood certification will be added to the Bridge Abutments (“**Infill Walls**”), as depicted on Exhibit C.
- I. The Google Project is a component of Google’s Moffett Park Green Link project, which consists of a series of connected pathways intended for cycling and walking throughout the City (“**Green Link**”). The Google Trails and Channel Bridge will connect existing Green Link pathways on 1212 Bordeaux Drive and 1265 Borregas Avenue in the City.
- J. No work will take place below the top of either the east or west banks of the West Channel as part of the Google Project.
- K. On July 22, 1960, the Superior Court of the State of California in and for the County of Santa Clara issued a Final Order and Decree of Condemnation (Order No. 110939) filed with the County Recorder for the County of Santa Clara on July 25, 1960 in Book 4865 at pages 62-66 as Document No. 1850008, which was amended by the Order Amending and Correcting Final Order and Decree of Condemnation filed with the County Recorder for the County of Santa Clara on December 14, 1960 in Book 5013, at pages 690-692 as Document No. 1923044 (together, “**Court Order**”).

- L. Pursuant to the Court Order, Google has the right to install the Channel Bridge on Valley Water Property. As stated therein, Google has the “the right to build or install and maintain structures to cross over and/or under storm water drainage facilities to be constructed by [Valley Water] on and including the [Valley Water Property]; provided such crossings will be constructed in such a manner that there will be only minimum interference with the maintenance of [Valley Water’s] planned or constructed flood control and/or storm water drainage facilities and that such facilities will not be obstructed or endangered by any such crossings.” The Google Trails on Valley Water Property are necessary to access and travel across the Channel Bridge and are therefore also authorized under the Court Order.
- M. The West Bank and East Bank Floodwalls proposed as part of the Google Project are also original components of the proposed Valley Water Project, with modifications to the proposed alignment. Therefore, Valley Water intends to share with Google the cost of constructing the modified West Bank and East Bank Floodwalls in accordance with the terms and conditions set forth in this Agreement.
- N. The Valley Water Property is subject to a 2022 Joint Use Agreement between Valley Water and the City, which pertains to the West Channel and the East Channel and grants a license to the City to construct, operate, maintain, repair, replace, and remove improvements along the West Channel including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, and fixtures (trash receptacles, benches etc.) for recreational purposes including non-motorized bicycling, walking, jogging and hiking activities.
- O. The 2022 Joint Use Agreement will be amended pursuant to a new 2023 Joint Use Agreement between Valley Water and the City, which was approved by the City Council on May 16, 2023 and is expected to be approved by the Valley Water Board concurrent with this Agreement. Among other things, the 2023 Joint Use Agreement will modify the conditions precedent under Section 2 of the 2022 Joint Use Agreement to allow for implementation of the rights and obligations of the parties therein to be triggered upon issuance by Valley Water of a permit for construction of improvements for the Google Project.
- P. The City and Google will separately enter into a Voluntary Improvement, Operation and Maintenance Agreement for certain Improvements (defined therein) proposed as part of the Google Project, which applies to the portion of the Valley Water Property that is subject to the 2023 Joint Use Agreement and authorizes Google to construct the Channel Bridge and Google Trails (defined below) and, among other things, requires Google to perform the City’s related maintenance and operation obligations under the 2023 Joint Use Agreement.
- Q. On April 20, 2023, the City, as a responsible agency under CEQA, prepared an addendum to the Valley Water Project EIR, which describes design changes to the previously approved Valley Water Project, including design changes to be implemented by the Google Project, and analyzes the environmental effects that



could result from the Valley Water Project changes (“**Addendum**”). As set forth in the Addendum, none of the conditions described in CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387) Section 15162(a) would occur as a result of the Valley Water Project changes, and therefore an addendum is the appropriate level of environmental review under CEQA to support approval of the Google Project pursuant to CEQA Guidelines Section 15164(a). Valley Water has considered the EIR and Addendum prior to deciding whether or not to approve this Agreement.

- R. On April 24, 2023, the City approved a Miscellaneous Plan Permit (MPP) with conditions of approval for the Google Project pursuant to City Planning Application No. 2022-7354, which, requires a public access easement on Google Property on the east side of the West Channel. City approval of a building permit will also be required.
- S. Upon Valley Water Acceptance (defined below), Valley Water shall operate and maintain the Valley Water Floodwalls pursuant to the Moffett Park Green Link Bordeaux-Borregas Bridge Project: Operation and Maintenance Agreement (“**O&M Agreement**”) separately agreed to by the Parties.
- T. Following construction of the Google Project, Google intends to maintain ownership of and maintenance responsibilities for the Google Bridge Structures and Google Trails pursuant to the O&M Agreement separately agreed to by the Parties.
- U. Google intends to construct the Google Project upon receipt of all required permits and approvals from regulatory and public agencies, including Valley Water, in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The Recitals above are incorporated into this Agreement as set forth herein.

2. Definitions. In addition to the defined terms in the Recitals, the following defined terms shall apply for purposes of this Agreement.

2.1 The term “**Google Trails**” means new publicly accessible multi-use trails for use by pedestrians and bicyclists (i) on both sides of and perpendicular to the West Channel, including associated stairs, ramps and retaining walls, which will connect to the Channel Bridge and existing Green Link pathways and (ii) on the top of the west bank of the West Channel in the same general location as the top-of-levee trail proposed as part of the Valley Water Project (“**West Bank Levee Trail**”), which will connect to the Channel Bridge and the asphalt pathway at the



Google Moffett Place Campus. The West Bank Levee Trail may be used by Valley Water and Google maintenance vehicles.

2.2 The term “**Valley Water Work**” means Valley Water’s flood protection channel maintenance and any other Valley Water work not otherwise included herein, including but not limited to (i) Valley Water maintenance obligations listed in the O&M Agreement (ii) construction, reconstruction, inspection, operation, maintenance, improvement, and repair of the Valley Water Floodwalls and appurtenant structures, except as specified in Section 3.1.3 (Inspection of Google Bridge Structures) of the O&M Agreement; (iii) planting, trimming or removing trees or brush; (iv) removal of earth, rock, sand, gravel, or other materials; and (v) if applicable, construction, maintenance, installation or management of any mitigation measures as may be required by regulatory agencies, including those related to Valley Water’s Stream Maintenance Program.

3. Google’s Obligations

3.1 Permitting. Coordinate with Valley Water in obtaining all required regulatory and public agency permits and authorizations prior to proceeding with construction of the Google Project. Such permits and authorizations include, but are not limited to, those permits listed in **Exhibit D** attached hereto.

3.2 Construction Contract. Contract for construction of the Google Project. Construction shall fully comply with the appropriate local, state, federal laws and ordinances, including full compliance with the applicable regulatory permits, and in accordance with FEMA’s Conditional Letter of Map Revision (CLOMR) to provide for 100-year levee/floodwall certification and meet National Flood Insurance Program requirements. Upon completion of the Google Project, Google shall record and provide Valley Water with a Notice of Completion of said project.

3.3 Construction Control. Assume sole responsibility for (i) construction of the Google Project, including compliance with all related permit conditions and (ii) all persons or entities engaged by Google in such work, including, but not limited to, contractors, subcontractors, suppliers, and service providers. Google’s contractor will be responsible for constructing the Google Project in conformance with the final construction documents approved by Valley Water. Google shall identify and provide a Google-authorized representative that shall function as the primary contact person for all communications related to the encroachment permit described in Section 4.3 (Encroachment Permit) below.

3.4 Warranty

3.4.1 For purposes of this Agreement, “**Defect**” is defined as a design defect and/or structural defect(s) of the Valley Water Floodwalls and/or Google Bridge Structures required for FEMA flood certification (including both patent and latent defect(s)) caused by faulty or defective design, construction materials, or workmanship, as determined by a licensed engineer.

3.4.2 For purposes of this Agreement, “**Completion of Construction**” is defined as the later of (i) Google contractor’s issuance of, and Valley Water receipt of, the Certificate of Substantial Completion for the Valley Water Floodwalls and Google Bridge



Structures required for FEMA flood certification and (ii) sign off on all required permits related to the construction of the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification by Valley Water, and other state/federal agencies, as applicable.

3.4.3 For purposes of this Agreement, “**Warranty Period**” is defined as a one (1) year period for any patent Defect(s) and a ten (10) year period for any latent Defect(s), both periods commencing upon Completion of Construction of the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification.

3.4.4 Correct, or cause the Google contractor and/or design professional(s), as applicable, to correct any Defect to or of the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification during the applicable Warranty Period.

3.4.5 Notwithstanding any language in this Agreement to the contrary, the establishment and acceptance of a one (1) year Warranty Period from Google’s contractor for patent Defects does not operate to limit, reduce, waive and/or alter any applicable statute of limitations and statute of repose, including but not limited to Code of Civil Procedure Section 337.1, that are available to Valley Water pertaining to patent Defects.

3.5 Prevailing Wage. Require the Google contractor performing the Google Project work to comply with all California Prevailing Wage Laws pursuant to California Labor Code Section 1720, et. seq. and the applicable implementing regulations.

3.6 Design.

3.6.1 Prepare design plans and technical specifications for the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification that are part of the Google Project in accordance with Valley Water and FEMA standards for the construction of flood protection improvements and provide those plans and technical specifications to Valley Water for review and comment.

3.6.2 Require the Google design professional signing and stamping the construction documents to perform to the applicable professional standard of care and prepare documents without any known errors or omissions.

3.6.3 Require the Google design professional(s) to carry reasonable professional liability insurance for claims relating to professional liability.

3.7 Resolving Contractor Disputes. Resolve any and all disputes with contractor(s) and/or design professional(s) retained by Google arising out of or related to Google’s contract(s) for construction and design of the Google Project, including, but not limited to, disputes relating to bids, payment, performance, workmanship, wages, negligent construction or design, or delay claims.

3.8 Construction Site Access. During construction of the Google Project, Google shall provide Valley Water with full access to the Google Project Area, provided that in all instances, Valley Water agrees to (i) comply with Google’s and the contractor’s safety



requirements applicable to the construction sites; (ii) provide, when reasonably feasible, Google with forty-eight (48) hours prior written notice of any Valley Water Work in the Google Project Area that could impede construction of the Google Project; and (iii) minimize, to the maximum extent practicable, restrictions to Google's access to and over the Channel Bridge when needed to perform Valley Water Work.

3.9 Schedule and Schedule Revisions. Use best efforts to complete the Google Project by December 31, 2024, subject to extension of time for force majeure delay, as defined in Section 9.1 below. If Google and Valley Water determine this deadline cannot be met, the Parties will in good faith negotiate a revised deadline for performance agreed to in writing by the Parties.

3.10 As-Built Drawings. Ensure that its contractor(s) prepares as-built drawings for the Google Bridge Structures, Google Trails, and Valley Water Floodwalls and ensure that its design professional(s) for the Google Project prepares record drawings, signed, and stamped by a professional engineer registered to practice in California ("**As-Built Drawings**"). Following the completion of the Google Project and prior to Valley Water Acceptance of the Valley Water Floodwalls required for FEMA flood certification, Google will provide the As-Built Drawings for the Google Bridge Structures, Google Trails, and Valley Water Floodwalls to Valley Water in electronic AutoCAD ".dwg" file version and electronic ".pdf" version and in conformance to standards acceptable to Valley Water.

3.11 Compliance with this Agreement. Require Google's contractor(s) to complete all work in compliance with all applicable laws, the encroachment permit described in Section 4.3 (Encroachment Permit) below, and the approved construction documents and confirm in writing that the Google Project has, to the best of Google's knowledge, been completed in full conformance with this Agreement.

3.12 No Encumbrances. Represent and warrant that the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification are free and clear of all mechanics liens, stop notices, security interests, or other encumbrances related to the work performed as described in this Agreement as of Valley Water Acceptance of the Valley Water Floodwalls.

3.13 Construction Management. Manage its contractor(s)' and/or design professional(s)', as applicable, correction of any Defect to or of the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification during the applicable Warranty Period, pursuant to Section 3.4 (Warranty) above ("**Required Corrections**"). If the Google contractor(s) and/or design professional(s), as applicable, fails to make any Required Corrections to Valley Water's reasonable satisfaction, Google shall cause any Required Corrections to be completed. Valley Water Acceptance of the Valley Water Floodwalls required for FEMA flood certification does not relieve Google of responsibility to make any Required Corrections. In addition, Valley Water Acceptance of the Valley Water Floodwalls required for FEMA flood certification does not waive any other remedy to which Valley Water is entitled by law or in equity.

3.14 Maintenance. Implement the maintenance obligations specified for Google in the O&M Agreement separately agreed to by the Parties.



3.15 FEMA. Design, construct and provide all documentation related to materials, design and construction of the Valley Water Floodwalls and Google Bridge Structures necessary and required to obtain FEMA certification for 100-year riverine flood protection.

3.16 Performance Bond. Prior to the issuance of the encroachment permit described in Section 4.3 (Encroachment Permit) below, Google shall provide Valley Water with a performance bond naming Valley Water as obligee in an amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of Google for the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification to guarantee and assure the faithful performance of Google's obligations under this Agreement. After expiration of the notice and cure period set forth in Section 9.11 (Opportunity to Cure) below, Valley Water shall have the right to draw against the performance bond in the event of a default by Google or in the event that Google fails to meet and fully perform any of its obligations under this Agreement. The form of the performance bond shall be reasonably approved by Valley Water and shall be substantially in conformance with the sample performance bond attached hereto as **Exhibit E**. The performance bond shall remain in full force until Valley Water Acceptance (defined below) of the Valley Water Floodwalls required for FEMA flood certification.

4. Valley Water's Obligations

4.1 Permitting. Cooperate with Google in its efforts to obtain all regulatory and public agency permits and authorizations required for construction, operation, and maintenance of the Google Project. Such permits and authorizations include, but are not limited to, those permits listed in Exhibit D attached hereto.

4.2 Document Review. Within twenty (20) business days of receipt of Google's design and construction documents, review and provide comments for any required revisions to ensure that the Google Project, as designed and included in these documents, provides 100-year riverine flood protection, and is consistent with the Water Resources Protection Ordinance and Manual.

4.3 Encroachment Permit. Provided that the plans and specifications are approved by Valley Water, act promptly to issue a construction/encroachment permit for the Google Project, pursuant to the Water Resources Protection Ordinance and the 2023 Joint Use Agreement ("**Encroachment Permit**").

4.4 Encroachment Permit Compliance. Without reducing or relieving Google of its responsibilities as stated herein, Valley Water shall periodically have an inspector at the construction sites to ensure compliance with Encroachment Permit conditions. However, Valley Water's inspector is only responsible for reporting to Google's authorized representative the inconsistencies that the inspector observes. Without limitation on any authority reserved for Valley Water pursuant to the Encroachment Permit to be issued by Valley Water for the Google Project, Valley Water will not direct the work of the Google contractor(s). Google assumes all costs and risks for removing and reconstructing any completed work that is inconsistent with the approved construction documents. Additionally, any work completed that incorporates a change to the approved construction documents without prior approval by Valley Water's inspector of a



change determined to be inconsistent with the approved construction documents shall be reconstructed at Google's cost if requested in writing by Valley Water's inspector.

4.5 Inspection and Acceptance of Valley Water Floodwalls and Inspection of Google Bridge Structures required for FEMA flood certification.

4.5.1 For purposes of this Section 4.5, the term "**Valley Water Acceptance**" means the dedication, conveyance, and transfer of the Valley Water Floodwalls by Google to Valley Water once the Google Project has been completed to the satisfaction of both Parties, as evidenced by the Parties' written acknowledgment noting project completion.

4.5.2 Valley Water Acceptance of the Valley Water Floodwalls required for FEMA flood certification shall be contingent upon Google providing Valley Water with FEMA requested documentation to certify the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification as providing 100-year riverine flood protection.

4.5.3 During construction of and prior to Valley Water Acceptance of the Valley Water Floodwalls, Valley Water shall inspect the Valley Water Floodwalls and Google Bridge Structures required for FEMA flood certification. To the extent there are any disagreements regarding the completion of the Valley Water Floodwalls and/or Google Bridge Structures required for FEMA flood certification, Google and Valley Water shall meet and confer to correct any purported deficiencies, as compared to the approved construction documents, identified by Valley Water. Google shall be responsible for the costs to remedy any such deficiencies identified by Valley Water.

4.5.4 Valley Water Acceptance of the Valley Water Floodwalls required for FEMA flood certification will not limit any rights held by Valley Water to make a claim during the Warranty Period. Valley Water has the right to demand additional work or documentation from Google necessary to obtain FEMA certification for 100-year riverine flood protection for the Valley Water Floodwalls, Google Trails, and the Google Bridge Structures.

4.6 Inspection and Maintenance. Implement the inspection and maintenance activities specified for Valley Water in the O&M Agreement separately agreed to by the Parties, including but not limited to Section 3.1.3 (Inspection of Google Bridge Structures) and Section 4 (Valley Water's Listed Maintenance Obligations) of the O&M Agreement.

4.7 Potential Acceptance of Bridge Abutments, Wingwalls, and Infill Walls.

4.7.1 For purposes of this Section 4.7, the term "**Valley Water Acceptance**" means the dedication, conveyance, and transfer of the Bridge Abutments, Wingwalls, and Infill Walls by Google to Valley Water, if and when removal of the Channel Bridge and Channel Bridge Headwalls is required and completed in accordance with Section 5.4.2 below, to the satisfaction of both Parties, as evidenced by the Parties' written acknowledgment noting completion of the Infill Walls.

4.7.2 Valley Water Acceptance, if any, of the Bridge Abutments, Wingwalls, and Infill Walls shall be contingent upon Google providing Valley Water with FEMA



requested documentation to certify the Bridge Abutments, Wingwalls, and Infill Walls required for FEMA flood certification as providing 100-year riverine flood protection.

4.7.3 Prior to Valley Water Acceptance, if any, of the Bridge Abutments, Wingwalls, and Infill Walls, Valley Water shall inspect the Bridge Abutments, Wingwalls, and Infill Walls required for FEMA flood certification. To the extent there are any disagreements regarding the completion of the Infill Walls required for FEMA flood certification, Google and Valley Water shall meet and confer to correct any purported deficiencies, as compared to the approved construction documents, identified by Valley Water. Google shall be responsible for the costs to remedy any such deficiencies identified by Valley Water.

4.7.4 Valley Water Acceptance of the Bridge Abutments, Wingwalls, and Infill Walls will not limit any rights held by Valley Water to make a claim during the Warranty Period. Valley Water has the right to demand additional work or documentation from Google necessary to obtain FEMA certification for 100-year riverine flood protection for the Bridge Abutments, Wingwalls, and Infill Walls.

4.8 FEMA Compliance. Valley Water shall not modify the Google Project Area or the Valley Water Floodwalls or Google Bridge Structures required for FEMA flood certification in a manner that would result in the inability to obtain and maintain FEMA certification for 100-year riverine flood protection.

4.9 Potential Hazardous Soils Discovery. In-situ soil characterization of the Google Project Area conducted on November 29, 2020 did not discover any hazardous soils on Valley Water Property. In the unanticipated event that hazardous soils are discovered during construction of the Google Project, Valley Water shall cooperate with Google to address the presence of such hazardous soils, at no cost to Valley Water, including but not limited to consideration of (i) a modified design for the Google Project that would leave the hazardous soils in situ; (ii) reuse of the hazardous soils elsewhere in the Google Project Area, if permitted pursuant to applicable laws and regulations; and (iii) off-haul of the hazardous soils. In no event shall the unanticipated discovery of hazardous soils cause Valley Water to issue any orders or take any action leading to the stoppage or suspension of work on the Google Project, except to the limited extent that such action may be required by law or regulatory permits.

5. Potential Modifications to the Google Project

5.1 Notice. Google must provide advance written notice to Valley Water of any modifications to the Google Project in accordance with the standard notice provisions in Valley Water's Encroachment Permit.

5.2 Valley Water Approval. If Valley Water approves the requested modifications, Google will be responsible for obtaining any and all applicable Valley Water, regulatory and public agency approvals for the modifications to the Google Project. The Parties acknowledge that CEQA clearance may be necessary prior to Valley Water's approval of the modifications.

5.3 Valley Water Disapproval. If Valley Water disapproves or rejects the modifications after Google's written request for approval, then Google agrees to suspend the



proposed modification until such time as Google and Valley Water can agree to a resolution of the matter.

5.4 Potential Removal, Redesign, Modification and/or Relocation.

5.4.1 Potential Removal, Redesign, Modification and/or Relocation of Google Trails on Valley Water Property. Upon Valley Water's determination, if any, that Valley Water's future use of Valley Water Property cannot be feasibly accomplished without removal, redesign, modification and/or relocation of one or more of the Google Trails on Valley Water Property, then, at Google's option, Google may propose a suitable alternative location and design for the Google Trails on Valley Water Property for Valley Water's consideration. If any of the Google Trails on Valley Water Property must be removed, redesigned, modified and/or relocated due to a Valley Water project, Google will, at no cost to Valley Water, carry out such removal, redesign, modification and/or relocation, including the costs to obtain any necessary regulatory permits or other approvals required by law, within a commercially reasonable timeframe (factoring in the time required to obtain final approval for any such removal from Valley Water, the City and state/federal agencies, as applicable) (collectively, "**Required Approvals**"). Valley Water retains the sole right to determine or define what is considered a suitable alternative design and whether a suitable alternative location exists on Valley Water Property.

5.4.2 Potential Removal of Channel Bridge and Channel Bridge Headwalls. Valley Water reserves the right to require removal of the Channel Bridge and Channel Bridge Headwalls if Valley Water does not provide its prior written approval pursuant to Section 9.9 below for a third party assignment and neither Google nor a Google Affiliate (defined under Section 9.9 below): (a) own the property on either side of the Channel Bridge, or (b) maintain ownership, operations, or maintenance responsibilities for the Channel Bridge and Channel Bridge Headwalls. Notwithstanding the foregoing, if the City executes an agreement with Google or a Google Affiliate, as applicable, pursuant to which the City agrees to own, operate, and maintain the Google Bridge Structures in accordance with the 2023 Joint Use Agreement and any amendments thereto, removal shall not be required of Google under this Section 5.4.2. If removal of the Channel Bridge and Channel Bridge Headwalls is required under this Section 5.4.2, Google will, at no cost to Valley Water, carry out such removal and install the Infill Walls required for FEMA flood certification, including the costs to obtain the Required Approvals. If and when the Infill Walls are installed by Google pursuant to this Section 5.4.2, the warranty provisions under Section 3.4, the as-built provision under Section 3.10, and the FEMA provision under Section 3.15 above shall also apply to the Infill Walls.

6. Cost-Sharing

6.1 Valley Water's Cost-Share Portion. Google and Valley Water agree that Valley Water's cost-share portion of the Google Project are those costs required to construct the West Bank and East Bank Floodwalls, which are components of the previously approved Valley Water Project ("**Valley Water's Cost-Share Portion**"). The Parties agree that Valley Water's Cost-Share Portion shall be \$1,590,608.00, pursuant to the estimated construction cost provided by Valley Water.



6.2 Google's Cost-Share Portion. Google's cost-share portion are all costs that are in excess of the Valley Water's Cost-Share Portion, including but not limited to, obtaining all necessary Valley Water, regulatory and public agency permits, planning (including any CEQA compliance costs), designing, mitigating, and constructing the Google Project in accordance with this Agreement.

6.3 Timing of Payment. Valley Water shall remit payment in full to Google for Valley Water's Cost-Share Portion within ninety (90) calendar days after Valley Water Acceptance of the Valley Water Floodwalls, pursuant to Section 4.5 (Inspection and Acceptance of Valley Water Floodwalls) above.

6.4 Encumbrances. Google represents and warrants that the Google Project, including the Valley Water Floodwalls and Google Bridge Structures, will be free and clear of all mechanic liens, stop notices, security interests, or other encumbrances related to the work performed prior to receipt of payment of Valley Water's Cost-Share Portion.

6.5 Cost-Share Document Availability. It is Google's responsibility to keep and maintain all itemized receipts, records, books, and other documents relating to Valley Water's Cost-Share Portion for the construction of the West Bank and East Bank Floodwalls. On receipt of two (2) weeks written notice from Valley Water, Google shall make available to Valley Water all itemized receipts, records, books, and other documents relating to Valley Water's Cost-Share Portion for the construction of the West Bank and East Bank Floodwalls that are in the possession or control of Google for a period of three (3) years, a time period that shall commence following receipt by Google of full payment of Valley Water's Cost-Share Portion by Valley Water.

7. Insurance

7.1 Prior to commencement of construction, Google and/or its construction contractor performing the work will secure and maintain in full force and effect, at all times during construction of the Google Project, the types, agreements, and limits of coverages as stated in the Insurance Requirements, attached hereto as **Exhibit F**.

7.2 Google agrees to require the Google construction contractor to include Valley Water as an additional insured in the insurance coverage required by Google's construction contract. Valley Water and its board members, officers, and employees, shall be named as an additional insured on the Google construction contractor's liability insurance. Google agrees to require the Google construction contractor to defend, indemnify, and hold harmless Valley Water and its board members, officers, and employees against any and all suits, claims or actions from third parties arising out of any injury to persons or property that may occur in connection with the construction of the Google Project in the same manner and to the same extent as the Google construction contractor is required to defend, indemnify, and hold harmless Google under the Google construction contract for the Google Project. Google further agrees to require the Google construction contractor to defend any and all such actions, suits or claims and pay all charges of reasonable attorneys' fees and all other reasonable incurred costs and expenses to the extent that they are covered by the above agreement to indemnify. If any judgment is rendered against Valley Water or any of the other individuals enumerated above in any such action, Google shall require the Google construction contractor, at its expense, to satisfy and discharge the same.



7.3 The rights, duties, and obligations of the Parties as set forth above in this Section 7 will survive completion, termination, suspension, and expiration of this Agreement.

8. Indemnification

8.1 Google's Indemnification Obligations.

8.1.1 Except to the extent arising out of the gross negligence or willful misconduct of Valley Water or its Other Parties (defined below), to the fullest extent permitted by law, Google agrees to defend, indemnify, and hold harmless Valley Water and its “**Other Parties**” which, for the purposes of this Agreement, means the officers, directors, employees, representatives, volunteers, successors, and assigns of the respective Party, from and against any and all claims, demands and losses, including but not limited to liabilities, obligations, costs (including but not limited to court costs, defense costs, interest, penalties, and fines), reasonable expenses (including but not limited to associated investigation and administrative expenses, reasonable attorneys’, consultants’, and expert fees, and costs of any alternate dispute resolution), fines, levies, imposts, 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 or consents, or any other loss) (collectively, “**Claims**”) in connection with this Agreement.

8.1.2 Google agrees to defend, indemnify, and hold harmless Valley Water and its Other Parties from and against any and all Claims arising from, related to, or in connection with any CEQA challenge of Valley Water’s approval of this Agreement.

8.2 Valley Water's Indemnification Obligations. Except to the extent arising out of the negligence or willful misconduct of Google or its Other Parties, Valley Water agrees to defend, indemnify, and hold harmless Google and its Other Parties from and against any and all Claims arising out of, pertaining to, resulting from, or relating to the gross negligence or willful misconduct of Valley Water or its Other Parties in connection with this Agreement.

9. Additional Provisions

9.1 Force Majeure. A “force majeure delay” means any delay in the performance of an obligation required by this Agreement resulting from causes beyond the Parties’ control. Such causes include acts of God or of public enemies, war, invasion, insurrection, rebellion, riots, terrorist acts, fires, floods, earthquakes, epidemics, pandemics, quarantine restrictions, strikes, lockouts, freight embargoes, unavailability of equipment, supplies, materials or labor, environmental conditions and unusually severe weather delays, or any other cause reasonably beyond the control of Google or Valley Water, as applicable.

9.2 Waiver. A Party’s waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.

9.3 Severability. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on Valley Water and Google.



9.4 California Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions thereof. The federal and state courts within the County of Santa Clara, California shall be the exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement. Each Party expressly consents to the personal jurisdiction of and venue in such courts.

9.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Effective Date. The term of this Agreement shall commence upon execution of this Agreement by both Parties and terminate as provided for in Section 11 (Termination) below.

9.7 Amendments. All changes or extensions to this Agreement must be in writing in the form of an amendment approved by both Parties.

9.8 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.

9.9 Successors and Assigns. This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successors, and assigns, except that neither this Agreement nor the duties or obligations as stated in this Agreement may be assigned by Google without the prior written consent of Valley Water, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the prior written consent of Valley Water shall not be required for an assignment to a Google Affiliate, which means any entity that, directly or indirectly, controls Google, is under common control with Google, or is wholly owned or controlled by Google. Upon assignment of this Agreement, Google and the successor assignee will execute the necessary document to memorialize the assignment of the obligations, promises and liabilities set forth in this Agreement. Google shall provide Valley Water with a copy of that assignment within ten (10) calendar days after the assignment is fully executed.

9.10 Dispute Resolution. If any dispute under this Agreement cannot be resolved by the Parties, upon written request of either Party to the dispute, the dispute will be dealt with in accordance with the procedures set forth in this Section 9.10.

9.10.1 Either Party may give the other Party written notice of any dispute in the manner set forth in Section 13 (Notices) below. Any notice shall state the basis of the dispute.

9.10.2 The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the Chief Executive Officer or, designee of the Chief Executive Officer, and an executive of similar authority at Google. Within twenty (20) calendar days after delivery of the notice specified in Section 9.10.1, the



executives shall meet at a mutually acceptable time, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute.

9.10.3 If the dispute has not been resolved by mutual agreement within thirty (30) calendar days of the first meeting, either Party may initiate a mediation of the controversy. Neither Party may initiate litigation until at least one mediation has been conducted.

9.10.4 All negotiations and any mediation conducted pursuant to this Section 9.10 are confidential and shall be treated as compromise and settlement negotiations, to which Sections 1119 and 1152 of the California Evidence Code shall apply, and Sections 1119 and 1152 are incorporated herein by reference.

9.10.5 Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary without delay to avoid irreparable damage or harm to such Party.

9.10.6 Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

9.10.7 Nothing in this Section 9.10 shall in any way be interpreted as requiring that Google or Valley Water reach an agreement with regard to any dispute, nor shall the outcome of any meeting(s) or mediation(s) be binding in any way on Google or Valley Water unless expressly agreed to in writing by the Parties to such meeting(s).

9.11 Opportunity to Cure. If a Party breaches any obligation hereunder and such breach continues for thirty (30) calendar days after written notice from any nonbreaching Party (or, if such breach is not reasonably susceptible of cure within thirty (30) calendar days, then for such longer period of time as may be reasonably required to effectuate such cure, provided that the breaching Party commences such cure within said thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion), and if such breach of an obligation presents a public health or safety concern, then the nonbreaching Party (following reasonable efforts to consult and coordinate with the breaching Party) may take appropriate steps to cure such breach, in which event the breaching Party shall reimburse the curing Party for all reasonable, actual costs and expenses incurred by the curing Party to effectuate such cure within forty-five (45) calendar days after receipt of an invoice therefor, together with reasonable supporting evidence of such costs and expenses.

10. Equal Opportunity

10.1 Compliance with Valley Water Requirements. Valley Water is an equal opportunity employer and requires the parties it contracts with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of this Agreement, Google will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding



and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

10.2 Compliance with Applicable Equal Opportunity Laws. Google's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); the Age Discrimination Act of 1975 (42 U.S.C. sec. 6101 et seq.); the California Fair Employment and Housing Act (Government Code Section 12900 et. seq.); and California Labor Code Sections 1101 and 1102.

10.3 Investigation of Claims. Google must designate a specific position within its organization to be responsible for investigating allegations of non-compliance with anti-discrimination and anti-harassment provisions of this Agreement. Google must conduct a fair, prompt, and thorough investigation of all allegations directed to Google by Valley Water. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Google must take prompt, effective action against the offender.

11. Termination

This Agreement will automatically terminate upon receipt by Google from Valley Water of Valley Water's Cost-Share Portion, as described in Section 6 above, except that the FEMA documentation (Sections 3.15 and 4.5.1), insurance (Section 7), indemnification (Section 8), potential future removal of Channel Bridge and Channel Bridge Headwalls and Valley Water Acceptance of the Bridge Abutments, Wingwalls, and Infill Walls (Section 4.7), Force Majeure (Section 9.1), and warranty obligations (Section 3.4) required by this Agreement shall survive the termination of this Agreement. The O&M Agreement separately agreed to by the Parties is subject to the termination provisions therein.

12. Reservation of Rights

Nothing in this Agreement shall limit the right of Valley Water to reasonably modify the West Channel at any time in the future if required to make such modifications to fulfill its floodwater and stormwater management obligations pursuant to its statutory mandate set forth in the Santa Clara Valley Water District Act.

13. Notices

13.1 Any communication, notice or demand of any kind whatsoever that any Party may be required or may desire to give to the other in connection with this Agreement shall be in writing, delivered by personal delivery by third party courier, or by similar overnight delivery service, or by registered or certified mail, postage prepaid. Any such notice shall be deemed



delivered as follows: (i) if personally delivered, on the date of delivery to the address of the person to receive such notice; (ii) if sent by overnight delivery service or other similar courier service, the date of delivery to the address of the person to receive such notice; (iii) if mailed, two (2) calendar days after depositing same in the U.S. Postal Service. Any notice required or given under this Agreement shall be addressed as follows, provided that any Party may change its address for notice by written notice given to the other at least five (5) calendar days before the effective date of such change in the manner provided in this Section 13.1:

Valley Water: Santa Clara Valley Water District
Community Projects Review Unit
5750 Almaden Expressway
San Jose, CA 95118

With a copy to:

Santa Clara Valley Water District
Design and Construction Unit 3
5750 Almaden Expressway
San Jose, CA 95118

Google: Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: REWS Dept/Lease Administration

With a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attention: Legal Department/RE Matters

13.2 Any e-mail notice authorized, required, or given to Google for convenience purposes only under this Agreement shall be addressed to parhamk@google.com, provided that Google may change its e-mail address(es) for notice by written notice given to Valley Water at least five (5) calendar days before the effective date of such change in the manner provided in Section 13.1.

14. Project Manager Contact Information

14.1 The designated Project Manager for Google for the duration of the project is Andy Springer, Project Executive, who can be reached at aspringer@google.com. Google's Project Manager shall have all the necessary authority to direct technical and professional work within the scope of this Agreement and shall serve as the principal point of contact with Valley Water.

14.2 The designated Project Manager for Valley Water for the duration of the project is Valley Water's Permit Authority, who can be reached at CPRU@valleywater.org.



Valley Water's Project Manager shall have all the necessary authority to direct technical and professional work within the scope of this Agreement and shall serve as the principal point of contact with Google.

14.3 Either Party may change its designated Project Manager upon written notice given to the other Party at least five (5) calendar days before the effective date of such change in the manner provided in Section 13 (Notices) above.

15. Exhibits. The following listed Exhibits referred to herein are incorporated in this Agreement as though set forth in full:

Exhibit A – Valley Water Property and Google Property

Exhibit B – Google Project Area and Google Project Improvements

Exhibit C – Operation and Maintenance Responsibility Diagram

Exhibit D – Required Permits

Exhibit E – Sample Performance Bond

Exhibit F – Insurance Requirements

16. Entire Agreement. This Agreement, together with the **Exhibits A** through **F** attached hereto, constitute the entire agreement between the Parties and supersedes all prior written or oral understandings.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have executed the Agreement the day and year set forth below, when fully executed.

Google:

GOOGL^{DocuSigned by:} LLC, Delaware limited liability company

By:  PARHAM KHOSHKBARI _____ Date: 7/27/2023
4561CBF72507408...
Parham Khoshkbari,
Director of Infrastructure

Valley Water:

SANTA CLARA VALLEY WATER DISTRICT, a special district

By:  n Ke _____ Date: 08/08/2023
EB78B8FE60E64F3...
Barbara F. Keegan
Vice Chair, Board of Directors

ATTEST: ^{DocuSigned by:}

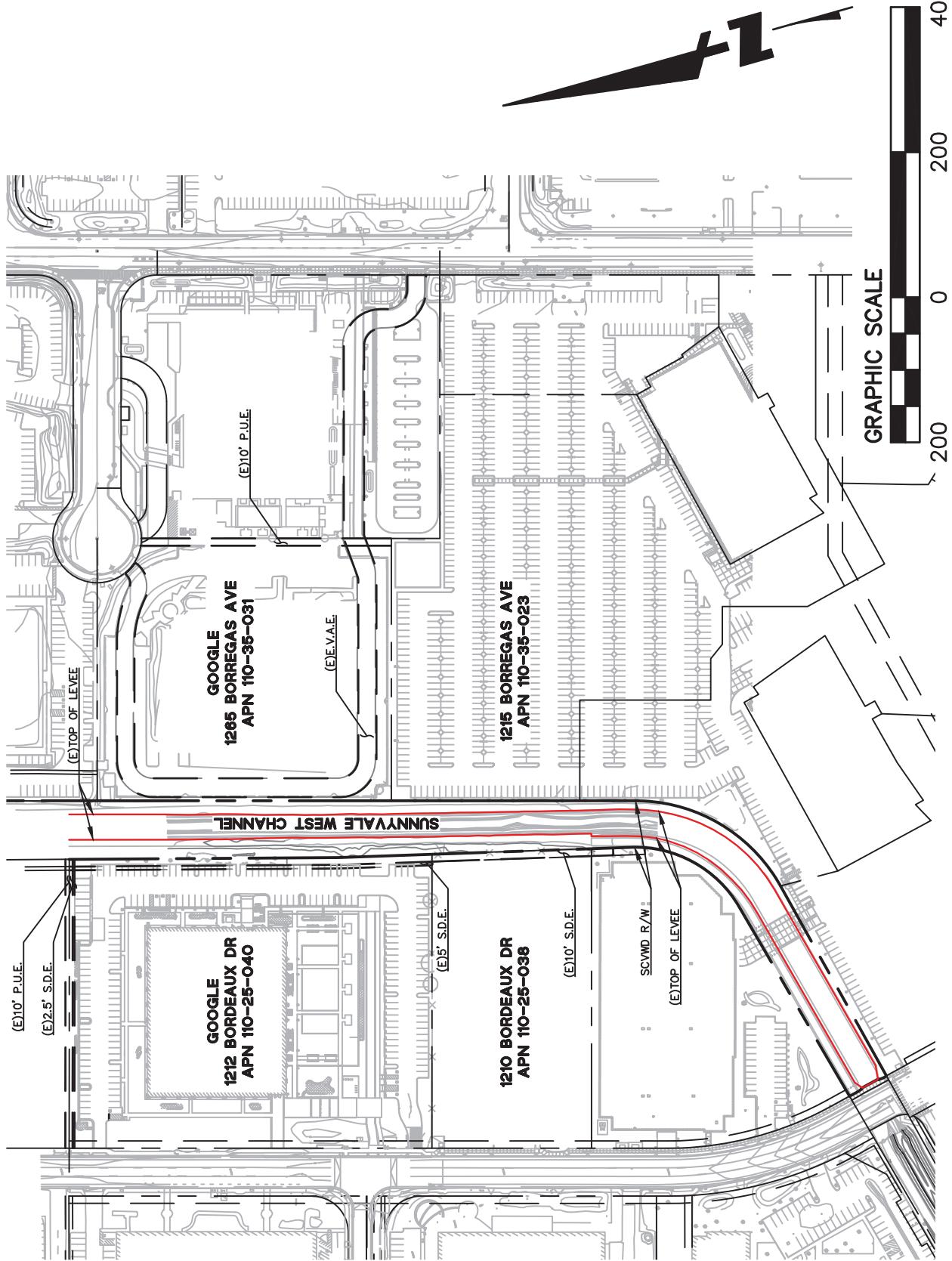
By:  Michele L. King _____ Date: 08/08/2023
7E1632DBD93E40C...
Michele L. King, CMC
Clerk, Board of Directors



EXHIBIT A

Valley Water Property and Google Property





**VALLEY WATER PROPERTY AND GOOGLE PROPERTY
MOFFETT PARK GREEN LINK – BORDEAUX/BORREGAS BRIDGE
SUNNYVALE, CA**

Checked JY
Date MARCH 16, 2023

Drawn CP Job No. 20180099-10

BKF ENGINEERS
255 SHORELINE DRIVE
SUITE 200
REDWOOD CITY, CA 94063

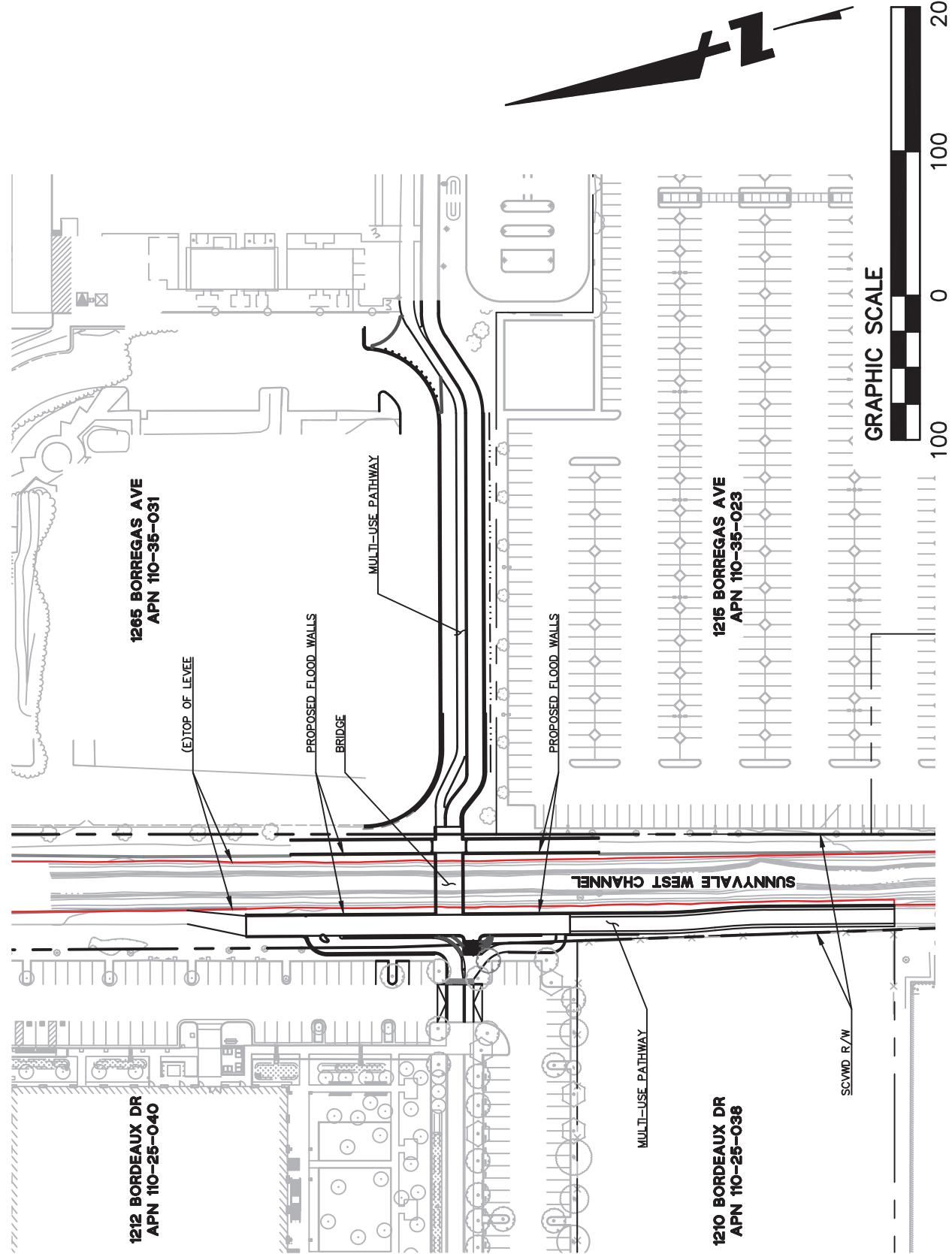


Attachment 1

EXHIBIT B

Google Project Area and Google Project Improvements





**PROJECT AREA IMPROVEMENTS
MOFFETT PARK GREEN LINK - BORDEAUX/BORREGAS BRIDGE
SUNNYVALE, CA**

Checked **JY**
Date **MARCH 16, 2023**

Approved **JD**
Sheet **EXHIBIT B**

BKF ENGINEERS
255 SHORELINE DRIVE
SUITE 200
REDWOOD CITY, CA 94065
(650) 482-6300
www.bkf.com

BKF

MOFFETT PARK

BORDEAUX/BORREGAS BRIDGE

Attachment 1

EXHIBIT C

Operation and Maintenance Responsibility Diagram



EXHIBIT D

Required Permits

City of Sunnyvale Miscellaneous Plan Permit
City of Sunnyvale Building Permit
Valley Water Resources Encroachment Permit
FEMA, Conditional Letter of Map Revision
CDFW, Streambed Alteration Agreement
City of Sunnyvale Encroachment Permit



EXHIBIT E

Sample Performance Bond



SAMPLE PERFORMANCE BOND

WHEREAS, _____ and _____ (hereinafter designated as "PRINCIPAL") have entered into an IMPROVEMENT AGREEMENT _____ (hereinafter designated as "AGREEMENT"), whereby PRINCIPAL agrees to install and complete certain designated improvements, which said AGREEMENT, dated _____, 2023, and as identified as project _____ is hereby referred to and made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of said AGREEMENT to furnish a bond for the faithful performance of said AGREEMENT,

NOW, THEREFORE, we the PRINCIPAL and _____, a Corporation organized and existing under the laws of the State of _____, and duly authorized to transact surety business in the State of California, as SURETY, are held and firmly bound unto _____ of _____, in the penal sum of _____ (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, each of our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded PRINCIPAL, his/hers or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said AGREEMENT and any alteration thereof made as therein provided, on his/her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless _____, its officers, agents and employees, as



therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by _____ in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the AGREEMENT or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the AGREEMENT or to the work or to the specifications.



IN WITNESS WHEREOF, this instrument has been duly executed by the PRINCIPAL and SURETY above named, on _____, 2023



EXHIBIT F

Insurance Requirements



INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("Valley Water"), 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:

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 original endorsements affecting coverage required by this Appendix. 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 before the contract commences.** 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 Appendix.

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:

\$2,000,000 per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage

\$2,000,000 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 include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Premises and Operations.
- c. Contractual Liability expressly including liability assumed under this contract.
- d. 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.



- e. Owners and Contractors' Protective liability.
- f. Severability of Interest.
- g. Explosion, Collapse and Underground Hazards, (X,C, and U).
- h. Broad Form Property Damage liability.
- i. If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Contractor's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self- insurance maintained by Valley Water, its Directors, officers, employees, agents or volunteers will be in excess of Consultant's insurance and will not contribute to it,

2. Business Auto Liability Insurance with coverage as indicated:

\$2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

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. Other public entities may also be added to the additional insured endorsement as applicable and the Contractor will be notified of such requirement(s) by Valley Water.

(NOTE: Additional insured language on the Certificate of Insurance is NOT acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07104 are NOT acceptable).

2. Primacy Clause: Contractor's insurance must be primary with respect to any other insurance which may be carried by Valley Water, its officer, agents and employees, and Valley Water's coverage must not be called upon to contribute or share in the loss.



3. Cancellation Clause Endorsement: Contractor must provide a cancellation endorsement stating that the insurer agrees to provide 30 days' notice of cancellation (10 days' notice for non-payment of premium), NOTE: Adding wording to the standard wording in the ISO Certificate of Insurance is not acceptable.
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 the Valley Water's Risk Management Administrator.
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.
6. Subcontractors: Should any of the work under this Agreement be sublet, the Contractor must require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractors may insure subcontractors under its own policies.
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: All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. Waiver of Subrogation: Contractor agrees on 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, or Builders' Risk policy described in Required Coverages above. Contractor agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
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.
11. Please mail the certificates and endorsements to:



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

IMPORTANT: On the certificate of insurance, please note either the name of the Project or the name of Valley Water contact person or unit for the contract.

If your insurance broker has any questions, please advise him/her to call Mr. David Cahen, Valley Water Risk Management Administrator, at (408) 630-2213.

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