Santa Clara Valley Water District
Board of Directors

HQ. Bldg. Boardroom, 5700 Almaden Expressway, San Jose, California
Join Zoom Meeting: https://valleywater.zoom.us/j/84454515597

CLOSED SESSION AND REGULAR MEETING AGENDA

Tuesday, August 25, 2026
11:00 AM

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

DISTRICT BOARD OF DIRECTORS
Tony Estremera, Chair-District 6
Richard P. Santos, Vice Chair-District 3
John L. Varela-District 1
Shiloh Ballard-District 2
Jim Beall-District 4
Nai Hsueh-District 5
Rebecca Eisenberg-District 7

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body, will be available to the public through the legislative body agenda web page at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to participate in the legislative body's meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 630-2277.

MELANIE RICHARDSON
Interim Chief Executive Officer

CANDICE KWOK-SMITH
Clerk, Board of the Directors
(408) 630-3193
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

Santa Clara Valley Water District
Board of Directors

CLOSED SESSION AND REGULAR MEETING
AGENDA

Tuesday, August 25, 2026	**11:00 AM**	**HQ. Bldg. Boardroom, 5700 Almaden Expressway, San Jose, California** **Join Zoom Meeting:** **https://valleywater.zoom.us/j/84454515597**

IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as hybrid meetings, conducted in-person as well as by telecommunication, and are compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while maintaining transparency and public access, members of the public have the option to participate via teleconference/video conference or attend in person. To participate in the meeting via teleconference/video conference, please refer to the meeting link located at the top of the agenda. If attending in-person, you are required to comply with Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS located at https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee during public comment or on any item listed on the agenda, may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify yourself in order to speak, at the time the item is called. Speakers will be acknowledged by the Board/Committee Chair in the order that requests are received and granted speaking access to address the Board. Written comments on any item on the agenda may be submitted to clerkoftheboard@valleywater.org or board@valleywater.org.

- Members of the Public may test their connection to Zoom Meetings at: https://zoom.us/test
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: https://www.youtube.com/watch?v=TojJpYCxXm0

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board of Directors/Board Committee meetings to please contact the Clerk of the Board's office at (408) 630-2277, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of

California, including but not limited to, Government Code Sections 54950 et. seq., and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes, or other obligations. Any projections, plans, or other forward-looking statements included in the information on this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at https://emma.msrb.org/ and https://www.valleywater.org/how-we-operate/financebudget/investor-relations, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:
https://valleywater.zoom.us/j/84454515597
Meeting ID: 844 5451 5597
Join by Phone:
1 (669) 900-9128, 84454515597#

1. CALL TO ORDER/ROLL CALL:

1.1. Roll Call.

2. 11:00 AM - CLOSED SESSION:

Notice to the Public: The Board of Directors meets in Closed Session in accordance with the Ralph M. Brown Act. Following the conclusion of Closed Session discussion, the Board will return for the remaining items on the regular meeting agenda.

2.1. CLOSED SESSION 26-0680
CONFERENCE WITH LEGAL COUNSEL, INITIATION OF LITIGATION
Pursuant to Government Code Section 54956.9(d)(4)
One potential case.

2.2. CLOSED SESSION 26-0681
CONFERENCE WITH LEGAL COUNSEL, SIGNIFICANT EXPOSURE TO LITIGATION
Pursuant to Government Code Section 54956.9(d)(2)
Two Cases.

2.3. District Counsel Report on Closed Session.

3. 1:00 PM - TIME CERTAIN:

3.1. Pledge of Allegiance/National Anthem.

3.2. Orders of the Day.

A. Approximate Discussion Time (Board); and

B. Adjustments to the Order of Agenda Items.

3.3. Time Open for Public Comment on any Item not on the Agenda.

Notice to the public: Members of the public who wish to address the Board/Committee on matters not listed on the agenda may do so by completing a Speaker Card and submitting it to the Clerk, or by using the "Raise Hand" feature within the Zoom meeting application to request recognition. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and, when recognized, will be granted speaking access to address the Board/Committee.

Public comments shall be limited to three (3) minutes per speaker, or such other time as determined by the Chair. State law does not permit the Board/Committee to take action on, or engage in extended discussion of, any item not appearing on the posted agenda, except as otherwise authorized under applicable law. If Board/Committee action is requested, the matter may be scheduled for consideration at a future meeting.

All public comments requiring a response will be referred to staff for a written reply. The Board/Committee may take action on any item of business appearing on the posted agenda.

3.4. Conduct a Public Hearing to Consider Adopting a Resolution of Necessity Relating to the Acquisition of Real Property Interests from Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez, Necessary to Complete the Coyote Creek Flood Protection Project, Project No. 26174043, APN 467-13-007, Real Estate File Nos. 4021-487 and 4021-490 (San Jose, District 2). 26-0626

Recommendation:

A. Open and conduct a Public Hearing to consider adoption of a Resolution of Necessity relating to the acquisition of real property interests from Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez, necessary to complete the Coyote Creek Flood Protection Project, Project No. 26174043;
B. Close the Public Hearing; and
C. Adopt the Resolution DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL PROPERTY BY EMINENT DOMAIN FOR THE COYOTE CREEK FLOOD PROTECTION PROJECT (PROJECT NO. 26174043) (CODE OF CIVIL PROCEDURE

SECTIONS 1245.220, et seq.), by a two-thirds vote.

Manager: Bhavani Yerrapotu, 408-630-2735

Attachments: Attachment A: Gov. Code 84308
Attachment 1: Resolution
Attachment 2: Notice of Intent
Attachment 3: PowerPoint

Est. Staff Time: 20 Minutes.

REGULAR AGENDA:

4. CONSENT CALENDAR: (4.1 - 4.4) (Est. Time: 5 Minutes)

Notice to the public: There is no separate discussion of individual consent calendar items. Recommended actions are voted on in one motion. If an item is approved on the consent vote, the specific action recommended by staff is adopted. Items listed in this section of the agenda are considered to be routine by the Board, or delegated to the Board Appointed Officers (BAOs) yet required by law or contract to be Board approved (EL-7.10). Any item may be removed for separate consideration at the request of a Board member. Whenever a resolution is on the consent calendar, a roll call vote will be taken on the entire calendar. Members of the public wishing to address the Board on any consent items may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify themselves to speak.

4.1. Adopt Recommended Positions on Federal Legislation: H.R. 9372 (Subramanyam) - Data Infrastructure Energy Measurement and Standards Act; and Other Legislation that may Require Consideration by the Board. 26-0127

Recommendation: Adopt a Position of "Support and Amend" on H.R. 9372 (Subramanyam) - Data Infrastructure Energy Measurement and Standards Act.

Manager: Marta Lugo, 408-630-2237

4.2. Adopt Recommended Positions on State and Local Ballot Measures: Proposition 1, The Veterans and Affordable Housing Bond Act of 2026; Proposition 43, Limits Voters' Ability to Raise Revenues for Local Government Services; Measure RTM, Connect Bay Area Transit Initiative; and Other Measures Which May Require Urgent Consideration for a Position by the Board. 26-0687

Recommendation:

A. Adopt a position of "Support" on: Proposition 1, The Veterans and Affordable Housing Bond Act of 2026;
B. Adopt a position of "Oppose" on: Proposition 43, Limits Voters' Ability to Raise Revenues for Local Government Services; and
C. Adopt a position of "Support" on: Measure RTM, Connect Bay Area Transit Initiative.

Manager: Marta Lugo, 408-630-2237

4.3. Approve Amendment No. 1 to Agreement No. A4909G with EMC Research, Inc., for On-Call Polling, Survey, and Public Opinion Research Services, PlanetBids File No. VW0259, Increasing the Not-to-Exceed Fee by $190,000 for a Revised Total Not-to-Exceed Fee of $415,000, and Extending the Term Through June 30, 2027. 26-0686

Recommendation: Approve Amendment No. 1 to Agreement No. A4909G with EMC Research, Inc. for on-call polling, survey, and public opinion research services, increasing the not-to-exceed fee by $190,000 for a revised total not-to-exceed fee of $415,000 and extending the term through June 30, 2027.

Manager: Rachael Gibson, 408-630-2884

Attachments: Attachment A: Gov. Code 84308
Attachment 1: Amendment No. 1
Attachment 2: Agreement

4.4. Accept the Work as Complete and Direct the Clerk to File the Notice of Completion of Contract and Acceptance of Work for the South County Recycled Water Pipeline Phase 1C Project, Cratus, Inc., Contractor, Project No. 91094009, Contract No. C0723 (City of Gilroy, Unincorporated Santa Clara County, District 1). 26-0629

Recommendation:
A. Accept the work on the South County Recycled Water Pipeline Phase 1C Project, Project No. 91094009, Contract No. C0723 as complete; and
B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

Manager: Emmanuel Aryee, 408-630-3074

Attachments: Attachment 1: Notice of Completion and Acceptance of Work
Attachment 2: Construction Contract Acceptance
Attachment 3: Project Completion Letter
Attachment 4: Construction Photos
Attachment 5: Project Delivery Process Chart

5. BOARD OF DIRECTORS:

5.1. Receive the Semi-Annual Lobbyist Report and Annual Registration of Individuals Engaged in Compensated Lobbying Activities for the period January 1, 2026, through June 30, 2026. 26-0622

Recommendation: Receive the Semi-Annual Lobbyist Report and Annual

Registration of Individuals Engaged in Compensated Lobbying Activities for the period January 1, 2026, through June 30, 2026.

Manager: Candice Kwok-Smith, 408-630-3193

Attachments: Attachment 1: Lobbyist Report

Est. Staff Time: 5 Minutes.

5.2. Board Committee Reports.

6. WATER UTILITY ENTERPRISE:

7. WATERSHEDS:

7.1. Receive Report of Bids, Ratify Addenda, Approve the Contingency Fund, and Award the Construction Contract to Hanford Applied Restoration & Conservation, for the Berryessa Creek Flood Protection Project, Calaveras Boulevard to Interstate 680, Upper Berryessa Creek Off-Site Mitigation Project, Project No. 26174041, Contract No. C0717 in the Sum of $5,963,750.00 (Milpitas and San Jose, Districts 3 and 6). 26-0608

Recommendation:

A. Ratify Addenda Nos. 1 and 2 to the Contract Documents for the Berryessa Creek Flood Protection Project, Calaveras Boulevard to Interstate 680, Upper Berryessa Creek Off-Site Mitigation Project;
B. Award the Construction Contract to Hanford Applied Restoration & Conservation, located in Petaluma, CA, in the sum of $5,963,750.00; and
C. Approve a contingency sum of $298,100.00 and authorize the Chief Executive Officer or designee to approve individual change orders up to the designated amount.

Manager: Bhavani Yerrapotu, 408-630-2735

Attachments: Attachment 1: Project Map
Attachment 2: Addenda No. 1 and 2
Attachment 3: Project Delivery Process Chart

Est. Staff Time: 5 Minutes.

8. ASSISTANT CHIEF EXECUTIVE OFFICER:

9. EXTERNAL AFFAIRS:

10. CHIEF EXECUTIVE OFFICER:

10.1. CEO and Chiefs' Report.

11. ADMINISTRATION:

12. DISTRICT COUNSEL:

13. BOARD POLICY PLANNING CALENDAR/PROPOSED FUTURE BOARD AGENDA ITEMS:

13.1. Review the Fiscal Year 2026 Board Policy Planning Calendar.

14. BOARD MEMBER REPORTS/ANNOUNCEMENTS:

15. CLERK REVIEW AND CLARIFICATION OF BOARD REQUESTS:

16. ADJOURN:

16.1 The Board will convene its next Regular Board meeting at 1:00 p.m. on Tuesday, September 8, 2026, in the Boardroom of the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, California, and via Zoom teleconference.

Santa Clara Valley Water District

File No.: 26-0680

Agenda Date: 8/25/2026
Item No.: 2.1.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:
CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL, INITIATION OF LITIGATION
Pursuant to Government Code Section 54956.9(d)(4)
One potential case.

Santa Clara Valley Water District

File No.: 26-0681

Agenda Date: 8/25/2026
Item No.: 2.2.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:
CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL, SIGNIFICANT EXPOSURE TO LITIGATION
Pursuant to Government Code Section 54956.9(d)(2)
Two Cases.

Santa Clara Valley Water District

File No.: 26-0626

Agenda Date: 8/25/2026
Item No.: 3.4.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☒ No ☐
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Conduct a Public Hearing to Consider Adopting a Resolution of Necessity Relating to the Acquisition of Real Property Interests from Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez, Necessary to Complete the Coyote Creek Flood Protection Project, Project No. 26174043, APN 467-13-007, Real Estate File Nos. 4021-487 and 4021-490 (San Jose, District 2).

RECOMMENDATION:

A. Open and conduct a Public Hearing to consider adoption of a Resolution of Necessity relating to the acquisition of real property interests from Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez, necessary to complete the Coyote Creek Flood Protection Project, Project No. 26174043;
B. Close the Public Hearing; and
C. Adopt the Resolution DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL PROPERTY BY EMINENT DOMAIN FOR THE COYOTE CREEK FLOOD PROTECTION PROJECT (PROJECT NO. 26174043) (CODE OF CIVIL PROCEDURE SECTIONS 1245.220, et seq.), by a two-thirds vote.

SUMMARY:
The Santa Clara Valley Water District (Valley Water) is undertaking the Coyote Creek Flood Protection Project (CCFPP or Project) to provide flood protection against a flood event equivalent to the February 2017 flood or approximately a 20-year flood event. The CCFPP is approximately nine (9) miles long and located within the City of San Jose. The Project is part of the Safe, Clean Water and Natural Flood Program that voters renewed in November 2020.

To implement the flood protection elements of the CCFPP, Valley Water must acquire a permanent water management easement and a temporary construction easement (Property Interests) over a portion of the following property owned by Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez (collectively, Owner): APN 467-13-007 in San Jose, California (Property).

Valley Water staff recommends proceeding with the acquisition of the Property Interests through eminent domain to meet the Project objectives and schedule. However, staff will continue to

negotiate a purchase of the Property Interests during these proceedings.

BACKGROUND

The CCFPP's primary objective is to provide protection from floods up to the level that occurred on February 21, 2017, equivalent to approximately a 5% flood (also referred to as a 20-year event), along Coyote Creek, between Montague Expressway and Tully Road, in San Jose. The CCFPP involves construction of multiple floodwalls, passive barriers and earthen berms along a nine (9) mile stretch of Coyote Creek.

Following a February 2020 order from the Federal Energy Regulatory Commission (FERC) regarding Anderson Dam, the original Coyote Creek Flood Protection Project was split into two projects to accommodate construction of a new outlet tunnel at Anderson Dam. As a result, Valley Water accelerated the design and construction of an initial project, the Coyote Creek Flood Management Measures Project (CCFMMP), representing 40% of the original Coyote Creek Flood Protection Project, so the creek can handle the potential release of higher flows from the larger outlet tunnel from the Anderson Dam Tunnel Project. The Valley Water Board of Directors (Board) awarded the CCFMMP construction contract in May 2023 and accepted the work as completed in June 2025.

Construction of the remaining components of the original CCFPP, the current CCFPP, is planned for completion before the Anderson Dam Seismic Retrofit Project (ADSRP) Stage 2 Diversion is in operation (estimated in 2028). In total, the Project includes constructing approximately 17,060 feet of improvements along the 9-mile stretch of Coyote Creek from Montague Expressway to Tully Road. The Project will result in flood risk reduction benefits to homes, businesses, schools, and transportation infrastructure, including disadvantaged communities along Coyote Creek.

Acquisition of the Property Interests

To construct the flood protection features of the CCFPP, Valley Water must acquire the Property Interests as more particularly described and depicted in Attachment 1 to the proposed Resolution of Necessity (RON), Exhibits A and B, which consist of a permanent easement and temporary construction easement.

Valley Water made good faith attempts to negotiate a voluntary acquisition from the Owner. An offer was mailed to Owner on February 20, 2026, for the Property Interests and Valley Water confirmed the offer was delivered on February 21, 2026. Owner did not respond to multiple phone calls and emails by Valley Water over the next thirty (30) days. On April 6, 2026, a Valley Water representative visited the Property and encountered a relative (son) of the Owner. This relative was asked to alert his father and suggested that his father contact Valley Water as soon as possible about the offer. On April 14, 2026, Valley Water received an email in the real estate services general inbox from a person claiming to be a relative (daughter) of the Owner. On April 22, 2026, Valley Water representatives responded to this email with an offer to meet and clear up any misunderstandings regarding the offer and the CCFPP improvements. Valley Water continued to reach out to Owner and finally arranged to meet with Owner at the Property on May 22, 2026. Owner expressed concerns about temporary relocation of personal property and compensation for improvements not being replaced by Valley Water. Valley Water has responded to these concerns but has been unable to schedule another meeting with Owner. To date, Valley Water has been unable to acquire the Property Interests through

a negotiated purchase.

In conformance with Code of Civil Procedure Section 1245.235, on July 14, 2026, Valley Water sent a Notice of Intent (Attachment 2) to hold a hearing to consider adoption of a RON (Attachment 1) by certified mail to the Owner, to provide them with a reasonable opportunity to be heard by the Board.

The Hearing by the Board and the adoption of the RON are legal preconditions to the exercise of Valley Water's power of eminent domain. This statutory requirement is designed to ensure that public entities verify and confirm the validity of their intended use of the power of eminent domain. A RON must contain a general statement of the intended public use for which the property is taken, a reference to the authorizing statutes, a description of the property, and a declaration stating that the Board has found and determined each of the following underlined findings to be true:

1. The public's interest and necessity require the Project. The Project is necessary, and in the public interest to provide flood protection within the City of San Jose to protect against a flood event equivalent to the February 2017 flood or approximately a 20-year flood event.

2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury. The Project design as a whole impacts the fewest private properties to the least extent possible while providing the conveyance capacity necessary to afford the desired level of flood protection. The Project's use of the Owner's Property was located, planned and designed in a manner compatible with the greatest public good and the least private injury to the Owner.

3. The Property Interests are necessary for the Project. The Project cannot be executed without the Property Interests because the configuration of the creek dictates the project alignment; without this property there would be a gap in the flood protection structures, thereby eliminating their ability to provide the planned level of protection to this property and downstream properties.

4. The Government Code Section 7267.2(a) offer has been made to the owner or owners of record. On February 20, 2026, Valley Water representatives mailed a written offer to the Owner to acquire the Property Interests, and Valley Water received confirmation of the offer being delivered on February 21,2026. Valley Water's offer complies with California Government Code Section 7267.2.

Attached for the Board's consideration is the proposed RON. The RON includes authorization to acquire the Property Interests described therein by eminent domain.

As stated above, Valley Water has attempted to acquire the Property Interests through a negotiated purchase, but the Owner is non-responsive and we have reached an impasse; therefore, adoption of the RON should be considered to meet the Project objectives and schedule. Whether or not the RON is adopted, Valley Water will continue efforts to make contact and achieve a mutual settlement with Owner.

ENVIRONMENTAL JUSTICE IMPACT:
The CCFPP will have beneficial Environmental Justice impacts. The intent of CCFPP is to protect the public from dangers associated with flooding similar to the flooding event that occurred in February 2017. Acquisition of right-of-way on the Property is required to achieve flood protection for all in the surrounding community.

During the planning phase, Valley Water staff evaluated multiple flood protection alternatives and implementation sites, met with the community numerous times, and determined that the preferred alternatives presented in the community meetings would best serve the area. The completion of the Project will directly benefit the adjacent disadvantaged communities along the full stretch of Coyote Creek between Montague Expressway and Tully Road.

Additionally, the Valley Water design team continues to coordinate with the community and key stakeholders as the project advances by holding public meetings and soliciting community feedback.

FINANCIAL IMPACT:
The CCFPP, Project No. 26174043, is included in the Capital Improvement Program (CIP) Fiscal Years (FY) 2027-31 Five-Year Plan and in the FY 2026-27 Adopted Budget. The statutory offer of compensation for the right-of-way for this Resolution of Necessity is $103,000 and does not change the overall Total Project Cost reflected in the CIP FY 2027-31 Five-Year Plan. There are adequate funds in the Project's FY 2026-27 Adopted Budget to encumber funds for the right-of-way purchase.

CEQA:
Valley Water is the lead agency under the CEQA for the implementation of the Project. On March 11, 2025, the Board adopted a resolution (Resolution No. 2025-16) certifying the Final Environmental Impact Report (EIR), adopting the Mitigation Monitoring and Reporting Program and approved the CCFPP. On April 14, 2026, the Board considered the first Addendum to the Final EIR, which analyzed the environmental impacts associated with design changes, and a Notice of Determination was filed on April 16, 2026.

The CCFPP Final EIR and Addendum(s), describes the acquisition of temporary and permanent easements for project construction and maintenance, and identifies environmental impacts associated with specific project construction and maintenance activities. Activities that will be occurring within the permanent easement and the temporary construction easement on the Property are wholly consistent with the activities described in the Final EIR. Appropriate best management practices (BMPs), mitigation measures, and Santa Clara Valley Habitat Plan (VHP) conditions and avoidance and minimization measures (AMMs) will be implemented as required to reduce impacts from these activities to the extent feasible.

ATTACHMENTS:
Attachment A: Gov. Code 84308
Attachment 1: Resolution

Attachment 2: Notice of Intent
Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:
Bhavani Yerrapotu, 408-630-2735

Attachment A: Gov. Code § 84308

Conduct a Public Hearing to Consider Adopting a Resolution of Necessity Relating to the Acquisition of Real Property Interests from Pedro D. Valdez, Maria C. Valdez, and Tomasa S. Valdez, Necessary to Complete the Coyote Creek Flood Protection Project, Project No. 26174043, APN 467-13-007, Real Estate File Nos. 4021-487 and 4021-490 (San Jose, District 6).

List of Parties and Their Agents/Representatives Known to Staff:

Organization Name	**Name**	**Role**	**Location**
N/A	Valdez, Pedro D.	Owner	844 E. St. John St., San Jose
N/A	Valdez, Maria C.	Owner	844 E. St. John St., San Jose
N/A	Valdez, Tomasa S.	Owner	844 E. St. John St., San Jose

List of Participants and Their Agents/Representatives Known to Staff:

Organization Name	**Name**	**Role**	**Location**
N/A	N/A	N/A	N/A

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Watershed: Coyote
Project: 26174043
Real Estate File No.: 4021-487, 4021-490

BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT

RESOLUTION NO. 2026-

DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL PROPERTY BY EMINENT DOMAIN FOR THE COYOTE CREEK FLOOD PROTECTION PROJECT (PROJECT NO. 26174043) (CODE OF CIVIL PROCEDURE SECTIONS 1245.220, et seq.)

WHEREAS, the Santa Clara Valley Water District ("Valley Water") intends to complete the Coyote Creek Flood Protection Project ("Project") to implement flood improvements along approximately 9 miles of Coyote Creek, between Montague Expressway and Tully Road; and

WHEREAS, the Project's primary objective is to provide protection to areas of Coyote Creek from floods up to the level that occurred on February 21, 2017, equivalent to approximately a 5% Annual Exceedance Probability flood (also referred to as a 20-year event) and has the additional objective to protect downstream communities from the potentially heightened flood risk they will face if the Coyote Creek Channel does not have the capacity to receive the increased flow anticipated once diversion for the Anderson Dam Seismic Retrofit Project (also referred to as a Stage 2 diversion system) commences diversion at full capacity; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code §§ 21000 et seq.), Valley Water certified the final Environmental Impact Report ("EIR") for the Project on March 11, 2025, considered the first Addendum to the Final EIR for the Project on April 14, 2026 and filed a Notice of Determination on April 16, 2026; and

WHEREAS, Valley Water is authorized to condemn property for the Project pursuant to Article I, Section 19 of the California Constitution, Part 3, Title 7 of the California Code of Civil Procedure, Section 6 of the Santa Clara Valley Water District Act, and other provisions and principles of law; and

WHEREAS, the real property interests to be acquired for the Project are described and shown in more detail in the plat maps and legal descriptions attached hereto as Exhibits A and B, and incorporated herein ("Property Interests"); and

WHEREAS, the Project cannot be completed without the Property Interests, and acquisition of the Property Interests is accordingly necessary and in the public interest; and

WHEREAS, Valley Water made an offer of just compensation to purchase the Property Interests from the owner of record on February 20, 2026, based on a current appraisal and in compliance with Government Code section 7267.2; and

WHEREAS, on July 14, 2026, Valley Water provided by certified mail to all persons whose names appear on the last equalized county assessment roll as having an interest in the Property Interests a notice that Valley Water's Board of Directors would hold a hearing on August 25, 2026, to consider the adoption of a resolution of necessity authorizing Valley Water to acquire the Property Interests by eminent domain; and

WHEREAS, Valley Water's notice of intent letter advised all such interested persons of the time and place for the hearing, their right to be heard in relation to that matter, and that their failure to file a written request to appear and be heard at the hearing by July 29, 2026, would result in a waiver of their right to be heard; and

WHEREAS, Valley Water has calendared consideration of this Resolution as an item on its Agenda and invited public comment prior to the meeting; and

WHEREAS, Valley Water's Board of Directors held a public hearing on August 25, 2026, to consider the adoption of this Resolution, and all interested parties were given an opportunity to be heard.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby declares:

1. The public interest and necessity require the Project;
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
3. The Property Interests described herein in plat maps and legal descriptions attached hereto as Exhibits A and B, are necessary for the Project;
4. Valley Water made the offer of just compensation as required by Government Code section 7267.2 to the owners of record;
5. Valley Water has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property Interests;
6. Valley Water has complied with the requirements of CEQA for the Project; and
7. Valley Water's Office of the District Counsel and/or its designee is hereby authorized to commence and prosecute an eminent domain proceeding to acquire the Property Interests, to deposit the amount of probable compensation pursuant to Code of Civil Procedure Section 1255.010, and to acquire prejudgment possession of the Property Interests as may be necessary for the Project.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on August 25, 2026:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

_____
TONY ESTREMERA
Chair, Board of Directors

ATTEST

_____
CANDICE KWOK-SMITH
Clerk, Board of Directors

EXHIBIT A
COVERSHEET

DEED CONDITIONS, LEGAL DESCRIPTION AND PLAT MAP
PERMANENT EASEMENT, FILE NO. 4021-487

No. of Pages: 5

Exhibit Attachments: None.

Exhibit A

Water Management Easement, File 4021-487

A water management easement over, upon and across that certain real property in the City of San Jose, County of Santa Clara, State of California, hereinafter more particularly described below.

This permanent easement is granted under the express conditions listed below:

1. Said easement area shall be kept clear of any type of building, fences, structure, pavement, or trees unless prior written approval is obtained from Grantee.

2. The easement shall include the right to construct, reconstruct, inspect, maintain, and repair a channel, protection works, and appurtenant structures, together with the right to trim or remove such trees or brush within the easement area as may constitute a hazard to persons or property or may interfere with the use of said area for the purpose granted. It also shall include the right to enter upon said land with vehicles, tools, implements, and other materials, take there from and use earth, rock, sand, and gravel for construction, maintenance, and repair of said channel, protections work, and appurtenant structures by Grantee, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control or storm drainage purposes.

3. The easement shall also include the non-exclusive right of ingress from and egress to public streets to the easement area described in Exhibit A, over and across the property of the Grantor by such route or routes as shall occasion the least practicable damage to the property and inconvenience to Grantor for the purposes of routine inspection and maintenance of the improvements within the easement. Grantee shall provide reasonable advance notification of its intent to enter Grantor's property.

4. Grantor shall keep all flood doors in the easement area closed at all times, except when carrying out activities related to Grantor's rights and responsibilities as the landowner. Grantor shall not place or permit any obstructions to be placed in such a way as to prevent a flood door from closing. If the flood doors are not closing properly, the Grantor shall promptly notify the Grantee.

5. (As used above, the term "grantor" shall include the plural as well as the singular number. The words "himself" and "his" shall include the feminine gender as the case may be.)

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD PROTECTION PROJECT (CCFPP)

RESU File No.: 4021-487
By: H. Zaeri

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

Permanent Easement (P.E.)

COMMENCING at an iron pipe, located on the most northwesterly corner of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey filed in Book 172 of Maps at Page 55, on February 4, 1964, said northwesterly corner also being the most northeasterly corner of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, both in the Office of the Recorder, Santa Clara County, State of California;

Thence along the easterly line of the lands as described in said deed, S29°54'16"E, 87.30 feet, to the **POINT OF BEGINNING;**

Thence continuing along said easterly line, S29°54'16"E, 42.70 feet to the most southeasterly corner of said lands;

Thence along the southerly line of said lands, S60°02'12"W, 51.07 feet to the most southwesterly corner of said lands;

Thence along the westerly line of said lands, N29°54'16"W, 5.23 feet;

Thence leaving said westerly line, the following two (2) courses:

1) N59°06'16"E, 9.77 feet;
2) N17°58'19"E, 55.69 feet to the **POINT OF BEGINNING.**

Containing 1,045 square feet of land, more or less.

BASIS OF BEARINGS:
The bearing of S29°54'16"E, shown as S30°41'30"E along the general westerly line of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey, filed for record on February 4, 1964, in Book 172 of Maps at Page 55, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

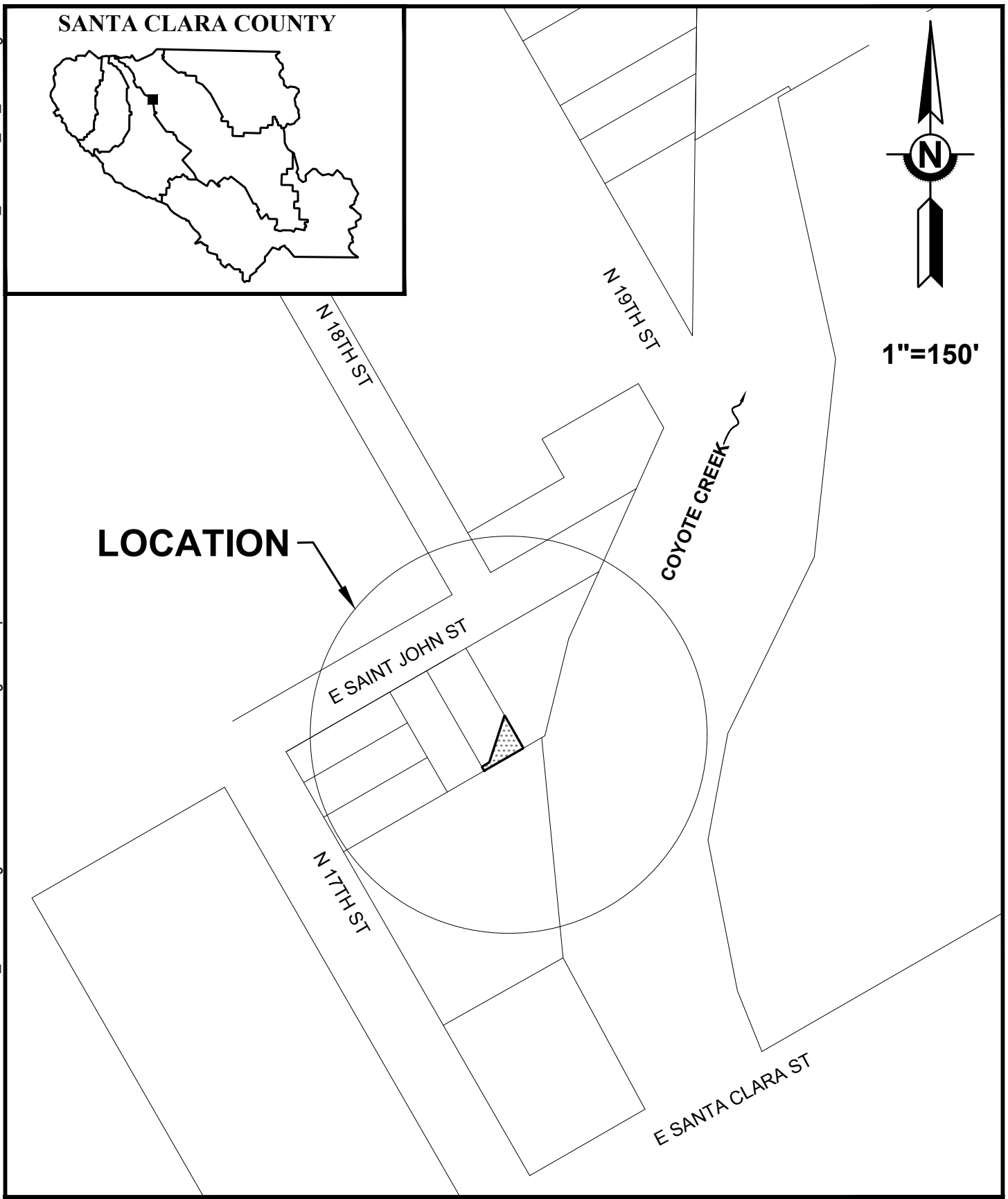
SURVEYOR'S STATEMENT:
The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Jessica DeMartini, PLS 9095

9/9/25
Date

PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
PLS 9095
STATE OF CALIFORNIA

VALDEZ



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SANTA CLARA VALLEY WATER DISTRICT

Valley Water

COYOTE CREEK FLOOD PROTECTION PROJECT

RESU FILE NO.	4021-487
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

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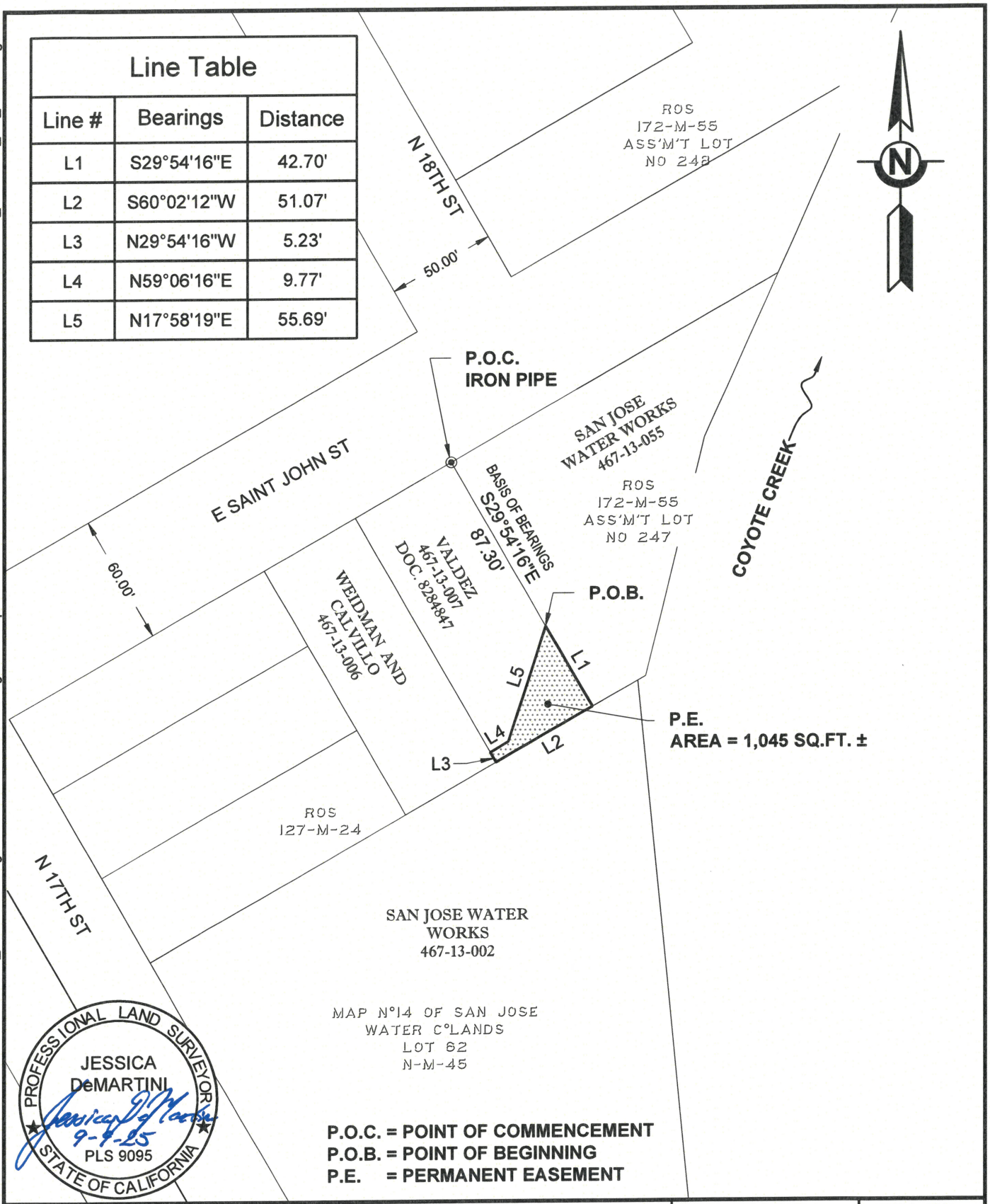
Line Table

Line #	Bearings	Distance
L1	S29°54'16"E	42.70'
L2	S60°02'12"W	51.07'
L3	N29°54'16"W	5.23'
L4	N59°06'16"E	9.77'
L5	N17°58'19"E	55.69'



P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
P.E. = PERMANENT EASEMENT

SANTA CLARA VALLEY WATER DISTRICT

Valley Water

SCALE: 1" = 60'

RESU FILE NO.	4021-487
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

SHEET 1 OF 1

EXHIBIT B
COVERSHEET

DEED CONDITIONS, LEGAL DESCRIPTION AND PLAT MAP
TEMPORARY CONSTRUCTION EASEMENT, FILE NO. 4021-490

No. of Pages: 5

Exhibit Attachments: None

Exhibit B

Temporary Construction Easement, File 4021-490

A temporary construction easement over, upon and across a portion of that real property in the City of San Jose, County of Santa Clara, State of California, hereinafter more particularly described below.

This temporary construction easement is granted under the express conditions listed below:

1. Grantor represents and warrants that she/he is the owner of the property described in Easement Area and that Grantor has the exclusive right to convey the temporary easement rights to the Grantee.

2. This temporary construction easement is necessary for the purpose of constructing the Coyote Creek Flood Protection Project and related activities incident to construction. This temporary construction easement shall not be revoked and shall continue in full force and effect beginning on July 1, 2026 until December 31, 2029, at which time the temporary construction easement shall terminate.

3. Grantor and Grantee acknowledge that the duration of the construction activity authorized herein within the Easement Area will likely be shorter than the term described in Section 2. Grantee agrees to notify Grantor in writing at least 1 week prior to exercise of the rights granted herein to enter the Easement Area. The written notification to the Grantor shall include an estimate of the expected duration of the Grantee's contractors and/or subcontractors use of the Easement Area.

4. Grantee agrees to use all reasonable efforts to keep any roadway covered by this easement open to traffic and to not interfere with residential occupants or construction activity of Grantor on site. Grantee will keep area covered by the easement clean and remove all debris related to its construction.

5. Grantee agrees to indemnify and hold harmless Grantor from and against any all claims, damages, liabilities, costs or any expenses whatsoever, arising from or caused, directly or indirectly by the entry onto the property by Grantee or its agent's, employees, invitees, contractors and subcontractors.

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD PROTECTION PROJECT (CCFPP)

RESU File No.: 4021-490
By: H. Zaeri

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

Temporary Construction Easement (T.C.E.)

COMMENCING at an iron pipe, located on the most northwesterly corner of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey filed in Book 172 of Maps at Page 55, on February 4, 1964, said northwesterly corner also being the most northeasterly corner of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, both in the Office of the Recorder, Santa Clara County, State of California;

Thence along the easterly line of the lands as described in said deed, S29°54'16"E, 53.92 feet to the **POINT OF BEGINNING;**

Thence continuing along said easterly line, S29°54'16"E, 33.38 feet;

Thence leaving said easterly line, the following two (2) courses:

1) S17°58'19"W, 55.69 feet;
2) S59°06'16"W, 9.77 feet to a point on the westerly line of said lands;

Thence along said westerly line, N29°54'16"W, 20.49 feet;

Thence leaving said westerly line, N15°27'58"E, 71.76 feet to the **POINT OF BEGINNING.**

Containing 1,555 square feet of land, more or less.

BASIS OF BEARINGS:
The bearing of S29°54'16"E, shown as S30°41'30"E along the general westerly line of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey, filed for record on February 4, 1964, in Book 172 of Maps at Page 55, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

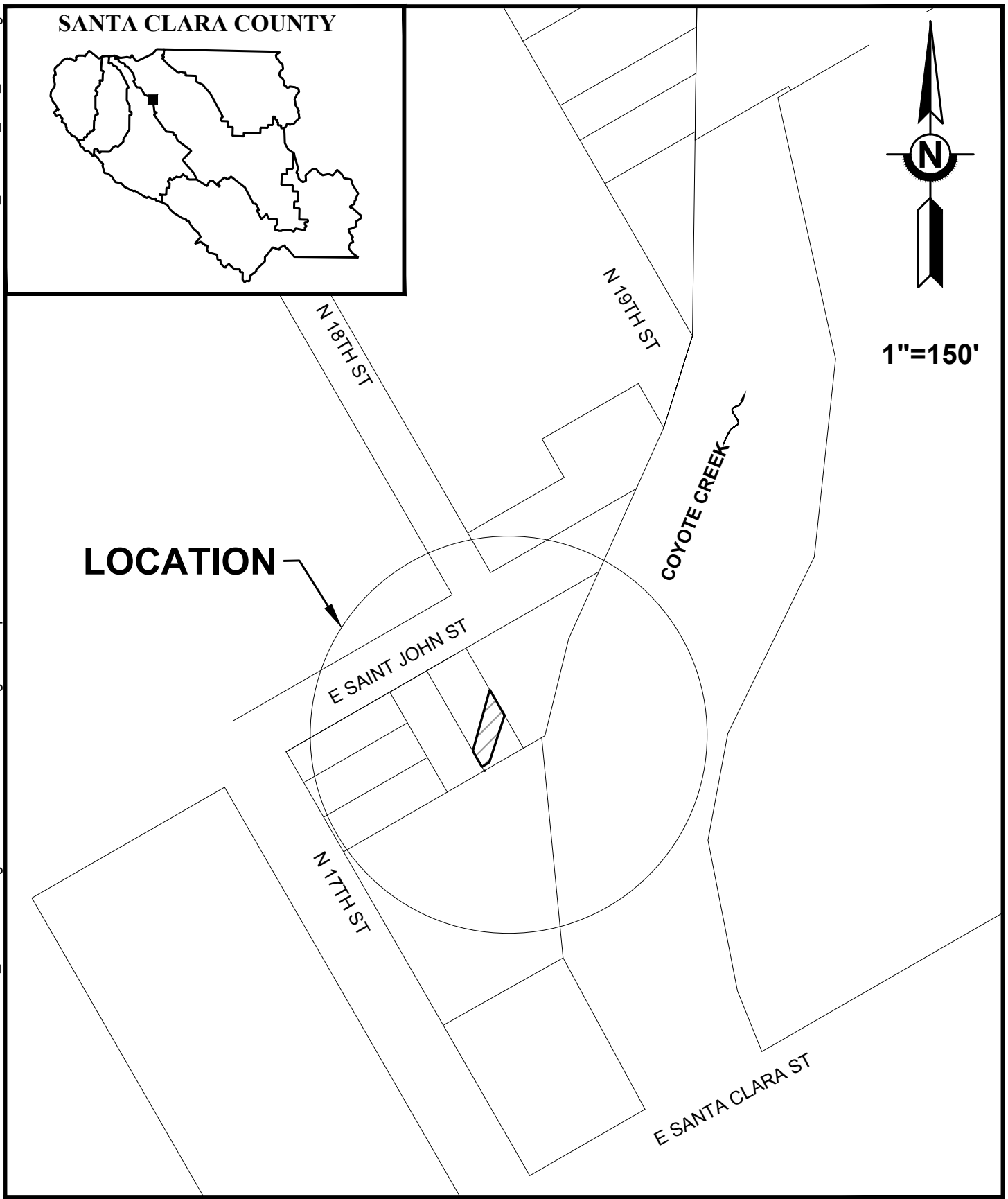
SURVEYOR'S STATEMENT:
The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Jessica DeMartini, PLS 9095

9/9/25
Date

PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
PLS 9095
STATE OF CALIFORNIA

VALDEZ



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SANTA CLARA VALLEY WATER DISTRICT

Valley Water

COYOTE CREEK FLOOD PROTECTION PROJECT

RESU FILE NO.	4021-490
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

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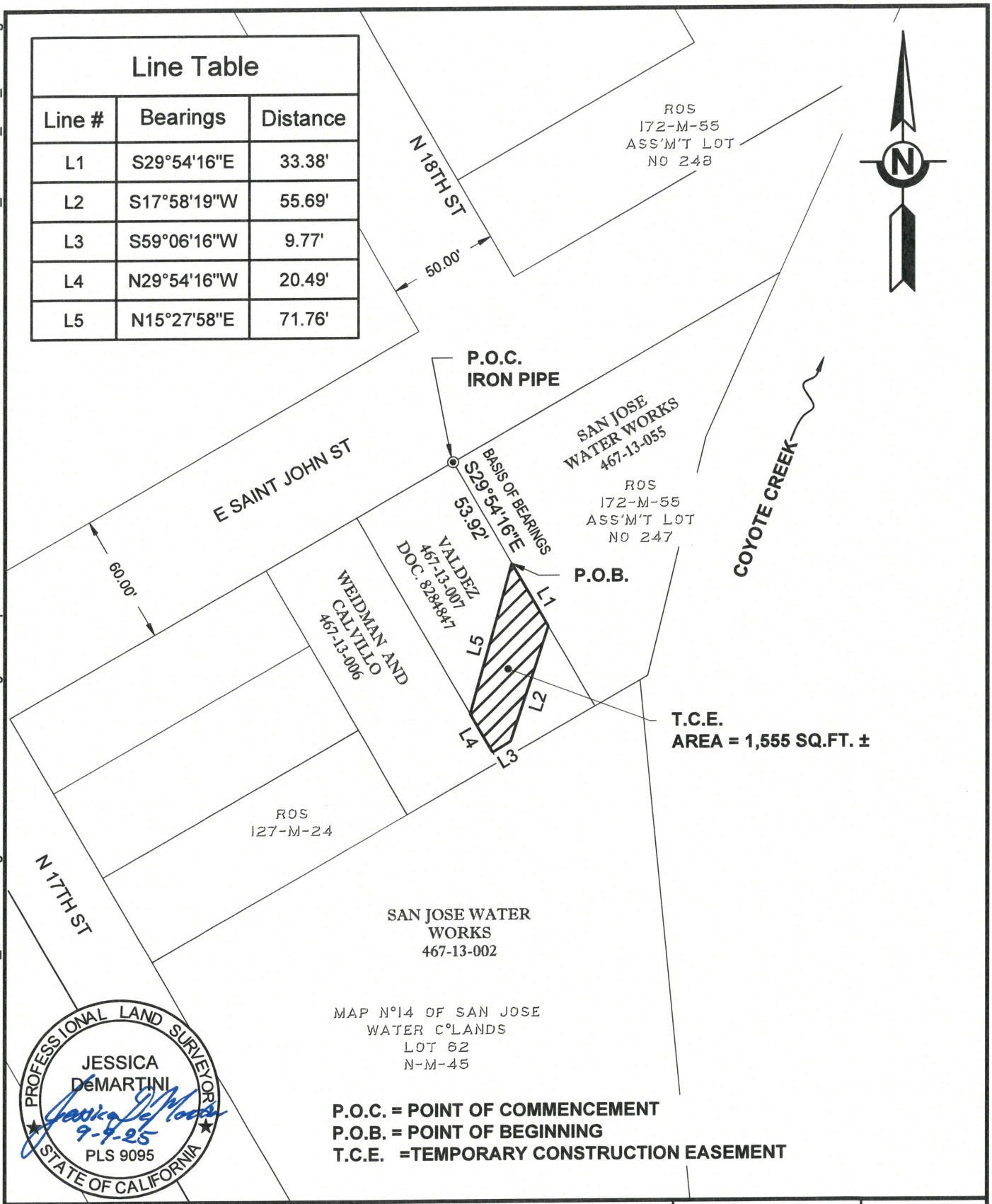
Line Table

Line #	Bearings	Distance
L1	S29°54'16"E	33.38'
L2	S17°58'19"W	55.69'
L3	S59°06'16"W	9.77'
L4	N29°54'16"W	20.49'
L5	N15°27'58"E	71.76'



PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
9-9-25
PLS 9095
STATE OF CALIFORNIA

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
T.C.E. =TEMPORARY CONSTRUCTION EASEMENT

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

SCALE: 1" = 60'

RESU FILE NO.	4021-490
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

SHEET 1 OF 1

Valley Water

Clean Water • Healthy Environment • Flood Protection

Files: 4021-487 and 4021-490
Coyote Creek Flood Protection Project

July 14, 2026

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Pedro D. and Maria C. Valdez
Tomasa S. Valdez
844 E. Saint John Street
San Jose, CA 95112-1905

Subject: NOTICE OF INTENTION TO CONSIDER THE ADOPTION OF A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY BY EMINENT DOMAIN

Dear Property Owner:

Notice is hereby given pursuant to Code of Civil Procedure, Section 1245.235, that it is the intention of the Board of Directors ("Board") of the Santa Clara Valley Water District ("Valley Water") to consider the adoption of a resolution declaring the public necessity for the acquisition of real property interests therein required for purposes of the Coyote Creek Flood Protection Project ("Project").

The resolution, if adopted, will authorize staff and counsel to commence an eminent domain proceeding to acquire the real property interests described in the attached Exhibits A & B ("Property").

Notice is further given that the Board is scheduled to meet to consider adoption of the Resolution of Necessity at its **August 25, 2026,** meeting which begins at **1:00 PM** at Valley Water's Headquarters Building, 5700 Almaden Expressway, San Jose, California. The meeting will also be live streamed on Valley Water's website.

Notice of Your Right to Appear and Be Heard

You are entitled to appear at the place and time set forth above and be heard on the following matters:

1. Whether public interest and necessity require the Project;

2. Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

3. Whether the Property sought to be acquired is necessary for the Project;

4. Whether Valley Water made the offer required by Government Code section 7267.2 to the owners of record;

5. Whether Valley Water has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property; and

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6. Whether Valley Water has complied with the requirements of the California Environmental Quality Act for the Project.

If you wish to appear and be heard, you must file a written request to appear and be heard with the Clerk of the Board at Valley Water, 5750 Almaden Expressway, San Jose, California, 95118 or email at clerkoftheboard@valleywater.org within 15 days after this notice was mailed.

Failure to file such written request within the time specified constitutes a waiver of the right to appear and be heard.

PLEASE BE AWARE THE PRICE TO BE PAID FOR THE PROPERTY WILL NOT BE CONSIDERED BY THE BOARD AT THIS HEARING, AND IF YOU ELECT NOT TO APPEAR AND BE HEARD, YOUR NON-APPEARANCE WILL NOT BE A WAIVER OF YOUR RIGHT TO CLAIM GREATER COMPENSATION IN A COURT OF LAW.

Please be advised that, notwithstanding the statutory language indicating that there is an "intent" to condemn, the Board has not in fact made a determination whether to condemn and will not so determine except in accordance with evidence and disclosures which will be heard at the time and place noted above.

If the Board elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, Valley Water would commence eminent domain proceedings in the Santa Clara County Superior Court. In that proceeding, the Superior Court will determine the amount of compensation to which you would be entitled.

Santa Clara Valley Water District

DocuSigned by:

By: Candice Kwok-Smith
20D1BFCB9B714BE...
Candice Kwok-Smith
Clerk, Board of Directors

By Certified Mail: 9589 0710 5270 1614 8779 62

Enclosures: Exhibit A and Exhibit B

Date Mailed: July 14, 2026

Notice of Intention to Appear must be filed on or before: July 29, 2026

cc: C. Achdjian, K. Anderssohn, J. Carrasco, R. Ruiz, C. Kwok-Smith, B. Yerrapotu, M. Thummaluru, R. Yamane, C. Kin-McAlpine, File

cc: BDG Law Group
Attn: Brian J. Bergman
10880 Wilshire Blvd. Ste. 1015
Los Angeles, CA 90024

Exhibit A

Water Management Easement, File 4021-487

A water management easement over, upon and across that certain real property in the City of San Jose, County of Santa Clara, State of California, hereinafter more particularly described below.

This permanent easement is granted under the express conditions listed below:

1. Said easement area shall be kept clear of any type of building, fences, structure, pavement, or trees unless prior written approval is obtained from Grantee.

2. The easement shall include the right to construct, reconstruct, inspect, maintain, and repair a channel, protection works, and appurtenant structures, together with the right to trim or remove such trees or brush within the easement area as may constitute a hazard to persons or property or may interfere with the use of said area for the purpose granted. It also shall include the right to enter upon said land with vehicles, tools, implements, and other materials, take there from and use earth, rock, sand, and gravel for construction, maintenance, and repair of said channel, protections work, and appurtenant structures by Grantee, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control or storm drainage purposes.

3. The easement shall also include the non-exclusive right of ingress from and egress to public streets to the easement area described in Exhibit A, over and across the property of the Grantor by such route or routes as shall occasion the least practicable damage to the property and inconvenience to Grantor for the purposes of routine inspection and maintenance of the improvements within the easement. Grantee shall provide reasonable advance notification of its intent to enter Grantor's property.

4. Grantor shall keep all flood doors in the easement area closed at all times, except when carrying out activities related to Grantor's rights and responsibilities as the landowner. Grantor shall not place or permit any obstructions to be placed in such a way as to prevent a flood door from closing. If the flood doors are not closing properly, the Grantor shall promptly notify the Grantee.

5. (As used above, the term "grantor" shall include the plural as well as the singular number. The words "himself" and "his" shall include the feminine gender as the case may be.)

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD PROTECTION PROJECT (CCFPP)

RESU File No.: 4021-487
By: H. Zaeri

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

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COMMENCING at an iron pipe, located on the most northwesterly corner of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey filed in Book 172 of Maps at Page 55, on February 4, 1964, said northwesterly corner also being the most northeasterly corner of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, both in the Office of the Recorder, Santa Clara County, State of California;

Thence along the easterly line of the lands as described in said deed, S29°54'16"E, 87.30 feet, to the **POINT OF BEGINNING;**

Thence continuing along said easterly line, S29°54'16"E, 42.70 feet to the most southeasterly corner of said lands;

Thence along the southerly line of said lands, S60°02'12"W, 51.07 feet to the most southwesterly corner of said lands;

Thence along the westerly line of said lands, N29°54'16"W, 5.23 feet;

Thence leaving said westerly line, the following two (2) courses:

1) N59°06'16"E, 9.77 feet;
2) N17°58'19"E, 55.69 feet to the **POINT OF BEGINNING.**

Containing 1,045 square feet of land, more or less.

BASIS OF BEARINGS:
The bearing of S29°54'16"E, shown as S30°41'30"E along the general westerly line of the lands shown as "ASS'M'T LOT NO 247" on that certain Record of Survey, filed for record on February 4, 1964, in Book 172 of Maps at Page 55, in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

SURVEYOR'S STATEMENT:
The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
PLS 9095
STATE OF CALIFORNIA

Jessica DeMartini, PLS 9095

9/9/25
Date

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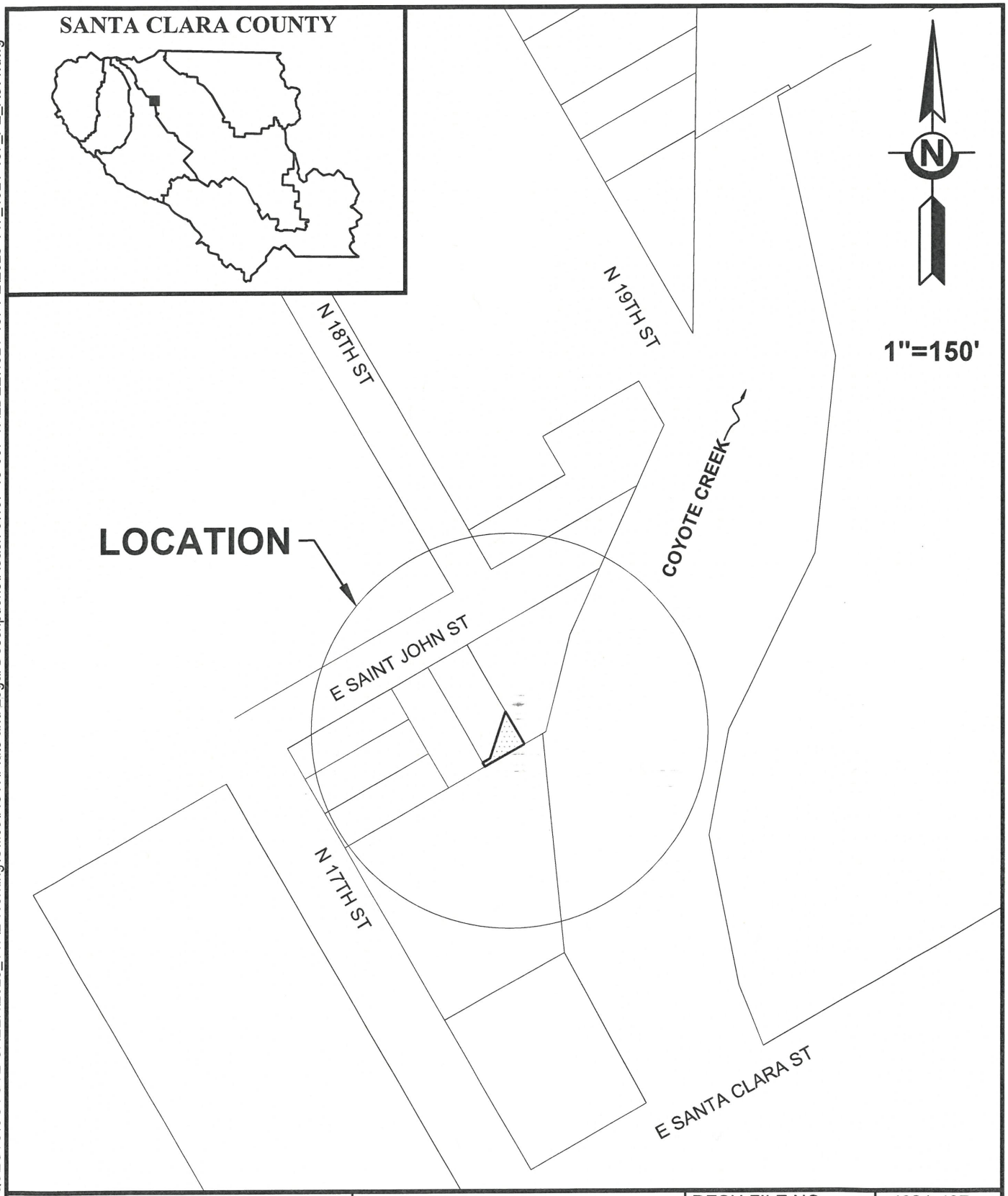
VALDEZ



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SANTA CLARA VALLEY WATER DISTRICT

Valley Water

COYOTE CREEK FLOOD PROTECTION PROJECT

RESU FILE NO.	4021-487
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

SCVWD S:\REQUESTS\COYOTE CREEK\2023_14712 Working\Office\ROW\Plats and Legal Descriptions\Reach 6\467-13-007 VALDEZ\4021-487 PE\2023-147_4021-487_PE_Rev1.dwg

Line Table		
Line #	Bearings	Distance
L1	S29°54'16"E	42.70'
L2	S60°02'12"W	51.07'
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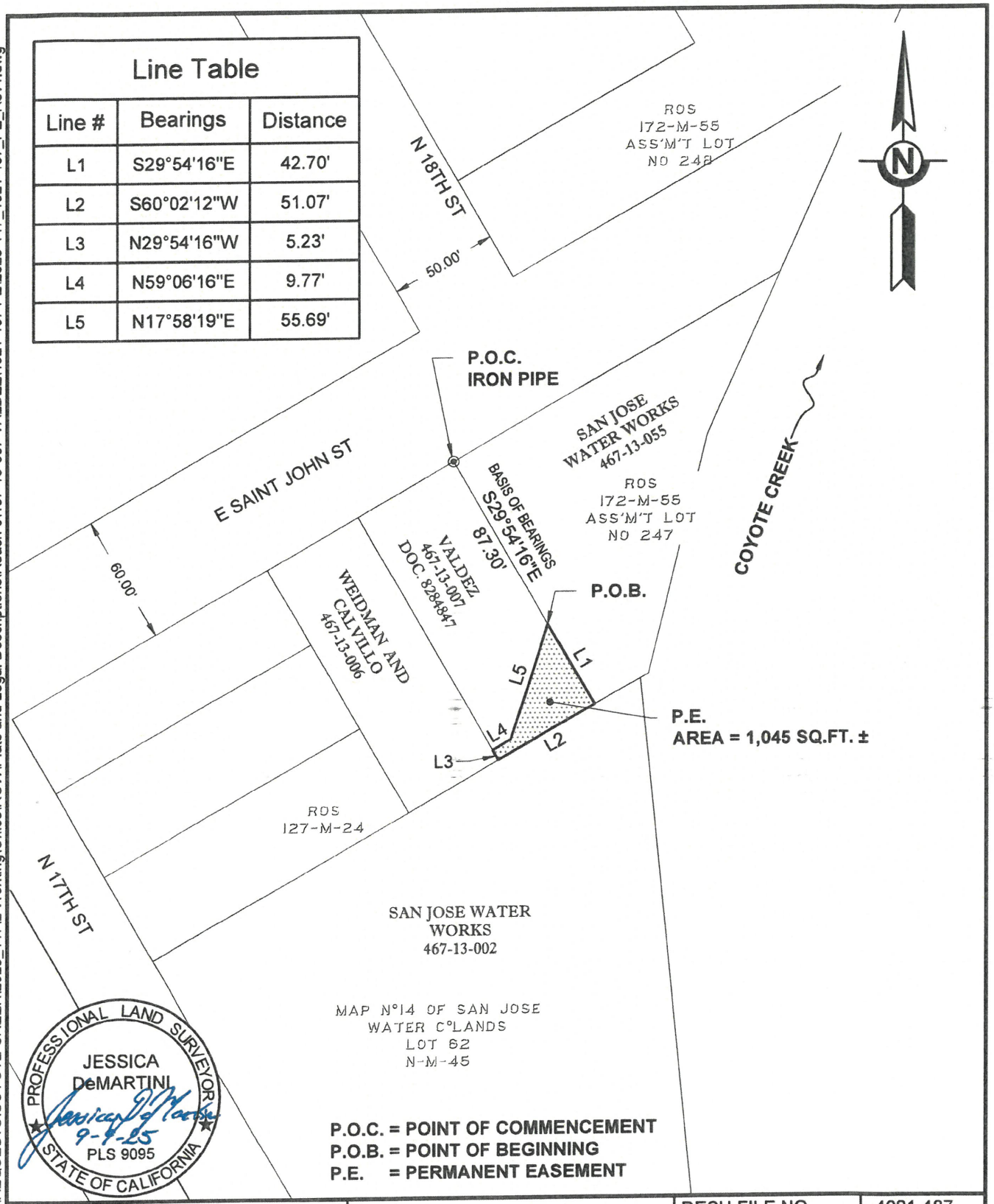

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
P.E. = PERMANENT EASEMENT

SANTA CLARA VALLEY WATER DISTRICT

Valley Water

SCALE: 1" = 60'

RESU FILE NO.	4021-487
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

SHEET 1 OF 1

Exhibit B

Temporary Construction Easement, File 4021-490

A temporary construction easement over, upon and across a portion of that real property in the City of San Jose, County of Santa Clara, State of California, hereinafter more particularly described below.

This temporary construction easement is granted under the express conditions listed below:

1. Grantor represents and warrants that she/he is the owner of the property described in Easement Area and that Grantor has the exclusive right to convey the temporary easement rights to the Grantee.

2. This temporary construction easement is necessary for the purpose of constructing the Coyote Creek Flood Protection Project and related activities incident to construction. This temporary construction easement shall not be revoked and shall continue in full force and effect beginning on July 1, 2026 until December 31, 2029, at which time the temporary construction easement shall terminate.

3. Grantor and Grantee acknowledge that the duration of the construction activity authorized herein within the Easement Area will likely be shorter than the term described in Section 2. Grantee agrees to notify Grantor in writing at least 1 week prior to exercise of the rights granted herein to enter the Easement Area. The written notification to the Grantor shall include an estimate of the expected duration of the Grantee's contractors and/or subcontractors use of the Easement Area.

4. Grantee agrees to use all reasonable efforts to keep any roadway covered by this easement open to traffic and to not interfere with residential occupants or construction activity of Grantor on site. Grantee will keep area covered by the easement clean and remove all debris related to its construction.

5. Grantee agrees to indemnify and hold harmless Grantor from and against any all claims, damages, liabilities, costs or any expenses whatsoever, arising from or caused, directly or indirectly by the entry onto the property by Grantee or its agent's, employees, invitees, contractors and subcontractors.

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD PROTECTION PROJECT (CCFPP)

RESU File No.: 4021-490
By: H. Zaeri

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of the lands as described in that certain Deed recorded as Document Number 8284847, filed on December 21, 1984, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

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Thence continuing along said easterly line, S29°54'16"E, 33.38 feet;

Thence leaving said easterly line, the following two (2) courses:

1) S17°58'19"W, 55.69 feet;
2) S59°06'16"W, 9.77 feet to a point on the westerly line of said lands;

Thence along said westerly line, N29°54'16"W, 20.49 feet;

Thence leaving said westerly line, N15°27'58"E, 71.76 feet to the **POINT OF BEGINNING.**

Containing 1,555 square feet of land, more or less.

BASIS OF BEARINGS:
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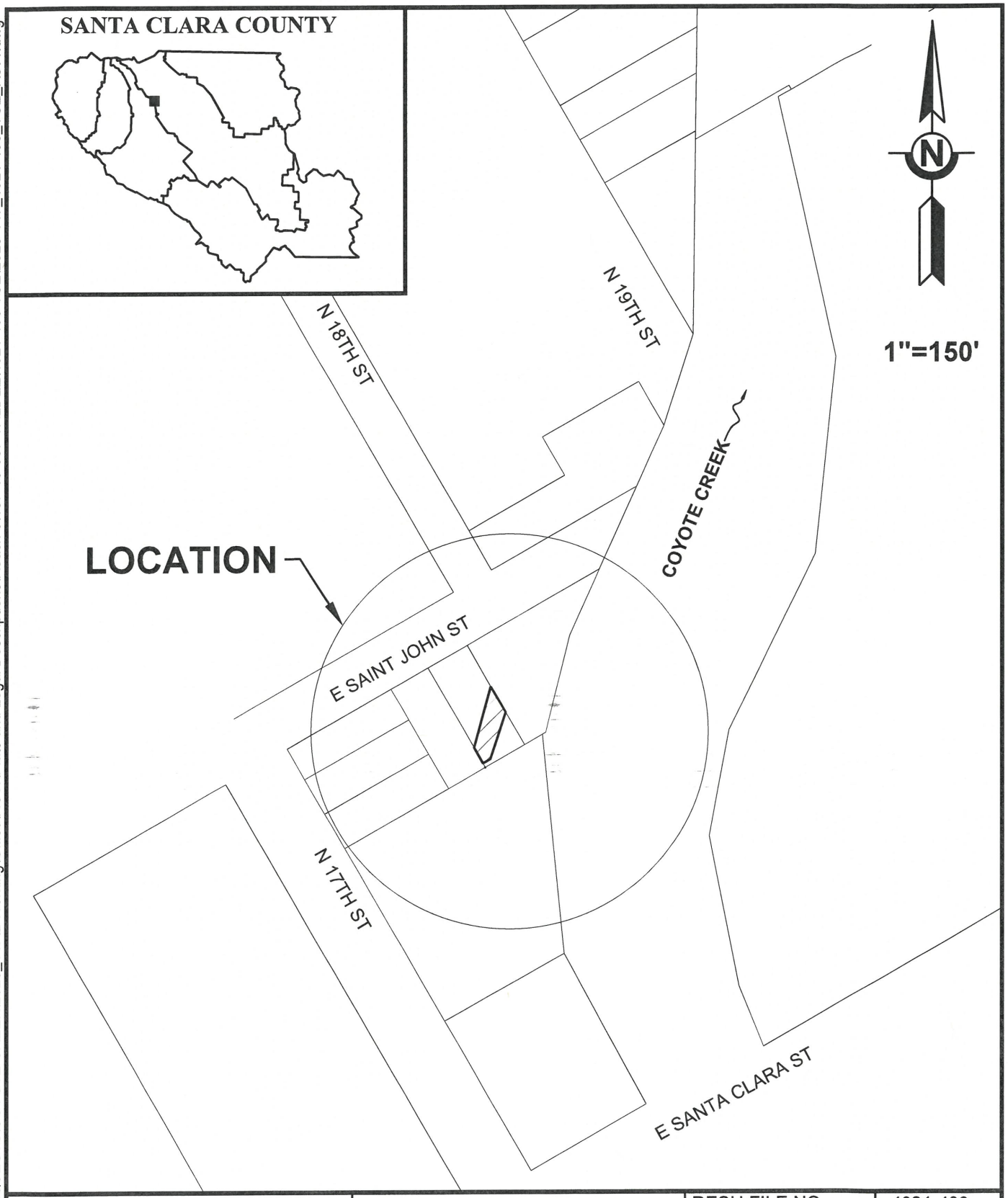
SURVEYOR'S STATEMENT:
The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Jessica DeMartini, PLS 9095

9/9/25
Date

PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
PLS 9095
STATE OF CALIFORNIA

VALDEZ



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SANTA CLARA VALLEY WATER DISTRICT

Valley Water

COYOTE CREEK FLOOD PROTECTION PROJECT

RESU FILE NO.	4021-490
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

VALDEZ

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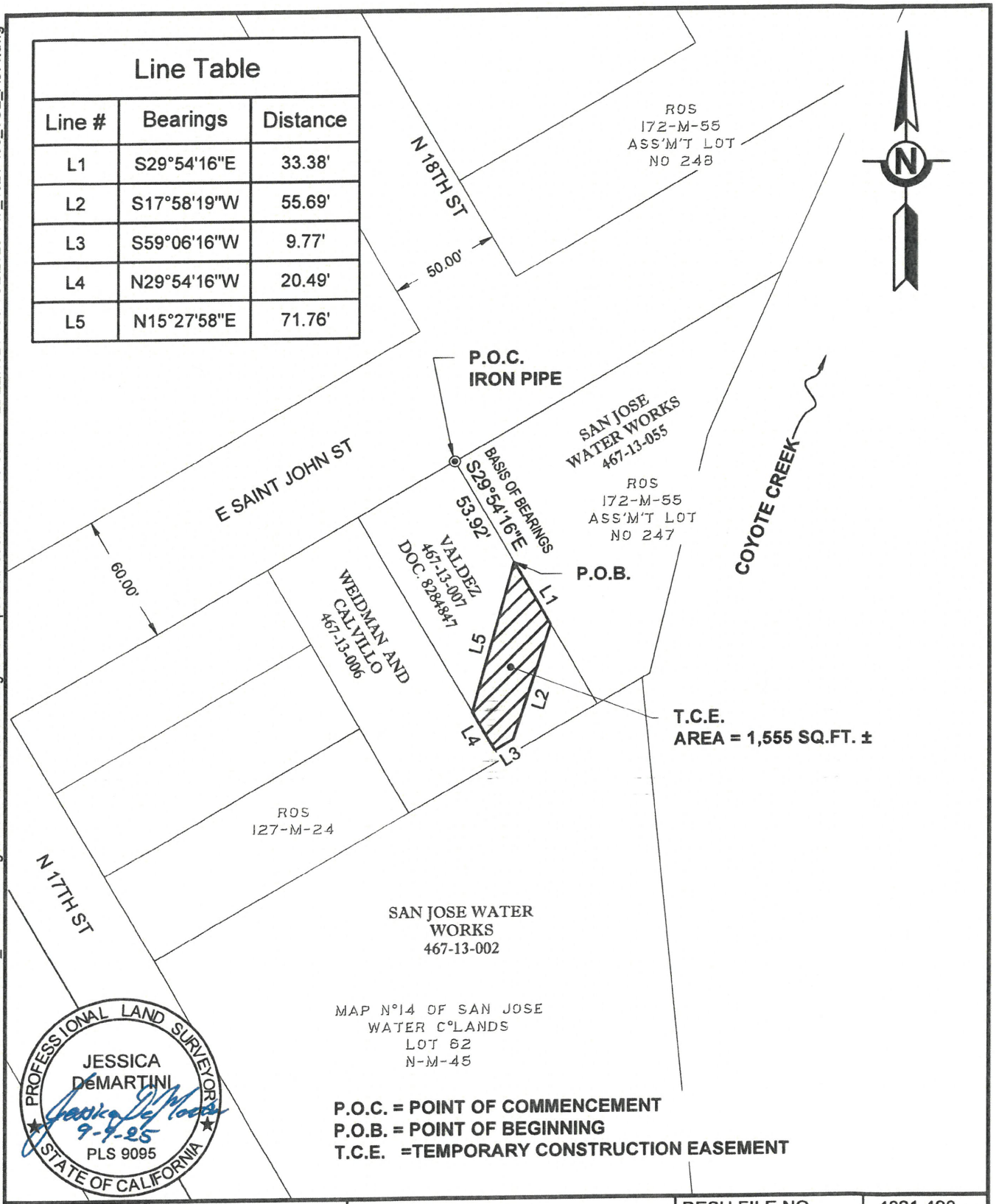
Line Table		
Line #	Bearings	Distance
L1	S29°54'16"E	33.38'
L2	S17°58'19"W	55.69'
L3	S59°06'16"W	9.77'
L4	N29°54'16"W	20.49'
L5	N15°27'58"E	71.76'



PROFESSIONAL LAND SURVEYOR
JESSICA DeMARTINI
9-9-25
PLS 9095
STATE OF CALIFORNIA

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
T.C.E. =TEMPORARY CONSTRUCTION EASEMENT

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

SCALE: 1" = 60'

RESU FILE NO.	4021-490
APN	467-13-007
LSMU REQUEST NO.	2023-147
DRAWN	H. Zaeri

SHEET 1 OF 1

Public Hearing to Consider Adoption of Resolution of Necessity: Coyote Creek Flood Protection Project

Valley Water

August 25, 2026

Findings to be Made at RON Hearing

- Establish the public need for the project
- Establish that project is designed/located in a manner most compatible with greatest public good and least private injury
- Determine the property is necessary for the project
- Establish offer required by Section 7267.2 of the Government Code was made to record owner(s)
- Establish that all conditions and statutory requirements necessary to exercise the power of eminent domain have been met
- Determine that all CEQA requirements have been complied with

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Public Necessity for the Proposed Project

3

- **Finding: The public interest and necessity require the proposed project**
  - Provide flood protection from floods up to the level that occurred in February 2017 (approximately a 20-year flood event) along portions of Coyote Creek from Montague Expressway to Tully Road
  - Preserve creek's habitat
  - Reduce long-term maintenance

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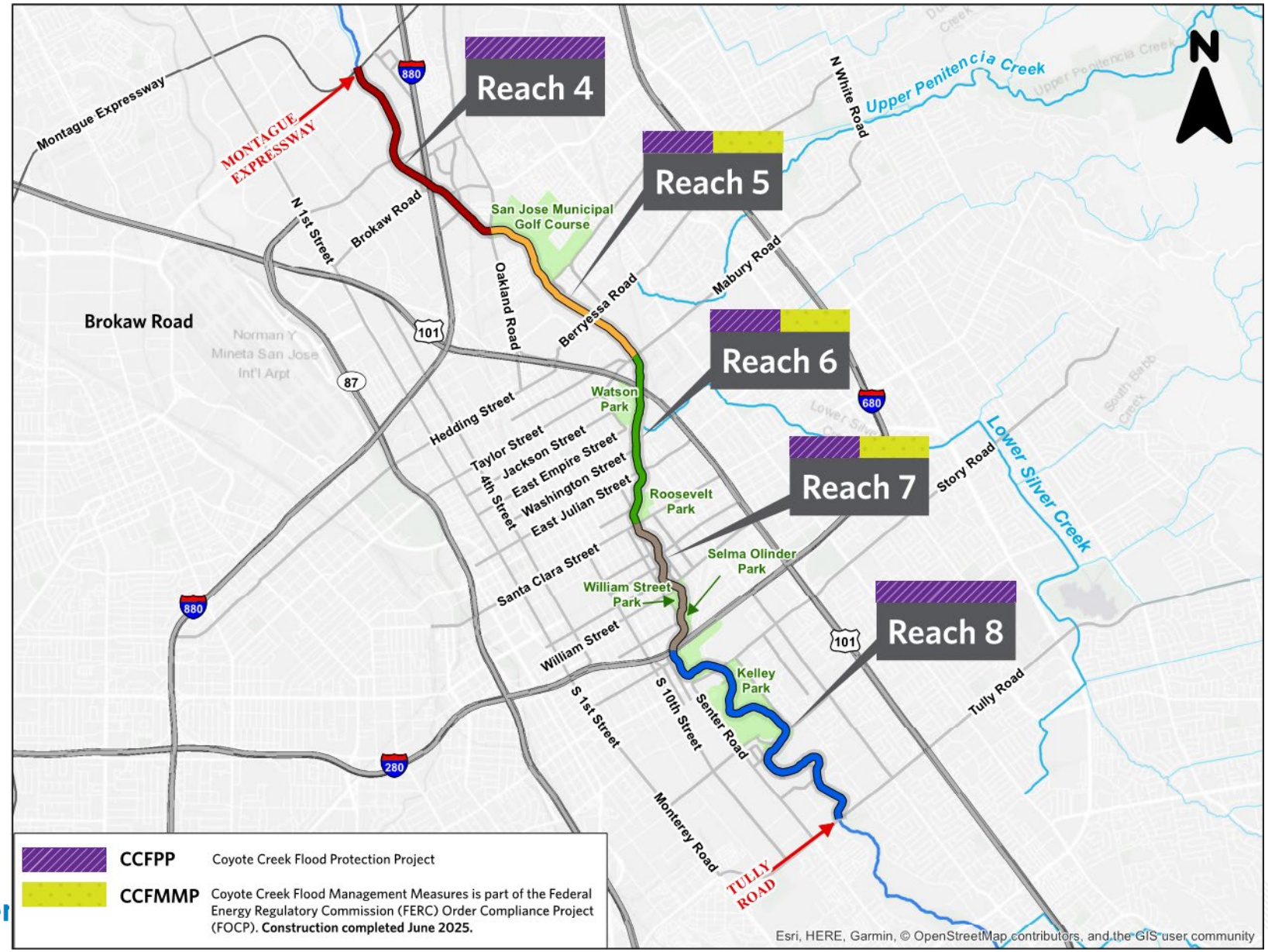
Coyote Creek Flood Protection Project



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Existing Constraints on Project Design

- The geography and footprint of the creek determines which properties will be impacted
  - Private property and public parks are located on both sides of the creek
  - The creek flows through private property and public parks

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Project Design Serves the Greatest Public Good with the Least Private Injury

Proposed Finding: The proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury

- Holistic approach to project design
- Avoidance of public and private structures
  - Locating project features to minimize impacts to existing structures
- Preserve habitat
  - Minimize disturbance to native vegetation
  - Preserve aquatic habitat
- Align project features with existing creek alignment

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CEQA Compliance

- An Environmental Impact Report (EIR) was prepared by Valley Water as the lead agency.
- The final EIR was certified by the Valley Water board of directors on March 11, 2025.
- On April 14, 2026, the Board considered the first Addendum to the Final EIR that analyzed the environmental impacts associated with design changes and a Notice of Determination was filed on April 16, 2026.

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Property Acquisitions Necessary for Project

- Project requires acquisition of 62 Properties in Reaches 4, 5, 6, 7, & 8
- A Resolution of Necessity is proposed to acquire a permanent easement and a temporary construction easement (property interests) over a portion of a property in Reach 6 owned by the following owners of record:
  - Pedro D. Valdez and Maria C. Valdez, a married couple; and
  - Tomasa S. Valdez, an unmarried woman.

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Property Interests on the Valdez Property are Necessary for the Project

Proposed Finding: The property described in the resolution is necessary for the proposed project

- This property is necessary for the project because a floodwall will be built at the back fence line of the Valdez property.
- Construction activities also require that a separate portion of the Valdez property be temporarily accessible to construct the project features.

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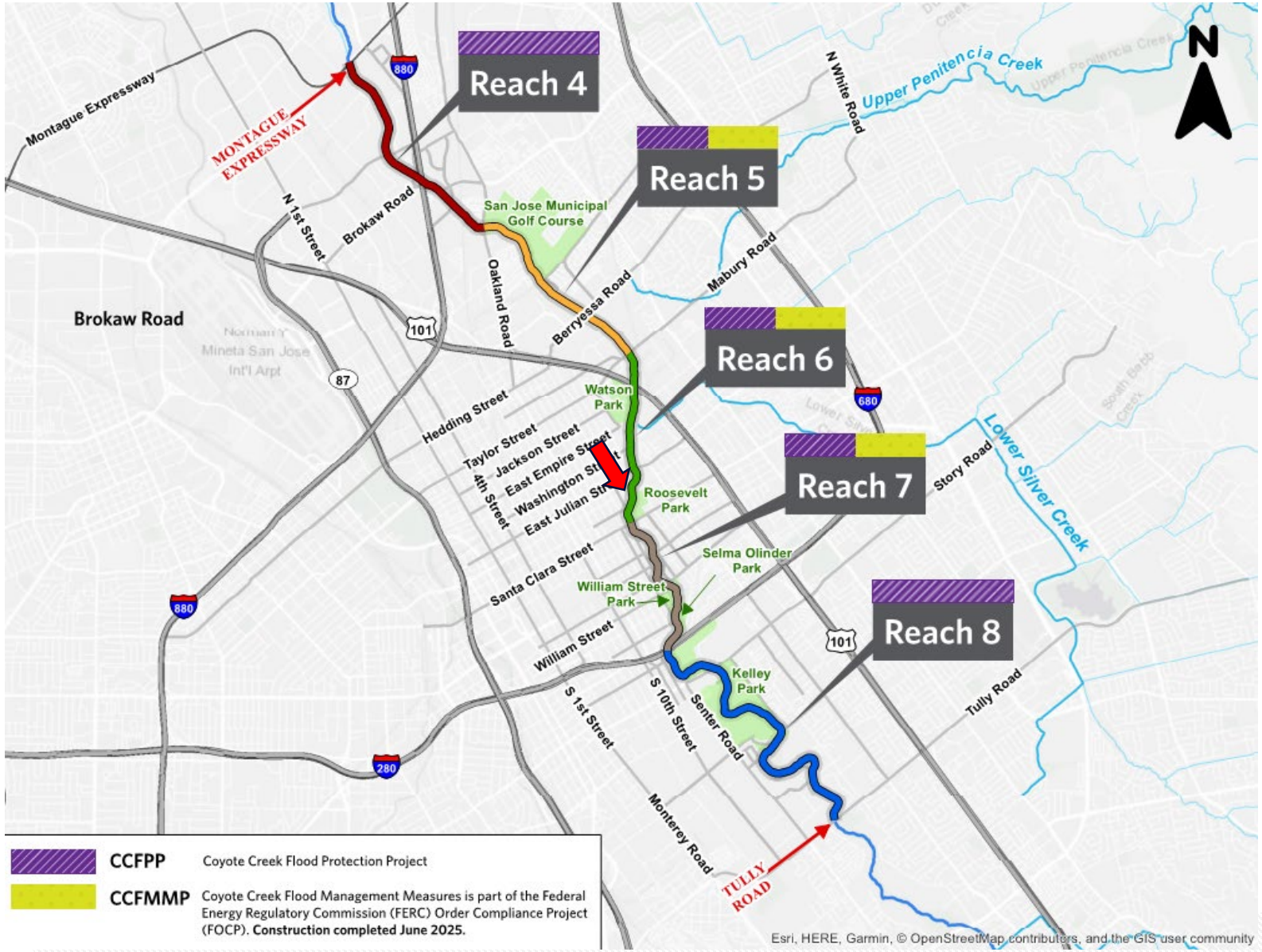
Valdez Property Location



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Valley Water

Valdez Property Exhibit

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CCFPP on the Valdez Property:

- The floodwall to be constructed is located along the rear fence line of the Valdez property.
- A portion of the area is to be acquired for access to and maintenance of the project features.
- After the project is constructed, the area will be returned to its existing use.

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Gov. Code Section 7267.2(a) Offer

Proposed Finding: The Offer of Just Compensation as Required by Section 7267.2(a) of the Gov. Code in an amount not less than the appraised value of the interest to be acquired has been made to the owners of record

- On February 20, 2026, the District sent a first written offer to the Owner(s) via certified mail for the Full Amount established as Just Compensation.
- The amount of just compensation was not less than fair market value established by an approved appraisal.

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Valdez Property - Acquisition Chronology

DATE	DISTRICT ACTIVITIES
February 20, 2026	Offer package mailed to Owners via USPS Priority Mail; delivery was confirmed on February 23, 2026*
March 10, 2026	VW called Owner. Left voicemail.
March 17, 2026	VW called Owner. Left voicemail.
March 23, 2026	VW called Owner. Left voicemail.
April 6, 2026	VW stopped by Owner Property and contacted Owner's son. Requested that Owner contact VW.
April 14, 2026	Owner sent email to VW with questions.
April 22, 2026	VW responded to Owner's questions via email.
May 4, 2026	VW called Owner. Left voicemail.
May 7, 2026	VW received text message from Owner asking for a meeting on May 22, 2026, to discuss the offer.
May 22, 2026	VW met with Owner at their Property and Owner expressed concerns and VW answered their questions.
June 22, 2026	VW sent follow up message to Owner.
June 29, 2026	VW sent follow up message to Owner to request another in person meeting.
July 4, 2026	Owner sent message to VW and stated that they were out of the country and would reach out when they returned.
July 6, 2026	VW sent message to Owner and continues working on scheduling another meeting.

*Item is not to be distributed to the public for protection of Owner's privacy. Just compensation is not part of this RON hearing.

Discussion and Decision

- This completes the Valley Water's presentation regarding acquisition of the Property Interests on the Valdez Property.
- After the Board receives comments from the property owner and public, staff is ready to answer questions.

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Close the Public Hearing

- After receiving comments/questions from the Owner and/or public, the Public Hearing can be closed.

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Valley Water

Clean Water • Healthy Environment • Flood Protection

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Santa Clara Valley Water District

File No.: 26-0127

Agenda Date: 8/25/2026
Item No.: 4.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Adopt Recommended Positions on Federal Legislation: H.R. 9372 (Subramanyam) - Data Infrastructure Energy Measurement and Standards Act; and Other Legislation that may Require Consideration by the Board.

RECOMMENDATION:
Adopt a Position of "Support and Amend" on H.R. 9372 (Subramanyam) - Data Infrastructure Energy Measurement and Standards Act.

SUMMARY:
H.R. 9372 (Subramanyam) - Data Infrastructure Energy Measurement and Standards Act
Recommended Position: Support and Amend
Priority Recommendation: 3
This bill would authorize the National Institute of Standards and Technology (NIST), in consultation with the Department of Energy, to develop a program for researching best practices in measuring and reporting energy and water use by data centers. Establishing these standardized metrics and data sharing mechanisms would help provide policymakers and other interested parties with improved energy and water demand forecasting capabilities.

Proposed Amendment:
The bill as amended and passed by the Committee on Science, Space, and Technology is significantly softer than originally written, merely authorizing the program at the NIST instead of directing its creation and removing the authorization of appropriations. This essentially makes the bill voluntary. Staff recommends supporting the bill as originally written to ensure that NIST develops the research program, and authorizing funding to carry that program out.

Status:
The bill was introduced in the House on June 18, 2026. The Committee on Science, Space, and Technology reported it favorably, as amended, on June 25.

Importance to Santa Clara Valley Water District (Valley Water):
The rapid expansion of data centers throughout California and across the nation raises serious

concerns over the centers' water and energy usage. Availability of data on this usage, however, remains elusive. Estimates of water consumption vary widely, and developers often decline to disclose usage, citing proprietary concerns. With the growing number of data centers in Silicon Valley and throughout our region, it is imperative that these centers document their usage to ensure Valley Water is able to plan for long-term water supply reliability and infrastructure capacity. This bill could help address these concerns by authorizing the development of best practices for researching and reporting energy and water use by data centers.

Pros:

- This bill could help facilitate greater data collection on energy and water use by data centers, providing policymakers with improved energy and water demand forecasting capabilities.

Cons:

- The bill as amended merely authorizes, rather than directs, the NIST to develop the research and reporting program.
- The amended bill also removed the authorization of appropriations. This significantly softens the intent of the bill.

ENVIRONMENTAL JUSTICE IMPACT:
There are no environmental justice impacts associated with this item, as the Board's position does not enact the legislation discussed above. If the enactment of legislation necessitates an action by the Board, any associated environmental justice impacts will be assessed when the Board considers the action.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
None.

UNCLASSIFIED MANAGER:
Marta Lugo, 408-630-2237

Santa Clara Valley Water District

File No.: 26-0687

Agenda Date: 8/25/2026
Item No.: 4.2.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Adopt Recommended Positions on State and Local Ballot Measures: Proposition 1, The Veterans and Affordable Housing Bond Act of 2026; Proposition 43, Limits Voters' Ability to Raise Revenues for Local Government Services; Measure RTM, Connect Bay Area Transit Initiative; and Other Measures Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

A. Adopt a position of "Support" on: Proposition 1, The Veterans and Affordable Housing Bond Act of 2026;
B. Adopt a position of "Oppose" on: Proposition 43, Limits Voters' Ability to Raise Revenues for Local Government Services; and
C. Adopt a position of "Support" on: Measure RTM, Connect Bay Area Transit Initiative.

SUMMARY:
A. Proposition 1, The Veterans and Affordable Housing Bond Act of 2026.

Position Recommendation: Support

Proposition 1 would authorize the state to issue $11.25 billion in general obligation bonds for housing purposes. Of that amount, $10 billion would support a variety of state housing programs and would be repaid by the state General Fund. An additional $1.25 billion would support the state's veterans home loan program and be repaid through payments from participating veterans.

Proposition 1 would allocate bond funding as follows:

Category of Programs	Funding
Affordable Multifamily Housing Programs	$7.2 billion
Veterans Housing Program	$1.25 billion
Homeownership Programs	$1.1 billion
Infrastructure Programs	$500 million

Farmworker Housing Program	$450 million
Higher Education Student Housing Programs	$350 million
Tribal Housing Program	$200 million
Local Pilot Programs	$200 million
Total	**$11.25 billion**

The $7.2 billion for affordable multifamily housing programs would support the acquisition, construction, and rehabilitation of rental housing for low-income households. These programs generally provide local governments and private developers with low-interest loans to fund a portion of project costs in exchange for reserving units for low-income households for a specified period. Some of this funding would support permanent supportive housing that combines housing with on-site services for certain residents.

The measure would provide $1.1 billion for homeownership programs for low- and moderate-income households, including first-time homebuyer assistance and funding for land acquisition and repairs to existing homes. Proposition 1 would provide an additional $450 million for farmworker housing, $350 million for affordable student housing at the University of California and California State University, $200 million for tribal housing, and $200 million for local pilot programs intended to develop housing at reduced costs.

Proposition 1 would provide $500 million for infrastructure projects that support affordable housing developments, including water, sewer, parks, and transportation improvements.

The measure would also provide $1.25 billion for veterans' home loan assistance, to be repaid through loan payments on home purchases.

The $10 billion in bonds supported by the General Fund is estimated to require approximately $500 million to $600 million in annual debt service payments over 25 years. As the veterans' housing funding would be repaid through payments made by participating veterans, it is not expected to result in a direct state cost.

Importance to Valley Water

Proposition 1 would provide significant state funding for affordable housing and related infrastructure, including water and wastewater improvements for housing developments. Valley Water interest is in supporting the development of housing that can reduce homelessness and housing affordability challenges affecting communities in Santa Clara County.

Increasing the supply of affordable housing can help reduce homelessness by expanding housing opportunities for low-income individuals and families who may otherwise be at risk of becoming or remaining unhoused. Proposition 1 would provide funding to develop and

preserve affordable multifamily housing, supportive housing, farmworker housing, and other housing opportunities. Increasing the availability of affordable, supportive housing may also provide additional options for unhoused individuals currently living along waterways within Valley Water's jurisdiction.

Valley Water has identified homelessness as an issue affecting its watershed stewardship responsibilities. Encampments along waterways can affect water quality, environmental resources, flood protection facilities, and Valley Water operations. Valley Water continues to address encampments through outreach, partnerships with cities and the County, and other programs. However, homelessness is a complex regional issue that requires coordinated efforts among local governments, housing and service providers, nonprofit organizations, and other partners.

Staff recommends that the Board adopt a position of "Support" on Proposition 1.

Pros

- Provides significant state funding to increase the supply of affordable housing.
- Increasing the availability of affordable and supportive housing may help reduce homelessness by providing additional housing opportunities for the unhoused.
- Provides $500 million for infrastructure supporting affordable housing developments, including water and wastewater improvements.
- Compliments regional efforts to reduce encampments along waterways and address the impacts of homelessness.

Cons

- Would increase state General Fund costs by approximately $500 million to $600 million annually for about 25 years.

B. Proposition 43, Limits Voters' Ability to Raise Revenues for Local Government Services.

Position Recommendation: Oppose

Proposition 43 limits voters' ability to pass voter-proposed local special taxes by increasing the percentage of votes needed to approve such ballot measures from a majority (over 50%) to two-thirds (66.6%), beginning January 1, 2027.

Currently, local governments, including special districts, must obtain two-thirds voter approval to impose, extend, or increase special taxes (taxes dedicated to a specific purpose) that they place on the ballot. However, this two-thirds vote requirement does not currently apply to special taxes placed on the ballot through voter-initiated signature gathering. Recent court decisions have allowed voter-initiated local special taxes to pass by a simple majority instead of the two-thirds threshold.

Specifically, beginning January 1, 2027, Proposition 43 would prohibit a local government, including the electorate of a local government exercising the initiative power, from:

- Imposing, extending, or increasing any special tax, except as provided in specific provisions of the California Constitution, unless and until that tax is submitted to the electorate and approved by a two-thirds vote.
- Imposing ad valorem taxes on real property, except where authorized under existing constitutional provisions in Article XIII D Section (3)(a)(1).

Importance to Valley Water

Because the measure includes existing requirements for special taxes and exemptions, Proposition 43 does not have a direct fiscal impact on special districts such as Valley Water. Valley Water will still be able to collect revenue based on assessed valuation due to the reference of Article XIII D Section (3)(a)(1) that incorporates existing exemptions, as well as to collect fees, as those charges are generally excluded from the definition of “tax” under Article XIII C.

Valley Water’s 2026 Legislative Guiding Principles IV.A.6. expresses support for reducing the vote threshold for ballot measures to fund infrastructure projects. Valley Water has historically supported efforts to lower the vote threshold for local revenue measures, including the failed Proposition 5 in 2004, which sought to reduce the threshold from two-thirds to 55% for local bond measures for housing and infrastructure projects.

Valley Water has also opposed efforts to restrict local governments’ ability to raise revenue, such as the 2024 “Taxpayer Protection and Government Accountability Act," which would have imposed stricter rules for local taxes, fees, and assessments. The California Supreme Court blocked the measure from the ballot for exceeding the scope of the power to amend the Constitution via citizen initiative.

If Proposition 43 passes, citizens' initiatives would be expressly forbidden from imposing ad valorem property taxes or imposing, extending, or increasing
special taxes without being subject to the relevant super-majority voter approval threshold provisions of Proposition 13 or Proposition 218. As a result, a minority of voters within Santa Clara County could block a majority of voters from approving revenues necessary to fund essential services and programs.

Staff recommends that the Board adopt a position of “Oppose” on Proposition 43.

Pros

- Closes what proponents have identified as a loophole to the two-thirds vote requirement for local special taxes.

Cons

- Restricts local control.
- Allows a minority of voters to block funding determined to be essential by a majority of local voters.
- Reduces an avenue for raising revenue currently available to communities.

C. Measure RTM, Connect Bay Area Transit Initiative.

Position Recommendation: Support

Measure RTM is a five-county regional sales tax proposal on the November 3, 2026, ballot, covering Alameda, Contra Costa, San Francisco, San Mateo, and Santa Clara counties. If approved, the measure would impose a 0.5% sales tax in Alameda, Contra Costa, San Mateo, and Santa Clara counties and a 1% sales tax in San Francisco for 14 years and is estimated to generate approximately $980 million to $1 billion annually.

The measure aims to prevent severe service cuts and support regional transit service, including the Santa Clara Valley Transportation Authority (VTA) and Caltrain. In addition to maintaining transit operations, the measure would provide funding for improvements intended to increase transit safety, cleanliness, reliability, affordability, accessibility, and coordination among San Francisco Bay Area transit systems, as well as certain transportation capital and roadway projects. This measure is also intended to support regional connectivity and preserve access to public transportation for workers, students, seniors, people with disabilities, and other riders who rely on public transit.

Importance to Valley Water

Measure RTM has a nexus to Valley Water Board Governance Policy No. E-5 (“Climate Change Mitigation and Adaptation”), which establishes the Board’s policy direction for Valley Water to achieve carbon neutrality and provide equitable, climate-resilient water supply, flood protection, and water resource stewardship.

Specifically, Ends Policy E-5.1.3 establishes the objective of incentivizing low-carbon practices, projects, and efforts by employees, contractors, and partners. By helping maintain reliable and accessible regional public transit, Measure RTM would preserve lower-carbon commuting options for Valley Water employees who use public transit and provide an alternative to single-occupancy vehicle travel. This is consistent with Valley Water’s goal of minimizing greenhouse gas emissions from its operations and its related objective of incentivizing low-carbon practices, projects, and employee efforts.

Staff recommends that the Board adopt a position of “Support” on the Connect Bay Area Transit Initiative.

Pros

- Supports regional greenhouse gas reduction efforts by maintaining public transit that can reduce automobile trips and associated transportation-related emissions.

- Supports regional coordination through a multi-county approach to maintaining and improving an interconnected Bay Area public transit network.
- Preserves lower-carbon transportation options for residents and workers, including Valley Water employees who rely on public transit for commuting.
- Benefits Santa Clara County by directing locally generated revenue to transit services, including VTA and Caltrain.

Cons

- Increases the local tax burden by imposing a 0.5% sales tax in Santa Clara County for 14 years.
- May contribute to taxpayer fatigue, as voters may grow weary of future measures that fund public services.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:
There are no Environmental Justice impacts associated with this item. The Board's position does not enact the ballot measures discussed above. If the enactment of such ballot measures necessitates an action by the Board, any associated Environmental Justice impacts will be assessed when the Board considers the action.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have the potential to result in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
None.

UNCLASSIFIED MANAGER:
Marta Lugo, 408-630-2237

Santa Clara Valley Water District

File No.: 26-0686

Agenda Date: 8/25/2026
Item No.: 4.2.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☒ No ☐
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Approve Amendment No. 1 to Agreement No. A4909G with EMC Research, Inc., for On-Call Polling, Survey, and Public Opinion Research Services, PlanetBids File No. VW0259, Increasing the Not-to-Exceed Fee by $190,000 for a Revised Total Not-to-Exceed Fee of $415,000, and Extending the Term Through June 30, 2027.

RECOMMENDATION:
Approve Amendment No. 1 to Agreement No. A4909G with EMC Research, Inc. for on-call polling, survey, and public opinion research services, increasing the not-to-exceed fee by $190,000 for a revised total not-to-exceed fee of $415,000 and extending the term through June 30, 2027.

SUMMARY:
Agreement History

On October 23, 2023, the CEO approved agreements with EMC Research, Inc. and Probolsky Research for a total not-to-exceed amount of $225,000 each. Additionally, on November 14, 2023, Fairbank, Maslin, Maullin, Metz and Associates, Inc., operating as FM3 Research, was awarded an agreement for a total not-to-exceed amount of $225,000. These three On-Call agreements were awarded through competitive solicitation (RFP No. VW0259), with a combined not-to-exceed amount of $675,000. Because the three agreements were awarded under the same competitive solicitation, the cumulative not-to-exceed value of the agreements is relevant when determining the appropriate approval authority for subsequent contract actions.

Amendment No. 1 to Agreement No. A4909G

Board approval is requested for Amendment No. 1 to Agreement No. A4909G in consideration of the cumulative not-to-exceed value of the agreements awarded under RFP No. VW0259. The proposed additional services remain within the scope of services established under the original competitive solicitation. Amendment No. 1 to Agreement No. A4909G with EMC Research, Inc. would increase the not-to-exceed amount by $190,000, from $225,000, for a revised not-to-exceed total of $415,000 and extend the agreement term through June 30, 2027.

These services are essential to Valley Water's ongoing outreach, communication, public engagement, and policy-related efforts. EMC Research currently has active task orders requiring additional contract capacity to complete planned and ongoing assignments. EMC also possesses specific experience and institutional knowledge relevant to upcoming assignments, providing continuity and efficiency in the performance of these services. Approval of the amendment will ensure continued access to timely public opinion research and community feedback, avoiding potential delays or disruptions to planned and ongoing initiatives.

ENVIRONMENTAL JUSTICE IMPACT:
There are no environmental justice impacts associated with this item.

FINANCIAL IMPACT:
The Agreement is for a revised total not-to-exceed fee of $415,000. There are adequate funds in the FY 2026-27 Adopted Budget for anticipated expenditures this year.

CEQA:
The recommended action does not constitute a project under the California Environmental Quality Act (CEQA) because it does not have the potential to result in a direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment A: Gov. Code 84308
Attachment 1: Amendment No. 1
Attachment 2: Agreement

UNCLASSIFIED MANAGER:
Rachael Gibson, 408-630-2884

Attachment A
Government Code §84308

Approve Standard On-Call Consultant Agreement with EMC Research, Inc., to provide On-Call Public Opinion, Research, Survey and Polling Support Services, Agreement No. A4909G, PB File No. VW0259, for a Not-to-Exceed Fee of $415,000

List of Parties and Their Agents/Representatives Known to Staff

Organization Name	**Name**	**Role**	**Location**
EMC Research, Inc.	Jessica Polsky-Sanchez	Principal	2001 Broadway, Suite 110 Oakland, CA 94612

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AMENDMENT NO. 1 TO AGREEMENT A4909G BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND EMC RESEARCH, INC.

This Amendment No. 1 (Amendment), effective as of the date it is fully executed by the Parties, amends the terms and conditions of the Standard On-Call Consultant Agreement A4909G (Agreement) dated October 23, 2023, between SANTA CLARA VALLEY WATER DISTRICT (District or Valley Water) and EMC RESEARCH, INC., (Consultant), collectively, the Parties.

RECITALS

WHEREAS, Consultant is currently providing On-Call Public Opinion, Research, Survey & Polling Services;

WHEREAS, the Agreement expires on October 23, 2026;

WHEREAS, the Parties desire to amend the Agreement to extend the term through June 30, 2027 and to increase the not-to-exceed fee by $190,000, for a revised total not-to-exceed of $415,000, to allow the Consultant to continue providing On-Call Public Opinion, Research, Survey & Polling Services for Valley Water.

NOW, THEREFORE, in consideration of the mutual promises and agreements stated herein and notwithstanding anything to the contrary stated in the Agreement District's and Consultant hereby agree to amend the Agreement as follows:

1. The Standard On-Call Consultant Agreement, Section Twelve, subsection 23. Schedules and Attachments, is amended to state as follows:

   "23. Schedules and Attachments. Schedule OC, Scope of Services, and the following listed Attachments are incorporated herein by this reference as though set forth in full:

   Attachment One – Fees and Payments (REVISED)
   Attachment Two – Schedule of Completion (REVISED)
   Attachment Three – Consultant's Key Staff and Subconsultants (UNCHANGED)."
   Attachment Four – Reference Materials (UNCHANGED)."

2. Attachment One to Schedule OC, Fees and Payment is revised as set forth in Revised Attachment One hereto.

3. Revised Schedule OC, Revised Attachment Two, Schedule of Completion, Section 2. is amended to state as follows:

   "2. This Agreement expires on June 30, 2027, unless, prior to its expiration, its term is modified by a written amendment hereto, signed by both Parties."

4. All other terms and conditions of the Agreement A4909G, not otherwise amended as stated herein remain in full force and effect.

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AMENDMENT NO. 1 TO AGREEMENT A4909G
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND EMC RESEARCH, INC.

IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AMENDMENT NO. 1 TO AGREEMENT A4909G THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

By: _____
Tony Estremera
Chair, Board of Directors

Date: _____

ATTEST:

_____
Candice Kwok-Smith
Clerk, Board of Directors

EMC RESEARCH, INC.
Consultant

By: Signed by: Jessica Polsky-Sanchez 8A0A972099094D7...
Jessica Polsky-Sanchez
Principal

Date: 8/10/2026

Consultant's Address:
2001 Broadway, Suite 100
Oakland, CA 946612

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AMENDMENT NO. 1 TO AGREEMENT A4909G
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS

1. Total Authorized Funding (REVISED)

Total payment for Services performed, to the satisfaction of Valley Water, as described in the Schedule and in all approved Task Orders will not exceed a total amount of **$415,000** (Not-to-Exceed Fees or NTE). Under no conditions will the total compensation to the Consultant exceed this NTE payment amount without prior written approval in the form of an amendment to this Agreement executed by Valley Water's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board. It is understood and agreed that this total is an estimate, and the total amount of Services to be requested by Valley Water may be less. **There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized pursuant to this Agreement.** However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars ($500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

2. Terms and Conditions (UNCHANGED)

A. Payments for Services performed, as described in each Task Order, which applies to the specific Services, will be based on the following terms:

1) Valley Water will pay for Services provided by the Consultant according to the fixed fee amount for professional, technical, and administrative personnel, as well as materials and supplies.

2) There are no hourly rates allowed under this agreement.

B. **Reimbursable Expenses (UNCHANGED)**

1) All reimbursable expenses not already covered in overhead may include, but are not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies. These other direct expenses as approved by Valley Water Project Manager (VWPM) will be billed on a monthly basis at actual cost linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted.

2) Equipment purchased on behalf of Valley Water that costs $50 or more must receive the prior written approval of Valley Water Project Manager (VWPM). All equipment purchased on behalf of Valley Water and paid for by Valley Water shall become the property of Valley Water and be delivered to Valley Water prior to expiration of this Agreement.

3) Travel expenses are reimbursed at actual costs. Travel and overnight accommodations, including per diem, required for performance of this Agreement will be paid at reasonable cost not to exceed the U.S. General Services Agency Per Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior approval has been obtained from Valley Water Project Manager (VWPM). For air travel, Valley Water will pay the cost of a coach class or equivalent ticket. Where air

travel is required, Valley Water will pay the total cost of taxi, rideshare, public transportation, or a rental car, which may include insurance, gas, car fee, and taxes and will be paid at the actual costs incurred. Vehicle rental is limited to a compact or economy model, unless prior approval has been obtained from Valley Water Project Manager (VWPM) for a different type of vehicle.

4) For staff with rates exceeding the rate of $[RATE LIMIT]/hr., the Consultant must obtain written approval from the Valley Water Project Manager (VWPM) as to the numbers of hours per task prior to that individual working on the Project. [NOT USED]

C. **Prevailing Wage Requirements** [NOT USED] **(UNCHANGED)**

STANDARD ON-CALL CONSULTANT AGREEMENT

Terms and Conditions Template (On-Call Administrative-General)
4/1/2023 – 4/30/2024

This agreement (Agreement) is effective once fully executed (Effective Date), by and between SANTA CLARA VALLEY WATER DISTRICT (Valley Water), EMC RESEARCH, INC., a Washington corporation (Consultant), individually the Party or collectively the Parties.

WHEREAS, Valley Water desires certain services hereinafter described and Consultant affirms it has the requisite experience and expertise, and desires to provide such services.

NOW, THEREFORE, Valley Water and Consultant, for the consideration and upon the Terms and Conditions specified, agree as follows:

SECTION ONE

SCOPE OF SERVICES

The Scope of Services (Services) to be performed pursuant to this Agreement is described in the Schedule, Scope of Services, attached hereto and incorporated herein by this reference (Schedule). Valley Water may require Consultant to provide all or a portion of these services (Services) through subsequently executed task orders (Task Orders). Task Orders will be in the form of the template described in Section Twelve, Miscellaneous Provisions, subsection 13. Task Orders and in the Standard On-Call Consultant Agreement, Appendix Three, Task Order Template. These Services will be provided on an on-call basis (On-Call).

SECTION TWO

DUTIES OF CONSULTANT

1. Performance

A. Each Scope of Service described in an attached Schedule must be performed by Consultant, or at its direction, to meet the purposes specified in this Agreement. References to “Consultant” herein include those performing any portion of the Services at its direction such as Subconsultants, vendors, suppliers, subcontractors, and other business entities and individuals.

B. Unless the requirements for the Services described in the attached Schedule are specifically modified in writing, Consultant must perform Services and provide all deliverables as required.

C. Consultant shall not undertake any Services not described in the attached Schedule unless authorized in writing by Valley Water prior to the performance of such Services by issuance of a Task Order or pursuant to an amendment to this Agreement signed by both Parties.

2. Consultant Controlled Areas

Consultant is responsible for the security and safety of the area(s) it controls wherein it is required to perform field operations pursuant to the Scope of Services.

3. Licensing

Services performed by Consultant will be undertaken only by persons appropriately licensed, certified, or registered in California, as applicable to the Services described herein, when required by statutes or regulations, as well as pursuant to the relevant standard of care as described in Section Two, Duties of Consultant, subsection 11, Standard of Care.

4. Valley Water's Approval of Deliverables

Deliverables prepared by Consultant, notwithstanding acceptance and approval by Valley Water, which Valley Water determines must subsequently be modified due to errors or omissions, will be corrected at no additional cost to Valley Water.

5. Errors and Omissions

Consultant is responsible for any direct or actual damages incurred by Valley Water which Valley Water determines result from Consultant's errors or omissions in Consultant's deliverables.

6. Valley Water Standardization Requirements

A. Consultant shall perform the Services utilizing Valley Water nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software at the time(s) Valley Water issues a Notice to Proceed pursuant to this Agreement.

7. Consultant's Key Staff and Subconsultants

A. Consultant's and firms subcontracted by the Consultant (Subconsultants) assigned to perform the Services are identified in the Schedule(s), Scope of Services, Attachment Three, Consultant's Key Staff and Subconsultants.

B. The Project team organization chart and delegated responsibilities of each team member will be submitted to Valley Water for concurrence.

C. Consultant may utilize Subconsultants it deems appropriate to the complexity and nature of the required Services.

1) Consultant must obtain Valley Water's approval of all Subconsultants. Upon Valley Water's request, Consultant must provide copies of all Subconsultant agreements.

2) Consultant must require its delegates or Subconsultants to agree, in writing, to adhere to Terms and Conditions of this Agreement.

D. Any delegation or use of Subconsultants by Consultant will not operate to relieve Consultant of its responsibilities as described in this Agreement.

E. If any of Consultant's designated key staff persons or Subconsultants fail to perform to the satisfaction of Valley Water, on written notice from Valley Water, Consultant will have 15 calendar days to remove that person from the Project and provide a replacement acceptable to Valley Water.

F. Consultant will not charge Valley Water for the time it takes Consultant's replacement personnel to obtain Valley Water-specific Project knowledge in the possession of the person(s) being replaced.

G. Consultant's Key Staff: Valley Water's Project Manager (VMPM) or authorized representatives may approve any revisions to Consultant's list of key staff assigned to the Project as an administrative modification to this Agreement, and such approval will be confirmed in writing.

H. Consultant's Subconsultants

1) Valley Water Project Manager may approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list and the Scope of Services is deleted from the Agreement or such services are assumed by the Consultant; such approval will be confirmed in writing.

2) Valley Water's authorized representative may approve any revisions to Consultant's list of authorized Subconsultants when a listed Subconsultant is replaced (to perform the same Scope) or a new Subconsultant is added (to perform new Scope), provided the firm complies with all insurance requirements established by Valley Water for such work; such approval will be confirmed in writing.

8. Compliance with All Laws

A. Consultant's performance must be in compliance with the most current versions of any and all laws relevant to the Services it performs pursuant to this Agreement, including, but not limited to adherence to: all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders, and other requirements; governmental requirements, applicable to state and federal compliance with the Professional Land Surveyors Act; State and Federal Endangered Species Act; state and federal water quality laws; and all other state and federal laws or regulations regarding environmental protection and compliance, health, safety, wages, hours, equal employment opportunity, nondiscrimination, working conditions, and transportation. In the event that Valley Water's assistance is necessary to achieve such compliance, Consultant shall promptly notify Valley Water.

B. Consultant shall provide, at Valley Water's request, documentation demonstrating Consultant's compliance with all laws as described herein. After reasonable notice and according to reasonable conditions, Valley Water has the right to inspect and copy any records of Consultant regarding such compliance.

C. Consultant represents and warrants that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal government department or agency.

9. Occupational Safety and Health

A. Consultant will perform the Services in compliance with the most current versions of all laws, standards, rules, and regulations of the Occupational Safety and Health Act, and all state and federal laws and regulations relating to safety and health standards. Consultant shall perform the Services in compliance with, will furnish only supplies, articles, and equipment that comply with such laws, standards, and regulations.

B. Consultant shall immediately notify Valley Water in the event of any personal injury accident or occurrence occurring during the performance of the Services. Upon Valley Water's request, Consultant shall provide Valley Water with documentation fully describing the accident and injury and the actions implemented to prevent similar occurrences.

10. Consultant as Independent Contractor

Consultant will perform all Services as an independent contractor and not an agent or employee of Valley Water. Consultant represents and warrants that it and its contractors who are performing any of the Services as Subconsultants will perform such Services as an independent contractor, and neither Consultant nor Subconsultants nor their employees are the servants, agents or employees of Valley Water. Except as expressly provided in this Agreement, Valley Water exercises no direction, supervision or control over Consultant, its employees, agents, or Subconsultants.

11. Standard of Care

A. Consultant must possess and maintain during the term of this Agreement all certifications, licenses, permits, and qualifications to perform the Services and prepare all deliverables. Consultant must perform all Services and prepare all deliverables in accordance with those standards and practices of care, skill, and diligence that are generally recognized and customarily observed by competent persons in Consultant's area of specialty in the State of California at the time such Services are rendered.

B. Consultant shall perform the Services and prepare all deliverables without any errors or omissions, and in accordance with Section Two, Duties of Consultant, subsection 8. Compliance with All Laws.

C. Consultant and its Subconsultants must perform the Services in compliance with all applicable written federal, state and local codes, statutes, laws, regulations, and ordinances, including, but not limited to, environmental, energy conservation, and disabled access requirements as per the provisions of Section Two, Duties of Consultant, subsection 8. Compliance with All Laws.

SECTION THREE

DUTIES OF VALLEY WATER

1. Available Data

Valley Water will make available to Consultant all data and information in its possession and control and which it deems necessary to the preparation of the deliverables specified in the Schedule. Valley Water will actively aid and assist Consultant in obtaining such information from other agencies and individuals as it deems necessary. Valley Water is not responsible for providing data and information that it does not possess.

2. Review of Deliverables

A. Valley Water will designate a Project Manager (Valley Water Project Manager) for purposes of administering and managing this Agreement.

B. Consultant's progress in completing the Services will be reviewed by Valley Water Project Manager at each milestone identified in an executed Task Order or at such other time(s) at the discretion of Valley Water.

C. Consultant must notify Valley Water in writing when it completes and has submitted to Valley Water each deliverable as per an executed Task Order. Deliverables deemed satisfactory and in compliance with this Agreement are subject to approval by Valley Water. Within 30 calendar days of receipt of each deliverable, Valley Water will either (1) notify Consultant that Valley Water accepts the deliverable, or (2) notify the Consultant that the deliverable is not acceptable and must be revised.

D. If Valley Water advises Consultant that a deliverable must be revised due to errors or omissions by the Consultant, Consultant must correct, at no cost to Valley Water, those deficiencies as soon as possible and shall notify Valley Water upon completion of the revised deliverable and submit to Valley Water.

E. Valley Water will then review the revised deliverable and within 30 calendar days of receipt, advise the Consultant if the revised deliverable is acceptable. All deficient deliverables will be revised at no cost to Valley Water and this process will continue until Consultant has corrected all deficiencies identified by Valley Water.

F. None of the proposed changes or revisions or anything else in this Agreement will be construed to relieve the Consultant of professional or legal responsibility for the performance of the Services as otherwise required by the Terms and Conditions of this Agreement. Corrections to any deliverable as a result of Consultant's errors or omissions, as determined by Valley Water, will not result in additional costs or expenses to Valley Water.

3. Access to Valley Water Facilities

Valley Water will facilitate access to Valley Water facilities as required for the Consultant to perform the Services.

SECTION FOUR

FEES AND PAYMENTS

1. Total Fixed Not-to-Exceed Fees

A. Payment for all Services performed by Consultant to the satisfaction of Valley Water, as described in the Schedule will be based on the Total Fixed Not-to-Exceed (NTE) Fees stated in the Schedule, Attachment One, Fees and Payments. Valley Water will make payments to the Consultant according to the terms provided for herein and in Schedule, Attachment One, Fees and Payments. Payments made by Valley Water to the Consultant for Services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s), equipment, reimbursable travel and per diem expenses incurred by the Consultant to perform the Services. All Service requests will be made by Valley Water on an as-needed basis, subject to future Task Order(s) executed by Valley Water and Consultant.

B. It is understood and agreed that there is no guarantee, either expressed or implied, as to the actual dollar amount, if any, of services that will be authorized under this Agreement, and that Valley Water is not obligated to request any service(s) from Consultant at all. However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars ($500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

C. The Schedule, Attachment One, Fees and Payments, sets forth the NTE fee, if any, for Services Consultant may perform pursuant to an executed Task Order.

D. Services to be performed pursuant to a Task Order will commence only after written approval by both Valley Water's authorized representative referenced in the Standard On-Call Consultant Agreement, Appendix One, Additional Legal Terms, and Consultant's authorized representative.

E. Notwithstanding any other provision of this Agreement, Valley Water agrees to pay Consultant in accordance with the terms set forth in an executed Task Order. Consultant represents and warrants that the amounts charged to Valley Water for Services do not exceed the amounts normally charged by Consultant to other customers for similar Services.

F. Upon the written approval of Valley Water, the Services described in a Task Order task may be reduced, revised, or deleted.

G. Automobile travel mileage expenses will be paid at the current Internal Revenue Service (IRS) rate. Valley Water will not reimburse Consultant nor its Subconsultants for mileage nor travel time to and from Valley Water Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. However, Valley Water will reimburse Consultant and its Subconsultants for mileage incurred from Valley Water Headquarters or Consultant's and Subconsultants' firm addresses, whichever is closer to the destination, to Project site(s) and, if directed or authorized by Valley Water, to meeting locations such as with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.

2. Consultant Invoices

A. Consultant's invoices will be prepared in accordance with the terms of this Agreement, Section Four, Fees and Payments, and represent Services performed and reimbursable costs incurred during the identified billing period. Invoices must be consistent with Scope of Services and executed Task Orders; and include the following:

1) Employee classification and name itemized with all labor charges by Service task;

2) Summary of the amount Consultant has been billed by their Subconsultants and further detailed by Service task;

3) A description of the site where Services were performed, if applicable;

4) The name of Valley Water staff requesting Services

5) The dates when Services were performed;

6) Other direct charges and reimbursable expenses by Task Order task;

7) Other direct charges and expenses must reflect actual fees versus the Task Order not-to-exceed fees as stated in the Schedule(s), Attachment One, Fees and Payments; and/or Task Orders;

8) The total amount due for completing the Services specified in that Task Order, which must not exceed the not-to-exceed amount specified in that Task Order; and

9) To the extent that the Consultant is adding an administrative, processing, overhead or mark-up fee, Valley Water will not pay for such duplication of costs for both the Consultant and its Subconsultants.

B. Before submitting monthly invoices, a draft invoice (in Adobe PDF format) will be provided in electronic format by the Consultant for preliminary review by Valley Water Project Manager. Upon preliminary approval by Valley Water, Consultant will email the complete, signed, and dated electronic copy invoice, including all supporting documentation. Valley Water's preliminary review of the draft invoice does not represent final approval of the electronic copy invoice, but is intended to reduce potential for re-submittals of electronic copy invoice by Consultant.

C. Invoices will include a summary of labor expenditures, direct costs, and billed Subconsultant charges. Invoices will be organized such that the billing categories correspond with the Task Order.

D. Notwithstanding language to the contrary in an executed Task Order, Consultant must invoice Valley Water for a Task Order within 30 calendar days of Valley Water accepting the deliverables of that Task Order.

E. Consultant shall email all invoices to: APinvoice5750@valleywater.org

Valley Water mailing address for invoices, if needed:

Santa Clara Valley Water District
Attention: Accounts Payable
P.O. Box 20670
San Jose, CA 95160-0670

F. Consultant must also ensure that each invoice and corresponding attachments contain the following information:

1) Agreement number;

2) Task Order number;

3) Full legal name of Consultant/Firm;

4) Payment remit-to address;

5) Invoice number;

6) Invoice date (the date invoice is emailed);

7) Detailed description of Services provided, including the “distribution account(s)” for those Services;

8) Number of hours spent by each person performing services and a brief description of the Services performed by each person; and

9) Beginning and end date for billing period that services were provided.

G. Consultant shall invoice for its performance of the Services as stated in an executed Task Order on a monthly basis consistent with the task fee breakdown stated in the Task Order(s), Attachment A. Unless otherwise specified in a Task order, Consultant will be paid for the Services as described in an executed Task Order.

H. Valley Water Project Manager will review Consultant’s written invoice within five Valley Water business days of receipt, address any questions with Consultant’s

Contact/Principal Officer and approve the undisputed amount of the invoice within ten working days of receipt of the invoice. Valley Water will pay undisputed invoice amounts within 30 calendar days from date invoice is received by Valley Water Project Manager.

I. Invoice Disputes

1) Valley Water may in good faith assert a bonafide dispute as to all or a portion of fees specified in any invoice. If any portion of an amount due to Consultant under this Agreement is subject to a bonafide dispute between the Parties, within 30 calendar days of Consultant's delivery of the invoice on which a disputed amount appears, Valley Water will notify Consultant in writing of the specific items in dispute, and will describe Valley Water's reason(s) for disputing each such item.

2) Consultant and Valley Water Project Manager must act in good faith to resolve this dispute in a timely manner. If the dispute is not resolved by the Consultant and Valley Water Project Manager within 30 calendar days of Consultant receiving Valley Water's written notice of dispute, Consultant and Valley Water will attempt to resolve the Dispute pursuant to the Standard On-Call Consultant Agreement, Appendix Two, Dispute Resolution.

J. Consultant shall ensure that its personnel performing services pursuant to this Agreement document their time doing so.

3. Prevailing Wages - NOT USED

4. Retention - NOT USED

SECTION FIVE

SCHEDULE OF COMPLETION

1. Performance of Tasks

Consultant will commence performing the tasks described in the Scope of Services of an executed Task Order upon receipt of the Task Order Notice to Proceed (NTP) issued by Valley Water.

2. Task Order Schedule

Consultant will perform and complete the Services in accordance with the schedule (Schedule) as described in each Task Order. Consultant will coordinate Services with Valley Water to provide the timeline of all tasks and subtasks including the site visits, document review, meetings, and deliverables.

3. Project Delays

Consultant will make all reasonable efforts to comply with the Schedule as stated in a Task Order. In the event the Task Order Schedule will be delayed, Consultant will notify Valley

Water Project Manager as soon as possible, providing the reason why, the length of the delay, and a description of the actions being taken to address the delay. In the event Consultant is delayed in performance of its Services by circumstances beyond its control, Valley Water may, at its discretion, grant a reasonable adjustment in the Schedule.

4. Changes to the Schedule

Valley Water's Project Manager and Consultant may agree to modify the Schedule specified for Consultant's performance in an executed Task Order as an administrative modification to the Task Order and will confirm such modifications in writing.

SECTION SIX

AGREEMENT MODIFICATIONS

The Parties may agree to modify the Terms and Conditions of this Agreement by executing a written amendment hereto.

SECTION SEVEN

TERM AND TERMINATION

1. Term & Automatic Termination

No Task Order will be written which extends beyond the expiration date of this Agreement. Consultant will not undertake to provide Services where it reasonably appears that the Services cannot be performed and completed within the Term of this Agreement. Uncompleted and/or unfinished Task Orders will co-terminate with this Agreement.

2. Valley Water Rights

A. Suspension: Valley Water may, by written notice to Consultant, suspend any or all Services pursuant to this Agreement or to any individual Task Order. Valley Water may subsequently terminate this Agreement or any Task Order for convenience, or determine to proceed. If a decision to proceed is not made within 90 days from the date of the notice of suspension, any decision to proceed must be conditioned upon execution of a new Notice to Proceed or Task Order.

B. Termination for Convenience: Valley Water may, by written notice to Consultant, terminate all or part of this Agreement or any Task Order at any time for Valley Water's convenience. Upon receipt of such notice, Consultant will immediately cease all work as specified in the notice. If this Agreement or any Task Order is so terminated, Consultant will be compensated as set forth in Section Seven, Term and Termination, subsection 3. Consultant's Compensation upon Termination or Suspension.

C. Termination for Breach: If Consultant violates any of the covenants, agreements or stipulations of this Agreement or a Task Order, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement or any Task Order, and

does not cure such failure or violation within 30 days (or a reasonable extension thereof, if requested, which extension will not be unreasonably withheld) after receipt of written notice from Valley Water specifying such failure or violation, Valley Water will thereupon have the right to terminate this Agreement and any or all uncompleted Task Orders by giving written notice to Consultant of such termination. Such notice will specify the effective date thereof, and Consultant will not be entitled to compensation for Services or expenses beyond the specified termination date.

D. If, after notice of termination for breach of this Agreement or any Task Order, it is determined that Consultant did not breach the Agreement or Task Order, the termination will be deemed to have been effected for Valley Water's convenience, and Consultant will receive payment that is allowed by this Agreement for a termination for convenience.

E. The rights and remedies provided herein to Valley Water are in addition to any other rights and remedies provided by law, this Agreement, or a Task Order.

3. Consultant's Compensation upon Termination or Suspension

In the event of termination of this Agreement or any Task Order, or suspension of Services by Valley Water, Consultant shall receive compensation based on satisfactory performance, accepted by Valley Water, as follows:

A. Direct Labor: Consultant shall be entitled to receive compensation for all authorized direct labor performed prior to termination pursuant to the provisions of this Agreement or Task Order and all authorized labor expenses incurred to demobilize from the Project after the date of termination;

B. Other Direct Costs and Expenses: Consultant shall be entitled to receive compensation for all authorized other direct costs and expenses incurred prior to termination and all authorized expenses incurred to demobilize from the Project after the date of termination; and

C. In no event shall the total compensation paid for any item of Service exceed the payment specified in the Agreement or applicable Task Order for that item of Service.

4. Survival

The Terms and Conditions of this Agreement, that by their context and a standard of reasonableness, are intended to survive termination, suspension, completion, and expiration of this Agreement, shall survive, including but not limited to, the following Sections and subsections: Independent Contractor Status, Confidentiality, Indemnification, Insurance Requirements, and Dispute Resolution, as well as any Consultant representations and warranties.

SECTION EIGHT

INDEMNIFICATION

Notwithstanding any other provision of this Agreement, Consultant agrees to indemnify, defend and hold harmless Valley Water, 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, taxes, levies, imposts, assessment, 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, pertain to, or relate to Consultant's negligence, recklessness, or willful misconduct. The foregoing does not limit any strict liability imposed on Consultant by law. The rights, duties, and obligations of the Parties as set forth above in this Section Eight, Indemnification, survive termination, expiration, completion, and suspension of this Agreement.

SECTION NINE

INSURANCE REQUIREMENTS

Insurance requirements applicable to this Agreement are set forth in the Standard On-Call Consultant Agreement, Appendix Four, Insurance Requirements. Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, all insurance coverages as detailed in the Standard On-Call Consultant Agreement, Appendix Four, Insurance Requirements, and comply with all provisions stated therein.

SECTION TEN

OWNERSHIP AND REUSE OF DELIVERABLES

1. Valley Water Ownership

All deliverables and other materials prepared by Consultant, including computer programs and media developed by Consultant, to perform the Services, during the term of this Agreement, will be and remain the property of Valley Water following payment in full to Consultant for each task or portion of a completed task, or in accordance with Section Seven, Term and Termination. In the event the work is not completed, the completed portions thereof will become the property of Valley Water. Consultant will provide Valley Water with such deliverables and material at appropriate times during this Agreement. Consultant may retain a copy for its records. Consultant does not convey, assign, or transfer the intellectual property rights it has, so as to limit its ability or right to develop, design, or provide services on other projects of or for its other clients.

2. Reuse of Instruments of Service

If Valley Water desires to reuse the completed plans, specifications, or other deliverables, in total or in part, on project sites associated with this Agreement, or any other site, or to

complete any incomplete portion of construction documentation which Valley Water has already paid Consultant, Valley Water will release Consultant from any liability incurred by Valley Water from reusing said deliverables.

3. Copies of Data

Copies of data exchanged by, through, and between Valley Water and Consultant that may be relied upon are limited to printed copies. Computer-generated files, disks, or tapes of text, data or graphics that are furnished are only for the mutual convenience of the Parties.

4. Computer-Generated Material

Any risk of translation or reliance on information obtained or derived from computer-generated material is at the user's sole risk, and no representations are made, either express or implied, as to the long-term performance of data thus transferred.

5. Work for Hire

Any and all original correspondence, memoranda, reports, designs, plans, specifications, data compilations, computer programs, or drawings delivered to Valley Water by Consultant according to the Terms of this Agreement, in or by any medium is deemed to be "work for hire" according to the copyright laws of the United States and the copyright belongs to Valley Water.

6. Copyright Claims

Co-venturers, subcontractors, Subconsultants, suppliers, and vendors to Consultant are likewise bound by these copyright terms. Valley Water makes no copyright claim and requires no release for copyrighted material or trademarked names used incidentally by Consultant.

SECTION ELEVEN

EQUAL OPPORTUNITY

1. Equal Opportunity Employer

Valley Water is an equal opportunity employer and requires its consultants to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, Consultant 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.

2. Compliance with Applicable Equal Opportunity Laws

Consultant's policy must be in conformance with applicable state and federal guidelines including the Federal Equal Opportunity Clause, 41 Code of Federal Regulations, Part 60-1, §60-1.4; Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the California Fair Employment and Housing Act (Government Code §12900 et. seq.); and California Labor Code §1101 and §1102.

3. Investigation of Claims

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

SECTION TWELVE

MISCELLANEOUS PROVISIONS

1. Formation of Agreement

This Agreement, which includes the Terms and Conditions, Appendices, the Schedule(s), Schedule(s)' Attachments, and all executed Task Orders, represents the entire understanding between the Parties hereto relating to the Services described in this Agreement and its executed Task Orders, which are incorporated herein by this reference, and supersedes any and all prior proposals or agreements, whether written or oral, that may exist between the Parties. This Agreement may not be modified or amended except in writing as stated herein. To the extent that any Schedule conflicts with this Agreement, this Agreement shall control.

2. Formation of Agreement

A. No agreement between the Parties is formed until all applicable actions have been completed to the satisfaction of Valley Water. Valley Water Project Manager will not issue a Notice to Proceed until all required documents have been submitted and accepted by Valley Water.

B. Formation of this Agreement between the Parties requires accomplishment of the following, as applicable:

1) Execution of the Agreement by Consultant;

2) Submission by Consultant, and acceptance by Valley Water, of evidence of all required insurance coverages and documents;

3) Submission by Consultant, and acceptance by Valley Water, of evidence of all required Form 700 documents, if applicable;

4) Submission by Consultant, and acceptance by Valley Water, of all required Non-Disclosure Agreements (NDA) as provided in the Schedule(s), Attachment Four, Reference Materials, if applicable;

5) Submission by Consultant, and acceptance by Valley Water, of a Health and Safety Plan, if applicable;

6) Any other requirements that are deemed necessary by Valley Water; and

7) Execution of the Agreement by Valley Water.

3. No Assignment

A. The expertise and experience of Consultant are material considerations for Valley Water's award and execution of this Agreement. Consultant will not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without prior written consent of Valley Water in the form of an amendment executed by the Parties, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, will be void and of no effect. Any assignment of monies due or to become due in accordance with this Agreement, will be to the extent permitted by law, and will be subject to all proper set-offs, deductions, and withholdings in favor of Valley Water.

B. In no event shall an assignment of any interest in this Agreement release Consultant from its duties and responsibilities as described in this Agreement nor shall Consultant be released from liability created by the provision of Services as described in this Agreement until such assignment takes effect. Any attempted or purported assignment without Valley Water's written consent in the form of an amendment executed by the Parties is null and void.

4. Reasonableness

Discretionary actions or approvals to be performed by the Parties will be exercised in a reasonable manner.

5. Gifts

Consultant hereby acknowledges that Valley Water policy prohibits the acceptance by Valley Water personnel of gifts of any kind from its contractors, consultants, suppliers or vendors. Consultant shall honor this policy by not sending or bringing gifts to Valley Water.

6. Audits

Consultant agrees that Valley Water and its agent(s) have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Consultant agrees to provide Valley Water and its agent(s) with any relevant information requested, in electronic and hard copy format, at Valley Water's discretion, and will permit Valley Water and its agent(s) access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees (alternatively, by phone at Valley Water's discretion) and inspecting or copying books, records, accounts, computerized records, and other materials that may be relevant to the matter under investigation or subject to audit, such as by a government agency, providing Valley Water with grant funds to pay for Consultant's services, for the purpose of determining compliance with this Agreement. Consultant further agrees to maintain such records for a period of three years after final payment as provided for in this Agreement.

7. Force Majeure

Neither Party will be held responsible for delays caused by acts beyond its control, such as acts of God or public enemies, utility or communication delays, or failures not caused by such Party's negligence or fault, accidents not caused by such Party's negligence or fault, labor disputes, war, or failure of the other Party to provide data as required pursuant to this Agreement.

8. Binding Effect

This Agreement is binding on the heirs, executors, administrators, successors and assigns of the Parties.

9. Choice of Law and Venue

The Parties agree that this Agreement is to be governed, construed, and enforced in accordance with the laws of the State of California. The Parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

10. Confidentiality

A. Due to the nature of the services Consultant will provide pursuant to this Agreement, there may be disclosures made to Consultant of detailed information about Valley Water's operations, including on a need-to-know basis information which may be

protected from public disclosure by confidentiality laws, the attorney-client privilege, and/or other provisions of law which govern the nature and timing of disclosure of public information.

B. Consultant understands and acknowledges that Valley Water staff members providing information to the Consultant do so with the understanding that such information will be handled appropriately.

C. In the event Consultant receives such restricted or confidential information, Consultant will limit access to the information to only those of Consultant's employees, its subcontractors and its Subconsultants authorized by Valley Water to have the information.

D. Consultant will notify Valley Water immediately of any request by any third party to have access to confidential information and will not disclose the requested information without first receiving express written authorization from Valley Water.

E. Notwithstanding the aforementioned Confidentiality requirements, upon the request of Valley Water Project Manager Consultant and its Subconsultants shall execute Valley Water's most current Non-Disclosure Agreement in effect at that time.

F. The requirements stated herein will survive completion, expiration, suspension, and termination of this Agreement.

11. Release of Information Prohibited

Consultant is not permitted to provide any information concerning the Project to the media nor anyone other than authorized Valley Water personnel. Consultant will not release any information pertinent to the Project for publication, public disclosure, or in any other manner without first obtaining clearance and a release in writing from Valley Water. Any media inquiry at any time to Consultant relating to any matter concerning Services provided or requested to be provided pursuant to this Agreement will be referred immediately to Valley Water. Consultant will not communicate with the media regarding any such matter.

12. Conflict of Interest

A. Consultant represents that there exists no actual or potential conflict of interest concerning the services to be performed pursuant to this Agreement.

B. Consultant represents that Consultant's performance required as stated in this Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party. Consultant will not bring to Valley Water, or use in the performance of Consultant's duties as described in this Agreement, any materials or documents of another party considered confidential or proprietary unless Consultant has obtained written authorization from such party, and the informed consent of Valley Water, for the possession and use of such materials.

C. Consultant represents and warrants that during the term of the Agreement, Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant shall not act as a Consultant or expert for any party in support of any potential or active claim or legal action against Valley Water by such party.

D. CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION STATEMENT OF ECONOMIC INTEREST FORM 700 ("FORM 700"): Upon Valley Water's request, Consultant employees, officers, agents, Subconsultants, and subcontractors shall complete, execute, and submit a Form 700 as follows:

1) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, shall file, in a manner prescribed by Valley Water, an Assuming Office Statement. The Assuming Office Statement shall be filed:

   a. Within 30 calendar days of the effective date of this Agreement; or

   b. Within 30 calendar days of Consultant hiring, adding, or promoting to a designated filer position, employees, officers, agents, Subconsultants, and subcontractors to perform services pursuant to this Agreement.

2) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file in a manner prescribed by Valley Water, an amendment to their Form 700 any time there is a need to correct or change disclosure information.

3) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file an Annual Statement in a manner prescribed by Valley Water, during the annual filing season, as determined by Valley Water;

4) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file in a manner prescribed by Valley Water, a Leaving Office Statement with Valley Water when one of the following occurs:

   a. Upon termination of this Agreement; or

   b. Within 30 calendar days of Consultant employees, officers, agents, Subconsultants, and subcontractors vacating a designated filing position (i.e., removed from the Project, promotion, demotion, transfer to non-designated position, end of employment, or as a result of changes in designated filer positions in Valley Water's Conflict of Interest Code).

5) Consultant understands and agrees that its employees, officers, agents, Subconsultants, and subcontractors may be disqualified from providing services to

Valley Water pursuant to the California Political Reform Act, Government Code §81000 et. seq. and §1090. If any of Consultant's employees, officers, agents, Subconsultants, and subcontractors are disqualified from providing services, on written notice from Valley Water Project Manager, Consultant will have 15 calendar days to remove said employee(s), officer(s), agent(s), Subconsultant(s)' and subcontractor(s)' employee(s) from the Project and provide a replacement acceptable to Valley Water.

6) The failure of Consultant's employees, officers, agents, Subconsultants, and subcontractors to file an Assuming Office, Annual, Amended, or Leaving Office Statement within the time prescribed by Valley Water is deemed a material breach and may result in termination of the Agreement for cause.

13. Task Orders

A. All tasks and Services will be assigned to Consultant through issuance of Task Orders. After the tasks and Services are identified and communicated to Consultant by Valley Water Project Manager, Consultant will prepare a proposed Task Order (see Standard On-Call Consultant Agreement, Appendix Three, Task Order Template). The proposed Task Order must identify the following:

1) Description of the Services, including deliverables;

2) The total Not-to-Exceed Fees for Consultant to complete the Services, including estimated number of hours per assigned staff to complete the Services;

3) Proposed staff that will be assigned to complete the Services, including resumes if not previously provided to Valley Water's Project Manager;

4) Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;

5) Schedule for completing the Services; and

6) Copies of applicable state and federal permits required to complete the Services, unless previously provided to Valley Water.

B. Consultant agrees that the Not-to-Exceed Fees specified in a proposed Task Order will be the product of a good faith effort in exercising its professional judgment. After an agreement has been reached on the negotiable items, the finalized Task Order will be signed by both Valley Water's authorized representative referenced in the Standard On-Call Consultant Agreement, Appendix One, Additional Legal Terms and Consultant's authorized representative.

C. Consultant must not commence performance of work or services on a Task Order until it has been approved by Valley Water's authorized representative and Notice to Proceed has been issued by Valley Water Project Manager. No payment will be made for any services performed prior to approval or after the period of performance of the Task

Order. The period of performance for Task Orders will be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement. The total amount payable by Valley Water for an individual Task Order will not exceed the amount agreed to in the Task Order.

D. Prevailing Wage Requirements: The Scope of Services may be considered by Valley Water to be "Public Works" requiring the payment of prevailing wages. See the Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages, and Appendix Three, Task Order Template.

14. Good Neighbor

Valley Water always strives to be a good neighbor to the community adjacent to its facilities. Consultant will ensure that disturbance to neighbors is minimized. Consultant, its staff, and Subconsultants will always interact with the members of the public in a polite and professional manner.

15. Governmental Permits and Notifications - NOT USED

16. Taxes and Benefits

Consultant has full and exclusive liability for the payment of, and Consultant will pay, any and all taxes and contributions for unemployment insurance, retirement benefits, workers' compensation insurance or benefits, life insurance, pensions, annuities and similar benefits and any other employment-related costs, obligations, and duties that may now or hereafter be imposed by law, collective bargaining agreements or otherwise with respect to persons employed by Consultant for the performance of Services pursuant to this Agreement.

17. Nonwaiver of Rights

The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other Party that is in violation of the terms of this Agreement will not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

18. No Third-Party Beneficiaries

Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

19. Severability

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential

purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

20. Debt Limitation

This Agreement is contingent on the appropriation of sufficient funding by Valley Water for the services described in this Agreement. Valley Water is subject to laws or policies which limit its ability to incur debt in future years. Nothing in this Agreement shall constitute an obligation of future legislative bodies of Valley Water to appropriate funds for purposes of this Agreement.

21. Notices

Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives below. All notices are deemed to have been given when made in writing and when delivered or mailed to the representatives of Valley Water and Consultant at their respective addresses as follows:

VALLEY WATER:

Deputy Operating Officer, as listed in the attached Schedule, Scope of Services, Section 1. Representatives.

CONSULTANT:

Consultant Principal Officer, as listed in the attached Schedule, Scope of Services, Section 1. Representatives.

22. Appendices

The following Standard On-Call Consultant Agreement Appendices are incorporated herein by this reference as though set forth in full:

Appendix One - Additional Legal Terms
Appendix Two - Dispute Resolution - NOT USED
Appendix Three - Task Order Template
Appendix Four - Insurance Requirements

23. Schedule and Attachments

Schedule OC, Scope of Services, and the following listed Attachments are incorporated herein by this reference as though set forth in full:

Attachment One - Fees and Payments
Attachment Two - Schedule of Completion
Attachment Three - Consultant's Key Staff and Subconsultants
Attachment Four - Reference Materials

IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

By: DocuSigned by: Rick L. Callender, Esq. 494EFB72AD8C4F9...
Rick L. Callender, Esq.
Chief Executive Officer

Date: 10/23/2023

EMC RESEARCH, INC.
Consultant

By: DocuSigned by: Ruth Bernstein 3497AF8B2FFC497...
Ruth Bernstein
President & CEO

Date: 10/18/2023

Consultant's Address:
2001 Broadway, Suite 110
Oakland, CA 94612

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STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX ONE
ADDITIONAL LEGAL TERMS

1. **Conflict of Interest for Future Services**

   Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant shall not submit a proposal:

   A. For any agreement to be awarded for any project that is related to the services provided pursuant to this Agreement; - NOT USED

   B. In response to any request for proposal or Valley Water solicitation developed or prepared by or with the assistance of Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant; or

   C. For any single or sole source products/services related to the Services pursuant to this Agreement, or have a financial stake in any single or sole source products/services resulting from this Agreement.

2. **Dispute Resolution** - NOT USED

3. **Small Business Enterprise (SBE) Participation** - NOT USED

4. **Task Order Approvals**

   A. Services to be performed pursuant to a Task Order may only commence once a specific Notice to Proceed for that Task Order has been issued by Valley Water.

   B. Task Orders are subject to approval by Valley Water's Deputy Operating Officer unless delegated to an Assistant Operating Officer and/or Unit Manager.

   C. Valley Water Assistant Operating Officer is authorized to approve individual Task Orders in an amount not-to-exceed $[authorization amount]. [NOT USED]

   D. Valley Water Unit Manager(s) is authorized to approve individual Task Orders in an amount not-to-exceed $ [Authorization Amount]. [NOT USED]

   E. The total not-to-exceed amount for any one Task Order shall not exceed $ [NOT-TO-EXCEED AMOUNT]. [NOT USED]

5. **Task Order Assignments** [NOT USED]

   Valley Water has retained [enter number] separate consultants to perform on-call [type of services] services during the same timeframe. Task orders will be assigned on a competitive basis when conflicts of interest do not exist. There is no guarantee of any amount of work that will be given to each of the consultants. Valley Water's Project Manager is responsible for administering the task orders for assigned work among the [enter number] firms for the term of the Agreements.

STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX TWO
DISPUTE RESOLUTION

NOT USED

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STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX THREE
TASK ORDER TEMPLATE

Task Order No. _____

Title: _____

Agreement: Standard On-Call Consultant Agreement _____ (Agreement) by and between the Santa Clara Valley Water District (Valley Water) and _____ (Consultant), dated _____.

Valley Water:

_____

Consultant: _____

Dollar Amount of Task Order: Not-to-Exceed $_____

1. Upon full execution of this Task Order No. _____, as set forth in the Standard On-Call Consultant Agreement, Section Twelve, Miscellaneous Provisions, subsection 13. Task Orders, and the issuance of a Notice to Proceed by Valley Water Project Manager, the Consultant is hereby authorized to perform the Services described in Attachment A to this Task Order. Any costs incurred, Services performed or expenditures by the Consultant before this Task Order is executed or before the issuance of the Notice to Proceed will be considered outside the contracted Scope of Services and will not be eligible for payment.

2. Both the Scope of Services to be performed and the deliverables to be provided in accordance with this Task Order are described in Attachment A which is attached hereto and incorporated by this reference. Attachment A shall include at a minimum the following:

   A. The Consultant personnel to be assigned to perform the Services, including resumes if not previously provided to Valley Water;

   B. The total not-to-exceed fees amount for Consultant to complete the Services, including estimated number of hours required to perform the Services assigned to each Consultant classification;

   C. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;

   D. The distribution detail for each service, direct cost, and reimbursable expense. This information must be included in the invoice for the services authorized under this task order; and

   E. Project schedule for completing the Scope of Services.

STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX THREE
TASK ORDER TEMPLATE

3. Consultant shall be compensated at fixed fees established in Schedule OC, Attachment One, Fees and Payments, of the Agreement. Consultant agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in the Attachment A.

4. This Task Order becomes effective on the date of full execution by authorized representatives of the Parties and remains in effect until the earlier of: completion of the tasks set forth in Attachment A; or [expected completion date].

5. Copies of applicable local, state and federal permits required to perform the Services described in Attachment A are attached to this Task Order, unless the Consultant previously provided the appropriate permits to Valley Water.

6. Consultant shall perform all Services described in Attachment A to this Task Order in accordance with the Terms and Conditions of the Agreement.

7. Prevailing Wage Requirements - NOT USED

8. Signatures:

Signature: _____ _____
[NAME OF CONSULTANT FIRM] DATE
[PRINT NAME]
[PRINT TITLE]

Signature: _____ _____
SANTA CLARA VALLEY WATER DISTRICT DATE
[PRINT NAME]
[PRINT TITLE]

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STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQURIEMENTS

Please Note: Failure to comply with the instructions below could result in a delay in receiving the Notice to Proceed. The District will not be responsible for time lost or costs incurred due to failure to comply with these requirements. Please note the check-list of documents needed at the end of this Appendix Four insurance requirement.

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

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

In addition to certificates, Consultant must furnish District with copies of all 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 District before the Agreement is executed**. In the event of a claim or dispute, District has the right to require Consultant's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix Four insurance document.

If your insurance broker has any questions about the above requirements, please advise him/her to call Mr. David Cahen, District Risk Manager at (408) 630-2213.

Certificates of Insurance

Consultant shall furnish the District with a Certificate of Insurance. The certificates will be issued on a standard ACORD Form.

Consultant shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the designated District Contract Administrator and email a copy to **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
   Agreement No. A4909G /PB No. VW0259

STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQURIEMENTS

IMPORTANT: The agreement or PB number must be included.
In the Description of Operations/Locations/Vehicles/Special Items Box:

1. Certificate Holder shall be named as Additional Insured;
2. District 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 Consultant receives any notice that any of the insurance policies required by this Appendix Four Insurance may be cancelled or coverage reduced for any reason whatsoever, Consultant or insurer shall immediately provide written notice to the designated District Contract Administrator that such insurance policy required by this Appendix Four Insurance is canceled or coverage is reduced.

Maintenance of Insurance

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

Renewal of Insurance

Consultant will provide the District with a current Certificate of Insurance and endorsements within thirty (30) business days from the expiration of insurance.

Consultant 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**

2. Provide the following information in the "Certificate Holder" box:

   Santa Clara Valley Water District
   5750 Almaden Expressway
   San Jose, CA 95118
   Agreement No. A4909G /PB No. VW0259

   IMPORTANT: The agreement or PB number must be included.

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

STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQURIEMENTS

Required Coverages

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

   $1,000,000 per occurrence / **$1,000,000** aggregate limits for bodily injury and property damage

   General Liability insurance must include:

   a. Coverage at least as broad as found in standard ISO form CG 00 01.
   b. Contractual Liability expressly including liability assumed under this contract.
   c. If Consultant must 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.
   d. Severability of Interest.
   e. Broad Form Property Damage liability.

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

   $1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

3. **Professional/Errors and Omissions Liability** with coverage as indicated:

   $1,000,000 per claim/ **$1,000,000** aggregate

   Professional/Errors and Omission Liability appropriate to the Consultant's profession, and must include:

   a. If coverage contains a deductible, or self-insured retention, it shall not be greater than one hundred thousand dollars ($100,000) per occurrence/event.
   b. Coverage shall include contractual liability
   c. If coverage is claims-made:

      i. Certificate of Insurance shall clearly state that the coverage is claims-made.
      ii. Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
      iii. Policy must allow for reporting of circumstances or incidents that might give rise to future claims.
      iv. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQURIEMENTS

4. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

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):** Consultant must provide an additional insured endorsement for Commercial General/Business Liability (for both on-going and completed operations) 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 Consultant will be notified of such requirement(s) by the District. **NOTE:** This section does not apply to the Workers' Compensation and Professional Liability policies.

   (**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, or CG 2038. Editions dated 07/04 are not acceptable.)

2. **Primacy Clause:** Consultant will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that consultant's insurance is primary with respect to any other insurance which may be carried by the District, its Directors, its officers, agents and employees, and the District'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**: Consultant will provide endorsements for all policies stating that the policy will not be cancelled without 30 days prior notification to the District**.**

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 District'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 the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Consultant shall

provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Consultant 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. **Subconsultants:** The Consultant shall secure and maintain or shall be responsible for ensuring that all subconsultants 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 the District.

7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District for any liability of Consultant 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:** Consultant agrees to waive subrogation against the District to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Consultant 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:** The District reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

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STANDARD ON-CALL CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQURIEMENTS

CHECK LIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits **($1,000,00)**	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	

Auto Liability:	A.	Limits **($1,000,000)**	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	

Umbrella:	A.	Limits ($)	
	B.	Primacy (Endorsement or policy language)	

Workers Comp:	A.	Limits **($1,000,000)**	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	

Professional Liability:	A.	Limits **($1,000,000)**	
	B.	Cancellation Endorsement	

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SCHEDULE OC
SCOPE OF SERVICES

1. Representatives

A. Valley Water's representatives are as listed below. Unless otherwise provided in this Agreement, all correspondence to Valley Water must be addressed to Valley Water's Project Manager (VWPM).

Linh Hoang (Valley Water Project Manager)
Communications Manager
Office of Communications
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: (408) 786-8952
Email: lhoang@valleywater.org

Don Rocha
Office of the Chief of External Affairs
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: (408) 355-4196
Email: drocha@valleywater.org

B. The Consultant's Project Manager is as listed below. All Valley Water questions and correspondence pertaining to this Agreement shall be referred to the Consultant's Project Manager.

Jessica Polsky-Sanchez
EMC Research, Inc.
Project Manager
2001 Broadway, Suite 110
Oakland, CA 94612

Phone: (510) 550-8933
Email: Jessica@EMCresearch.com

C. The Consultant's Principal Officer for this Agreement is as listed below. As per the Agreement, Section Twelve, Miscellaneous Provisions, subsection 21. Notices, all notices pertaining to this Agreement must be submitted to the Consultant's Principal Officer.

Ruth Bernstein
EMC Research, Inc.
Project Advisor
2001 Broadway, Suite 110
Oakland, CA 94612

Phone: (510) 550-8922
Email: Ruth@EMCresearch.com

2. Scope of Services

A. Consultant shall be responsible for, but not limited to, performing on-call public opinion, research, survey and poling support services (Project). These services will be requested on an "as-requested" or "as-needed basis" to assist Valley Water in accomplishing its maintenance, rehabilitation and replacement projects in a timely manner. Valley Water may request services to be performed by the Consultant at any time during the term of this Agreement and by staff at different levels of experience and expertise. The requested tasks may involve research, surveys, and polls to test Santa Clara County voters, residents, and other state holders on their perceptions related of Valley Water efforts, including but not limited to, projects, plans, campaigns or programs on recycled/potable water reuse, water conservation, imported water, water rates, grantee satisfaction and or other as-needed Valley Water work.

B. Consultant will administer research polls on behalf of Valley Water. The poll outcomes will allow Valley Water to measure public perception and public support. Additionally, those insights could be used by Valley Water to assist the development of political, public relations, public education strategies, and other approaches on an as-needed basis.

C. Most polls will have questions that are tracked from previous surveys as part of tracking polls, with additions or other edits made based on discussion with the Consultant to ensure the poll best measures research needs.

D. Valley Water (staff with varying level of expertise) may request services to be performed by the Consultant at any time during the term of this Agreement. The requested tasks may involve multi-language services to ensure Valley Water have the ability to receive public opinions from the diverse communities that we serve.

E. Refer to Scope of Services Tasks for list of types of polls and poll categories to be issued as tasks orders, as-needed.

3. Project Objectives

A. The Santa Clara Valley Water District (Valley Water) implements a number of capital and operational projects and programs to meet its mission and goals in water supply, flood protection and watershed stewardship. The on-call services provided pursuant to this Agreement will augment the services of Valley Water staff and provide additional on-call public opinion, research, survey and polling services as needed.

B. Valley Water to utilize polling research firms to collect data and measure public perception and public support. Additionally, those insights could be used by Valley Water to assist in the development of political, public relations, public education strategies, and other approaches on an as-needed basis.

C. All Services required pursuant to this Agreement will be provided only on an as-needed/as-requested basis by the issuance of an authorized Task Order by the Valley Water to the Consultant. A project scope will be developed for each task order, including deliverables for a total not-to-exceed amount. No work will be performed without a task order. The Consultant will perform services on a Task Order Basis as authorized by the VWPM, as set forth in the Standard On-Call Consultant Agreement, Section Twelve, Miscellaneous Provisions, subsection 13. Task Orders.

4. Background

A. The mission of the Santa Clara Valley Water District, now known as Valley Water, is to provide Silicon Valley safe, clean water for a healthy life, environment, and economy.

Valley Water is a public agency providing water supply, flood protection, and stream stewardship for Santa Clara County. Valley Water manages an integrated water resources system that includes the supply of clean safe water, flood protection and stewardship of streams on behalf of Santa Clara County's 2 million residents. Valley Water effectively manages ten dams and surface water reservoirs, three water treatment plants, a state-of-the-art water quality laboratory, and more than 275 miles of streams. For information about Valley Water, visit www.valleywater.org.

5. Intent

A. Valley Water intends to retain up to one or more separate consultants to perform on-call public opinion, research, survey and polling services for a three-year term. Task orders will be issued on a competitive basis when conflicts of interest do not exist. There is no guarantee of any amount of work that will be given to the selected firms.

B. This Schedule OC, Scope of Services describes the on-call public opinion, research, survey and polling professional services to be performed by Consultant for Valley Water's (Project). The deliverables, number of staff hours, and proposed staff for each Task Order will depend on the nature and scope of services requested by Valley Water, as well as the not-to-exceed fees of the Agreement, and will be negotiated along with the Services, payment terms, and not-to-exceed fees for each Task Order. There is no guarantee of any amount of work that will be given to the selected firm.

C. Task Orders will not be issued to Consultant when Consultant cannot perform the Services due a conflict of interest or if all funds in this Agreement have been expended.

D. Conflict of Interest. In addition to Valley Water's General Terms and Conditions, the following will apply with regard to conflict of interest:

1) Consultant may be awarded multiple Task Orders pursuant to this agreement, for the same Valley Water Project.

2) Consultant is precluded from performing services for any other entity, or in any other capacity for Valley Water, on the same Valley Water project, for which a Task Order has been issued.

3) Task Orders will be voided when the Consultant cannot perform the Services due to a conflict of interest.

4) Consultant must bring the conflict of interest to Valley Water's attention as soon as the Consultant is aware of the potential conflict.

5) If Consultant is already performing services on a Valley Water project, unrelated to this Agreement, in any capacity, a Task Order related to that project will not be issued pursuant to this Agreement.

6. Assumptions and Requirements

A. General Assumptions and Requirements

1) **Manage Scope of Services**. Consultant shall manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with the Project schedule and ensure that all services and deliverables meet Valley Water and Project objectives and requirements.

2) **Deliverable Format**. Consultant shall submit deliverables in both electronic and hardcopy format, if requested. Deliverables shall be submitted in PDF and native (editable) format, including Word documents, Excel spreadsheets, PowerPoint files, Autodesk files, etc. The hard copy deliverables shall be printed in professional quality presentation and submitted in 5 (five) copies, if requested. Valley Water may require original copies of signed documents and/or scanned (Adobe PDF) versions.

   a. Valley Water Standardization Requirements

      (1) Consultant shall perform the Services utilizing Valley Water nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software and Autodesk Civil 3D software that is compatible with Valley Water's current Microsoft Office software and Autodesk software used at the time(s) Valley Water issues a Notice to Proceed pursuant to this Agreement.

      (2) Engineering drawings prepared by Consultant must be in compliance with Valley Water's Computer-Aided Design and Drafting (CADD) standards including line types, line weights, text sizes, text orientation, dimensioning, labeling/numbering system for detailed plan views and detailed section views. Drawings prepared using different CADD software and versions must be converted to be compatible with Valley Water's CADD software at no additional cost to Valley Water. Prior to acceptance, Valley Water reserves the right to test the submitted CADD files to verify that the files are not corrupted or missing linkages (for blocks, etc., used in the drawings) and that the standards are retained during the conversion process used by the Consultant.

3) **Review of Deliverables**. Valley Water will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions. As determined by Valley Water, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following Valley Water review process. For each deliverable, Valley Water will collect comments from all Valley Water stakeholders and provide a single set of consolidated comments to the Consultant. The comments provided by Valley Water staff during the workshops will be documented by the Consultant as meeting minutes and will be included in the next revision of the documents.

4) **Valley Water Quality Environmental Management System**. Valley Water maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines, and work instructions for the performance of various Valley Water work. If requested, the Consultant will perform the applicable Agreement tasks and/or sub-tasks in accordance with the QEMS framework. In such situations, the VWPM will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the preparation of such deliverables.

5) **Consultant Responsibility**. Consultant, with its expertise in performing the Services described herein, is responsible for making the appropriate assumptions in each task to complete each task's deliverables and to achieve the Project objectives of this Agreement as described in section 3. Project Objectives.

6) **Document Control**. Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this Project is maintained by Valley Water.

7) **File Exchange Service**. Consultant will provide a file exchange service, accessible to all parties as designated by Valley Water, to facilitate communications; particularly of large files over three megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by Consultant. In the event that transmitting or receiving information does not occur in a timely manner, Valley Water will not be responsible for delays in completing Project work. Consultant may need to coordinate with Valley Water's Information Technology Division to address any firewall issues and/or permissions required to allow for these communications.

B. Project-Specific Assumptions and Requirements

Valley Water staff assume the following:

1) Consultant will provide raw data behind their results.

2) Consultant will provide executive summary in addition to survey results/report.

3) Consultant will travel or be available virtually as determined by Valley Water Project Manager (VWPM) to present at a Valley Water Committee, Board meeting, Chief or senior management meeting, if requested by Valley Water.

7. Scope of Services Tasks

The Preliminary On-Call Scope of Services will generally include, but not be limited to the Tasks described below. Tasks and deliverables will be determined on a task order basis.

A. The scope of On-Call services will generally include, but is not limited to the following types of polls:

1) Telephone surveys
2) Online surveys
3) Written surveys
4) Focus groups
5) In-Depth Interviewing
6) Customer satisfaction research
7) Advertising/Messaging effectiveness tracking
8) Micro-targeting
9) Multi-language research

B. Poll Categories:

Typically, six polls are conducted annually and may include, but are limited to:

1) Public perception of Valley Water
2) Public perception of our projects, such as recycled/purified water
3) Grantee satisfaction
4) Ad hoc polls – As needed, additional polls might be conducted. This includes political research polls.

Task 1 – Task Order Project Management and Coordination

1.1 Provide project management and coordination of assigned task orders.

1.2 Conduct project meetings with VWPM and Valley Water staff to review progress of assigned task orders.

1.3 Prepare monthly status reports detailing progress of assigned task orders.

1.4 Kickoff Meeting

Consultant will attend an initial meeting (meetings are usually hybrid/virtual) with Valley Water for each poll. The participants will discuss the purpose and expectations of the poll, review and discuss existing poll questions (if applicable) so that the Consultant is able to collaborate on additions or other needed edits to the poll or to any related poll logistics (e.g., sample size).

SCHEDULE OC
SCOPE OF SERVICES

1.5 One-on-One Meetings with Valley Water

If requested, the Consultant Project Manager must provide a brief update of the teams work activities completed within designated time period the look-ahead activities, and the issues and actions that require Valley Water's attention, in a meeting/conference call with the VWPM; frequency of these meetings and calls will be as directed by Valley Water.

1.6 Coordination and Communication with External Agencies

If requested, Consultant will assist the VWPM with coordination and communication with appropriate Consultants, as necessary, to execute this Scope of Services. This task includes support in drafting correspondence related to the Consultant's Project activities as requested by Valley Water.

1.7 Public Outreach

If requested, the Consultant will provide support and assistance to the Valley Water's public outreach activities and will relate to coordination, preparation, and participation including, preparing presentation materials, attendance at meetings, review or editing newsletters, graphics, updates to the Project website, developing responses to questions, and performing other tasks as directed by the VWPM.

Task 1 – Deliverables

1. Attends meetings. Consultant shall be available by phone, email, web conferencing or in person, if necessary, to keep Valley Water updated on any changes or edits.

2. Provide a draft of the polling questions for review and approval as requested by Valley Water.

3. Consultant shall prepare a survey that may require multi-language translation (English, Spanish, Vietnamese, Chinese, etc.) if requested.

4. Consultant shall review and prepare a survey instrument tailored to local voter and resident demographics that may require multi-method dissemination strategy (phone, mail, internet, etc.), if requested.

5. Develops, edits, administers, and analyze public opinion/poll surveys as defined by Valley Water.

6. Presents poll results to Valley Water staff, management, committees, and teams as determined by Valley Water.

7. Consultant shall present and receive direction from Valley Water on the public outreach results.

8. Provide results to include an executive summary, report, and deck slides for Valley Water's review. The document shall include the summary of findings, survey methodology, and recommendations of the public opinion/polling survey as identified in the Scope of Work.

9. Provide Raw data at Valley Water's request.

Task 1 – Assumptions

1. It is assumed the Consultant will be requested to perform all tasks.
2. To be determined on a Task Order basis.

8. Attachments

The following Standard On-Call Consultant Attachments are incorporated herein by this reference as though set forth in full:

Attachment One – Fees and Payments
Attachment Two – Schedule of Completion
Attachment Three – Consultant's Key Staff and Subconsultants
Attachment Four – Reference Materials

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SCHEDULE OC
ATTACHMENT ONE
FEES AND PAYMENTS

1. Total Authorized Funding

Total payment for Services performed, to the satisfaction of Valley Water, as described in the Schedule and in all approved Task Orders will not exceed a total amount of **$225,000** (Not-to-Exceed Fees or NTE). Under no conditions will the total compensation to the Consultant exceed this NTE payment amount without prior written approval in the form of an amendment to this Agreement executed by Valley Water's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board. It is understood and agreed that this total is an estimate, and the total amount of Services to be requested by Valley Water may be less. **There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized pursuant to this Agreement.** However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars ($500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

2. Terms and Conditions

A. Payments for Services performed, as described in each Task Order, which applies to the specific Services, will be based on the following terms:

1) Valley Water will pay for Services provided by the Consultant according to the fixed fee amount for professional, technical, and administrative personnel, as well as materials and supplies.

2) There are no hourly rates allowed under this Agreement.

B. **Reimbursable Expenses**

1) All reimbursable expenses not already covered in overhead may include, but are not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies. These other direct expenses as approved by Valley Water Project Manager (VWPM) will be billed on a monthly basis at actual cost linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted.

2) Equipment purchased on behalf of Valley Water that costs $50 or more must receive the prior written approval of Valley Water Project Manager (VWPM). All equipment purchased on behalf of Valley Water and paid for by Valley Water shall become the property of Valley Water and be delivered to Valley Water prior to expiration of this Agreement.

3) Travel expenses are reimbursed at actual costs. Travel and overnight accommodations, including per diem, required for performance of this Agreement will be paid at reasonable cost not to exceed the U.S. General Services Agency Per Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior

approval has been obtained from Valley Water Project Manager (VWPM). For air travel, Valley Water will pay the cost of a coach class or equivalent ticket. Where air travel is required, Valley Water will pay the total cost of taxi, rideshare, public transportation, or a rental car, which may include insurance, gas, car fee, and taxes and will be paid at the actual costs incurred. Vehicle rental is limited to a compact or economy model, unless prior approval has been obtained from Valley Water Project Manager (VWPM) for a different type of vehicle.

4) No markup will apply for Consultant to manage Subconsultants, subcontractors and vendors, including lab services.

5) For staff with rates exceeding the rate of $[RATE LIMIT]/hr., the Consultant must obtain written approval from the Valley Water Project Manager (VWPM) as to the numbers of hours per task prior to that individual working on the Project. [NOT USED]

C. Prevailing Wage Requirements [NOT USED]

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SCHEDULE OC
ATTACHMENT ONE
FEES AND PAYMENTS

POLL CATEGORY MATRIX

Area of Expertise	Telephone surveys	Online surveys	Written surveys	Focus groups	In-Depth Interviewing	Customer satisfaction research	Advertising/ Messaging effectiveness tracking	Micro-targeting	Multi-language research
	☒	☒	☒	☒	☒	☒	☒	☒	☒

Consultant provides beginning-to-end research services including methodology and research design, research implementation, analysis and presentation of research results. On any given project, our services and deliverables may include the following:

- Develop final research design in consultation with the client team;
- Design a survey questionnaire, focus group discussion guide, or interview guide in consultation with the client team;
- Translate the research instrument into Spanish, Vietnamese, Chinese languages, or other languages as needed;
- As applicable, collect data, recruit participants or conduct in-depth-interviews or focus groups;
- As applicable, tabulate, code, clean, and weight data;
- Perform in-depth analysis;
- Prepare and deliver preliminary results and a detailed report of findings, including graphic presentation of key findings, analysis and recommendations;
- Present results and analysis; and,
- Be available for consultation on findings and strategy.

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SCHEDULE OC
ATTACHMENT TWO
SCHEDULE OF COMPLETION

1. This Agreement commences on the Effective Date, subject to accomplishment of all conditions to formation of an agreement listed in the Agreement at Section Twelve, Miscellaneous Provisions, subsection 2. Formation of Agreement.

2. This Agreement expires three (3) years after the effective date, with the option to extend for up to two-one (1) year option terms, unless, prior to its expiration, its term is modified by a written amendment hereto, and signed by both Parties.

3. Each Task Order will state the schedule for Consultant's performance of that Task Order.

4. Valley Water and Consultant may agree to modify the schedule specified for Consultant's performance in an executed Task Order, as an administrative modification to the Task Order and will confirm such modification in writing.

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SCHEDULE OC
ATTACHMENT THREE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS

1. Consultant's key staff assigned to the Project are as follows:

Team Member	Classification	Project Role	Contact Information
Ruth Bernstein	CEO & President	Project advisor	2001 Broadway, Suite 110 Oakland, CA 94612 (510) 550-8922 ruth@emcresearch.com
Jessica Polsky-Sanchez	Principal	Project Manager	2001 Broadway, Suite 110 Oakland, CA 94612 (510) 550-8933 jessica@emcresearch.com
Ayse Toksoz	Senior Director	Project Director (1)	2001 Broadway, Suite 110 Oakland, CA 94612 (206) 204-8047 ayse@emcresearch.com
Sianna Ziegler	Director	Project Director (2)	2001 Broadway, Suite 110 Oakland, CA 94612 (206) 204-8045 sianna@emcresearch.com
TBD	TBD	Associate	2001 Broadway, Suite 110 Oakland, CA 94612 (510) 844-0680

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SCHEDULE OC
ATTACHMENT FOUR
REFERENCE MATERIALS

Ref No.	Description
1	Santa Clara Valley Water District Non-Disclosure Agreement (NDA) (FC 1650)
2	Santa Clara Valley Water District (Valley Water) Standards for GIS Products April 2021 version:http://gis.valleywater.org/Download/GIS_PRODUCT_STANDARDS.pdf

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Santa Clara Valley Water District

File No.: 26-0629

Agenda Date: 8/25/2026
Item No.: 4.4.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Accept the Work as Complete and Direct the Clerk to File the Notice of Completion of Contract and Acceptance of Work for the South County Recycled Water Pipeline Phase 1C Project, Cratus, Inc., Contractor, Project No. 91094009, Contract No. C0723 (City of Gilroy, Unincorporated Santa Clara County, District 1).

RECOMMENDATION:
A. Accept the work on the South County Recycled Water Pipeline Phase 1C Project, Project No. 91094009, Contract No. C0723 as complete; and
B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

SUMMARY:
The construction contractor, Cratus, Inc. (Contractor), has completed the South County Recycled Water Pipeline Phase 1C Project (Project).

Project Background

In 2004, the Santa Clara Valley Water District (Valley Water) and South County Regional Wastewater Authority (SCRWA), with the participation of the Cities of Gilroy and Morgan Hill, jointly prepared the South County Recycled Water Master Plan (2004 Master Plan). The 2004 Master Plan was updated in 2015 (2015 Master Plan Update) and approved by both the SCRWA Board and Valley Water's Board of Directors (Board). The 2015 Master Plan Update carried forward the immediate and short-term capital investments that had been defined in the 2004 Master Plan and re-evaluated the long-term capital investments to expand the use of recycled water in Gilroy and Morgan Hill. The immediate-term facilities were completed in 2006. The short-term Phase 1 distribution facilities were split into Phases 1A, 1B, and 1C. The Phase 1A facilities were completed in 2012. At the request of the City of Gilroy, a portion of the Phase 1B facilities (Camino Arroyo Service Line) was completed in June 2015.

The remaining phases were bid and awarded under the South County Recycled Water Pipeline Short -Term Phase 1B/2A/1C/2B Project (Contract No. C0668), with Phase 1C included as a supplemental

item. Phase 1B facilities, along with the Phase 2A facilities, were installed in August 2023. The work for Phase 2B is ongoing under Contract No. C0668. Unfortunately, Valley Water was not able to proceed with the Phase 1C work under Contract No. C0668 because easements were not secured in sufficient time. As the scope was removed from Contract No. C0668, the funds allocated for Phase 1C were disencumbered from the Fiscal Year 2024-25 (FY 25) adjusted budget and carried forward to the FY 2025-26 (FY 26) adjusted budget to allow for the scope to be re-bid under the Project (Contract No. C0723).

This Project completes the short-term Phase 1 distribution system facility improvements in the 2015 Master Plan Update to help resolve the current recycled water distribution system's operational deficiencies, improve the system's reliability, expand the system to serve new customers, and allow increased use by existing customers.

Relevant Prior Board Actions

On October 13, 2015, the Board held a Public Hearing on the Engineer's Report and adopted Resolution No. 15-64 approving the Engineer's Report.

On September 14, 2021, the Board considered the First Addendum to the South County Recycled Water Master Plan Program's Environmental Impact Report for the Phase 1C alignment and adopted the plans and specifications and authorized advertisement for bids for construction of the South County Recycled Water Pipeline Short-Term Phase 1B/2A/1C/2B Project.

On December 14, 2021, the Board awarded a construction contract to Steve P. Rados, Inc. (Contract No. C0668) for the South County Recycled Water Pipeline Short-Term Phase 1B/2A/1C/2B Project, ratified addenda to the contract documents, and approved a construction contingency of $3,446,200.

On August 12, 2025, the Board adopted the Project plans and specifications and authorized advertisement for bids for construction.

On September 23, 2025, the Board ratified Addenda No(s). 1, 2, 3, and 4 to the Contract Documents for the Project, awarded the Construction Contract to Cratus, Incorporated, in the sum of $3,270,000, and approved a contingency sum of $490,500 and authorized the Chief Executive Officer or designee to approve the individual change orders up to the designated amount.

Contract Change Orders

A total of four (4) contract change orders totaling a net increase of $154,339.85 were executed for this contract to address various issues, including modifications to the pipeline alignment and profile, unforeseen groundwater issues, City of Gilroy backfill requirements, Valley Water requested changes, and credits back to the contract for deleted items of work.

These changes included:

A. $21,442.40 for modifying the HDPE pipeline alignment to avoid conflicts with a telecommunication company's utility pole and additional potholing.

B. $200,000.00 for dewatering (pumping and discharging) groundwater including monitoring, pH, and turbidity testing, and reporting to State Waterboards for SWPPP compliance.

C. $60,231.11 for off-haul and disposal of the City of Gilroy's soil along with the purchase of aggregate base (Class 2) for trench backfill.

D. <$127,333.66> credit for unused or partially used bid items (Bid Item #5, #16, #18, and #21), and unused supplemental bid items (Bid Item #23, #24, #25, and #26). This contract change order also includes compensation to the Contractor for changes to the air-release valve (ARV) and steel pipe, pipe bedding material, and installation of additional telemetry conduit.

Table 1 presents a summary of the construction contract and contingency amounts.

TABLE 1
SUMMARY OF CONSTRUCTION CONTRACT AND CONTINGENCY AMOUNTS

	Contract Amount	**Contingency Amount Remaining**
Original Contract and Board-Approved Contingency	**$3,270,000.00**	**$490,500.00**
Change Order No. 1 (Staff approved)	$21,442.40	$469,057.60
Change Order No. 2 (Deputy approved)	$200,000.00	$269,057.60
Change Order No. 3 (Staff approved)	$60,231.11	$208,826.49
Change Order No. 4 Final (Staff approved)	$136,162.34	$72,664.15
Contingency Amount Spent on COs 1-4 and Remaining	**$417,835.85**	**$72,664.15**
Change Order No. 4 Final (Staff-approved Contract Credit)	($263,496.00)	
Reduced Contract Amount with Credit	**$3,006,504.00**	
Final Contract Amount with Change Orders and Credit	**$3,424,339.85**	

Acceptance of the Work and Recording Notice of Completion of Contract

The California Civil Code allows an owner or agent to execute a Notice of Completion of Contract after acceptance of the work by the Board. The Notice of Completion of Contract and Acceptance of Work is included in Attachment 1. The Designated Engineer has determined that the work has been completed, to the best of their knowledge, in accordance with the plans and specifications, and recommends acceptance. The Designated Engineer's recommendation of construction acceptance is included in Attachment 2. The Project Completion Letter is included as Attachment 3. Photos of the completed Project are included in Attachment 4. The Project Delivery Process Chart is included in Attachment 5.

Construction Contract Retention

California law requires Valley Water to release contract retention in accordance with certain time frames, which will commence once the Notice of Completion is recorded. Interest payment on retention due to the contractor may be avoided by meeting the requisite deadlines.

Valley Water is currently withholding retention funds totaling five percent (5%) of the contract items ($171,216.99) in accordance with the Public Contract Code. Per the Contract Documents, Valley Water is required to release retention funds associated with the contract 35 days after recording the Notice of Completion of Contract and Acceptance of Work, subject to any withholds required by law or the contract.

Total Project Expenditures

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount of $3,270,000.00 has increased by $154,339.85 to $3,424,339.85, an increase of approximately 4.72 percent.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:
There are no environmental justice impacts associated with this item. This action is unlikely to or will not result in adverse impacts.

FINANCIAL IMPACT:
The South County Recycled Water Pipeline Phase 1C Project, Project No. 91094009, is included in the Capital Improvement Program (CIP) FY 2027-31 Five-Year Plan and in the FY 2026-27 Adopted budget. The Project was funded by the Water Utility Enterprise Fund (Fund 61), with 100% of the cost allocated to Zone W-5 (South County).

Transfer of Remaining Balances

The original contract amount of $3,270,000.00, combined with the Board-approved contingency encumbrance of $490,500.00 totals $3,760,500.00, for construction of the Project. The original contract amount of $3,270,000.00 was reduced by ($263,496.00) with Change Order #4's contract credit, resulting in a reduced contract amount of $3,006,504.00. When combined with the contingency amount spent on Change Orders 1-4, totaling $417,835.85, the final contract amount with all change orders and credit is $3,424,339.85.

The total approved for construction of the Project of $3,760,500.00, less $3,424,339.85 (the final contract amount with all change orders and credit), results in a positive balance of $336,160.15. Upon Project completion and close-out, any remaining funds will be released to Project reserves for the South County Recycled Water Pipeline - Short-Term Implementation Phase 1B (91094009).

CEQA:

The recommended action does not constitute a project under CEQA because it does not have potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: Notice of Completion and Acceptance of Work
Attachment 2: Construction Contract Acceptance
Attachment 3: Project Completion Letter
Attachment 4: Construction Photos
Attachment 5: Project Delivery Process Chart

UNCLASSIFIED MANAGER:
Emmanuel Aryee, 408-630-3074

RECORD WITHOUT FEE UNDER SECTION 6103
GOVERNMENT CODE OF THE STATE OF CALIFORNIA
SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY, SAN JOSE, CA 95118

Recording Requested by: Candice Kwok-Smith, Interim Clerk, Board of Directors

When Recorded, Mail to:

Candice Kwok-Smith, Interim Clerk, Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

NOTICE OF COMPLETION OF CONTRACT AND ACCEPTANCE OF WORK

NOTICE IS HEREBY GIVEN by order of the Board of Directors of Santa Clara Valley Water District, State of California, pursuant to law, that work to be performed under the contract heretofore made and executed by and between Santa Clara Valley Water District, as Owner therein, and **Cratus, Inc., 945 Taraval St. #302, San Francisco, CA 94116**, as Contractor therein (Contractor), bearing the date **September 23, 2025** for construction of the South County Recycled Water Pipeline Phase 1C Project, Contract No. C0723, and Project No. 91094009 and appurtenant facilities upon lands of said District known as South County situated in the County of Santa Clara, State of California, was completed as called for and in the manner designated by the plans and specifications, by the Contractor, and the work was accepted by the District's Board of Directors on behalf of the District on September 8, 2026.

That upon said contract, **The Ohio Casualty Insurance Company, 1990 North California Boulevard, Suite #620, Walnut Creek, CA 94596 (Bond No. 070226232)** was surety on the bond given by **Cratus, Inc.,** the Contractor, as required by law;

That the title of said District to the real property upon which said work and contract was performed is that of **in fee** and;

That the District's address is 5750 Almaden Expressway, San Jose, California 95118.

IN WITNESS WHEREOF, pursuant to the order of the Board of Directors made and given on September 8, 2026 authorizing and directing the execution of this instrument, the District has caused these presents to be executed in its name, authenticated by the signature of the Clerk of the Board of Directors on September 8, 2026.

_____
Candice Kwok-Smith
Clerk, Board of Directors
Santa Clara Valley Water District

I, the undersigned, say that I am Clerk of the Board of Directors of the Santa Clara Valley Water District; that I make this declaration on its behalf; that District is the owner of the real property interest described in the foregoing Notice; that declarant has read the foregoing Notice and knows the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 2026, at San Jose, California.

_____
Candice Kwok-Smith
Clerk, Board of Directors
Santa Clara Valley Water District

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SANTA CLARA VALLEY WATER DISTRICT

RECOMMENDATION OF CONSTRUCTION CONTRACT ACCEPTANCE

In accordance with **Article 11.01.06, Acceptance of Work,** of the contract specifications, a final inspection was conducted on July 1, 2026, for the South County Recycled Water Pipeline Phase 1C Project, Contract No. C0723, Project No. 91094009. The Project Completion Letter dated July 15, 2026, indicates that the work was completed in accordance with the requirements of the contract.

It is recommended that the work under this contract be accepted by the District.

Recommended By:

Signed by:
Tayyab Khan
2AB6E2D4F7EB45A...

7/15/2026

Tayyab Khan
Associate Engineer
Designated Engineer's Representative

Date

Concurrence:

DocuSigned by:
Emmanuel Aryee
F0052D4291DA4DF...

7/15/2026

Emmanuel Aryee, P.E.
Deputy Operating Officer
Water Utility Capital Division

Date

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July 15, 2026

Liam Finnegan
South County Recycled Water Pipeline Phase 1C
945 Taraval St. #302
San Francisco, CA 94116

Subject: South County Recycled Water Pipeline Phase 1C Project
Contract No. C0723, Project No. 91094009
Project Completion Letter

Dear Mr. Finnegan:

The Santa Clara Valley Water District (Valley Water) is in receipt of the Project Completion Certification, dated July 1, 2026, from Cratus, Inc. All work for the construction of the subject contract has been completed as attested to by Valley Water and all required closeout documents have been received.

In accordance with **Article 11.01.05 Project Completion,** this serves as the Project Completion Letter for the subject contract and established the completion of the project.

Therefore, in accordance with **Article 11.01.06 Acceptance of Work,** I will recommend that the Valley Water Board of Directors formally accept this contract.

If you have any questions, contact me at (408) 857-5437 or email at tkhan@valleywater.org.

Sincerely,

Signed by:
Tayyab Khan
2AB6E2D4F7EB45A...

Tayyab Khan
Associate Engineer

cc: E. Aryee, H. Angeles, L. Gregory, S. De La O, B. Ponce, S. Pe-Wong, J. Davila, M. Rivera, J. Luna, M. Tan, J. Renteria Contract File

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SOUTH COUNTY RECYCLED WATER PIPELINE PHASE 1C PROJECT

Contract C0723, Project No. 91094009

Construction Photos

Valley Water

Construction Photos

Dewatering of Groundwater

valleywater.org

Construction Photos

Installation of Shoring System

valleywater.org

Construction Photos

HDPE Pipe Fusion Machine

valleywater.org

Construction Photos

Installation of 24” HDPE Pipe

valleywater.org

Construction Photos

City of Gilroy ROW - Soil Off-Haul

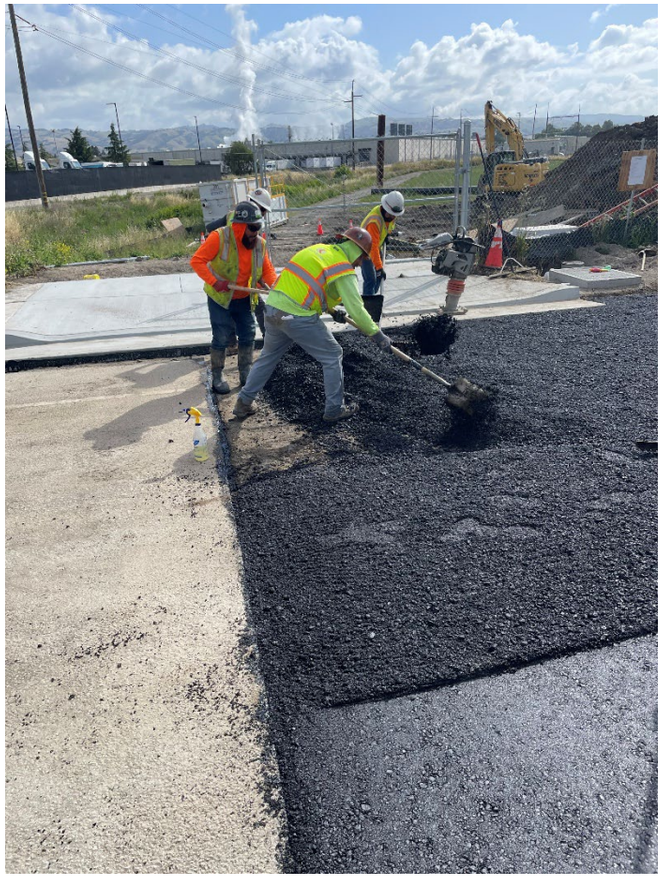
valleywater.org

Construction Photos

Trench Compaction

valleywater.org

Construction Photos



City of Gilroy ROW - Repaving

valleywater.org

Construction Photos

Installation of Pumpout Riser

valleywater.org

Construction Photos

Installation of Air Release Valves

valleywater.org

Construction Photos

Tie-In Connection to Existing 36” Recycled Water Pipeline

valleywater.org

Construction Photos

Tie-In Connection to Existing 12” Recycled Water Pipeline

valleywater.org

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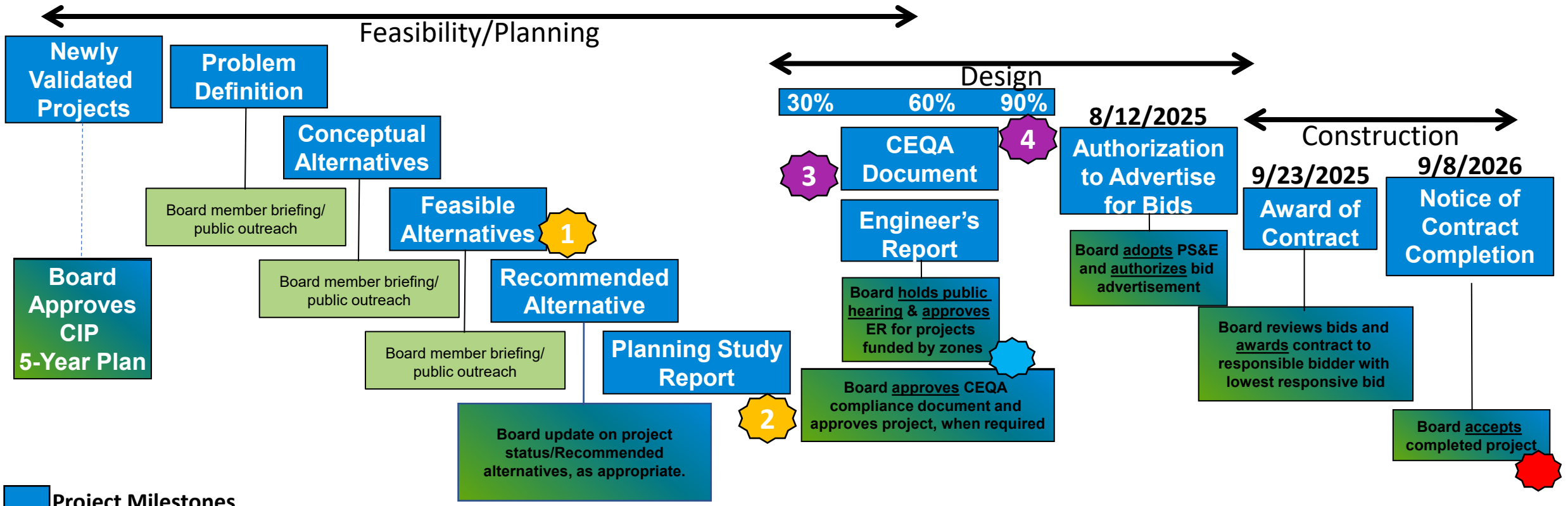
South County Recycled Water Pipeline Phase 1C Project
Project No. 91094009, Contract No. C0723

BOARD ACTION & ENGAGEMENT: CAPITAL PROJECT DELIVERY PROCESS*

* This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.



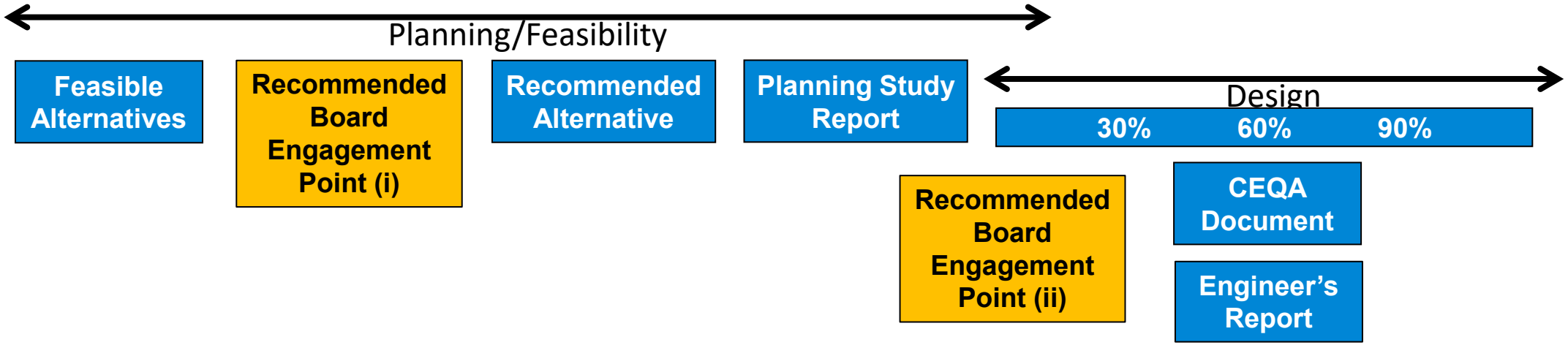
- Project Milestones
- Board Member Engagement
- Board Engagement/Action
- Additional Board Engagement Points for Complex Projects
- Additional Board Engagement Points for Operations & Maintenance Impacts
- Board Action: Approval/Adoption of Environmental = Approval of Project
- Staff: Reassess Risk for Remaining Contingency

Capital Improvement Program (CIP)

Project Delivery Process*

Board Engagement/Actions

Additional Recommended Points for Board Engagement



For capital projects with unusually complex fiscal, jurisdictional, environmental, or community considerations:

i. During the Planning/Feasibility Phase, after identifying the Feasible Alternatives but before selecting the Recommended Alternative, present the Feasible Alternatives and staff's initially proposed Recommended Alternative to the Capital Improvement Program (CIP) Committee. If recommended by the CIP Committee, present them to the Board for feedback to inform the selection of the Recommended Alternative; and

ii. For the projects for which the Board provided feedback regarding the Recommended Alternative, should changes to the project occur during the Planning and initial Design Phases that result in a significant deviation from the Recommended Alternative, staff will return to both the CIP Committee and the Board to provide information and receive feedback, as necessary, prior to the public review of the California Environmental Quality Act (CEQA) document.

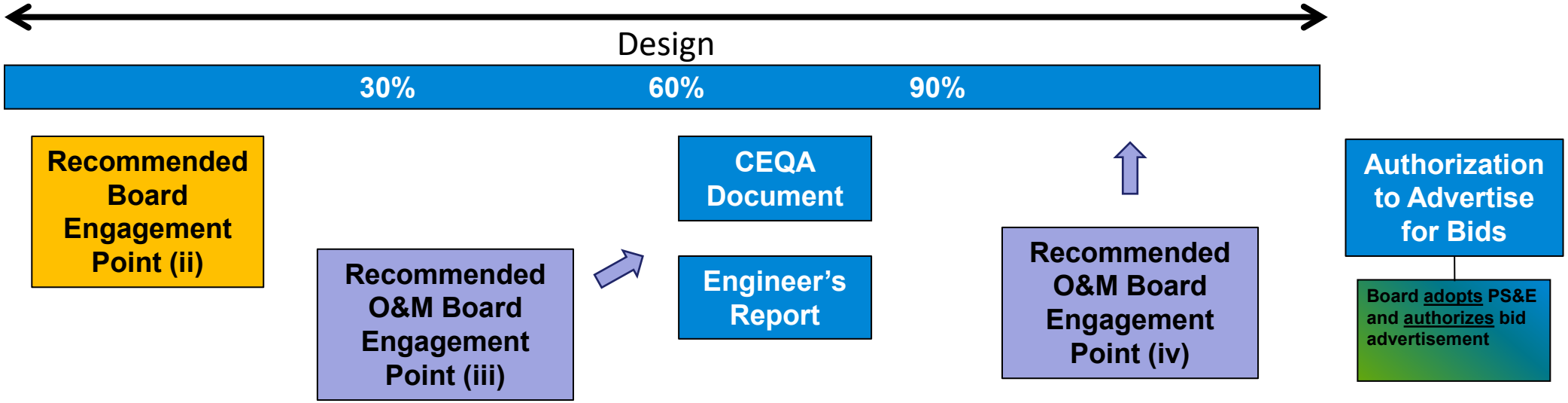
Valley Water

* For discussion purposes only. This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.

F-751-093 Project Delivery Process Chart for Board Agenda Items Revision: F Effective Date: 02/16/2024

Project Delivery Process*

Additional Recommended Points for O&M Engagement



For all capital projects:

iii. As part of the Board memo on either the Engineer's Report or CEQA document, include an O&M cost and impact assessment

iv. If significant changes occur after the Engineer's Report or CEQA document is approved by the Board, present an updated O&M cost and impact assessment to the Capital Improvement Program (CIP) Committee

Valley Water

* This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.

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Santa Clara Valley Water District

File No.: 26-0622

Agenda Date: 8/25/2026
Item No.: 5.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☐
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Receive the Semi-Annual Lobbyist Report and Annual Registration of Individuals Engaged in Compensated Lobbying Activities for the period January 1, 2026, through June 30, 2026.

RECOMMENDATION:
Receive the Semi-Annual Lobbyist Report and Annual Registration of Individuals Engaged in Compensated Lobbying Activities for the period January 1, 2026, through June 30, 2026.

SUMMARY:
In accordance with reporting requirements of the Lobbyist Ordinance, Ordinance No. 10-01, adopted by the Board on June 5, 2010, the attached Semi-Annual Lobbyist Report of Individuals Engaged in Compensated Lobbying Activities (Attachment 1) for the period of January 1, 2026, through June 30, 2026, is provided for Board information.

The Lobbyist Ordinance was adopted by the Board to ensure that the public is aware of the identities of interests that attempt to influence district decisions.

A Lobbyist webpage (<https://www.valleywater.org/how-we-operate/lobbyist-ordinance>) has been created on the Santa Clara Valley Water District's (Valley Water) website. It provides public access to Valley Water's Lobbyist Ordinance, Lobbyist Report, filing forms, and frequently asked questions.

Along with providing a semi-annual report, the Lobbyist Ordinance also requires the Clerk of the Board to recommend a fee schedule to the Board for adoption, based on the estimated cost of services provided pursuant to the ordinance. With only three registered individuals at present, there has not been a significant amount of staff time spent performing duties relevant to lobbyist registration. Therefore, no fee schedule is recommended at this time. The Clerk will continue to monitor staff time required to process lobbyist reports and return to the Board at a future date, if necessary, to recommend a fee schedule.

ENVIRONMENTAL JUSTICE IMPACT:
There is no environmental justice impact associated with the Semi-Annual Lobbyist Report. This

action is unlikely to or will not result in human health or environmental effects.

FINANCIAL IMPACT:
There is no financial impact associated with this item.

CEQA:
The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:
Attachment 1: Lobbyist Report

UNCLASSIFIED MANAGER:
Candice Kwok-Smith, 408-630-3193

Santa Clara Valley Water District Registered Lobbyists - Semi-Annual Report January 1 to July 31, 2026

Lobbyist Entity / Firm	Clients	Individuals Lobbying under Entity	District Decisions
Pacific Gas and Electric Company		Sergio Jimenez	Working with District officials to ensure that necessary work on gas and electric infrastructure can be completed in a timely and cost effective fashion in order to provide safe, reliable, and affordable service to our customers. PG&E's lobbying may occasionally include advocating for District policy that ensures our customers continue to receive safe, reliable, and affordable gas and electric service.
Google LLC and its Affiliates		Erin Lama	No action this reporting period.
Pete Carillo, Silicon Valley Advisors	Kiewit Infrastructure West Co.	Pete Carillo, Silicon Valley Advisors (Silicon Valley Advisors is a Government Relations, Lobbying and Land Use Consulting Firm)	No action this reporting period.

Updated: 8/25/2026 / Time: 10:53 AM

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Santa Clara Valley Water District

File No.: 26-0608

Agenda Date: 8/25/2026
Item No.: 7.1.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Receive Report of Bids, Ratify Addenda, Approve the Contingency Fund, and Award the Construction Contract to Hanford Applied Restoration & Conservation, for the Berryessa Creek Flood Protection Project, Calaveras Boulevard to Interstate 680, Upper Berryessa Creek Off-Site Mitigation Project, Project No. 26174041, Contract No. C0717 in the Sum of $5,963,750.00 (Milpitas and San Jose, Districts 3 and 6).

RECOMMENDATION:
A. Ratify Addenda Nos. 1 and 2 to the Contract Documents for the Berryessa Creek Flood Protection Project, Calaveras Boulevard to Interstate 680, Upper Berryessa Creek Off-Site Mitigation Project;
B. Award the Construction Contract to Hanford Applied Restoration & Conservation, located in Petaluma, CA, in the sum of $5,963,750.00; and
C. Approve a contingency sum of $298,100.00 and authorize the Chief Executive Officer or designee to approve individual change orders up to the designated amount.

SUMMARY:
The Upper Berryessa Creek Off-Site Mitigation Project (Mitigation Project) will provide mitigation planting enhancement in connection with the Upper Berryessa Creek Flood Risk Management Project (FRMP), a joint project between the U.S. Army Corps of Engineers (USACE) and the Santa Clara Valley Water District (Valley Water). The proposed Mitigation Project includes 15 acres or 15,000 linear feet of mitigation planting containing three types of enhancement areas within the cities of Milpitas and San Jose: (1) native herbaceous seeding sites across approximately 60% of the area (i.e., 9 acres or 9,000 linear feet), (2) native woody planting sites across approximately 27% of the area (i.e., 4 acres or 4,000 linear feet), and (3) road decommissioning sites across approximately 13% of the area (i.e., 2 acres or 2,000 linear feet).

Project Background

The FRMP completed construction in December 2018 and provides flood protection for residents, businesses, and infrastructure along Upper Berryessa Creek. The FRMP was permitted under the Waste Discharge and Water Quality Certification on March 14, 2016, by the California Regional

Water Quality Control Board San Francisco Region (Water Board), which facilitated the contracting and construction schedule later in 2016. The Water Board also stated that subsequent to the issuance of this Certification, they would consider the adoption of Waste Discharge Requirements with Valley Water named as permittee for the Project. On April 17, 2017, the Water Board issued a revised Waste Discharge Requirements and Water Quality Certification that rescinded and superseded the March 2016 Certification. The revised Certification included a condition that Valley Water provide compensatory mitigation enhancement for 15 acres or 15,000 linear feet to Waters of the State. To comply with this requirement, Valley Water drafted the Off-Site Mitigation Monitoring Plan for the FRMP-which activities therein necessitated the Mitigation Project.

Addenda Ratification

Two (2) addenda (Attachment 2) were issued during the bid advertisement period to clarify the Mitigation Project Contract Documents and answer bidders' questions. To formally incorporate the addenda into the Mitigation Project Contract Documents, staff recommend that the Board ratify the addenda.

Contract Award

A report of bids received at the bid opening for the Mitigation Project on July 8, 2026, is summarized in Table 1.

The only responsive bid was submitted by Hanford Applied Restoration & Conservation of Petaluma, California. The bid submitted by Hanford Applied Restoration & Conservation is approximately $2.5 million over the Engineer's Estimate of $3,397,900. The contractor's bid items for the planting, maintenance and irrigation were much higher than staff estimated.

The scope of work spans twelve (12) sites to secure enough acreage required for the Mitigation Project. In further review of the Engineer's Estimate developed by the consultant, the level of effort and costs estimated for planting and maintenance at each location seemed to have been underestimated, in comparison to Valley Water's own internal O&M efforts.

Additionally, the project has an unusually long duration of eight years. The approximately eight-year performance and payment bond requirement corresponds to the full contract duration, including the plant establishment and maintenance period, to ensure continuous protection of Valley Water and to secure the contractor's performance and payment obligations throughout the entire contract term. It is likely that the length of the bond requirements and uncertainty of inflation over the eight-year project duration contributed to the bid coming in significantly higher than the Engineer's Estimate.

Given the circumstances, a rebid may not necessarily mean lower bids or more competition. In addition, rebidding will also delay the work beyond the scheduled planting period in the winter rainy season, increasing construction costs and delaying permit timeline requirements.

Therefore, staff recommends the Board award the Construction Contract to Hanford Applied Restoration & Conservation as the responsible bidder submitting the sole responsive bid.

Table 1 - Bid Opening Results

Contractor(s)	Bid Price	Difference from EE (-) or + %	Deemed Responsive
Hanford Applied Restoration & Conservation	**$5,963,750.00**	**+ 75.5%**	**Yes**
Engineer's Estimate	**$3,397,900**		

Contingency Funds

The Contract award sum for the Mitigation Project is $5,963,750.00. To allow staff to quickly address unforeseen or changed site conditions and other unanticipated occurrences, without causing unnecessary delays or consequential costs to the Mitigation Project, staff recommends that the Board approve encumbering a contingency amount of $298,188 (5% of the contract amount) for the Mitigation Project.

The above contingency amount was estimated due to known and unknown risks, such as:

1. Unanticipated variances in quantities and cost of various lump sum items estimated in the Bid Proposal;
2. Unforeseen or differing site/field conditions that may be significantly different from the baseline or as-built information used in the preparation of Mitigation Project Contract Documents;
3. Coordination issues and risks associated with weather conditions; and
4. Coordination issues with operations and maintenance activities.

Approval of individual change orders for the Mitigation Project will be subject to approval at the following designated amounts:

Engineering Unit Manager: $100,000

Deputy Operating Officer: $300,000

Chief Operating Officer: $400,000

Assistant CEO: $500,000

Chief Executive Officer: Up to the Total Amount of Contingency

Relevant Previous Board Actions

On February 9, 2016, the Board considered the environmental effects of the FRMP as presented in the Final Environmental Impact Report (EIR), adopted Resolution No. 16-04 certifying the Final EIR,

adopted a Mitigation Monitoring and Reporting Program, Findings of Fact, and Statement of Overriding Considerations, and approved the FRMP. Additional information pertaining to the California Environmental Quality Act process is included below in this memorandum.

On May 26, 2026, the Board considered the First Addendum to the Final Environmental Impact Report, approved the Upper Berryessa Creek Off-Site Mitigation Project, adopted the plans and specifications, authorized advertisement for bids for construction of the Upper Berryessa Creek Off-Site Mitigation Project, and authorized the Designated Engineer to issue addenda, as necessary, during the bidding process.

Outreach to Bidders

The Notice to Bidders was sent to the following recipients: 26 plan rooms, 83 minority businesses, 44 Chambers of Commerce, as well as small business groups, certified small business contractors, and local and regional firms that have the appropriate license for this type of work, and the Santa Clara and San Benito Counties Building & Construction Trades Council, which maintains contacts with at least 1048 contractors and 70 union representatives. The total number of entities notified in PlanetBids was 1322.

Contractors were contacted using Valley Water's PlanetBids Vendor Portal. Broader advertising efforts also included two placements of the Invitation to Bid in the San Jose Post-Record.

Small Business Program

This Mitigation Project was advertised under Valley Water's Small Business Enterprise (SBE) Outreach Program. The SBE Program Policy requires non-SBE bidders who have not achieved a 30 per cent subcontracting goal and have submitted one of three apparent low bids to demonstrate Good Faith Efforts (GFE) made to solicit SBE participation. The only bidder, Hanford Applied Restoration & Conservation (Hanford), complied with the SBE Outreach Program Policy by submitting the required GFE documentation. Hanford is not an SBE and did not meet the minimum 30 percent SBE subcontracting participation goal. Therefore, Hanford does not qualify for an evaluation preference, but Hanford did provide GFE documentation that satisfied the GFE requirement.

Rights of Way

This Mitigation Project will be constructed within Valley Water's existing rights-of-way.

Permits

The Mitigation Project is a covered activity under the Santa Clara Valley Habitat Plan. Staff also received a confirmation letter from the California Department of Fish and Wildlife stating that a Lake or Streambed Alteration Agreement is not required for the Mitigation Project.

Public Outreach

Prior to construction, Valley Water will inform the surrounding neighborhood of the Mitigation Project and potential construction impacts. A mailer and social media will be used to reach out to neighbors, and construction site signage will be installed once the contractor has begun the work.

Next Steps

If the Board approves the recommendations, staff will proceed with contract administration managed by Valley Water staff to facilitate the construction of the Mitigation Project, which is anticipated to begin in November 2026 and be completed by March 2034. The Project Delivery Process Chart (Attachment 3) highlights the current Project phase and the staff recommendation before the Board.

ENVIRONMENTAL JUSTICE IMPACT:
There are no environmental justice impacts associated with the Mitigation Project. This action is unlikely to or will not result in disproportionate impacts on any specific community(ies) relative to the general population from the implementation of this project.

FINANCIAL IMPACT:
The Berryessa Creek Flood Protection Project, Calaveras Boulevard to Interstate 680 - Upper Berryessa Creek Off-Site Mitigation Project, Project No. 26174041 is included in the Capital Improvement Program (CIP) Fiscal Years (FY) 2027-31 Five-Year Plan and in the FY 2026-27 (FY27) Adopted Budget. The total cost for the recommended construction contract, including contingency sum of $298,188, is $6,261,938. Award of this construction contract would increase the total Project cost reflected in the CIP's Adopted FY 2027-31 Five-Year Plan by approximately $3,000,000. The increase in the total Project cost will be incorporated into the CIP's Draft FY 2028-32 Five-Year Plan. The Mitigation Project is funded by the Safe, Clean Water & Natural Flood Protection Program (Safe, Clean Water Program) Fund (Fund 26); however, the funds were allocated under the 2012 Safe, Clean Water Program, which are held in project reserves or encumbrances. Any TPC increase that exceeds the remaining project funds, beyond the amount encumbered under the 2012 Program, will be provided by the Watershed and Stream Stewardship Fund (Fund 12). At this time, it is estimated that Fund 12 will provide approximately $1M in funding.

The Berryessa Creek Flood Protection Project was originally included in the Clean, Safe Creeks and Natural Flood Protection Plan approved by voters in 2000 and was subsequently transitioned into the voter-approved 2012 Safe, Clean Water Program (2012 Program), under which the Berryessa Creek Flood Protection Project was constructed, and the remaining required associated funds were encumbered. However, the Upper Berryessa Creek Flood Protection Project, which includes the Mitigation Project, was not included in the renewed Safe, Clean Water Program, approved by voters in 2020 and is, therefore, not eligible for additional funding from the 2020 Program.

CEQA:
On October 27, 2001, Valley Water issued a Notice of Preparation (NOP) for the FRMP

Environmental Impact Report (EIR). The 30-day scoping period for the project occurred between October 27 and November 27, 2001. A public scoping meeting was held on November 7, 2001, at the City of Milpitas Police Department.

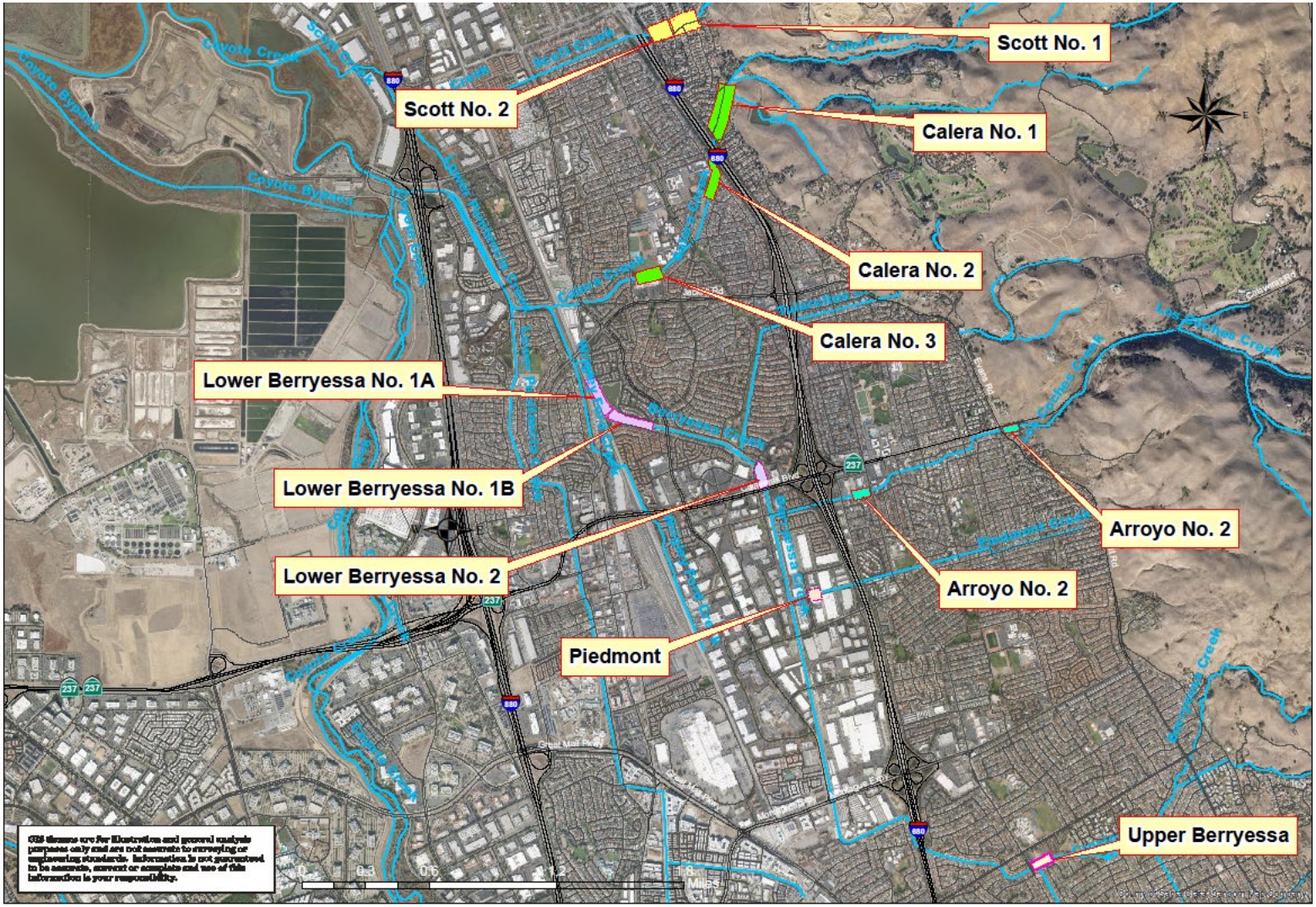
Valley Water released the Draft EIR (DEIR) for review and comment by the public for a 49-day period beginning September 25, 2015, and ending November 12, 2015. The DEIR and Notice of Completion (NOC) were transmitted to the State Clearinghouse on September 24, 2015, and notice of the DEIR's availability was sent to interested parties. Valley Water received five comment letters on the Draft EIR during the comment period. All public comments were responded to as part of the Final EIR that was published on January 29, 2016. Valley Water's Board considered and certified the Final EIR on February 9, 2016, and a Notice of Determination (NOD) was filed on February 16, 2016. The Final EIR can be viewed from here: [<https://fta.valleywater.org/dl/3cVKhhJwVYpG>].
On May 26, 2026, the Board considered the First Addendum to the Final EIR and approved the Upper Berryessa Creek Off-Site Mitigation Project. The addendum demonstrates that the implementation of the Off-Site Mitigation Plan would not result in significant new environmental effects and would not substantially increase the severity of any significant environmental effects identified in the EIR.

ATTACHMENTS:
Attachment 1: Project Map
Attachment 2: Addenda No. 1 and 2
Attachment 3: Project Delivery Process Chart

UNCLASSIFIED MANAGER:
Bhavani Yerrapotu, 408-630-2735

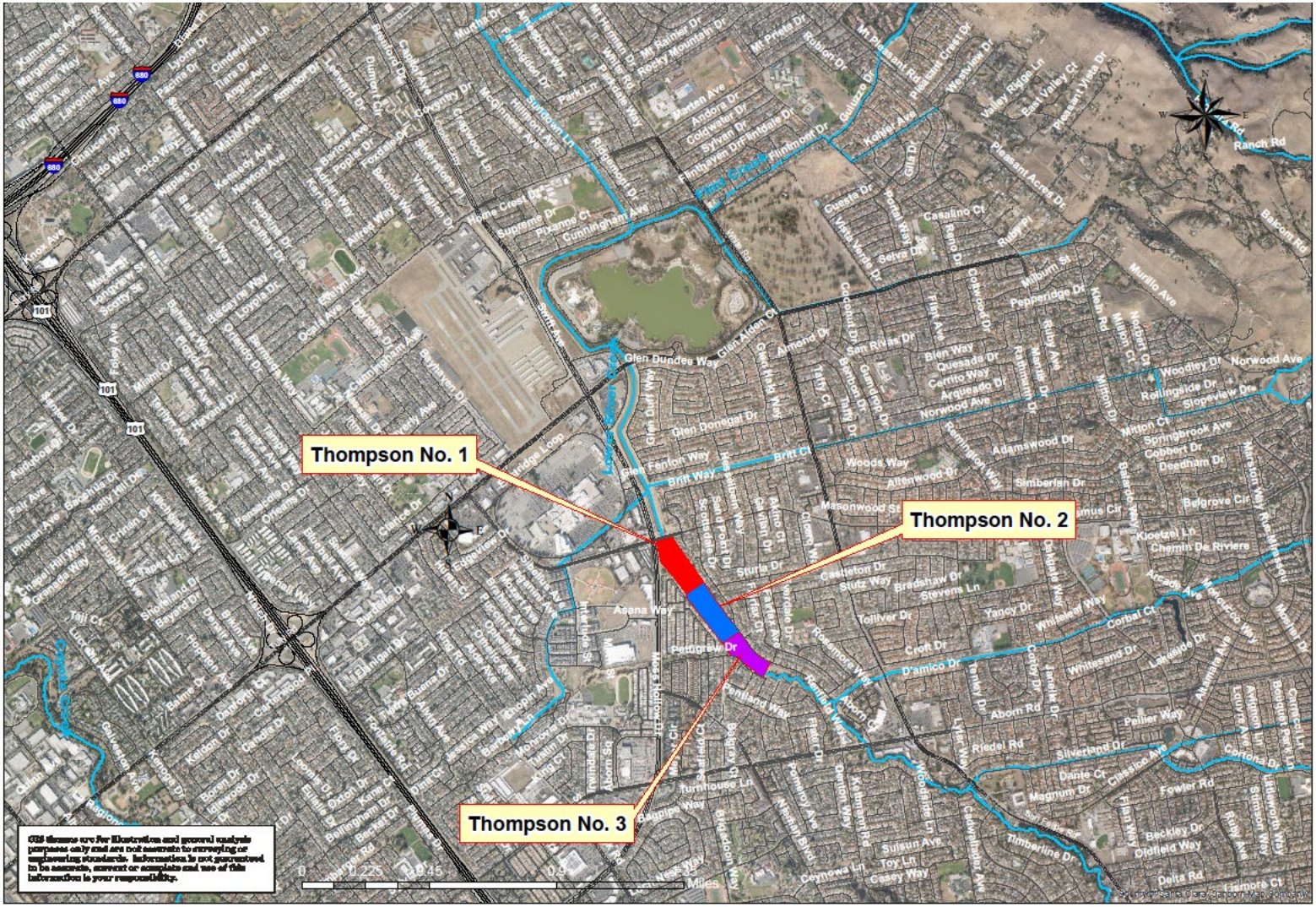
Upper Berryessa Creek Off-Site Mitigation
Project No. 26174041

Location Map and Features No. 1



Upper Berryessa Creek Off-Site Mitigation
Project No. 26174041

Location Map and Features No. 2



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SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 630-3088
www.valleywater.org
scvwdplanroom@valleywater.org

Santa Clara Valley Water District
Notification of this Addendum is transmitted via PlanetBids Vendor Portal to all current plan holders.
This Addendum is posted on the Valley Water PlanetBids Public Site for Bids Vendor Portal at
https://pbsystem.planetbids.com/portal/48397/portal-home

June 18, 2026

ADDENDUM NO. 1
TO CONTRACT DOCUMENTS FOR THE
UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT
Project No. 26174041 Contract No. C0717
Invitation No. VW0684

Notice is hereby given to Prospective Bidders that the Contract Documents are modified as hereinafter set forth.

SPECIFICATIONS

SPECIAL PROVISIONS

SECTION 12. WORK AND CONTRACT TIME(S)

1. **REPLACE** Article 12.03.C.1 in section 12.03. Contract Time(s) with:

   "Milestone 1: September 2026 to November 2026 – Mobilization, demolition, clearing and grubbing, access to the planting sites, soil preparation for seeding and planting, completion of the SWPPP, installation of the stormwater BMPs, and completing the irrigation system design for all planting sites except Thompson Creek and Scott Creek."

2. **REPLACE** Article 12.07.B.1 in section 12.07. Changes with:

   "All extra work by either Time and Materials or a Lump Sum Change Order, shall be paid at the estimated cost. The markup, provided under Article 3.07.02.G, shall compensate the Contractor for all direct and indirect overhead cost and profit. No separate allowance or itemization shall be allowed for extended overhead or time related overhead; unless, otherwise approved in writing by the District's Deputy Operating Officer."

SECTION 14. SPECIAL REQUIREMENTS

3. **REPLACE** Article 14.16.01.B.3 in section 14.16. Insurance with:

"In the "Certificate Holder" box include:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Contract No. C0717"

4. **REPLACE** Article 14.16.03.B.2 in section 14.16 Insurance with:

"Provide the following information in the "Certificate Holder" box:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Contract No. C0717"

SECTION 15. GENERAL COORDINATION

5. **REPLACE** Article 15.05.B.1 in section 15.05. Public Notification with:

"Milestone 1: September 2026 to November 2026 – Mobilization, demolition, clearing and grubbing, access to the planting sites, soil preparation for seeding and planting, completion of the SWPPP, installation of the stormwater BMPs, and completing the irrigation system design for all planting sites except Thompson Creek and Scott Creek."

SECTION 20. SUBMITTAL AND QUALITY REQUIREMENTS

6. **ADD** Article 20.01.02.A.3 in section 20.01.02. Immediate Submittals:

3. Resume of the Contractor's Qualified Biologist (Standard Provisions Article 10.14.01.B) must be submitted within five (5) days of the First Chargeable Day of the Contract.

GENERAL QUESTIONS & RESPONSE

QUESTION 1: (Date Received – June 5, 2026)

Can a A-License Contractors be added to the contractors list of bid approved licenses?

RESPONSE 1:

Section 9 of the Notice to Bidders requires that the Bidder or one of its subcontractors possess a valid Class C-27 Landscaping Contractor's license at the time of bid submittal. A Class A General Engineering Contractor's license may also be possessed by the Bidder; however, the C-27 licensing requirement remains mandatory. Therefore, adding Class A to the list of approved licenses does not waive the requirement that the Bidder or one of its subcontractors hold a valid C-27 license.

QUESTION 2: (Date Received – June 10, 2026)

Please provide sign-in sheet from Mandatory Prebid.

RESPONSE 2:

The sign-in sheet for the mandatory pre-bid meeting has been posted under the Document Tab in PlanetBids. Please refer to the Document Tab for access to the sign-in sheet.

QUESTION 3: (Date Received – June 11, 2026)

We are in receipt of the pre-bid meeting attendance sheet, but do you have a list of companies who are bidding as a prime and who is bidding as a subcontractor?

RESPONSE 3:

Please refer to the Prospective Bidder list available in PlanetBids.

QUESTION 4: (Date Received – June 11, 2026)

Combining the two semi-concurrent plant establishment periods into one contract creates an unusually long period for bonding (essentially 8 years). The usual duration we see for this type of project is 4 years. This presents challenges to acquiring bonding for the project. Could the projects be separated somehow for bonding purposes?

RESPONSE 4:

No. The Project cannot be separated for bonding purposes.

QUESTION 5: (Date Received – June 11, 2026)

Combining the two semi-concurrent plant establishment periods into a single contract result in an unusually long bonding duration—approximately eight years, compared to the more typical four-year duration we see for similar projects. This extended period increases the risk assumed by the surety and may make it more difficult to secure bonding. Could the projects be structured or separated in a way that limits bonding to active construction and/or maintenance phases or sites?

RESPONSE 5:

No. The Project cannot be separated for bonding purposes.

QUESTION 6: (Date Received – June 11, 2026)

The liquidated damages specified for this project appear to be higher than what we typically encounter for this type of work, particularly during the plant establishment periods. Is there flexibility to revisit or adjust the liquidated damages provisions to better align with standard industry expectations?

RESPONSE 6:

The Design Team determined the liquidated damages amount based on the anticipated costs that Valley Water would incur if a project milestone is not completed on time. These costs

include potential labor, materials, construction management, contract administration, and other related expenses.

The daily liquidated damages amount was developed through an analysis of the Valley Water staff positions that would be required to address project delays, including their applicable daily labor rates and the estimated level of effort associated with extended project duration.

Accordingly, the liquidated damages amount is supported by this analysis and reflects a reasonable estimate of the damages that Valley Water would incur as a result of delayed performance. Therefore, the established liquidated damages amount cannot be modified.

QUESTION 7: (Date Received – June 13, 2026)

Section 14 Special Requirements - G. Surety Bonds - Can the 100% Payment & Performance be issued on an annual basis (renewed each year) for the duration of the contract?

RESPONSE 7:

No. Pursuant to the Contract Documents, the successful Bidder is required to furnish Performance and Payment Bonds, each in an amount equal to 100% of the Contract Price. The bonds must satisfy the requirements of the Contract Documents and provide coverage for the full contract obligation. Annual renewal bonds are not permitted.

QUESTION 8: (Date Received – June 13, 2026)

Section 14 Special Requirements - G. Surety Bonds - If the Payment & Performance Bonds cannot be issued on an annual basis, can they be issued per specific milestone or group of milestones?

RESPONSE 8:

No. Pursuant to the Contract Documents, the successful Bidder is required to furnish Performance and Payment Bonds, each in an amount equal to 100% of the Contract Price. Bonds issued on a milestone-by-milestone basis or for groups of milestones do not satisfy this requirement.

QUESTION 9: (Date Received – June 13, 2026)

Will any bidder that signed in to the mandatory Prebid after 10:05am be excluded from bidding?

RESPONSE 9:

Yes. Pursuant to Section 11. A of the Notice to Bidders (NTB), any bidder not in attendance at the mandatory pre-bid meeting by 10:05 a.m. is considered late and as having not attended the mandatory pre-bid meeting.

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THIS ADDENDUM NO. 1, WHICH CONTAINS 5 PAGES AND 0 ATTACHMENT (S), IS ATTACHED TO AND IS A PART OF THE SPECIFICATIONS AND CONTRACT DOCUMENTS FOR THIS PROJECT.

DocuSigned by:
Bhavani Yerrapotu
468D6D59FDEC458...

Date: 6/18/2026

Bhavani Yerrapotu, P.E.
Deputy Operating Officer
Watershed Capital Division

Docusign Envelope ID: 00D72ACB-3CC2-84FA-800A-C87AD1CDD5B8

SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 630-3088
www.valleywater.org
scvwdplanroom@valleywater.org

Santa Clara Valley Water District
Notification of this Addendum is transmitted via PlanetBids Vendor Portal to all current plan holders.
This Addendum is posted on the Valley Water PlanetBids Public Site for Bids Vendor Portal at
https://pbsystem.planetbids.com/portal/48397/portal-home

July 2, 2026

ADDENDUM NO. 2
TO CONTRACT DOCUMENTS FOR THE
UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT
Project No. 26174041 Contract No. C0717
Invitation No. VW0684

Notice is hereby given to Prospective Bidders that the Contract Documents are modified as hereinafter set forth.

SPECIFICATIONS

SPECIAL PROVISIONS

SECTION 19. ENVIRONMENTAL

1. **REMOVE** Paragraphs C. and D. under Article 19.07.07. Submittals, in their entirety

MAP AND CONSTRUCTION PLAN

2. **REPLACE** the following revised plan sheets with ATTACHMENT NO. 1.

   1) G-02 (Sheet 2) DRAWING INDEX AND GENERAL NOTES

   2) G-06 (Sheet 6) ARROYO–2 SITE ACCESS AND SITE PREPARATION PLAN

   3) C-01 (Sheet 35) ARROYO–1 PLAN AND PROFILE

   4) L-12 (Sheet 62) PLANTING AND SEEDING PLAN SCOTT-1 SITE (SUPPLEMENTAL BID ITEM)

   5) L-17 (Sheet 67) PLANTING AND SEEDING PLAN UPPER BERRYESSA SITE

GENERAL QUESTIONS & RESPONSE

QUESTION 1: (Date Received – June 19, 2026)

Is there a bid bond form?

RESPONSE 1:

Yes. Please refer to Appendix A of the Specifications for the Bid Bond form.

QUESTION 2: (Date Received – June 21, 2026)

This is Ahmet Gulcu from Empire Landscaping Inc I was at the pre bid meeting I joined by phone by 530-400-3943 I was at the duration of the pre bid conference Could you please check this and add me on pre bid listing please.

RESPONSE 2:

Please refer to the Pre-Bid Meeting Sign-In Sheet posted in the Documents section of PlanetBids. Pursuant to Section 11.A of the Notice to Bidders (NTB), any bidder who is not in attendance at the mandatory pre-bid meeting by 10:05 a.m. is considered late and is deemed not to have attended the mandatory pre-bid meeting.

QUESTION 3: (Date Received – June 26, 2026)

The different milestones, Thompson Creek, and Scott Creek to have different start and beginning times. Please clarify if the plant establishment for all 3 jobsites will start when all 3 jobsites have been completed.

RESPONSE 3:

There are a total of 13 planting sites. Per Article 12.03.C, Milestones 1 and 2 include site preparation and planting for all sites except Thompson Creek and Scott Creek (11 sites) and will be completed between September 2026 and March 2027. Milestone 3 includes a five-year plant establishment and maintenance period for these sites, from April 2027 through March 2032.

Thompson Creek is the largest planting site and has been divided into two planting phases. Milestones 4 and 5 include site preparation and planting for the first half of Thompson Creek, from Station 10+25 to Station 26+25, between April 2027 and March 2028. Milestone 6 includes the five-year plant establishment and maintenance period for this portion of Thompson Creek, from April 2028 through March 2033.

Milestones 7 and 8 include site preparation and planting for the second half of Thompson Creek, from Station 26+25 to Station 42+25, between April 2028 and March 2029. Milestone 9 includes the five-year plant establishment and maintenance period for this portion of Thompson Creek, from April 2029 through March 2034.

Scott Creek is a Supplemental Bid Item. If authorized for construction, its site preparation, planting, and five-year plant establishment and maintenance activities will be incorporated into Milestones 7, 8, and 9.

QUESTION 4: (Date Received – June 26, 2026)

This project has a requirement to design the irrigation. Please clarify if water is available at the different locations. If not, where is the contractor getting water and who pays for it? Under what item is the water, meters, trucking is being paid?

RESPONSE 4:

Water is not available at the planting sites. The Contractor shall provide a water truck and connect it to the irrigation system as necessary to supply irrigation water.

Per Article 30.01, Irrigation maintenance shall include furnishing all labor, materials, water, and equipment required to perform the Work during the five (5)-year plant establishment and maintenance period. Payment for this work is included under Bid Item No. 9, Plant Establishment and Maintenance**.**

For additional information, please refer to Attachment No. 2: Irrigation Assessment for the Berryessa Creek Subwatershed Enhancement Project Technical Memorandum, dated April 3, 2026.

QUESTION 5: (Date Received – June 26, 2026)

Are there any potential points of connection for irrigation systems on this project or will all water need to be trucked into the sites?

RESPONSE 5:

The Contractor shall provide a water truck to transport water to the various planting sites as needed.

QUESTION 6: (Date Received – June 26, 2026)

What hauling permits would be required for this project?

RESPONSE 6:

Per Article 18.01.02, Contractor is responsible to obtain hauling permits from the City of San Jose and City of Milpitas.

QUESTION 7: (Date Received – June 26, 2026)

Confirming: Is the District providing all plants for initial planting?

RESPONSE 7:

Per Article 14.07.A, Valley Water will furnish plant materials which consist of native plants, including trees, shrubs, and herbaceous plants.

QUESTION 8: (Date Received – June 26, 2026)

If implemented as part of this contract, when does the district anticipate work at Scott Creek to be implemented?

RESPONSE 8:

Scott Creek is a Supplemental Bid Item, if constructed, we anticipate that the work may be incorporated into Milestones 7, 8 and 9.

QUESTION 9: (Date Received – June 26, 2026)

In our experience, the Certified Ecologist Restoration Practitioner or Practitioner in Training (CERP or CERPIT) certification is for designers: will the implementing contractor still be required to have this certification? Could it be fulfilled by a subcontractor?

RESPONSE 9:

Either the prime contractor or subcontractor with CERP or CERPIT is acceptable.

QUESTION 10: (Date Received – June 26, 2026)

Can the requirement for “Certified Professional in Erosion and Sediment Control (CPESC)” be fulfilled by a subcontractor used on the project?

RESPONSE 10:

Either the prime contractor or subcontractor with CPESC is acceptable.

QUESTION 11: (Date Received – June 26, 2026)

It has been brought to our attention that SFDW no longer meets Valley Water’s definition of special-status species: considering this, are the submittals in 19.07.07 C and D still applicable?

RESPONSE 11:

Please refer to the Special Provisions changes in this addendum that deletes paragraphs C and D under Article 19.07.07.

QUESTION 12: (Date Received – June 26, 2026)

28.H.4.b states that” All herbicides will be applied by or under the immediate (onsite during application) direction of a Department of Pesticide Regulation licensed applicator.”. In our experience, this onsite presence requirement of a QAC/QAL holder is unusual and would be very cost prohibitive. Will close, off-site direction by a QAC/QAL coupled with our annual training program for all applicators suffice for this requirement?

RESPONSE 12:

Per Article 23.02.04.H.2, it is Valley Water policy that all herbicides are applied by, or under the immediate supervision of, a California Department of Pesticide Regulation licensed applicator.

QUESTION 13: (Date Received – June 26, 2026)

Can contractors assume on-demand access to sites for maintenance purposes?

RESPONSE 13:

Upon issuance of the Notice to Proceed, the Contractor will have access to the project site for the duration of the Contract, subject to the requirements and restrictions specified in the Contract Documents. Please refer to Section 18, Article 18.02, Hours of Work**,** for the allowable working hours.

QUESTION 14: (Date Received – June 26, 2026)

The RFP references environmental permits from CDFW, RWQCB, and potentially USACE. Are these permits available to determine what requirements need to be met, other than nesting migratory birds?

RESPONSE 14:

Please refer to Attachment No. 3 for the California Regional Water Quality Control Board permit from the Upper Berryessa Creek Project, which has been extended to this project. For the California Department of Fish and Wildlife (CDFW) permit, please refer to Appendix B of the Specifications. As stated in Article 18.01.01 District Obtained Permits, there is no United States Army Corps of Engineers (USACE) permit for this project.

THIS ADDENDUM NO. 2, WHICH CONTAINS FIVE (5) PAGES AND THREE (3) ATTACHMENTS, IS ATTACHED TO AND MADE A PART OF THE SPECIFICATIONS AND CONTRACT DOCUMENTS FOR THIS PROJECT.

DocuSigned by:
Karl Neuman
C5FE887E51CB488...

Date: 7/2/2026

Karl Neuman, P.E., G.E.
Acting Deputy Operating Officer
Watersheds Design and Construction Division

ENCLOSURE(S):

ATTACHMENT NO. 1: Revised Plan Sheets G-02, G-06, C-01, L-12, L-17
ATTACHMENT NO. 2: Irrigation Assessment for the Berryessa Creek Subwatershed Enhancement Project Technical Memorandum
ATTACHMENT NO. 3: California Regional Water Quality Control Board San Francisco Bay Region

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C0717 - UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

ADDENDUM NO. 2

ATTACHMENT NO. 1

REVISED PLAN SHEETS: G-02, G-06, C-01, L-12, L-17

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1 G-02	DRAWING INDEX AND GENERAL NOTES	2
G-03	ABBREVIATIONS, LEGEND, AND SYMBOLS	3
G-04	INDEX MAP	4
G-05	ARROYO-1 SITE ACCESS AND SITE PREPARATION PLAN STA 198+85 TO STA 201+75	5
1 G-06	ARROYO-2 SITE ACCESS AND SITE PREPARATION PLAN STA 155+00 TO STA 159+00	6
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GENERAL NOTES

1. ALL EXISTING FACILITIES, STRUCTURES, TREES, FENCES, LANDSCAPING, ETC., DESIGNATED "EXIST" OR SHOWN EXISTING ARE TO REMAIN. EXISTING UTILITIES SHALL BE MAINTAINED OPERATIONAL AT ALL TIMES. ONLY THOSE SPECIFICALLY DESIGNATED FOR REMOVAL AS SHOWN ON THE DRAWINGS, OR AS DIRECTED BY THE ENGINEER SHALL BE REMOVED.
2. LOCATIONS AND DEPTHS OF EXISTING OVERHEAD AND UNDERGROUND UTILITIES AS SHOWN ON THE PLANS ARE BASED ON INFORMATION FROM THE UTILITY AND ARE TO BE CONSIDERED AS APPROXIMATE ONLY.
3. PRIOR TO PERFORMING ANY WORK IN THE VICINITY OF EXISTING UNDERGROUND UTILITIES, THE CONTRACTOR SHALL VERIFY THE LOCATIONS AND DEPTHS AND TAKE PROPER PRECAUTIONS TO AVOID ANY DAMAGE TO THEM. CALL UNDERGROUND SERVICE ALERT AT (800) 642-2444 AT LEAST 48 HOURS IN ADVANCE FOR LOCATION.
4. THE CONTRACTOR SHALL COMPLY WITH THE REQUIREMENTS OF THE STATE WATER RESOURCES CONTROL BOARD FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.
5. ALL REFERENCES MADE TO RIGHT OR LEFT, AND ALL CROSS SECTIONS SHOWN ON PLAN ARE VIEWED LOOKING UPSTREAM.
6. ALL TRAFFIC CONTROL DEVICES, SUCH AS CONSTRUCTION SIGNS, BARRICADES, LIGHTS, AND DELINEATORS SHALL BE FABRICATED IN ACCORDANCE WITH THE LATEST STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION MANUAL. ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) AND THE MUTCD CALIFORNIA SUPPLEMENT. ALL CONE SPACING AND TAPER SPACING AND SIGN SPACING SHALL BE IN ACCORDANCE WITH THE MUTCD CALIFORNIA SUPPLEMENT.
7. FIRE HYDRANTS SHALL NOT BE OBSTRUCTED BY FENCE, EQUIPMENT, K-RAIL TRAFFIC CONTROL DEVICES OF ANY KIND.
8. MAINTAIN 12' MIN. TRAFFIC LANES UNLESS OTHERWISE SPECIFIED OR APPROVED BY THE CITY.
9. KEEP DRIVEWAYS OPEN AT ALL TIMES.
10. CONTRACTOR SHALL NOT STORE, OPERATE, OR HANDLE ANY EQUIPMENT OR MATERIALS WITHIN PRIVATE OR PUBLIC OWNED AREAS AFTER WORK HOURS UNLESS CONTRACTOR OBTAINS PRIOR APPROVAL FROM DESIGNATED OWNERS(S).
11. CONTRACTOR SHALL PROVIDE CERTIFIED FLAGGERS WHEN OPERATING AND HAULING EQUIPMENT AND MATERIALS WITHIN CITY ROADS IMMEDIATELY ADJACENT TO THE PROJECT.
12. CONTRACTOR IS RESPONSIBLE FOR OBTAINING APPROVAL FROM THE CITY OF SAN JOSE AND CITY OF MILPITAS FOR HIS OR HER PROPOSED TRUCK ROUTE/HAUL PLAN FOR THE PROJECT.
13. REFER TO SPECIFICATIONS FOR THE LATEST CITY OF SAN JOSE AND MILPITAS ENCROACHMENT PERMIT INFORMATION. CONTRACTOR SHALL FOLLOW THE SPECIFICATIONS STIPULATED IN THIS FORM.
14. PRIOR TO ACCESSING CITY STREETS FOR MOBILIZATION OF THE PROJECT, CONTRACTOR SHALL COORDINATE WITH AND SUBMIT TO THE CITY A TRAFFIC CONTROL PLAN WHICH THE CITY MUST APPROVE WITH THEIR STAMPED CERTIFICATION.
15. NO WORK THAT INTERFERES WITH PUBLIC TRAFFIC SHALL BE PERFORMED BEFORE 7 AM OR AFTER 5 PM, UNLESS CONTRACTOR OBTAINS PRIOR APPROVAL FROM THE CITY.

DESIGN NOTES

1. SURVEY CONTROL INFORMATION
   a. VERTICAL DATUM IS NAVD 88
   b. HORIZONTAL DATUM IS NAD 83
   c. CALIFORNIA COORDINATE SYSTEM IS CA ZONE 3

REV	DESCRIPTION	DATE	APPR
1	ADDENDUM #2	06/26	J.V.

ADDENDA DRAWING
06-26-26

REFERENCE INFORMATION AND NOTES

DATE 05/08/2026
DESIGN A. PERDOMO
DRAWN O. REYNOSO
CHECKED J. VALENCIA

ENGINEERING CERTIFICATION
REGISTERED PROFESSIONAL ENGINEER CARL NEUMANN CIVIL STATE OF CALIFORNIA
SEE ORIGINAL "AS-BID" DOCUMENT FOR SIGNATURE AND DATE
ENGINEER DATE

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

PROJECT NAME AND SHEET DESCRIPTION:
UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT
DRAWING INDEX AND GENERAL NOTES

SCALE AS SHOWN
VERIFY SCALES 0 1"
BAR IS ONE INCH ON ORIGINAL DRAWING IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

PROJECT NUMBER 26174041
SHEET CODE: 1 G-02
SHEET NUMBER: 2

DOCUMENT NUMBER: BER_CY-G-4017-90030
USERNAME: OscaReyn 6/26/2026 10:47 AM
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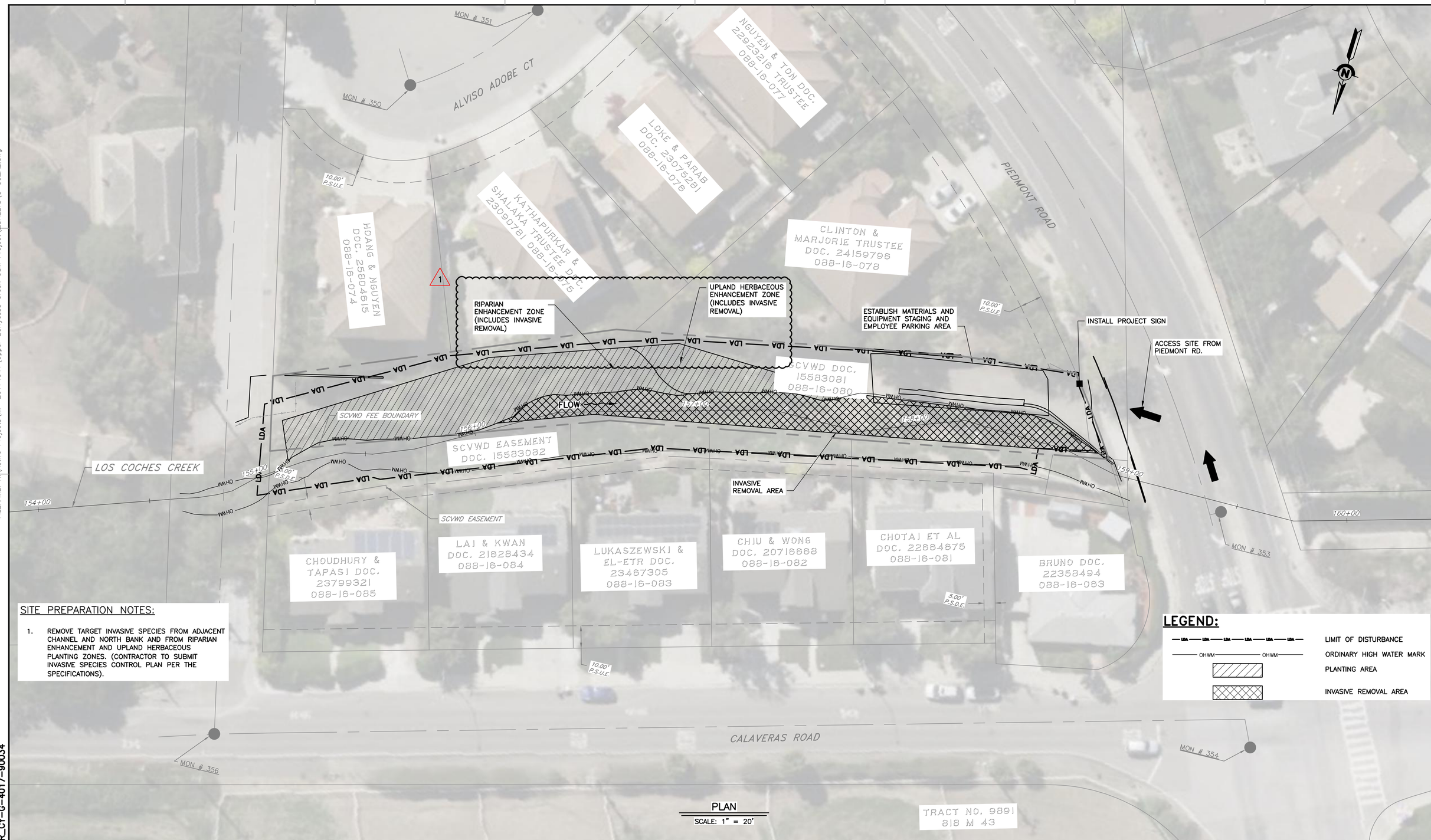

SITE PREPARATION NOTES:

1. REMOVE TARGET INVASIVE SPECIES FROM ADJACENT CHANNEL AND NORTH BANK AND FROM RIPARIAN ENHANCEMENT AND UPLAND HERBACEOUS PLANTING ZONES. (CONTRACTOR TO SUBMIT INVASIVE SPECIES CONTROL PLAN PER THE SPECIFICATIONS).

LEGEND:

LDA	LIMIT OF DISTURBANCE
OHWM	ORDINARY HIGH WATER MARK
	PLANTING AREA
	INVASIVE REMOVAL AREA

PLAN

SCALE: 1" = 20'

REV	DESCRIPTION	DATE	APPR
1	ADDENDUM #2	06/26	J.V.

ADDENDA DRAWING
06-26-26

REFERENCE INFORMATION AND NOTES

DATE	05/08/2026
DESIGN	A. PERDOMO
DRAWN	O. REYNOSO
CHECKED	J. VALENCIA

ENGINEERING CERTIFICATION

REGISTERED PROFESSIONAL ENGINEER CARL NEUMANN CIVIL STATE OF CALIFORNIA

SEE ORIGINAL "AS-BID" DOCUMENT FOR SIGNATURE AND DATE

ENGINEER DATE

SANTA CLARA VALLEY WATER DISTRICT

Valley Water

PROJECT NAME AND SHEET DESCRIPTION:

UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

ARROYO-2 SITE ACCESS AND SITE PREPARATION PLAN STA 155+00 TO STA 159+00

SCALE: AS SHOWN

VERIFY SCALES: 0 — 1"

BAR IS ONE INCH ON ORIGINAL DRAWING IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

PROJECT NUMBER: 26174041

SHEET CODE: G-06

SHEET NUMBER: 6

DOCUMENT NUMBER: BER_CY-G-4017-90034

USERNAME: KathBrav 6/25/2026 2:17 PM
FILENAME: K:\Active Projects\MP-26174041\Upper Berryessa Creek OSM Project_SHEETS\G-06_A2.dwg

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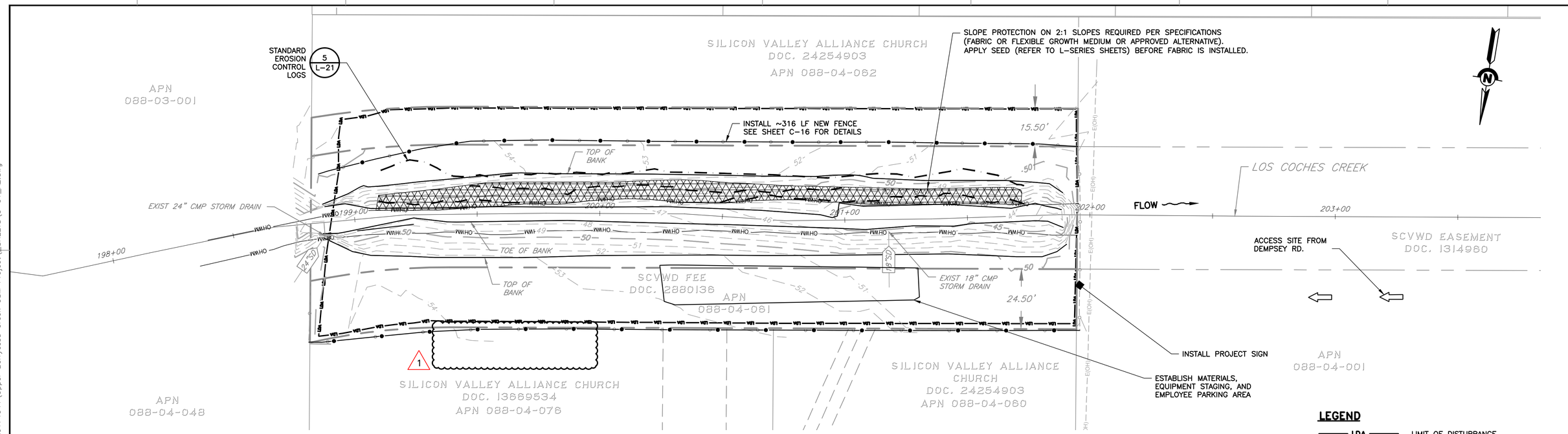
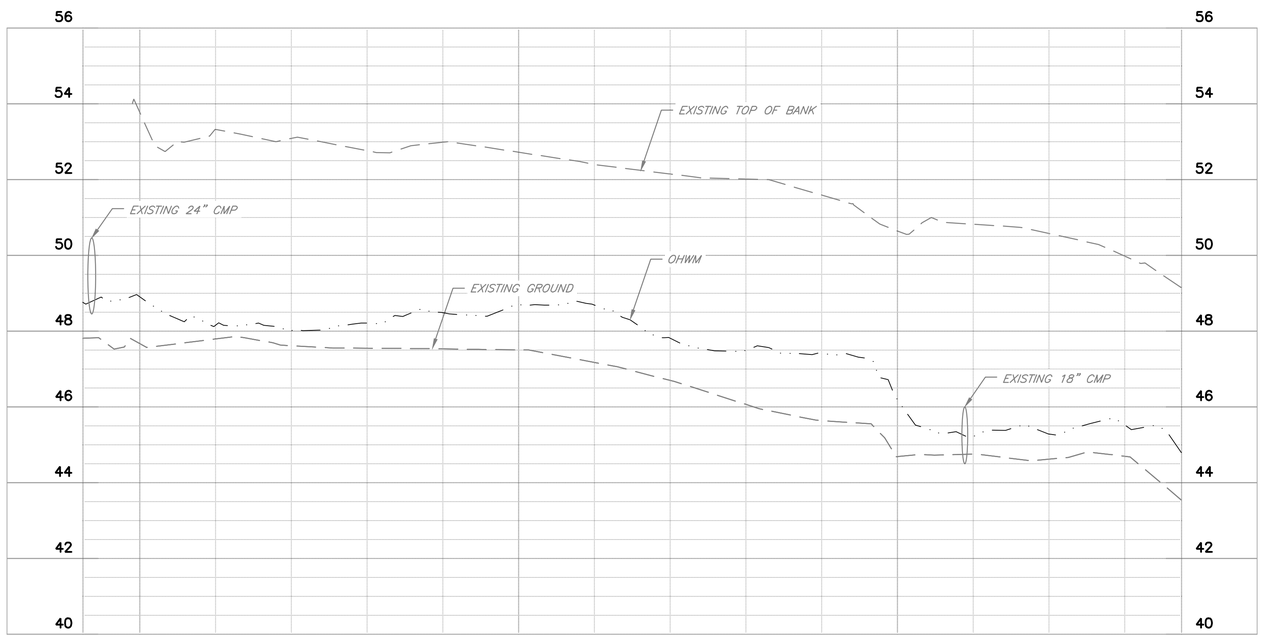


PLAN

SCALE: 1" = 20'

LEGEND

LDA	LIMIT OF DISTURBANCE
OHWM	ORDINARY HIGH WATER MARK
	NEW FENCE
	SLOPE PROTECTION



PROFILE

HORIZ: 1" = 20'
VERT: 1" = 2'

REV	DESCRIPTION	DATE	APPR
1	ADDENDUM #2	06/26	J.V.

ADDENDA DRAWING
06-26-26

REFERENCE INFORMATION AND NOTES

DATE	05/08/2026
DESIGN	A. PERDOMO
DRAWN	O. REYNOSO
CHECKED	J. VALENCIA

ENGINEERING CERTIFICATION

REGISTERED PROFESSIONAL ENGINEER KARL NEUMANN CIVIL STATE OF CALIFORNIA

SEE ORIGINAL "AS-BID" DOCUMENT FOR SIGNATURE AND DATE

ENGINEER DATE

SANTA CLARA VALLEY WATER DISTRICT

Valley Water

PROJECT NAME AND SHEET DESCRIPTION:

UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

ARROYO-1 PLAN AND PROFILE STA 198+85 TO STA 201+75

SCALE: AS SHOWN

VERIFY SCALES: 0 — 1"

BAR IS ONE INCH ON ORIGINAL DRAWING IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

PROJECT NUMBER: 26174041

SHEET CODE: C-01

SHEET NUMBER: 35

DOCUMENT NUMBER: BER_CY-C-4017-90063

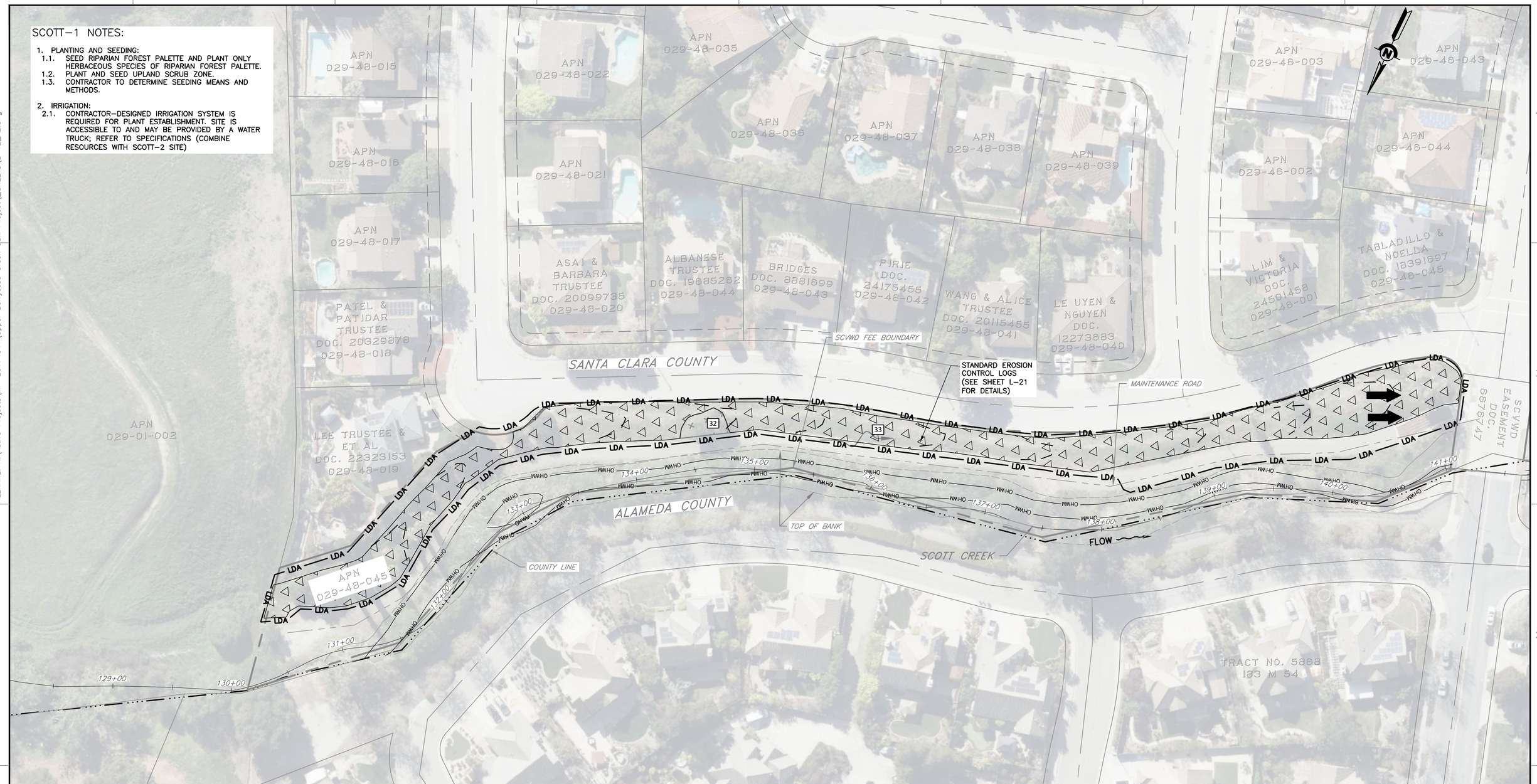
USERNAME: KathBrav 6/26/2026 8:22 AM
FILENAME: K:\Active Projects\MP-26174041\Upper Berryessa Creek OSM Project_SHEETS\C-01_A2.dwg

Docusign Envelope ID: 00D72ACB-3CC2-84FA-800A-C87AD1CDD5B8

USERNAME: KathBrav 6/26/2026 8:24 AM
FILENAME: K:\Active Projects\MP-26174041\Upper Berryessa Creek QSM Project_SHEETS\L-12_A2.dwg

SCOTT-1 NOTES:

1. PLANTING AND SEEDING:
   - 1.1. SEED RIPARIAN FOREST PALETTE AND PLANT ONLY HERBACEOUS SPECIES OF RIPARIAN FOREST PALETTE.
   - 1.2. PLANT AND SEED UPLAND SCRUB ZONE.
   - 1.3. CONTRACTOR TO DETERMINE SEEDING MEANS AND METHODS.
2. IRRIGATION:
   - 2.1. CONTRACTOR-DESIGNED IRRIGATION SYSTEM IS REQUIRED FOR PLANT ESTABLISHMENT. SITE IS ACCESSIBLE TO AND MAY BE PROVIDED BY A WATER TRUCK; REFER TO SPECIFICATIONS (COMBINE RESOURCES WITH SCOTT-2 SITE)



PLAN
SCALE: 1" = 40'

PLANTING / ENHANCEMENT ZONES: SCOTT-1

AREA ID#	TYPE	AREA (AC)	AREA (SF)	CLEARING AND GRUBBING (INVASIVE REMOVAL ONLY) (SF)	SOIL PREPARATION (SF)	SEED MIX
32	RIPARIAN FOREST ENHANCEMENT	0.02	706	706	0	B
33	UPLAND SCRUB PLANTING ZONE	0.69	29883	29883	0.69	A
	TOTALS:	0.70	30589	30589	0.69	
				TOTAL SEEDING AREA (SF):		30589
				TOTAL SEED MIX A (LBS):		5.90
				TOTAL SEED MIX B (LBS):		0.11

PLANTING LEGEND

- RIPARIAN FOREST ENHANCEMENT
- UPLAND SCRUB PLANTING

REV	DESCRIPTION	DATE	APPR.
1	ADDENDUM #2	06/26	J.V.

ADDENDA DRAWING
06-26-26

REFERENCE INFORMATION AND NOTES

NOTES:
1. SEE SPECIFICATIONS FOR SUPPLEMENTAL BID ITEM WORK FOR SCOTT SITES
2. REFER TO SHEETS L-18 THROUGH L-22 FOR PLANTING/ENHANCEMENT DETAILS AND SPECIES LISTS

Stillwater Sciences

DATE 6/26/2026
DESIGN KR/MP/RBM
DRAWN GWD
CHECKED RBM

ENGINEERING CERTIFICATION
REGISTERED PROFESSIONAL ENGINEER KARL NEUMANN CIVIL STATE OF CALIFORNIA
SEE ORIGINAL "AS-BID" DOCUMENT FOR SIGNATURE AND DATE
ENGINEER DATE

SANTA CLARA VALLEY WATER DISTRICT
Valley Water
PROJECT ENGINEER ACCEPTED BY DISTRICT DATE

PROJECT NAME AND SHEET DESCRIPTION:
UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT
PLANTING AND SEEDING PLAN SCOTT-1 SITE (SUPPLEMENTAL BID ITEM)

SCALE: AS SHOWN
VERIFY SCALES: 0 1"
BAR IS ONE INCH ON ORIGINAL DRAWING IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

PROJECT NUMBER: 26174041
SHEET CODE: L-12
SHEET NUMBER: 62

DOCUMENT NUMBER: BER_CY-L-4017-90090

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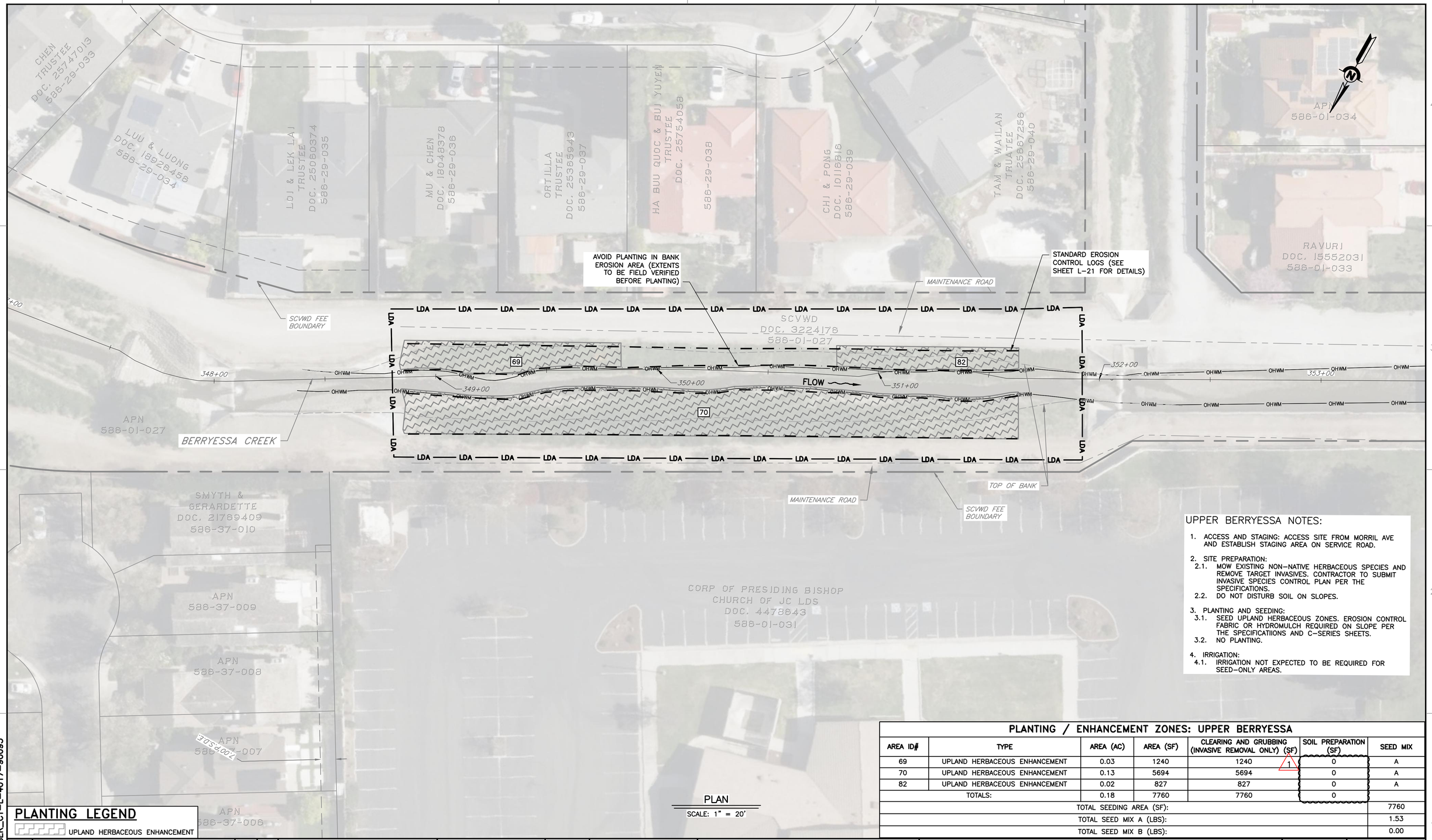

PLAN

SCALE: 1" = 20'

UPPER BERRYESSA NOTES:

1. ACCESS AND STAGING: ACCESS SITE FROM MORRIL AVE AND ESTABLISH STAGING AREA ON SERVICE ROAD.
2. SITE PREPARATION:
   - 2.1. MOW EXISTING NON-NATIVE HERBACEOUS SPECIES AND REMOVE TARGET INVASIVES. CONTRACTOR TO SUBMIT INVASIVE SPECIES CONTROL PLAN PER THE SPECIFICATIONS.
   - 2.2. DO NOT DISTURB SOIL ON SLOPES.
3. PLANTING AND SEEDING:
   - 3.1. SEED UPLAND HERBACEOUS ZONES. EROSION CONTROL FABRIC OR HYDROMULCH REQUIRED ON SLOPE PER THE SPECIFICATIIONS AND C-SERIES SHEETS.
   - 3.2. NO PLANTING.
4. IRRIGATION:
   - 4.1. IRRIGATION NOT EXPECTED TO BE REQUIRED FOR SEED-ONLY AREAS.

PLANTING / ENHANCEMENT ZONES: UPPER BERRYESSA

AREA ID#	TYPE	AREA (AC)	AREA (SF)	CLEARING AND GRUBBING (INVASIVE REMOVAL ONLY) (SF)	SOIL PREPARATION (SF)	SEED MIX
69	UPLAND HERBACEOUS ENHANCEMENT	0.03	1240	1240	0	A
70	UPLAND HERBACEOUS ENHANCEMENT	0.13	5694	5694	0	A
82	UPLAND HERBACEOUS ENHANCEMENT	0.02	827	827	0	A
	TOTALS:	0.18	7760	7760	0	
					TOTAL SEEDING AREA (SF):	7760
					TOTAL SEED MIX A (LBS):	1.53
					TOTAL SEED MIX B (LBS):	0.00

PLANTING LEGEND

UPLAND HERBACEOUS ENHANCEMENT

REV	DESCRIPTION	DATE	APPR.
1	ADDENDUM #2	06/26	J.V.

ADDENDA DRAWING
06-26-26

REFERENCE INFORMATION AND NOTES

NOTES:
1. REFER TO SHEETS L-18 THROUGH L-22 FOR PLANTING/ENHANCEMENT DETAILS AND SPECIES LISTS.

Stillwater Sciences

DATE 6/25/2026
DESIGN KR/MP/RBM
DRAWN GWD
CHECKED RBM

ENGINEERING CERTIFICATION
REGISTERED PROFESSIONAL ENGINEER KARL NEUMANN CIVIL STATE OF CALIFORNIA
SEE ORIGINAL "AS-BID" DOCUMENT FOR SIGNATURE AND DATE
ENGINEER DATE

SANTA CLARA VALLEY WATER DISTRICT
Valley Water
PROJECT ENGINEER ACCEPTED BY DISTRICT DATE

PROJECT NAME AND SHEET DESCRIPTION:

UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

PLANTING AND SEEDING PLAN UPPER BERRYESSA SITE

SCALE: AS SHOWN

VERIFY SCALES: 0 — 1"
BAR IS ONE INCH ON ORIGINAL DRAWING IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY

PROJECT NUMBER: 26174041

SHEET CODE: L-17

SHEET NUMBER: 67

DOCUMENT NUMBER: BER_CY-L-4017-90095

USERNAME: KathBrav 6/25/2026 9:20 PM
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C0717 - UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

ADDENDUM NO. 2

ATTACHMENT NO. 2

Irrigation Assessment Technical Memorandum

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Stillwater Sciences

TECHNICAL MEMORANDUM

Date: 4/3/2026

To: Javier Valencia, Santa Clara Valley Water District

From: Karley Rodriguez and Rae Brownsberger, Stillwater Sciences

Subject: Irrigation assessment for the Berryessa Creek Subwatershed Enhancement Project

The planting plan and specifications for Santa Clara Valley Water District's Berryessa Creek Subwatershed Enhancement Project (Project) require irrigation for plant establishment at most sites within the project. The design of an appropriate irrigation system that meets the Project specifications and plant establishment goals is the responsibility of the selected revegetation contractor for the Project. This memorandum is intended to provide guidance to the selected contractor on the anticipated water demands of the Project to support irrigation system design. The Project plans and specifications take precedent over this memorandum.

1 Water demand analysis

1.1 Irrigation schedule

The prescribed watering schedule is described in detail in Section 30.04 (Item C) of the Project specifications. For convenience, the watering frequency requirements in Item C3 in Section 30.04 are summarized below in Table 1. The contractor will be required to adjust the water demands based on actual soil conditions and precipitation events to achieve the establishment goals as described in the Project specifications.

Table 1 Summary of Irrigation Requirements (Specifications Section 30.04 (C) (3))

Year post-construction:	Year 1		Years 2 and 3	
Season	Winter (November-March)	Spring and Summer (April-October)	Winter (November-March)	Spring and Summer (April-October)
Watering frequency:	Once a week to a depth of to a depth of 7"-12" for the TB2 plants, 11"-18" for TB4 plants, and 36" for cuttings	Once every other week to a depth of 12" for TB2 plants, 18" for TB4 plants, and 36" for cuttings	Only if there is a severe drought and plant show signs of stress.	Once per month to a depth of 24" for TB2 plants, 36" for TB4 plants, and 36" for cuttings.

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The establishment and maintenance period continues through Year 5. Irrigation in Years 4 and 5 may have a reduced schedule as defined in the specifications, but the target depths of watering are the same as those defined in Years 2 and 3. The Contractor may consider the water demand analysis for Years 2 and 3 to apply to Years 4 and 5 on a per irrigation cycle basis.

For simplicity, the water demand calculations presented in this memorandum assume no natural precipitation during the irrigation period; the contractor may adjust water delivery depending on precipitation inputs as defined in the specifications (Section 30.04 Item C3).

1.2 Water Demand

Water demand for a given plant type will vary depending on the soil conditions (porosity). In the absence of site-specific soil porosity data, the water demand analysis assumes an average porosity value. The assumptions and results of the water demand analysis are presented in Attachment A. The gallons per planting area and site will allow contractors to select an appropriately sized tank and plan for the frequency of filling cycles. Actual water demand will need to be adjusted based on site conditions.

Attachments: Water Demand Analysis Tables

1-Target watering depths and soil parameters Year 1

2-Water demand per cycle by site Year 1

3-Target watering depths and soil parameters Years 2 and 3 (and Years 4 and 5)

4-Water demand per cycle by site Years 2 and 3 (and Years 4 and 5)

YEAR 1

HIGH POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed
TB2	6	3	0.35	12	8	803.84	0.5	1.2	5	704	246	1.07
TB4	10	4	0.35	18	12	2712.96	1.6	4.1	5	1215	425	1.84
cutting	30	3	0.35	36	12	5425.92	3.1	8.2	5	2240	784	3.39

LOW POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed
TB2	6	3	0.20	12	8	803.84	0.5	0.7	5	704	141	0.61
TB4	10	4	0.20	18	12	2712.96	1.6	2.3	5	1215	243	1.05
cutting	30	3	0.20	36	12	5425.92	3.1	4.7	5	2240	448	1.94

APPLIED AVG. POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed	AVERAGE OF ALL METHODS AND APPROACHES -- APPLIED WITHIN ANALYSIS: central avg of methods and porsity assumptions gallons required to reach wetted depth (gallons)
TB2	6	3	0.28	12	8	803.84	0.5	1.0	5	704	194	0.8	0.90
TB4	10	4	0.28	18	12	2712.96	1.6	3.2	5	1215	334	1.4	2.34
cutting	30	3	0.28	36	12	5425.92	3.1	6.5	5	2240	616	2.7	4.56

Year 1 Water Demand by Cycle Estimates (Contractor to adjust based on site-specific conditions and natural precipitation)

Planting Areas 1–26:

	Type/Size of planting pot	Arroyo-1	Arroyo-1	Arroyo-2	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-3
	Planting Area ID	*1*	*2*	*4*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*	*16*	*18*	*19*	*20*	*21*	*22*	*25*	*26*
	TB2	52	16	37	25	33	27	2	4	5	27	17	2	8	52	2	9	10	4	23	87
	TB4	8	2	0	1	1	1	0	0	0	5	0	0	0	2	0	0	0	0	0	0
release rate of single emitter (gal per hour)	cutting	0	0	5	6	8	6	0	1	0	0	4	0	1	12	0	1	2	1	4	0
0.5	plug	31	9	8	0	0	0	2	1	2	16	0	0	0	0	0	2	2	1	5	0
Number of emitters per plant	Type/Size of planting pot	gallons per hour to water each plant at metered flow of emitters																			
1	TB2	26	8	19	13	17	14	1	2	3	14	9	1	4	26	1	5	5	2	12	44
2	TB4	8	2	0	1	1	1	0	0	0	5	0	0	0	2	0	0	0	0	0	0
4	cutting	0	0	10	12	16	12	0	2	0	0	8	0	2	24	0	2	4	2	8	0
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		34	10	29	26	34	27	1	4	3	19	17	1	6	52	1	7	9	4	20	44
	Type/Size of planting pot																				
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	47	14	33	22	30	24	2	4	4	24	15	2	7	47	2	8	9	4	21	78
	TB4	19	5	0	2	2	2	0	0	0	12	0	0	0	5	0	0	0	0	0	0
	cutting	0	0	23	27	37	27	0	5	0	0	18	0	5	55	0	5	9	5	18	0
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		65	19	56	52	68	54	2	8	4	36	34	2	12	106	2	13	18	8	39	78
Total Gallons by the area and plants present at each Site		84		56	225							233									78
Total Gallons by the project		14,827																			
	Type/Size of planting pot																				
time (hours) required per plant	TB2	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
	TB4	2.3	2.3	0.0	2.3	2.3	2.3	0.0	0.0	0.0	2.3	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	0.0	0.0
	cutting	0.0	0.0	2.3	2.3	2.3	2.3	0.0	2.3	0.0	0.0	2.3	0.0	2.3	2.3	0.0	2.3	2.3	2.3	2.3	0.0
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		1.9	1.9	2.0	2.0	2.0	2.0	1.8	2.0	1.8	1.9	2.0	1.8	2.0	2.0	1.8	1.9	2.0	2.0	2.0	1.8

Planting Areas 28–60:

	Type/Size of planting pot	Low Berry-1a	Low Berry-1b	Low Berry-2	Scott-1	Scott-1	Scott-2	Scott-2	Scott-2	Scott-2	Scott-2	Scott-2	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1
	Planting Area ID	*28*	*27*	*29*	*32*	*33*	*34*	*35*	*36*	*37*	*38*	*39*	*41*	*43*	*45*	*46*	*50*	*52*	*54*	*56*	*57*	*60*
	TB2	132	204	102	8	881	31	44	29	17	11	28	407	910	502	225	127	46	137	143	138	0
	TB4	0	0	0	0	0	1	1	1	0	0	0	62	0	0	0	4	1	0	22	0	0
release rate of single emitter (gal per hour)	cutting	23	34	18	0	0	8	9	8	3	1	5	0	0	0	0	29	10	0	0	0	0
0.5	plug	26	41	20	0	0	0	0	0	3	2	6	246	0	0	0	0	0	0	85	0	0
Number of emitters per plant	Type/Size of planting pot																					
1	TB2	66	102	51	4	441	16	22	15	9	6	14	204	455	251	113	64	23	69	72	69	0
2	TB4	0	0	0	0	0	1	1	1	0	0	0	62	0	0	0	4	1	0	22	0	0
4	cutting	46	68	36	0	0	16	18	16	6	2	10	0	0	0	0	58	20	0	0	0	0
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		112	170	87	4	441	33	41	32	15	8	24	266	455	251	113	126	44	69	94	69	0
	Type/Size of planting pot	gallons req'd per area to reach wetted depth for all plants of indicated size																				
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	118	183	92	7	791	28	39	26	15	10	25	365	817	451	202	114	41	123	128	124	0
	TB4	0	0	0	0	0	2	2	2	0	0	0	145	0	0	0	9	2	0	51	0	0
	cutting	105	155	82	0	0	37	41	37	14	5	23	0	0	0	0	132	46	0	0	0	0
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		223	338	174	7	791	67	83	65	29	14	48	510	817	451	202	256	89	123	180	124	0
Total Gallons by the area and plants present at each Site		223	338	174	798		306						12,312									
	Type/Size of planting pot	hours needed to apply water to reach saturation depth as a total at each site																				
time (hours) required per plant	TB2	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	0.0
	TB4	0.0	0.0	0.0	0.0	0.0	2.3	2.3	2.3	0.0	0.0	0.0	2.3	0.0	0.0	0.0	2.3	2.3	0.0	2.3	0.0	0.0
	cutting	2.3	2.3	2.3	0.0	0.0	2.3	2.3	2.3	2.3	2.3	2.3	0.0	0.0	0.0	0.0	2.3	2.3	0.0	0.0	0.0	0.0
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		2.0	2.0	2.0	1.8	1.8	2.1	2.0	2.1	2.0	1.9	2.0	1.9	1.8	1.8	1.8	2.0	2.0	1.8	1.9	1.8	0.0

Planting Areas 61–74:

	Type/Size of planting pot	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1
	Planting Area ID	*61*	*64*	*66*	*68*	*76*	*77*	*80*	*40*	*42*	*44*	*47*	*48*	*49*	*51*	*53*	*55*	*62*	*63*	*65*	*67*	*73*	*74*
	TB2	0	2754	114	571	1664	158	188	166	84	104	211	71	25	177	84	350	114	3498	39	79	15	35
	TB4	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	1
release rate of single emitter (gal per hour)	cutting	0	0	0	0	0	0	0	0	0	0	0	16	0	0	0	0	0	0	0	0	4	8
0.5	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Number of emitters per plant	Type/Size of planting pot																						
1	TB2	0	1377	57	286	832	79	94	83	42	52	106	36	13	89	42	175	57	1749	20	40	8	18
2	TB4	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	1
4	cutting	0	0	0	0	0	0	0	0	0	0	0	32	0	0	0	0	0	0	0	0	8	16
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		0	1,377	57	286	832	79	94	83	42	52	106	70	13	89	42	175	57	1,749	20	40	17	35
	Type/Size of planting pot																						
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	0	2472	102	512	1493	142	169	149	75	93	189	64	22	159	75	314	102	3139	35	71	13	31
	TB4	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	2	2
	cutting	0	0	0	0	0	0	0	0	0	0	0	73	0	0	0	0	0	0	0	0	18	37
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		0	2,472	102	512	1,493	142	169	149	75	93	189	141	22	159	75	314	102	3,139	35	71	34	70
	Type/Size of planting pot																						
time (hours) required per plant	TB2	0.0	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
	TB4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	2.3
	cutting	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	2.3
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		0.0	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	2.0	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	2.1	2.0

YEARS 2 AND 3

HIGH POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed
TB2	6	3	0.35	24	8	1607.68	0.9	2.4	5	704	246	1.07
TB4	10	4	0.35	36	12	5425.92	3.1	8.2	5	1215	425	1.84
cutting	30	3	0.35	36	12	5425.92	3.1	8.2	5	2240	784	3.39

LOW POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed
TB2	6	3	0.20	24	8	1607.68	0.9	1.4	5	704	141	0.61
TB4	10	4	0.20	36	12	5425.92	3.1	4.7	5	1215	243	1.05
cutting	30	3	0.20	36	12	5425.92	3.1	4.7	5	2240	448	1.94

APPLIED AVG. POROSITY	potted depth (in)	potted width (in)	porosity	WETTED OVERAGE AS CONE: desired depth of watering (in)	wetted radius at surface (in)	bulk volume of cone (cuin)	bulk volume of cone (cuft)	gallons of water in cone	WETTED OVERAGE AS CUBIC: wetted addition in excess on all potted dims (in)	bulk vol (cuin)	water volume to fill porosity (cuin)	gallons absorbed	AVERAGE OF ALL METHODS AND APPROACHES -- APPLIED WITHIN ANALYSIS: central avg of methods and porsity assumptions gallons required to reach wetted depth (gallons)
TB2	6	3	0.28	24	8	1607.68	0.9	1.9	5	704	194	0.8	1.38
TB4	10	4	0.28	36	12	5425.92	3.1	6.5	5	1215	334	1.4	3.95
cutting	30	3	0.28	36	12	5425.92	3.1	6.5	5	2240	616	2.7	4.56

Years 2 and 3 Water Demand by Cycle Estimates (Contractor to adjust based on site-specific conditions and natural precipitation)

	Type/Size of planting pot	Arroyo-1	Arroyo-1	Arroyo-2	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-1	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-2	Calera-3	Low Berry-1a
	Planting Area ID	*1*	*2*	*4*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*	*16*	*18*	*19*	*20*	*21*	*22*	*25*	*26*	*28*
	TB2	52	16	37	25	33	27	2	4	5	27	17	2	8	52	2	9	10	4	23	87	132
	TB4	8	2	0	1	1	1	0	0	0	5	0	0	0	2	0	0	0	0	0	0	0
release rate of single emitter (gal per hour)	cutting	0	0	5	6	8	6	0	1	0	0	4	0	1	12	0	1	2	1	4	0	23
0.5	plug	31	9	8	0	0	0	2	1	2	16	0	0	0	0	0	2	2	1	5	0	26
Number of emitters per plant	Type/Size of planting pot	gallons per hour to water each plant at metered flow of emitters																				
1	TB2	26	8	19	13	17	14	1	2	3	14	9	1	4	26	1	5	5	2	12	44	66
2	TB4	8	2	0	1	1	1	0	0	0	5	0	0	0	2	0	0	0	0	0	0	0
4	cutting	0	0	10	12	16	12	0	2	0	0	8	0	2	24	0	2	4	2	8	0	46
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		34	10	29	26	34	27	1	4	3	19	17	1	6	52	1	7	9	4	20	44	112
	Type/Size of planting pot																					
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	72	22	51	34	45	37	3	6	7	37	23	3	11	72	3	12	14	6	32	120	182
	TB4	32	8	0	4	4	4	0	0	0	20	0	0	0	8	0	0	0	0	0	0	0
	cutting	0	0	23	27	37	27	0	5	0	0	18	0	5	55	0	5	9	5	18	0	105
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		103	30	74	66	86	68	3	10	7	57	42	3	16	134	3	17	23	10	50	120	287
Total Gallons by the area and plants present at each Site		133		74	297							297									120	287
Total Gallons by the project		22,222																				
	Type/Size of planting pot																					
time (hours) required per plant	TB2	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
	TB4	4.0	4.0	0.0	4.0	4.0	4.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	cutting	0.0	0.0	2.3	2.3	2.3	2.3	0.0	2.3	0.0	0.0	2.3	0.0	2.3	2.3	0.0	2.3	2.3	2.3	2.3	0.0	2.3
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		3.0	3.0	2.6	2.6	2.6	2.6	2.8	2.5	2.8	3.1	2.5	2.8	2.6	2.6	2.8	2.6	2.5	2.5	2.6	2.8	2.6

	Type/Size of planting pot	Low Berry-1b	Low Berry-2	Scott-1	Scott-1	Scott-2	Scott-2	Scott-2	Scott-2	Scott-2	Scott-2	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1
	Planting Area ID	*27*	*29*	*32*	*33*	*34*	*35*	*36*	*37*	*38*	*39*	*41*	*43*	*45*	*46*	*50*	*52*	*54*	*56*	*57*	*60*	*61*
	TB2	204	102	8	881	31	44	29	17	11	28	407	910	502	225	127	46	137	143	138	0	0
	TB4	0	0	0	0	1	1	1	0	0	0	62	0	0	0	4	1	0	22	0	0	0
release rate of single emitter (gal per hour)	cutting	34	18	0	0	8	9	8	3	1	5	0	0	0	0	29	10	0	0	0	0	0
0.5	plug	41	20	0	0	0	0	0	3	2	6	246	0	0	0	0	0	0	85	0	0	0
Number of emitters per plant	Type/Size of planting pot																					
1	TB2	102	51	4	441	16	22	15	9	6	14	204	455	251	113	64	23	69	72	69	0	0
2	TB4	0	0	0	0	1	1	1	0	0	0	62	0	0	0	4	1	0	22	0	0	0
4	cutting	68	36	0	0	16	18	16	6	2	10	0	0	0	0	58	20	0	0	0	0	0
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		170	87	4	441	33	41	32	15	8	24	266	455	251	113	126	44	69	94	69	0	0
	Type/Size of planting pot	gallons req'd per area to reach wetted depth for all plants of indicated size																				
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	281	140	11	1212	43	61	40	23	15	39	560	1252	691	310	175	63	188	197	190	0	0
	TB4	0	0	0	0	4	4	4	0	0	0	245	0	0	0	16	4	0	87	0	0	0
	cutting	155	82	0	0	37	41	37	14	5	23	0	0	0	0	132	46	0	0	0	0	0
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		436	222	11	1,212	83	106	80	37	20	61	805	1,252	691	310	323	113	188	284	190	0	0
Total Gallons by the area and plants present at each Site		436	222	1,223		387						18,747										
	Type/Size of planting pot	hours needed to apply water to reach saturation depth as a total at each site																				
time (hours) required per plant	TB2	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	0.0	0.0
	TB4	0.0	0.0	0.0	0.0	4.0	4.0	4.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	4.0	4.0	0.0	4.0	0.0	0.0	0.0
	cutting	2.3	2.3	0.0	0.0	2.3	2.3	2.3	2.3	2.3	2.3	0.0	0.0	0.0	0.0	2.3	2.3	0.0	0.0	0.0	0.0	0.0
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		2.6	2.6	2.8	2.8	2.6	2.6	2.6	2.6	2.6	2.6	3.0	2.8	2.8	2.8	2.6	2.6	2.8	3.0	2.8	0.0	0.0

	Type/Size of planting pot	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1	Thompson-1
	Planting Area ID	*64*	*66*	*68*	*76*	*77*	*80*	*40*	*42*	*44*	*47*	*48*	*49*	*51*	*53*	*55*	*62*	*63*	*65*	*67*	*73*	*74*
	TB2	2754	114	571	1664	158	188	166	84	104	211	71	25	177	84	350	114	3498	39	79	15	35
	TB4	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	1
release rate of single emitter (gal per hour)	cutting	0	0	0	0	0	0	0	0	0	0	16	0	0	0	0	0	0	0	0	4	8
0.5	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Number of emitters per plant	Type/Size of planting pot																					
1	TB2	1377	57	286	832	79	94	83	42	52	106	36	13	89	42	175	57	1749	20	40	8	18
2	TB4	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	1
4	cutting	0	0	0	0	0	0	0	0	0	0	32	0	0	0	0	0	0	0	0	8	16
0	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the hour		1,377	57	286	832	79	94	83	42	52	106	70	13	89	42	175	57	1,749	20	40	17	35
	Type/Size of planting pot																					
gallons req'd per area to reach wetted depth for all plants of indicated size	TB2	3789	157	786	2290	217	259	228	116	143	290	98	34	244	116	482	157	4813	54	109	21	48
	TB4	0	0	0	0	0	0	0	0	0	0	8	0	0	0	0	0	0	0	0	4	4
	cutting	0	0	0	0	0	0	0	0	0	0	73	0	0	0	0	0	0	0	0	18	37
	plug	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gallons by the area and plants present at each Area ID		3,789	157	786	2,290	217	259	228	116	143	290	179	34	244	116	482	157	4,813	54	109	43	89
	Type/Size of planting pot																					
time (hours) required per plant	TB2	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
	TB4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	4.0	4.0
	cutting	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	2.3
	plug	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total time by area (hrs)		2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.6

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C0717- UPPER BERRYESSA CREEK OFF-SITE MITIGATION PROJECT

ATTACHMENT NO. 3

ADDENDUM NO. 2

California Regional Water Quality Control Board San Francisco Bay Region

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. R2-2017-0014

WASTE DISCHARGE REQUIREMENTS and WATER QUALITY CERTIFICATION for:

SANTA CLARA VALLEY WATER DISTRICT and
U.S. ARMY CORPS OF ENGINEERS,
UPPER BERRYESSA CREEK FLOOD RISK MANAGEMENT PROJECT
SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:

1. The Santa Clara Valley Water District (District) delivers water and is responsible for flood protection and stream stewardship in Santa Clara County (County). The District is charged with providing local flood protection within five major watersheds in the County, including the 322-square mile Coyote Creek watershed, which drains from the southeastern hills of the County to Lower San Francisco Bay.

2. Berryessa Creek is in the Coyote Creek watershed in the County and drains from the undeveloped Diablo Range hills east of San Jose, through urbanized areas in San Jose and Milpitas, until it discharges to Lower Penitencia Creek, which is tributary to Coyote Creek. Under existing conditions, Berryessa Creek overtops its banks about once every 10 to 20 years in the 2.2-mile-long reach from Calaveras Boulevard in Milpitas upstream to Interstate 680 (I-680) in San Jose (Upper Berryessa Creek) (Attachment A, Figure 1).

3. **Local-Federal Partnership.** The District is partnering with the U.S. Army Corps of Engineers (Corps) for the Upper Berryessa Creek Flood Risk Management Project (Project) to increase flood protection in the surrounding community. Construction of the Project was authorized by Congress in the Water Resources Development Act (WRDA) of 1990, Public Law 101-640, section 101(a)(5). The District and Corps are each funding Project costs and, between the two sponsors, are dividing and/or sharing various roles and responsibilities, such as design, construction, and post-construction operations, in accordance with the Project Partnership Agreement signed by the Corps and District on May 17, 2016. Regarding cost-sharing, the Project Partnership Agreement stipulates that the District will contribute 25 to 50 percent of the total Project cost, in accordance with the WRDA of 1986, Public Law 99-662, as amended (United States Code, title 33, section 2213). The cost-sharing schedule specifically requires the Corps to conduct (and/or oversee) construction contracting and activities and the District to provide all lands, easements, rights-of-way, relocations, and disposal areas (LERRD). The WRDA also requires the Corps to prepare an operations and maintenance manual for the Project (see Finding 16 - Maintenance).

   While the WRDA and the Project Partnership Agreement stipulate cost-sharing criteria between the Corps and District, construction management and implementation to the Corps,

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and LERRD to the District, this Order specifically requires the development and implementation of additional plans, which are described in more detail in this Order:

a. Adaptive Management Plan (Finding 17; Provision 18);

b. Mitigation and Monitoring Plan for compensatory mitigation (Finding 21; Provision 19); and

c. Post-Construction Stormwater Management Plan (Finding 20 (Impacts); Provision 15).

The Water Board's understanding is that the District will be responsible for these three plans because the District owns the Project and is responsible for post-construction operations and maintenance. In addition, the Water Board understands that certain aspects of the construction activities are the responsibility of the Corps (see Findings 8, 9, and 10).

4. **Dischargers.** The Water Board is issuing this Order to the District and Corps, collectively referred to as the "Discharger," because the Project activities will cause or contribute to a discharge of waste that will affect the quality of waters of the State and the United States. By the nature of WRDA projects, the partnership between the Corps and District is inextricable, and the Project could not occur without each sponsor. Therefore, the Water Board is naming the District and Corps, the two Project co-sponsors, as dischargers. As appropriate, this Order notes which Discharger has agreed to be responsible for certain requirements based on WRDA requirements, as well as the Water Board's understanding of the agreements the Corps and District have made with each other (see Finding 3).

5. **Rescission of Existing Water Quality Certification.** The Water Board previously issued water quality certification for the Project pursuant to Clean Water Act (CWA) section 401 to the Corps on March 14, 2016, (Certification) to facilitate the Corps' timely contracting for the Project (see Finding 23). The Certification required the Corps to construct the Project consistent with the then-current design plans and the Corps' water quality certification application dated September 25, 2015 (Application). This Order rescinds and supersedes the previously-issued water quality certification with waste discharge requirements (WDRs) and a reissued water quality certification. The Water Board is authorized to issue WDRs and water quality certification for the Project in accordance with California Water Code (CWC) section 13263(a) and CWA section 401(d) to both the Corps and the District as the Dischargers.

6. **Project Purpose**. The Project is intended to provide flood protection in Upper Berryessa Creek from the one percent exceedance probability flood event (also known as the one-percent-annual-chance flood event, or the 100-year flood event) for an estimated 650 land parcels and to contribute to reduced flood risks for an unquantified number of additional parcels where flow from Upper Berryessa Creek combines with other flood waters. The Project will also modify about 220 linear feet of Los Coches Creek and 60 linear feet of Piedmont Creek, which are tributary to Upper Berryessa Creek. The completed Project will meet Federal Emergency Management Administration certification standards.

The area being protected encompasses the new Milpitas Bay Area Rapid Transit (BART) station and rail line infrastructure, part of a $2.3 billion (including $900 million in federal

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funding) BART expansion project to extend BART service from Fremont through Milpitas to San Jose. Project construction began in early October 2016 and is scheduled to be completed in December 2017, with the intent to be complete before the planned opening of the Milpitas BART station in late 2017. The Project is located just upstream of the Lower Berryessa Creek and Lower Calera Creek Flood Protection Improvements Project currently under construction by the District, as authorized by the Water Board in October 2015, which has a planned completion date of October 2018.

7. **Coverage of this Order.** This Order covers Project construction activities (see construction elements listed below), as well as planned operations and maintenance activities after the Project is constructed (see Finding 16 for additional information about maintenance). This Order also covers the mitigation and monitoring requirements necessary for compliance with federal and State regulations (e.g., see Findings 19 through 28).

   The Project's major construction features include: (1) enlarging the Upper Berryessa Creek channel; (2) armoring the channel beds and banks with rock riprap to be covered with 4 inches of soil and to be hydroseeded; and (3) constructing concrete box culverts and concrete transition structures, floodwalls, and access ramps.

   The Project construction elements have the following details below and are shown in Attachment A, Figures 2 and 3; and the fill and excavation information is presented in Table 1:

   a. Widen, deepen, and contour Upper Berryessa Creek to create a trapezoidal channel cross section with a bed width varying from 12 to 40 feet, depth varying from 8 to 14 feet, and banks with a 2-to-1 horizontal-to-vertical (2:1) slope. The channel footprint from top of bank to top of bank in Upper Berryessa Creek will increase from 9.7 to 17.2 acres;

   b. Build two new pre-cast (or cast-in-place) concrete box culverts (where currently none exist), consisting of a box culvert at both the Los Coches Creek and Piedmont Creek mouths and a double-barrel box culvert to replace the existing Union Pacific Railroad (UPRR) wooden trestle bridge downstream of Montague Expressway, and the associated cast-in-place concrete wingwalls and concrete or grouted rock riprap transition structures;

   c. Armor the channel bed and banks with rock riprap, covered by 4 inches of soil and hydroseeded for erosion protection, with the following details:

      i. Total area of 9.81 acres (10,072 linear feet of rock riprap, including 9.71 acres in Upper Berryessa Creek (9,831 linear feet), 0.09 acres in Los Coches Creek (221 linear feet), and less than 0.01 acres in Piedmont Creek (20 linear feet);

      ii. Rock riprap (9 to 24 inches thick) in channel beds and banks extending up to the 2.5- to 10-year water surface elevation (7,547 linear feet);

      iii. Rock riprap in banks (additional 2,525 linear feet in Upper Berryessa Creek) extending from 5 feet below the channel invert elevation up to the 2.5- to 10-year water surface elevation;

      iv. A 4-inch layer of native soil covering channel bed and bank riprap (10,072 linear

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feet), covered by biodegradable coconut fiber mats from the toe to top of banks, with hydroseed in beds and banks to promote herbaceous native vegetation growth and erosion protection; and

v. Grouted rock riprap (24 inches thick) at the Piedmont Creek confluence and beneath the existing Yosemite Drive bridge crossing;

d. Construct concrete floodwalls of 1,123 feet long by up to 2-feet high on the left bank (looking downstream) of Upper Berryessa Creek, between Los Coches Street and Piedmont Creek at the top of bank, and 450-feet long by 3-feet deep, to be buried on the left bank upstream of Montague Expressway to reinforce an existing retaining wall;

e. Construct two concrete access ramps on the right bank (looking downstream), one located about 1,000 feet upstream of Montague Expressway and the other one is 900 feet downstream of I-680;

f. Construct concrete and rock riprap transition structures at the upstream face of the existing Calaveras Boulevard Bridge;

g. Build 4.33 acres and 10,865 linear feet of new maintenance roads and redevelop 2.47 acres and 5,978 linear feet of existing maintenance roads, with a width of 18 feet on the right bank and a width of 15 to 18 feet on the left banks, except in certain two sections downstream of Montague Expressway and I-680 that lack space for a road;

h. Remove an unspecified volume of sediment and vegetation from about 200 linear feet of a concrete-lined reach of Upper Berryessa Creek just downstream of I-680; and

i. Replace and realign existing selected utilities within the Project right-of-way according to the 100 percent design plans dated August 4, 2016.

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Table 1. Fill and Excavation Quantities

Project Element	Material	Excavation (cubic yards)	Fill (cubic yards)	Length (linear feet)	Area (acres)
Enlarge and contour channel	Soil	148,400	33,600	10,453	17.2
Riprap in beds and banks	Imported rock (9 to 24-inch diameter)	--	15,233	9,753	9.23
Grouted riprap in beds and banks	Imported rock (24-inch diameter)	--	1,882	319	0.58
Pre-cast concrete culverts	Concrete	--	675	284	0.11
Cast-in-place wingwalls and transition structures	Concrete	--	37	100	<0.01
Access ramps	Concrete	--	101	200	0.10
Floodwalls	Concrete	--	424	1,573	0.04
Concrete channel lining	Concrete	290	---	262	0.36
Maintenance roads	Aggregate base material	--	5,654	16,843[1]	6.8

Notes:
"- -" – Not applicable; UPRR – Union Pacific Railroad

[1] This length is the total for roads on both sides of the channel. Roughly 10,400 linear feet of Upper Berryessa Creek will have maintenance roads on at least one side of the channel. The area of new road is 4.33 acres and the area of redeveloped road is 2.47 acres.

8. **Staging, Stockpiling, and Hauling.** Two areas outside of the Project right-of-way will be used for staging and sediment stockpiling (Attachment A, Figures 2 and 3). Access to and from the Project site and the staging areas will occur along existing paved roads via Calaveras Boulevard, Los Coches Street, Yosemite Drive, Ames Avenue, and Montague Expressway. The Water Board's understanding is that the Corps is implementing the staging, stockpiling, and hauling tasks associated with the construction of the Project.

9. **Reuse or Dispose of Exported Material.** The Discharger will haul about 114,800 cubic yards of sediment from the Project site in addition to demolition debris such as concrete and utility components. Soil and demolition debris will be reused or recycled to the extent feasible. Disposal of any demolished material and debris will be in accordance with all applicable local, State, and federal regulations. The soil to be transported offsite is suitable for non-hazardous landfill disposal, according to the Project Environmental Impact Report (Project EIR) (State Clearinghouse No. 2001104013). The Water Board's understanding is

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that the Corps is implementing the soil reuse and disposal tasks relevant to this Finding.

10. **Construction General Permit.** The Discharger is required to seek coverage under and comply with, or oversee that its contractors seek coverage and comply with, the statewide General Permit for Discharges of Storm Water Associated with Construction Activities (Order No. DWQ-2009-0009, as amended by Order Nos. 2010-0014-DWQ and 2012-006-DWQ) (Construction General Permit) (Provision 9). The Corps has contracted with its consultants to meet the requirements of the Construction General Permit.

11. **Final 100 Percent Design Plans.** The Water Board has received final 100 percent design plans and specifications dated August 4, 2016, and the final 100 percent Planting Plan dated April 1, 2016. Effective October 3, 2016, the Project is under construction.

12. **Replace and Realign Selected Utilities Infrastructure.** Multiple utility lines are in the Project right-of-way, including sanitary sewer, stormwater, irrigation, cable, electrical, telephone, fiber optic, and gas lines. The locations of some utilities are estimated and will be confirmed during Project construction activities. Consistent with the 100 percent design plans, the utility infrastructure planned for replacement and/or realignment are sanitary sewer, stormwater lines and outlets, a water irrigation line, an electric line, and two electric utility vaults. In addition, two groundwater monitoring wells and a gauging port will be relocated. In addition, the Application states that all utility work will be implemented by cut and fill procedures with no directional drilling.

13. **Rain Event Action Plan.** The Discharger shall develop and implement a Rain Event Action Plan (REAP), as required by the Construction General Permit, designed to protect all exposed portions of the Site within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the Discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is a forecast of 50 percent or greater probability of substantial precipitation in the Project area.

14. **Dewatering.** Dewatering of surface water or groundwater that accumulates at excavated areas will likely be necessary. The Project EIR includes a mitigation measure for creek dewatering (WAQ-B, "Prepare and Implement a Dewatering Plan"). The Discharger submitted an acceptable Dewatering Plan on January 9, 2017.

15. **Groundwater Management and Soil Management.** The Project is within the footprint of a past solvent release from the former Jones Chemical, Inc., chemical plant (JCI site). The Water Board requires the Discharger to capture and treat all groundwater encountered from within the potential extent of the toxic waste plume as demarcated in the 100 percent design plans (JCI plume area). Any such groundwater must meet the standards of the General Permit for the Discharge or Reuse of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic Compounds (VOC), Fuel Leaks and Other Related Wastes (Water Board Order No. R2-2012-0012; NPDES Permit No. CAG912002) (VOC and Fuel General Permit), as stipulated in a letter to the Corps dated August 14, 2015. The Corps submitted a Groundwater Management Plan dated January 26,

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2016, for groundwater discharges in the JCI plume area. Water Board staff notified Corps staff on March 8, 2016, that the plan is acceptable.

The Project EIR, Appendix E, contains soil sampling data from the JCI plume area indicating that VOCs were detected in soils at concentrations less than the Water Board's Environmental Screening Levels. However, excavating in the JCI plume area may bring soil vapor VOC concentrations to the surface at concentrations that may be a worker health and safety concern, in light of the soil vapor concentrations west of the Project site. The Corps' Design Documentation Report (DDR) dated April 29, 2016, states that if contaminated soils are encountered, the soil will be removed and stockpiled on the JCI site for disposal by others. The Water Board requires the data collected for soil analyses, stockpiling, and disposal for soil excavated within the JCI plume area to be made available to the Executive Officer upon request, consistent with Provision 16.

16. **Maintenance**. The Project EIR states that regular maintenance, such as sediment and vegetation removal in Upper Berryessa Creek, will be necessary after the Project is constructed. The District will be responsible for maintenance for the life of the Project, which is anticipated to be approximately 50 years. As part of the federal-local partnership, and in accordance with the WRDA of 1990 (Finding 3), the Corps will develop an Operations and Maintenance Manual (O&M Manual) to guide maintenance, such as sediment removal.

    The O&M Manual will be completed after the Local Cost Agreement is completed between the Corps and the District. However, the schedule for this has not been identified by the Corps. According to the Project Environmental Impact Statement/General Reauthorization Report (EIS/GRR), the Corps plans to conduct cross-sectional and longitudinal monitoring after construction is completed to inform development of the O&M Manual (Revised Final EIS/GRR, March 2014; specifically in the Corps' responses to comments from the Peer Review Panel (Batelle, 2013[1]).

    The Project EIR also states that the Project will result in less sediment accumulation and less volume than existing conditions and, specifically, that sediment will accumulate only at the UPRR trestle bridge replacement site and the other UPRR culvert upstream of Ames Avenue. Water Board staff's review of the sediment transport model and other Project documents indicates that the Project reach will continue to be depositional, despite the banks being stabilized. This is because there is ample sediment supply to the Project reach both from upstream and its tributaries, and because, as stated in the Project EIR, the Project design will increase the channel cross-sectional area, which will result in reduced velocity during storm flows and lower sediment transport capacity. In addition, based on the sediment transport modeling results in the technical memo dated July 20, 2016,[2] "…small benches might deposit in the proposed design cross section…," which would have "minor" impacts on flood

[1] Batelle Memorial Institute (Batelle), 2013. Final Independent External Peer Review Report Berryessa Creek, Santa Clara County, California, General Reevaluation Study (GRS) Draft General Reevaluation Report and Environmental Impact Statement/Environmental Impact Report. Department of the Army U.S. Army Corps of Engineers Flood Risk Management Planning Center of Expertise for the Baltimore District. Batelle, Columbus, OH.

[2] Santa Clara Valley Water District (District), 2016a. Comments on Waste Discharge Requirements for the Upper Berryessa Creek Flood Risk Management Project. Exhibit 1-Technical Memorandum. Channel Stability and Geomorphologic Characteristics (July 20, 2016). Submitted to Water Board, September 19, 2016.

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conveyance and would not trigger sediment maintenance. Further, the Project site is in an alluvial fan, which by its very nature tends toward deposition. All lines of geomorphic evidence, including lower shear stresses, field observations, comparison of historic and current cross sections, and maintenance records, indicate the Project will result in a more-depositional system than existing conditions (Water Board Staff Memos, October 21, 2016,[3] and April 12, 2016[4]).

The accumulation of sediment may benefit the creek because the sediment could provide a more natural substrate for biota and allow for more diverse habitat via the development of a low-flow channel. However, if sediment must be removed at a volume and frequency that prevents the development and persistence of a low-flow channel, these benefits will not be realized. In addition, an independent peer review panel (Batelle, 2013 (see Footnote 1)) found that sedimentation can occur at various locations in the Project reach. Although the peer review panel did not elaborate on whether its members concur or disagree with the Discharger's findings that sediment will only accumulate at the two UPRR sites, the panel expressed significant concern about "…the lack of details on the operation and maintenance (O&M) plan and has identified the need for a detailed O&M plan to ensure the design assumptions concerning sedimentation are valid." The Water Board shares these concerns and, accordingly, requires the following steps to address sediment maintenance in the Project. These steps will occur in tandem with the Corps' process to develop an O&M Manual for the Project and are intended to minimize the recurring impacts from sediment maintenance activities:

a. **Santa Clara Valley Water District Stream Maintenance Program**. The timing of the Local Cost Agreement to occur, and for the transfer of the Project from the Corps to the District, is uncertain, and the O&M Manual may not be available immediately after the Project is constructed. Although the EIS/GRR states the O&M Manual will be developed during the pre-construction design and engineering phase, the Corps will instead develop it after the Project is constructed based on an interagency agreement (January 4, 2016, meeting with Water Board, Corps, and District staffs). Therefore, while the O&M Manual is being developed, this Order authorizes the District to conduct maintenance consistent with the District's existing Stream Maintenance Program (SMP) (Provision 17), authorized under Water Board Order No. R2-2014-0015 (SMP Order), and any future revisions. In the event there is a conflict between the SMP Order, the O&M Manual, and this Order, the requirements of this Order will govern.

b. **Multiagency Collaboration**. Development of the O&M Manual will be accomplished through a collaboration of the Water Board and other appropriate regional, State, and federal agencies. This is necessary to ensure the planning and implementation of

[3] Setenay Bozkurt Frucht, 2016. Response to SCVWD Comments on the Upper Berryessa Creek Tentative Order. Internal Staff Memorandum from S. Bozkurt Frucht to Keith Lichten, Chief, Watershed Management Division, San Francisco Bay Regional Water Quality Control Board. Available from Water Board staff upon request.

[4] Riley, Ann L., and Setenay Bozkurt Frucht, 2016. Projected Future Maintenance on the Upper BerryessaCreek Flood Risk Management Project. Internal Staff Memorandum from A. Riley and S. Bozkurt Frucht to Keith Lichten, Chief, Watershed Management Division, San Francisco Bay Regional Water Quality Control Board. Available from Water Board staff upon request.

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maintenance are consistent with the SMP and, accordingly, will minimize environmental impacts. Additionally, it is consistent with the SMP approach, which includes a multi-agency collaborative process to determine maintenance needs, based on avoiding and minimizing impacts in waters to the extent practicable.

c. **Maintenance Action Thresholds**. The O&M Manual will set maintenance action thresholds based on channel capacities and a performance standard based on protecting 50 percent of the Project design freeboard, consistent with the maximum tolerance applied by the Corps in flood control projects it co-sponsors. The Manual will include using a combination of vegetation and/or sediment management to meet flood risk objectives while minimizing environmental impacts. Using maintenance action thresholds is consistent with the District's SMP Manual process for developing reach- and creek-specific maintenance guidelines. Maintenance action thresholds will be revised iteratively, if needed, based on data to be collected under the Adaptive Management Plan described in the next finding.

d. **Five-Year Assessments for Adaptive Management, and Previously-Mitigated Areas**. The O&M Manual will be evaluated at least every five years to incorporate the findings (i.e., development of maintenance guidelines) under the activities required in the next finding to prepare and implement an Adaptive Management Plan.

e. **Authority to Conduct Maintenance in the Project Site**. Maintenance in the Project site, after construction is completed, is authorized under this Order until such time that the Executive Officer determines the site may be folded into the District's SMP. This is necessary because the monitoring necessary to verify sediment transport processes cannot be maintained under the SMP procedures for priority project budgeting and implementation.

17. **Adaptive Management Plan.** This Order requires the Discharger to submit an Adaptive Management Plan, acceptable to the Executive Officer, pursuant to Provision 18. The Adaptive Management Plan will describe channel dimension and flow data to be collected, which the Discharger will use to understand how the Project is performing after construction (e.g., stage-discharge relationships) and to generate quantifiable channel capacity flood protection objectives (e.g., acceptable freeboard at bridge crossings) to guide future maintenance activities. The objectives shall be revised iteratively as new data are collected under post-construction conditions and shall inform the O&M five-year assessments.

    Adaptive management is consistent with the District's SMP, which requires development of channel and reach-specific triggers for maintenance (i.e., maintenance guidelines) that minimize disturbance of the creek channel vegetation and substrate. This approach informs sediment and vegetation removal based on field observations of channel processes and performance, rather than solely using design criteria. Further, at least part of the data to be collected is consistent with the Corps' plans to collect longitudinal and cross-sectional data to calibrate sediment transport model results, specified in the Corps' responses to comments from the peer review panel (Batelle, 2013).

18. **Waters of the U.S. and of the State.** Based on a jurisdictional wetland delineation (Tetra

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Tech, 2014), the Project has 4.18 acres of waters of the U.S. as creek waters (other waters). The waters of the U.S. are also waters of the State. An additional area of 5.63 acres from the ordinary high water mark elevation to the tops of banks constitutes waters of the State (but not waters of the U.S.), for a total area of 9.81 acres of waters of the State. This elevation difference, i.e., the vertical distance from the ordinary high water mark to the top of bank, ranges from zero to 6 feet. The linear extent of the Project activities in waters of the U.S. and of the State is approximately 10,072 linear feet of other waters.

No jurisdictional wetlands, as defined by the Corps' 1987 manual for wetland delineation, are in the Project area. However, significant portions of the creek, inset floodplain, and riparian habitat from top of bank to top of bank are riverine wetlands that are waters of the State (see Finding 26). The wetland delineation identified patches of wetland vegetation fringing the margins of the Upper Berryessa Creek active channel, with a combined area estimated at less than 0.5 acres, and an earlier assessment found an area of 0.39 acres of fringing wetland vegetation. For purposes of this Order, about 0.45 acres of fringing wetland vegetation is in the Project downstream of the Piedmont Creek confluence, where flow is most likely to be present year round and support wetland vegetation.

19. **Rare and Endangered Species.** The Project site does not presently support any rare or endangered species. It provides potential habitat for such species.

20. **Impacts.** The Project will result in fill and excavation impacts to 4.18 acres of waters of the U.S. that are also waters of the State and an additional 5.63 acres of waters of the State, for a total of 9.81 acres and about 10,450 linear feet of waters of the State in Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek. These impacts consist of both permanent and temporal degradation of water quality function and value. The permanent and temporal impacts are co-located, although they each affect separate types of function and value in the affected creeks, as explained in detail in sections (a) and (b) below. The Project will also result in impacts from installation of new and replaced impervious surfaces.

a. Permanent Degradation in Water Quality Function and Values

i. *Rock Riprap.* The rock riprap fill (excluding the *grouted* riprap (see (ii) below)) will permanently degrade the function and value of creek bed and bank by displacing existing soil with 9- to 24-inch diameter angular rock underlain with a layer of geotextile fabric. This will result in less habitat for the benthic organisms living in the creek, including, but not limited to, algae, worms, diatoms, micro- and macroinvertebrates, and fish larvae. This impact to the benthic community will likely, in turn, reduce nutrient cycling and energy (as carbon) transfer to upper trophic level organisms (e.g., fish and birds). The lack of lower trophic organisms will restrict the designated beneficial uses in the Project, including warm water habitat, wildlife habitat, and non-contact water recreation uses (see Finding 26 for additional details of the beneficial uses).

The total rock riprap length is 9,753 feet, which encompasses 262 linear feet of concrete lining that will be removed in the area of Station 177. At this section, the replacement of concrete with rock riprap will result in a low-level improvement in

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habitat quality. Therefore, the net length of permanent degradation from rock riprap is 9,491 feet (9.23 acres).

Although a 4-inch layer of soil will cover the rock, this layer is not enough to make up for the loss in functions and values currently provided by the earthen substrate in the creek bed and banks. In addition, the riprapped substrate is likely to severely restrict the colonization of vegetation in the creek bed and banks. Woody species that may attempt to grow would be impeded by the rock substrate. Any attempts to establish native vegetation as dominant cover at the Project site (see next finding - Mitigation) will be severely restricted due to the lack of soil on the creek banks and bed. Of the six native plant species in the upland and wetland hydroseed mixes being used in the Project, the minimum root depth requirement in soil ranges from 5.1 to 20.5 inches (Cal Flora database, http://www.calflora.org/. Accessed September 26, 2016).

ii. *Concrete and Grouted Riprap Structures.* Concrete and grouted riprap culverts and transition structures will permanently degrade the function and value by restricting the creek's natural processes in the same manner but to a greater extent than the riprapped sections of channel. Both concrete and grouted riprap are impervious and block the natural exchange of water, oxygen, and nutrients in the channel bed and bank. Further, concrete and grouted riprap surfaces do not support biota except a film of algae, fungi, and other non-vascular vegetative growth and any invertebrates that incidentally land on the hardscape. The length of concrete and grouted riprap is about 703 linear feet and 0.7 acres of creek bed and bank and an additional 200 linear feet (0.1 acre) along the right bank extending from the top of bank to the bed elevation. In addition, the 1,123-foot long concrete floodwall will disconnect the creek from the riparian corridor.

b. Temporal Degradation in Water Quality Function and Values

i. *Creek Widening.* The Project design will likely result in temporal losses of function and value by removing Upper Berryessa Creek's existing low-flow channel and inset floodplain benches that have formed over the past few decades and replacing them with a widened, flat-bottomed, riprapped channel. This could homogenize habitat structure within the creek and alter material transport functions until sediment deposition creates a new low-flow channel and floodplain benches. The formation of a low-flow channel with inset floodplain benches may occur from about the 1.1-year[5] to 10-year[6] flow based on the District's analyses and depending on precipitation patterns after construction is completed. Accordingly, recovery from channel widening will likely occur within five years. Thus, channel widening will result in temporal losses in function, contingent upon the Discharger's implementation of adaptive management discussed in Finding 17. Channel widening will impact 9,327 linear feet of Upper Berryessa Creek (channel widening will not occur at the Montague Expressway crossing, the two UPRR bridges, the Yosemite Drive crossing, and the Los Coches Creek confluence).

[5] Santa Clara Valley Water District, 2016-b. Geomorphic Approach to Design and Maintain Creeks. PowerPoint Presentation, June 24, 2016.

[6] Stefanovic, Dragi (District's Consulting Engineer at Tetra Tech), 2016. Email to Water Board staff, Setenay Bozkurt Frucht, January 11, 2016.

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ii. *Vegetation Removal.* The Project will remove 53 native trees and shrubs growing within creek banks along the entire length of the Project. The Project will also remove about 0.45 acres of non-woody wetland vegetation fringing and within the active channel downstream of the Piedmont Creek tributary. Removing the woody vegetation from the riparian corridor and non-woody wetland vegetation fringing and within the active channel is impactful because this vegetation contributes to bank stability, nutrient cycling, water cycling, and habitat for wildlife. Wetland vegetation will likely reestablish within the same time frame as the active channel (i.e., within five years), based on similar projects in the San Francisco Bay Region, and the District's SMP.

iii. *Construction Activities.* The Project will temporarily impact waters of the State and the U.S. during construction (about 15 months) of the Project. The water quality of Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek will be impacted by creek dewatering activities and may be impacted by accidental releases of soil, debris, other non-hazardous materials, hazardous materials, and contaminants during construction. These releases could cause violations of the water quality objectives proscribed in Chapter 3 of the Basin Plan, including, but not limited to, water quality objectives for the following parameters: bacteria, dissolved oxygen, floating material, oil and grease, pH, sediment, settleable material, suspended material, temperature, toxicity, turbidity, and specific chemical constituents.

21. **Mitigation.** The Application states the Discharger will replace any native trees and shrubs that will be removed and maintain them for five years. The locations for native tree and shrub species to be planted at the site are shown in the 100 percent Planting Plan dated April 1, 2016. The Discharger will seed the creek channel beds with wetland species to serve as a seed bank to restore the 0.45 acres of wetland vegetation to be removed by the Project. The Discharger will also seed the banks with native grass species. The wetland and grass species palettes are listed in the 100 percent Planting Plan specifications (section 32 92 19).

The Water Board requires additional mitigation to compensate for temporary and permanent losses of functions and values resulting from the Project design as described in Finding 20. The Discharger has stated that compensatory mitigation is not feasible within the Project site. Therefore, compensatory mitigation will be offsite. This Order requires the Discharger to submit a Mitigation and Monitoring Plan (MMP), acceptable to the Executive Officer, by October 2, 2017, and to timely implement the MMP. The Water Board's understanding is that this schedule coincides with the District's schedule to adopt the capital improvement project budget for its One Water Plan. However, this Order does not require the District to propose a One Water Plan project as compensatory mitigation. The Water Board will notify the public upon receipt of the required MMP and consider public comments before the Executive Officer accepts it.

The MMP must propose mitigation such that the Project and mitigation, taken together, meet the California Wetlands Conservation Policy (Executive Order W-59-93), known as the "No Net Loss Policy," as described in the Basin Plan (see Findings 27 and 28). The purpose of the No Net Loss Policy is to ensure no overall net loss and to achieve a long term net gain in the quantity, quality, and permanence of wetlands acreage and values. Compensatory mitigation is determined in part on the functions and areal extent of the lost wetlands. The Water Board

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has considered the following factors in determining the required amount of mitigation that will adequately compensate for functions lost as a result of the Project:

- The mitigation project will enhance riverine wetland functions rather than restore or create riverine wetland area and functions;
- The mitigation will be in-kind (i.e., riverine mitigation for riverine impacts);
- The mitigation project will be offsite (because the Discharger has stated that compensatory mitigation is not feasible within the Project site) and will be within the Berryessa Creek watershed or elsewhere within the District's jurisdiction and within the San Francisco Bay Region;
- The mitigation project will be constructed within 12 months of the date when creek impacts first occurred (i.e., temporal loss of functions for one year);
- The enhancement benefits from the mitigation project will be fully achieved within five years;
- The mitigation project will have a moderate to high likelihood of success;
- The Project will result in an additional 7.4 acres of waters of the State, which will have the function and value of creek waters with rock riprap armor and concrete substrate and a moderate to low likelihood of native vegetation success in dominating the disturbed area; and
- The Project site will partially recover from impacts within five years of incurring the impacts (e.g., formation of a new low-flow channel and establishment of wetland vegetation within five years).

Based on these factors, the Water Board requires the MMP to include measures that enhance about 15,000 linear feet or 15 acres of waters of the State or a combination of length and area commensurate with the Project's impacts.

In addition, the Water Board may increase or decrease the amount of mitigation required if any of the factors listed above change. For instance, the mitigation length and/or area will be increased by an additional 10 percent for each year mitigation is delayed to compensate for the additional temporal loss. This annual increase is consistent with how the Water Board accounts for temporary impacts in any project. Similarly, the Water Board may decrease the amount of mitigation if the proposed mitigation project is constructed quickly, has a small footprint for construction activities, and has far-reaching beneficial impacts in waters downstream and/or upstream of the mitigation project construction footprint.

When determining whether to accept out-of-kind mitigation, the Water Board may consider such sources as the Baylands Ecosystem Habitat Goals (1999), the Baylands Ecosystem Species and Community Profiles (2000), and the Baylands Ecosystem Habitat Goals Science Update (2015) (referred to collectively as the "Habitat Goals Reports"), the San Francisco Estuary Partnership's Comprehensive Conservation and Management Plan (1993 and its

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2016 revision), or other plans specific to the District's flood protection and stream stewardship goals that would result in a project with a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values ..." consistent with the Basin Plan, section 4.23.4. Examples of potentially acceptable mitigation projects include dam removal, increasing salmonid habitat complexity in another creek, replacing a concrete channel with restored riverine wetland habitat, and preparing a watershed management plan and implementing projects specified in that plan sufficient to meet the Order's mitigation requirements.

The MMP must include performance and success criteria appropriate for the type of project. For vegetation in mitigation sites, herbaceous plantings must be monitored for no less than five years, and shrubs and trees must be monitored for no less than ten years, consistent with the Vegetation Performance and Success Criteria in Attachment B or standards of equivalent or better effectiveness.

The MMP will also report on the recovery of channel form and processes after the Project is completed using data collected to calibrate sediment transport model results and inform maintenance activities under the Adaptive Management Plan (see Finding 17).

22. **Monitoring and Technical Reports.** All monitoring and technical reports required in this Order are required pursuant to CWC section 13267. The burden of preparing these reports, including costs, bears a reasonable relationship to the benefits to be obtained from the reports and monitoring. Specifically, the monitoring and technical reports will demonstrate protection of beneficial uses during construction and maintenance projects, as well as verify the success of efforts to mitigate impacts as described in Findings 20 (i.e., impacts) and 21 (i.e., mitigation requirements). The monitoring reports will log the progress of revegetation over time and verify the success of mitigation plantings and/or other project features in the MMP, consistent with the minimum success and performance standards in the MMP. In addition, the technical reports will document the Project design and inform the Adaptive Management Plan and its implementation.

23. **Water Quality Certification.** The Project will result in discharge of dredge and fill materials into waters of the U.S. and of the State. The CWA (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 401 of the CWA (33 U.S.C. §1341) requires every applicant for a federal license or permit that may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the CWA, including water quality standards and implementation plans promulgated pursuant to CWA section 303 (33 U.S.C. § 1313). CWA section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the CWA and with any other appropriate requirement of state law. CWA section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project.

As the federal administrating agency for regulating the discharge of dredge and fill materials to waters of the U.S. pursuant to CWA section 404 (33 U.S.C., section 1344), the Corps

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signed the Record of Decision dated May 29, 2015, stating that the Project meets all environmental statutes. On March 14, 2016, the Water Board issued the Certification pursuant to CWA section 401 to the Corps for the Project. The Certification states that the Water Board would consider WDRs for the Project to address the future operations and maintenance activities, vegetation monitoring for construction mitigation plantings, and an offsite mitigation plan for impacts due to the Project's design. This Order rescinds and supersedes the previously-issued water quality certification and replaces it with WDRs and a new water quality certification.

24. **Waste Discharge Requirements (WDRs).** Pursuant to CWC section 13263 and Title 23, section 3857 of the California Code of Regulations (CCR), the Water Board is issuing WDRs to regulate the proposed discharge of excavation, dredge, and fill materials into waters of the State. The Water Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59- 93), and to accommodate and require appropriate changes over the life of the Project, including during its construction. In accordance with CWC sections 13263(a) and 13241, the Water Board, after considering this matter at a public hearing, has prescribed requirements as to the nature of the proposed discharge. These requirements implement the Water Board's relevant water quality control plans and policies and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, and the need to prevent nuisance.

25. **California Environmental Quality Act (CEQA).** CEQA requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document for such projects. The Discharger, as the lead agency, certified an Environmental Impact Report for the Project on February 9, 2016 (Project EIR). The Project EIR found several significant impacts that are under the purview and jurisdiction of the Water Board. These included significant impacts to: (1) biological resources; (2) soil or topsoil resources; (3) hazardous materials; (4) utility and service systems; and (5) hydrology and water quality. The Project EIR also found that the mitigation measures proposed therein would mitigate all of these impacts to less than significant levels. The Project EIR identified the following mitigation measures to mitigate these impacts to less than significant levels:

- Using seeds or cuttings collected at or near the Project area, or higher in the watershed if onsite collection is not feasible, to replace the 53 native tree and shrubs removed at the following rates:
    - Native tree up to 8 inches diameter at breast height (dbh): plant 1 native tree for each tree removed;
    - Native trees up to 20 inches dbh: plant 2 native trees for each tree removed;
    - Native trees greater than 20 inches dbh: plant 3 native trees for each native tree removed; and
    - Native shrubs: plant 2 native shrubs for each native shrub removed;

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- Maintaining a buffer zone around those riparian trees that will be protected in place during construction;

- Replacing non-native and ruderal vegetation with native grass and forbs by hydroseeding disturbed areas;

- Conducting nesting bird surveys prior to construction and during nesting season, and establishing appropriate buffers to reduce impacts to nesting bird species;

- Preventing soil erosion or loss of topsoil by preparing and implementing Rain Event Action Plans (REAPs);

- Collecting and treating potentially contaminated groundwater encountered during Project excavation in the Jones Chemical groundwater plume area to comply with the VOC and Fuels General Permit standards before discharging the groundwater to the environment; and

- During construction, removing hazardous materials and wastes from the creek channel prior to substantial rain so that water flowing in the creek does not entrain hazardous substances.

The Water Board, as a responsible agency under CEQA, has considered the EIR and finds that in combination with the requirements of this Order, impacts during the construction of the Project that are within the Water Board's purview and jurisdiction have been identified and will be mitigated to less-than-significant levels. This Order includes conditions and mitigation measures that will substantially lessen or avoid the Project's impacts on the environment. The need for compensation of impacts from the Project design is addressed in this Order (see Finding 21).

26. **Water Quality Control Plans.** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), U.S. EPA, and the Office of Administrative Law where required. The Basin Plan is the Water Board's master water quality control planning document. It designates beneficial uses of receiving waters, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed by the Plan.

    Section 2.2.1 of the Basin Plan indicates that the beneficial uses of any specifically identified water body generally apply to its tributary streams. Existing and potential beneficial uses of waters at the Project include the following:

    - **Upper Berryessa Creek:** Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), Water Contact Recreation (REC-1), and Noncontact Water Recreation (REC-2)

    - **Los Coches Creek:** Preservation of rare and endangered species (RARE), WARM, WILD, REC-1, and REC-2

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- **Piedmont Creek:** WARM, WILD, REC-1, and REC-2

Upper Berryessa Creek is tributary to Lower Penitencia Creek, Calera Creek, and Tularcitos Creek. The Basin Plan designates WARM, WILD, REC-1, REC-2, and Navigation (NAV) to these creeks. These creeks, in turn, flow into Coyote Creek, a tributary to San Francisco Bay. The beneficial uses of Lower Penitencia Creek are the same as for Upper Berryessa Creek. Some of the beneficial uses of Coyote Creek, which also apply to Upper Berryessa Creek by the Tributary Rule, include migration habitat (MIGR), spawning habitat (SPWN), preservation of rare and endangered species (RARE), and cold water habitat (COLD).

Section 2.2.3 of the Basin Plan indicates that the Water Board will rely on the naming conventions of the National Wetlands Inventory for mapping wetlands. Under these naming conventions, significant portions of Upper Berryessa Creek are riverine wetlands, and, as such, Table 2-3 of the Basin Plan lists examples of existing and potential beneficial uses for riverine wetlands. Therefore, Upper Berryessa Creek is a type of wetland under the Water Board's regulations. Moreover, Section 2.2.3 of the Basin Plan provides a list of aquatic features that the Water Board recognizes as wetlands, some of which would not be recognized as wetlands by the Corps. Some of the features listed that occur at the Project site include unvegetated ponded areas, the inset floodplain within the current channel, and riparian habitat within the Project site and are wetlands that are waters of the State. Moreover, the Project EIR states that there is in-channel wetland vegetation and riparian habitat on the Project site and acknowledges that the riparian habitat is waters of the State, although it is not waters of the U.S. The Corps disclaimed federal wetland jurisdiction over the fringing wetland vegetation because it did not have wetland soils. Section 4.23.4 of the Basin Plan states that "The Water Board may choose to exercise its independent authority under the Water Code in situations where there is a conflict between the state and the Corps, such as over a jurisdictional determination … ." Wetlands and waters impacted in the Project site are riverine wetlands. The beneficial uses associated with riverine wetlands at the Project site include WARM, WILD, REC-1, REC-2, and RARE. However, rare or endangered species do not presently inhabit the Project site. Requirements of this Order implement the Basin Plan.

27. **Basin Plan Wetland Fill Policy.** The Basin Plan Wetland Fill Policy (Fill Policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when a project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the region, whenever possible, as the project. The Fill Policy further establishes that wetland disturbance should be avoided whenever possible and, if not possible, should be minimized and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. The Water Board applies the Fill Policy to waters that are creeks because significant portions of creeks are riverine wetlands. Requirements of this Order implement the Fill Policy.

28. **California Wetlands Conservation Policy.** The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "…long-term net gain in the quantity, quality, and permanence of wetland acreage and values…." The California Wetlands Conservation Policy

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also calls for a "development of means to provide flexibility in the regulatory process … for allowing public agencies, water districts, and landowners to establish wetlands on their property consistent with the primary purpose of the property."

Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "highest priority shall be given to improving or eliminating discharges that adversely affect…wetlands, estuaries, and other biologically sensitive areas."

The Water Board applies the California Wetlands Conservation Policy to waters that are creeks because significant portions of creeks are riverine wetlands. Requirements of this Order implement the California Wetlands Conservation Policy.

29. **California EcoAtlas.** It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the California Wetlands Conservation Policy, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires that the Discharger use the California Wetlands Form to provide Project information related to impacts and mitigation/restoration measures. An electronic copy of the form and instructions can be downloaded at: http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml. Project information concerning impacts and mitigation/restoration will be made available at the web link: http://ecoatlas.org/regions/ecoregion/bay-delta/projects.

30. **Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). The Discharger is responsible for meeting all requirements of the applicable Endangered Species Acts. As applicable, the Discharger shall utilize the appropriate protocols, as approved by the U.S. Fish and Wildlife Service (USFWS) and stated in the USFWS Coordination Act Report, to ensure that Project activities do not adversely impact water quality or the beneficial uses of Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek, or other beneficial uses of waters downstream of the Project as referenced in Finding 26.

31. **Notification of Interested Parties.** The Water Board has notified interested parties, including the Corps, U.S. EPA, USFWS, the California Department of Fish and Wildlife, the Guadalupe-Coyote Resource Conservation District, the Citizens Committee to Complete the Refuge, the City of Milpitas, the Valley Transportation Authority, BART, the Santa Clara County Parks and Recreation Department, and the California Department of Transportation-District 4, of its intent to prescribe WDRs for this discharge.

32. **Consideration of Public Comment.** The Water Board, in a public meeting, heard and considered all comments pertaining to the discharge.

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33. **Records Management.** This Project file is maintained at the Water Board under CIWQS Place No. 818597, and Regulatory Measure No. 403119.

34. **Fees for Dredge and Fill Projects.** The fee amount for the WDRs shall be in accordance with the current fee schedule, per California Code of Regulations (CCR), Title 23, Division 3, Chapter 9, Article 1, section 2200(a)(3). The Water Board understands, based on information from the Corps and the District, that the District is responsible for the fee.

35. Pursuant to 23 CCR sections 3857 and 3859, the Water Board is issuing WDRs and Water Quality Certification for the activities proposed in this Order.

IT IS HEREBY ORDERED that the water quality certification pursuant to CWA section 401, dated March 14, 2016, issued to the Corps, is rescinded upon the effective date of this Order, except for enforcement purposes. The Water Board hereby issues this modified certification for the Project, updating the March 14, 2016, certification to reflect current Project conditions and certifying that any discharge from the Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) and with other applicable requirements of State law. Pursuant to the provisions of CWA 401 and Division 7 of the CWC, related regulations, and guidelines adopted thereunder, the Dischargers, their agents, successors, and assigns shall comply with the following pursuant to authority under CWC sections 13263 and 13267:

A. Discharge Prohibitions

1. The discharge of wastes, including debris, rubbish, refuse, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including floodplains, is prohibited.

2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.

3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.

4. The fill activities in waters of the State subject to these requirements shall not cause a nuisance as defined in CWC section 13050(m).

5. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.

6. The discharge of materials, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the U.S. and State is prohibited.

7. The use of imported soil in the Project is prohibited unless the Executive Officer grants

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an exception to this under the requirements of Provision 16. Under such circumstances, the Discharger shall submit the report required in Provision 16 to provide justification for the use of imported soil fill with resulting impacts to the waters of the State.

8. Directional drilling in the Project is prohibited.

9. The use of bank stabilization methods and materials other than the methods and materials in the 100 percent design plans and specifications is not authorized under this Order.

10. This Order prohibits any creek dewatering, diversion, or discharge before the Executive Officer accepts, in writing (including via electronic mail), a Dewatering Plan that meets the requirements of Provision 12.

11. This Order prohibits the alignment of any utilities, or maintaining existing utility lines in the Project, in such a manner that will create an obstacle to flow or destabilize the creek channel.

B. Provisions

1. The Discharger shall comply with all Prohibitions and requirements of this Order immediately upon adoption of this Order or as otherwise provided below. The Discharger shall fully implement all requirements of this Order, including all plans accepted by the Water Board or the Executive Officer. The Discharger shall notify the Executive Officer in writing should the Discharger need to significantly alter the Project. If the Water Board is not notified of a significant alteration to the Project, the Discharger will be considered in violation of this Order and may be subject to Water Board enforcement actions.

2. All plans and reports required under this Order shall be submitted and acceptable to the Executive Officer.

3. The Project shall be constructed in conformance with the 100 percent Design Plans dated August 4, 2016, and 100 percent Planting Plan, dated April 1, 2016, consistent with Finding 11.

4. All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize disturbances that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.

5. Disturbance or removal of vegetation shall be minimized. The Project site shall be stabilized through incorporation of appropriate BMPs, including the successful establishment of native grass vegetation, to compensate for impacts to wildlife habitat values and to prevent and control erosion and sedimentation. The Discharger shall revegetate the Project based on the 100 percent Planting Plan and Specifications for trees and shrubs dated April 1, 2016, and the 100 percent Conformed Drawings dated August 4, 2016, for native wetland and grass species. The Discharger shall maintain trees and shrubs for five years as stated in the Application.

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6. There shall be no violation of any water quality standard for receiving waters adopted by the Water Board or the State Water Board. Creek dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted creek and stormwater flows shall not be discharged to waters of the State without meeting the receiving water objectives in the Basin Plan.

7. Dredging, excavation, and fill in Upper Berryessa Creek, Piedmont Creek, and Los Coches Creek shall not cause the turbidity in the receiving water (i.e., water in these creeks and in waters to which they discharge) to increase by more than 10 percent if the ambient turbidity of the receiving water is greater than 50 NTU or by more than 5 NTU if the ambient turbidity of the receiving water is less than or equal to 50 NTU.

8. No equipment shall be operated in stream channels or other waters where there is flowing or standing water. No fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to waters of the State may occur.

9. Concrete used in the Project shall be allowed to completely cure (a minimum of 28 days) or be treated with a California Department of Fish and Wildlife-approved sealant before it comes into contact with flowing water.

10. **Construction General Permit.** The Discharger shall seek coverage under and comply with, or oversee that its contractors seek coverage and comply with, the statewide General Permit for Discharges of Storm Water Associated with Construction Activities (Order No. DWQ-2009-0009, as amended by Order Nos. 2010-0014-DWQ and 2012-006-DWQ) (Construction General Permit). All work performed within waters of the State shall be completed in a manner that minimizes impacts to water quality and the beneficial uses of Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek and waters downstream of these creeks.

11. **Rain Event Action Plan.** The Discharger shall develop and implement a Rain Event Action Plan (REAP), as required by the Construction General Permit, designed to protect all exposed portions of the Project site within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the Discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is a forecast of 50 percent or greater probability of precipitation in the Project area.

12. **Dewatering Plan.** The Discharger shall implement, or ensure that its contractor implements, the Dewatering Plan consistent with Finding 14 and the discharge requirements in Provision 14, for surface and groundwater flows throughout the Project site, excluding the groundwater flow within the JCI plume area that is regulated under Provision 13.

13. **Groundwater Management Plan.** The Discharger shall implement the Groundwater Management Plan dated January 26, 2016, and accepted by the Executive Officer on

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March 8, 2016, to meet the standards of the VOC and Fuel General Permit, consistent with Finding 15, and discharge requirements in Provision 14.

14. **Discharge and Receiving Water Objectives.** Creek dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted creek and stormwater flows shall not be discharged to waters of the State without meeting the following discharge and receiving water limitations herein. All monitoring records at the Project site shall be maintained at a location to be designated in the Dewatering Plan and shall be made available upon request by Water Board staff.

    a. pH - the instantaneous discharge pH shall be in the range of 6.5 to 8.5, and controllable water quality factors shall not cause changes greater than 0.5 units in the receiving water pH levels.

    b. Discharge Dissolved Oxygen - the discharge dissolved oxygen concentration shall be no less than 5.0 milligrams per liter (mg/L) (hourly average).

    c. Discharge Dissolved Sulfide - the discharge dissolved sulfide shall not be greater than 0.1 mg/L.

    d. Receiving Water Turbidity - the receiving water turbidity measured as nephelometric turbidity units (NTU) shall not be greater than 10 percent of natural conditions in areas where natural turbidity is greater than 50 NTU (daily average). All Project discharge plans shall identify an acceptable location or locations at which to measure background turbidity. The Discharger shall monitor receiving water and discharge turbidity at least one time every 8 hours on days when discharges from excavations or any other dewatering processes may occur.

    e. Receiving Water Temperature - the receiving water shall not be increased by more than 5°F (2.8°C) above natural receiving water temperature.

    f. Nutrients - the receiving waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

15. **Post-Construction Stormwater Management Plan.** No later than 90 days from the date this Order is adopted, the Discharger shall submit a Post-Construction Stormwater Management Plan consistent with the Municipal Regional Stormwater Permit's (Water Board Order No. R2-2015-0049; NPDES Permit No. CAS612008) requirements for post-construction stormwater management for new or replacement impervious surfaces. The plan shall identify construction materials, designs, treatment controls, a proposed operation and maintenance plan, and all other information, as appropriate, sufficient to ensure the appropriate treatment of runoff from 6.8 acres of maintenance roads and 0.1 acres of concrete access roads and ramps, either onsite or at an alternative offsite location, and a trash management plan for public access areas.

16. **Fill Quality Report**. The Discharger shall avoid reusing any contaminated soil excavated from within the JCI plume area, consistent with the Project's DDR. The Executive

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Officer may authorize reuse of soil from the JCI plume area if the soil analytical results meet the criteria outlined in this Provision. The Discharger shall maintain records onsite of laboratory analyses, excavation quantities, stockpiling, and disposal records, for soil excavated from the JCI plume area, and shall make the records available upon request by the Executive Officer or staff upon request.

In addition, no later than 30 days prior to placing any imported soil fill material, and any soil from within the JCI plume area, at the Project area, including all placement of fill in areas below the top of bank, on levees, and at any other location where the fill is a discharge to or has the potential to discharge to any waters of the State in the Project, the Discharger shall submit a technical report, acceptable to the Executive Officer, that the chemical concentrations in the imported fill soil are in compliance with the protocols specified in the following documents:

- The Dredged Material Management Office (DMMO) guidance document *Guidelines for Implementing the Inland Testing Manual in the San Francisco Bay Region* (Discharger Public Notice 01-01, or most current version) (Inland Testing Manual) with the exception that the water column bioassay simulating in-bay unconfined aquatic disposal shall be replaced with the modified effluent elutriate test, as described in Appendix B of the Inland Testing Manual, for both water column toxicity and chemistry (DMMO suite of metals only); and,

- The Water Board May 2000 staff report *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, or the most current revised version. Water Board staff shall review and approve data characterizing the quality of all material proposed for use as fill prior to placement of fill at any of the levee, marsh, or channel areas at the Project site. Modifications to these procedures may be approved by the Executive Officer on a case-by-case basis, pending the Discharger's ability to demonstrate that the imported fill material is unlikely to adversely impact beneficial uses.

17. **Maintenance.** Maintenance activities shall be consistent with the District's SMP as described in Finding 16 and consistent with the Adaptive Management Plan this Order requires pursuant to Provision 18 (Finding 17). In addition, the mitigation required due to impacts from maintenance activities shall be consistent with the District's SMP.

18. **Adaptive Management Plan.** No later than 180 days after the date this Order is adopted, the Discharger shall submit an Adaptive Management Plan that is consistent with Finding 17. The Adaptive Management Plan shall identify the Project's performance with respect to sediment deposition and accumulation and develop ways of reducing the need and frequency of maintenance activities and maximizing habitat acreage, values, and functions. The Adaptive Management Plan shall be implemented immediately upon Project channel construction completion. For the purposes of this Order, Project channel construction completion is defined as the first business day after construction contractors are no longer within the Project right-of-way, except for any contractor present solely for the purposes of vegetation planting, monitoring, and/or management.

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The Adaptive Management Plan shall include, but not be limited to, the following elements:

a. A workplan to periodically conduct cross-sectional and longitudinal profile surveys and collect stage-discharge recordings, including high water stages and velocities, after the Project is constructed. The data collected shall inform the Geomorphology Report described below in section (f).

b. A decision-making process to avoid sediment and/or vegetation removal before analyzing channel capacity based on field survey data to be collected in accordance with (a) above.

c. Identification of a maintenance trigger based on a stated freeboard; and other appropriate maintenance trigger(s).

d. Identification of stream gage locations necessary to implement the monitoring requirements for the Adaptive Management Plan, installation of gage(s), and data acquisition and analysis of stream flow gage(s) to implement the monitoring requirements of the Adaptive Management Plan.

e. A collaborative process comparable to the District's Notification of Proposed Work process under the SMP (see Finding 16) to convene a team, including Discharger staff and Water Board staff, to jointly develop Project-specific maintenance work plans, acceptable to the Executive Officer, for any bank stabilization, sediment, and/or vegetation (including woody vegetation) maintenance activities that may be necessary in the event that a maintenance trigger (or multiple triggers) occurs.

f. **Geomorphology Report.** A report submitted after five measurable flood events at or exceeding the estimated 1.1-year flood event, and one event at or exceeding the estimated 10-year flood event, to analyze data collected over the first years of Adaptive Management Plan implementation to evaluate channel performance and address the uncertainty in sediment transport processes (see Finding 16). The Geomorphology Report will evaluate:

   i. whether flow events have occurred that will enable the evaluation of sediment deposition processes in the Project;

   ii. whether sediment deposition rates have increased or decreased compared to the existing conditions;

   iii. whether sediment only accumulates at the two UPRR culverts as stated in the Project EIR; and

   iv. a comparison of stage-discharge relationships based on collected field data and the model projections.

   In addition, the Geomorphology Report shall be the basis for the following possible steps to determine whether the District will continue implementing the Adaptive

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Management Plan:

v. The Executive Officer shall authorize the Project to be transferred to the District's SMP if results in the report indicate sediment deposition has decreased or is similar to existing conditions. The maintenance guidelines developed with the Adaptive Management Plan shall be incorporated into the District's SMP and implemented for future maintenance activities under the SMP.

vi. The District shall continue implementing the Adaptive Management Plan if the Geomorphology Report findings indicate the sediment transport issues have not been resolved, either because not enough rainfall has occurred to generate flows in the creeks to verify sediment transport processes and/or because the data are inconclusive.

Mitigation Requirements

19. **Mitigation and Monitoring Plan.** No later than October 2, 2017, the Discharger shall submit a final Mitigation and Monitoring Plan (MMP) acceptable to the Executive Officer. The MMP shall include the following performance criteria by addressing the following elements and/or comparable criteria appropriate for the case-specific plan:

a. The MMP shall include a proposal, workplan, monitoring plan, performance standards, and all other information, as appropriate, sufficient to ensure the mitigation of permanent and temporal losses in functions and values of waters of the State and to ensure the Project results in no net loss and a long-term net gain in wetland and waters area, function, and value, consistent with Finding 21.

Thus, the mitigation package (i.e., the MMP) shall provide for a minimum restoration of the Project reach, subject to the Adaptive Management Plan (see Provision 18) and additional offsite mitigation. The offsite mitigation shall enhance 15,000 linear feet or 15 acres of creek waters or the equivalent.

The Water Board may require a lesser or greater amount of area and/or linear feet based changes in the factors listed in Finding 21, such that the size and scope of the mitigation project shall be appropriate for the Project's impacts.

b. The MMP shall include (but not be limited to) the vegetation performance standards and success criteria, or comparable standards, as those in Attachment B. If the offsite mitigation plan includes vegetation plantings and/or hydroseeding, the vegetation shall be monitored annually for success, health, and vigor as specified in Attachment B, Tables 1 and 2.

c. Plantings in the offsite mitigation area(s) shall be monitored for a minimum period of five years for grasses, forbs, and shrubs and ten years for trees, until the success criteria in the MMP are achieved.

d. The Discharger shall ensure invasive plant species in the Project site do not exceed cover of more than 10 percent based on the percent cover of, specifically, "highly" invasive plant species as defined by the California Invasive Plant Council. In

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addition, the Discharger shall apply the guidance in Attachment B, or comparable standards, for revegetation of onsite grasses, shrubs, and trees specified in the Planting Plan.

e. In addition to performance standards and success criteria for vegetation, the MMP shall identify other appropriate performance standards and success criteria based on the mitigation plan, habitat features, and other factors, as appropriate to the proposed mitigation project(s).

f. The MMP shall include methods for performing an assessment of whether the low-flow channel has recovered within the first five years after construction, using data collected for the Adaptive Management Plan (see Provision 18). If the low flow channel does not recover within five years, the Discharger shall provide additional mitigation to compensate for the temporal loss in function and value due to the impacts of creek widening, consistent with Finding 21.

The MMP shall incorporate the reporting requirements stipulated in Provisions 24 through 28.

20. **EIR Mitigation Measures.** To mitigate the significant impacts identified in the Project EIR over which the Water Board has authority, the Discharger shall implement those mitigation measures, which are summarized below and described in Finding 25:

a. Replacing any native trees and shrubs of certain sizes the Project will remove during construction;

b. Maintaining a buffer zone around riparian trees during construction;

c. Replacing non-native and ruderal vegetation with native grass and forbs;

d. Conducting nesting bird surveys following established protocols prior to construction and during the nesting season (general mid-April to late July). If nests are detected at staging areas and construction sites during these surveys, a 50-foot no-construction buffer will be delineated around the nest until young have fledged (300-foot buffer for raptors);

e. Preparing and implementing Rain Event Action Plans;

f. Preparing and implementing a creek dewatering plan;

g. Collecting and treating potentially contaminated groundwater encountered to meet the VOC and Fuels General Permit standards; and

h. Preventing hazardous materials and wastes from being entrained in creek flow.

21. **Log of Impacts.** The Discharger shall maintain an Impacts Log to track Project activities including the start dates of impacts to waters of the State and the associated mitigation

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activities. The Discharger shall make the Impacts Log available for review by Water Board staff upon request. The Impacts Log shall include, but not be limited to, the start dates of the following Project milestones:

a. Channel excavation and grading;

b. Creek dewatering;

c. Groundwater management;

d. Hydroseeding;

e. Tree and shrub planting; and

f. Offsite mitigation construction elements (as described in the MMP requirements (Finding 21; Provision 19)).

Reporting Requirements

22. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.

23. The Discharger shall report any water quality monitoring data that are not in compliance with Provision 14 (a non-compliance event) to the Water Board within 24 hours via telephone and shall follow up with a written report within 14 days. The written report shall provide the following:

    a. Discharge and receiving water measurements for the water quality parameter(s) collected during the non-compliance event;

    b. The location, duration, and likely cause of the non-compliance event;

    c. All actions taken to remedy non-compliance immediately after identifying the non-compliance event and to mitigate for any adverse impacts caused or contributed to by the non-compliance event; and

    d. All actions taken to prevent a similar non-compliance event in the future.

24. **California EcoAtlas.** The Discharger shall use the standard California Wetlands Form to provide Project information describing impacts and restoration measures no later than 14 days from the date of the final MMP approved pursuant to Provision 19. An electronic copy of the form can be downloaded at: http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml. The completed form shall be submitted electronically to habitatdata@waterboards.ca.gov or shall be submitted as a hard copy to both (1) the Water Board, to the attention of EcoAtlas, and (2) the San Francisco Estuary Institute, 4911 Central Avenue, Richmond, CA 94804, to the attention of EcoAtlas.

25. **Mitigation Monitoring Reports**. The Discharger shall submit annual reports, no later

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than January 31 following each year in which mitigation is monitored, during each year of the first five years of the initial ten year monitoring period. After the first five years, the Discharger shall submit reports in years seven, nine, and ten. The reports shall summarize each year's monitoring results, including the need for any remedial actions (e.g., re-planting or bank stabilization). The annual report shall compare data to previous years and describe progress towards meeting final success criteria. The final year's report (e.g., the year 10 report if the MMP spans 10 years) shall consist of the annual data from the final year (e.g., from year 10 for an MMP that spans 10 years), in addition to a comprehensive final report. Annual reports and the comprehensive final report shall include photographs from the photo-documentation points specified in Provision 29.

The final report shall document whether the Project site and offsite mitigation area(s) meet the final performance criteria of the MMP. If the criteria are not met, the report shall identify remedial measures to be undertaken, including extension of the monitoring period until the criteria are met.

Success of the mitigation program shall be determined by the Executive Officer after all the minimum success criteria in MMP are achieved. All Annual Reports shall include photographs, special-status species monitoring, and all other information, as appropriate.

26. The Discharger shall continue to submit Annual Reports after the designated monitoring period in the MMP as necessary (e.g., after the first ten years if the MMP spans 10 years), until the sites have met their performance standards and final success criteria, and the Executive Officer has accepted a notice of mitigation completion (see Provision 28) for each mitigation site.

27. **EIR Mitigation Measure Implementation**. The Discharger shall submit annual reports to report on implementation of Project EIR mitigation measures pursuant to Provision 20. The Discharger shall submit the first annual report no later than January 31 following adoption of this Order and shall continue annual reporting until one year after completion of channel construction. Annual reporting to meet this requirement may be a section within the MMP annual reports required under Provision 25, with clearly defined section headings to identify the Project EIR mitigation annual data and information.

28. **Notice of Mitigation Completion**. When the Discharger has determined that a mitigation area achieved the performance standards and final success criteria specified in the MMP, it shall submit a notice of mitigation completion. This notice shall include a status report on the implementation of the long-term maintenance and management portion of the MMP and a description of the status of the mitigation component that has been determined to be successful. After acceptance of the notice of mitigation completion in writing by the Executive Officer, the Discharger's submittal of mitigation monitoring reports for that mitigation component is no longer required.

29. **Photo-documentation Report**. To document channel and bank conditions immediately upstream and downstream of the Project site, as well as the Project site itself, the Discharger shall establish a minimum of 12 photo-documentation sites at the Project site, and additional sites sufficient to document each bridge crossing in the Project. These

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photo-documentation sites shall be selected to document channel and bank conditions immediately upstream and downstream of each site, as well as the Project reach. The Discharger shall prepare site maps with the photo-documentation points clearly marked. Prior to implementing the Project, the Discharger shall photographically document the condition of each site. Following implementation of the Project, the Discharger shall photographically document the immediate post-construction condition of the sites and submit a report to the Water Board including the pre-construction photographs, the post-construction photographs, and the map with the locations of the photo-documentation points. This report shall be submitted to the Water Board along with the as-built plans (Provision 30).

30. **As-built Plans.** Within 180 days of construction completion in the Project site, the Discharger shall submit an as-built report of the Project in both digital format and hard copy of at least 11-inches by 17-inches to the Water Board. The as-built report shall be submitted either by email to staff or by uploading it to the Water Board's FTP internet site. Instructions for uploading documents to the FTP internet site are available at http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/FTP_Discharger_Guide-12-2010.pdf. If the as-built report is submitted by uploading it to the FTP internet site, the Discharger shall notify the Water Board case manager via email. For purposes of this Order, the definition for construction completion shall be the final date when construction contractors (excluding contractors for revegetation activities) are in the Project site.

31. **Project Completion Report**. The Discharger shall notify the Water Board by electronic mail or by hard copy of Project completion upon transfer of the Project to the local sponsor. This notification, known as a Project Completion Report, shall consist of the following information: (a) the CIWQS Place ID for this Project (i.e., CWIQS Place ID 818597); (b) the date Project construction activities were completed; and (c) the completion date of mitigation plantings. Project construction activities for the purpose of this condition are defined as activities associated with construction of the Project, establishing native grass vegetation on the banks, and planting trees and shrubs as per the Planting Plan. The Project Completion Report shall be submitted to Susan Glendening at Susan.Glendening@waterboards.ca.gov or the current Water Board staff member assigned to the Project.

32. **Final Operations and Maintenance Manual.** The Discharger shall submit the final Project Operations and Maintenance Manual, as referenced in Finding 16, to the Water Board upon transfer of the Project to the local sponsor.

Other Requirements

33. The Discharger shall immediately notify the Water Board by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the provisions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition shall be submitted to the Water Board within two weeks of occurrence. The written notification shall identify the

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adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Executive Officer, for the remedial actions. The Discharger shall notify the Water Board, in writing or via electronic mail, at least 30 days prior to actual start dates for each Project component (i.e., prior to the start of grading or other construction activity for any Project component, including the creek mitigation components).

34. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with the Project materials for the Corps' Application and the plans and reports required by this Order (e.g., Provisions 12, 13, 15, 16, 18, and 19), which, together, serve as the basis for the Project description this Order covers.

    Please be advised that failure to implement the Project as proposed is a violation of this Certification. Failure to comply with any condition of this Certification shall constitute a violation of the CWA. Any such Certification previously granted shall immediately be revoked and any or all discharges shall cease. The Discharger may then be subject to injunctive release, including stop work and/or restoration orders.

35. The Discharger shall be responsible for work conducted by its consultants, contractors, and subcontractors.

36. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater. The discharge of any hazardous, designated, or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable State and federal regulations.

37. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.

38. The Discharger shall maintain a copy of this Order at the Project site at all times during construction of the Project and be made available to Water Board staff upon request. All foremen and other employees responsible for overseeing that construction of the Project complies with permitting requirements shall have access to and be familiar with the Order requirements.

39. The Discharger shall permit the Water Board or its authorized representatives at all times, upon presentation of credentials:

    a. Entry onto Project premises, including all areas on which wetland or waters fill or mitigation of waters of the State, is located or in which records are kept.

    b. Access to copy any records required to be kept under the terms and provisions of this Order.

    c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.

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d. Sampling of any discharge or surface water covered by this Order.

40. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, State, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.

41. The Discharger shall timely pay all fees associated with this Order. The fee amount for this Order shall be in accordance with the current fee schedule, per California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(3). The fee payment shall indicate the Order number, the CIWQS Place ID no. 818597, the Regulatory Measure ID no. 403119, and the applicable season.

42. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC section 13330 and 23 CCR section 3867.

43. The Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the CWC or CWA section 303 or in response to new information concerning the conditions of the Project. Additionally, the Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to the Discharger, if the Water Board determines that the Project fails to comply with any of the conditions of this Certification, or when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the CWC or CWA section 303 (33 U.S.C. § 1313).

44. This Order is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Project materials for the Order were filed pursuant to 23 CCR subsection 3855(b) and those Project materials specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

45. The Water Board may consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

This Order applies to the Project as proposed in the Project materials. Failure to implement the Project as proposed and as authorized herein is a violation of this Order. Violation or threatened violation of the Provisions of this Order is subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law, including administrative civil liability pursuant to CWC section 13350. Failure to meet any Provision of this Order may subject the Discharger to civil liability imposed by the Water Board to a maximum of $5,000 per day of violation or $10 for each gallon of waste discharged in

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violation of the Order. Also, any requirement for a report made as a Provision to this Order (e.g., Provisions 23 through 32) or technical or monitoring reports the Water Board requests in response to a suspected violation of this Order, is a formal requirement pursuant to CWC section 13267, and failure to submit, late or inadequate submittal, or falsification of such technical report(s) is also subject to civil liability pursuant to CWC section 13268.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on April 12, 2017.

_____
Bruce H. Wolfe
Executive Officer

Attachments:

Attachment A - Figures

1 – Upper Berryessa Creek Project Location and Vicinity

2 – Project Elements, Calaveras Boulevard to Ames Avenue

3 – Project Elements, Ames Avenue to Interstate 680

Attachment B - Vegetation Performance Standards and Criteria

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Attachment A

Figure 1 – Project Location and Vicinity

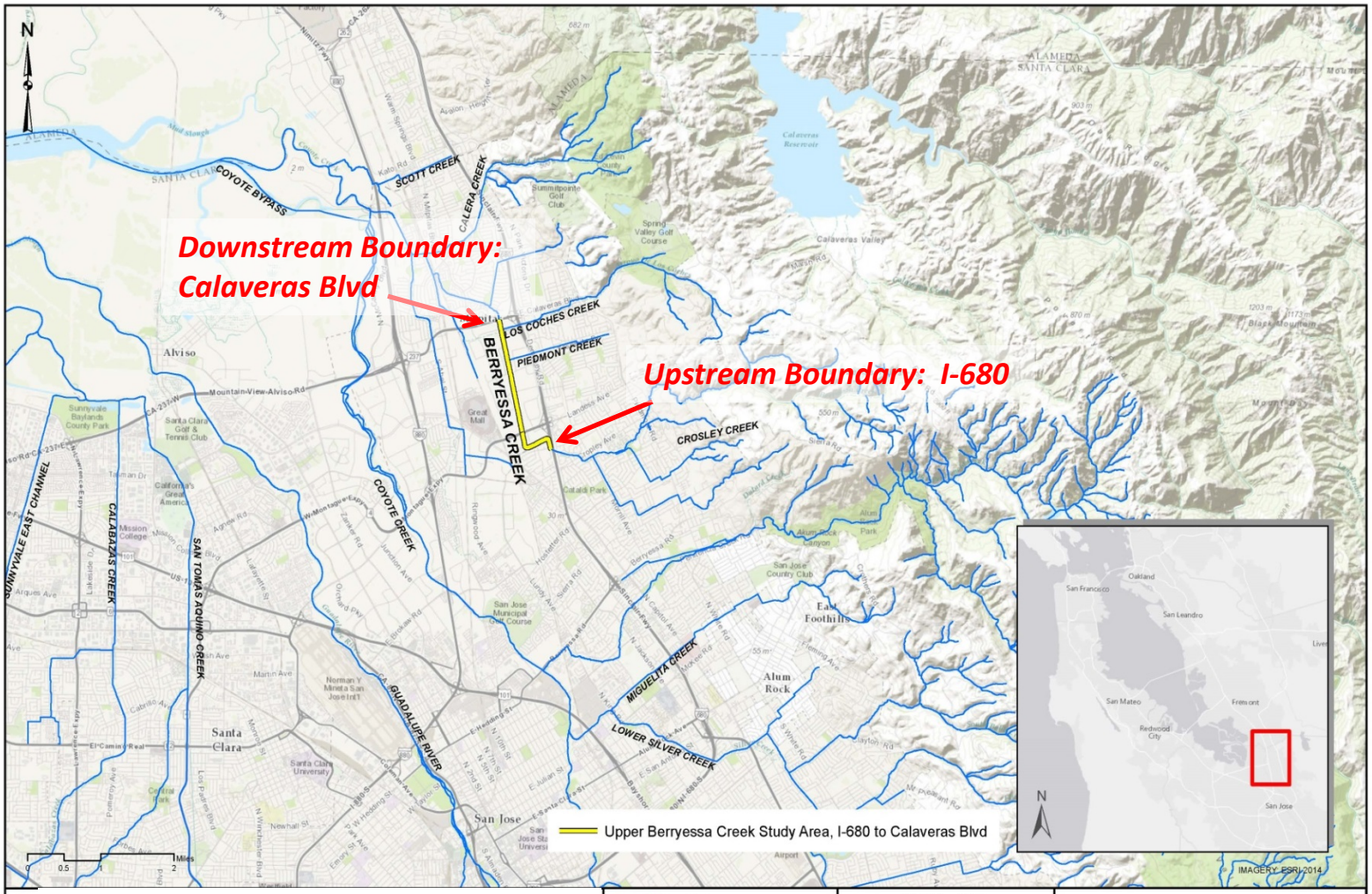

FIGURE 1 –Project Location & Vicinity

Tetra Tech
17885 Von Karman Avenue, Suite 500
Irvine, CA 92614
Tel. (949) 809-5000 Fax. (949) 809-5003

Santa Clara Valley Water District

UPPER BERRYESSA CREEK
FLOOD RISK MANAGEMENT PROJECT

Attachment A

Figure 2 – Project Elements, Calaveras Boulevard to Ames Avenue

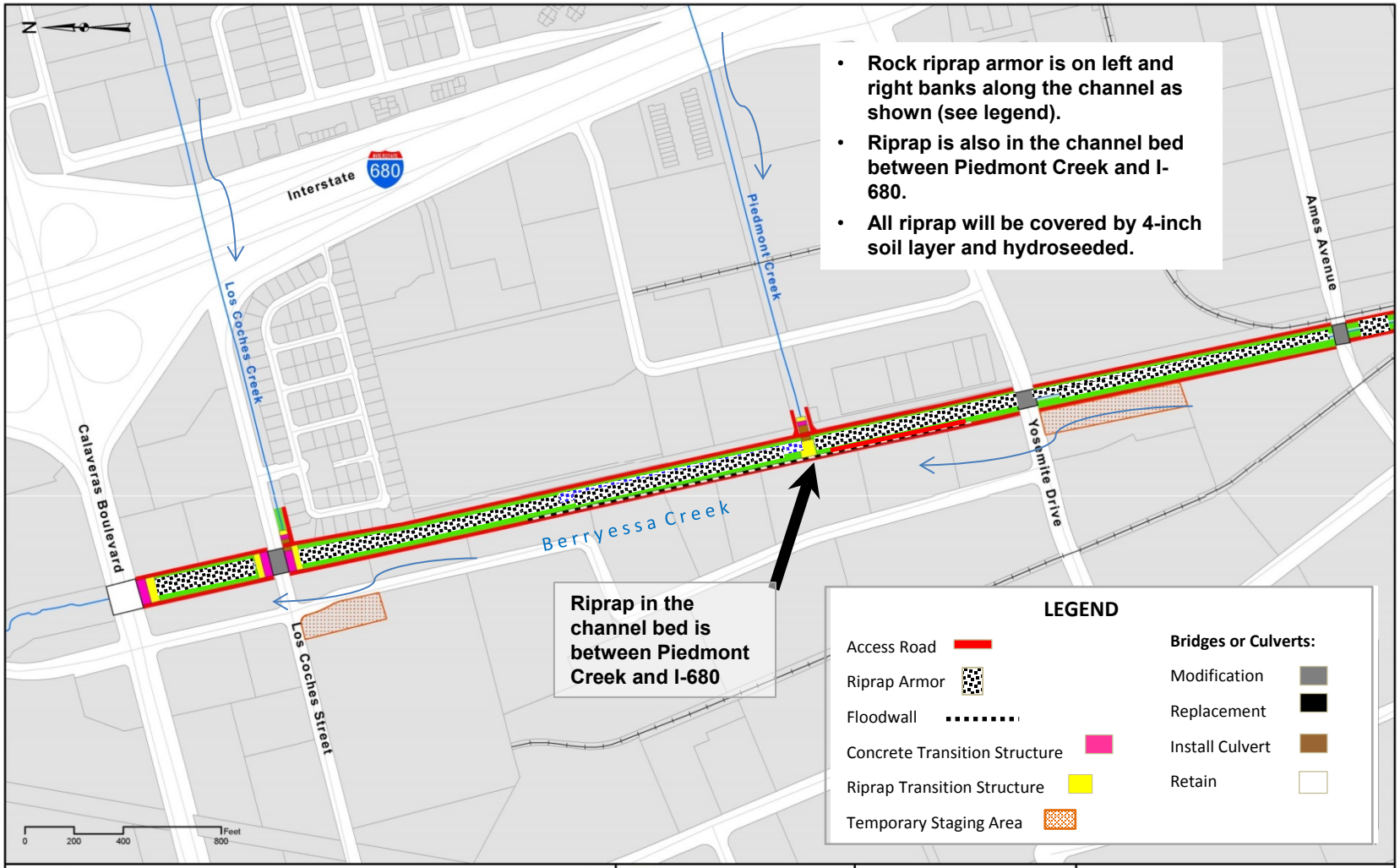

FIGURE 2 - Project Elements

Tetra Tech
17885 Von Karman Avenue, Suite 500
Irvine, CA 92614
Tel. (949) 809-5000 Fax. (949) 809-5003

Santa Clara Valley Water District

UPPER BERRYESSA CREEK
FLOOD RISK MANAGEMENT PROJECT

Attachment A

Figure 3 – Project Elements, Ames Avenue to Interstate 680

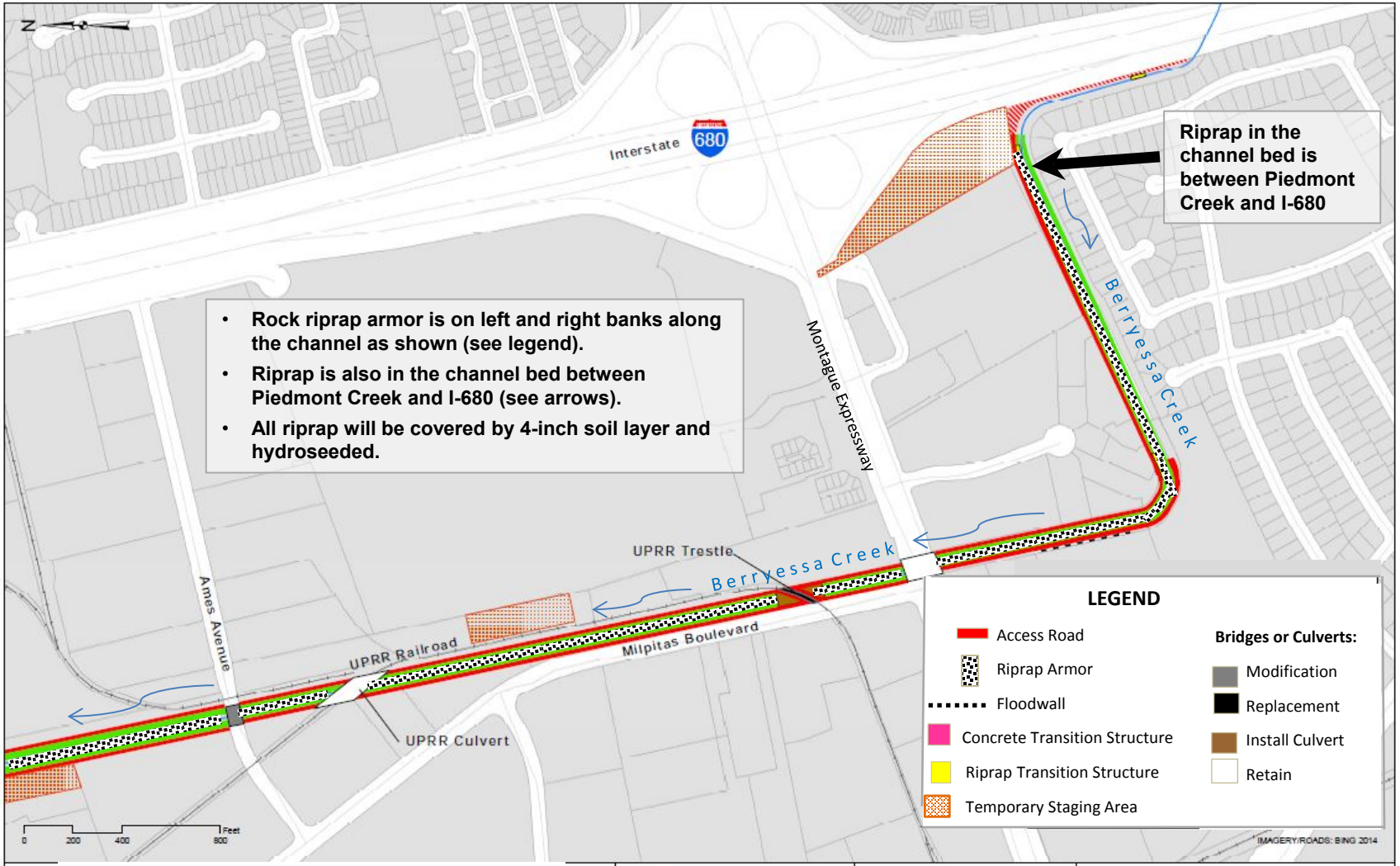

FIGURE 3 - Project Elements

Tetra Tech
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ATTACHMENT B
Vegetation Performance and Success Criteria

Performance and success criteria for the Project's mitigation plantings are outlined in Table 1. The overall health and vigor of all plantings will be evaluated each year in the field using the ratings listed in Table 2. The criteria include annual or semi-annual plant survival success criteria of no less than five years for herbaceous species and no less than ten years for woody species (i.e. trees and shrubs).

a. A vegetation monitoring plan shall be developed and implemented to track whether the plantings meet success criteria; replanting to replace unsuccessful growth; and other steps to ensure establishment, vigor, and health in mitigation plantings and mitigation success.

b. The mitigation for tree and shrub removals shall be consistent with the tree removal ordinances or similar requirements in the County of Santa Clara and cities of Milpitas and San Jose, at a minimum, and shall meet the requirements of the U.S. Fish and Wildlife Service Coordination Act Report for the Project dated April 26, 2013.

c. The Discharger shall water all riparian and wetland plantings for a minimum of three years. The Discharger shall continue to water all plantings during all projected dry water years (defined as 75 percent of average annual rainfall) that occur during the first ten years after construction. Any replacement plants shall be watered for a minimum of three years.

d. The Discharger shall follow the best management practices for preventing introduction and spreading of plant pathogens in mitigation areas, in accordance with the Planting Plan.

Table 1. Performance and Minimum Success Criteria - Offsite Mitigation Plantings

Habitat Type	Criteria
Native herbaceous and forbs communities – percent cover native species and non-native species	Year 1: 50 percent cover Year 3: 75 percent cover Year 5: 85 percent cover • Post-planting shall meet 85 percent cover after five years • Invasive plant species at a maximum cover of no more than 10% based on, specifically, "highly" invasive plant species as defined by the California Invasive Plant Council. • Health and vigor monitoring pursuant to Table 2.

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Riparian plantings including trees and shrubs – canopy cover success criteria	• Performance standards and success criteria shall be consistent with the District's Stream Maintenance Program Manual, July 21, 2014, section 11.3.2. • In addition, shrubs and trees shall be monitored for an additional 5 years beyond the first 5 years following initial planting. Monitoring shall be conducted in years 6 through 10, but annual reporting shall only be in years 7, 9, and 10. Each annual report shall cover the monitoring for the previous year or two years of monitoring conducted, in addition to the cumulative monitoring results at each monitoring milestone. • Annual health and vigor monitoring pursuant to Table 2.
Seasonal wetland communities (applicable if the offsite mitigation area includes seasonal wetland habitat)	Year 1: 5 percent or greater absolute cover of planted and natural recruitment of wetland species. No more than 5 percent absolute cover of target invasive plants. No large unvegetated bare spots (greater than 25 percent) or erosional areas; no evidence of oversaturation or permanent inundation. Year 2: 20 percent or greater absolute cover of planted and natural recruitment of wetland species. No more than 5 percent absolute cover of target invasive plants. No large unvegetated bare spots (greater than 25 percent) or erosional areas; no evidence of oversaturation or permanent inundation. Year 3: 45percent or greater absolute cover of planted and natural recruitment of wetland species. No more than 5 percent absolute cover of target invasive plants. No large unvegetated bare spots (greater than 25 percent) or erosional areas; no evidence of oversaturation or permanent inundation. Year 4: 60 percent or greater absolute cover of planted and natural recruitment of wetland species. No more than 5 percent absolute cover of target invasive plants. No large unvegetated bare spots (greater than 25 percent) or erosional areas; no evidence of oversaturation or permanent inundation. Year 5: 70 percent or greater absolute cover of planted and natural recruitment of wetland species. • Invasive plant species at a maximum cover of no more than 10% based on, specifically, "highly" invasive plant species as defined by the California Invasive Plant Council. • No large unvegetated bare spots (greater than 20 percent) or erosional areas; no evidence of oversaturation or permanent inundation. • Annual health and vigor monitoring pursuant to Table 2.

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Table 2. Health and Vigor Ratings

5	Excellent – less than 5% of the quadrat affected by mortality or cumulative symptoms of poor health, for example, disease, insect damage, mechanical damage, and poor growth;
4	Very good – 5 to 25% of quadrat affected by mortality or cumulative symptoms of poor health;
3	Good – 25 to 50% of quadrat affected;
2	Fair – 50 to 75% of quadrat affected;
1	Poor – greater than 75% of quadrat affected; or
0	Dead – no living plants in quadrat

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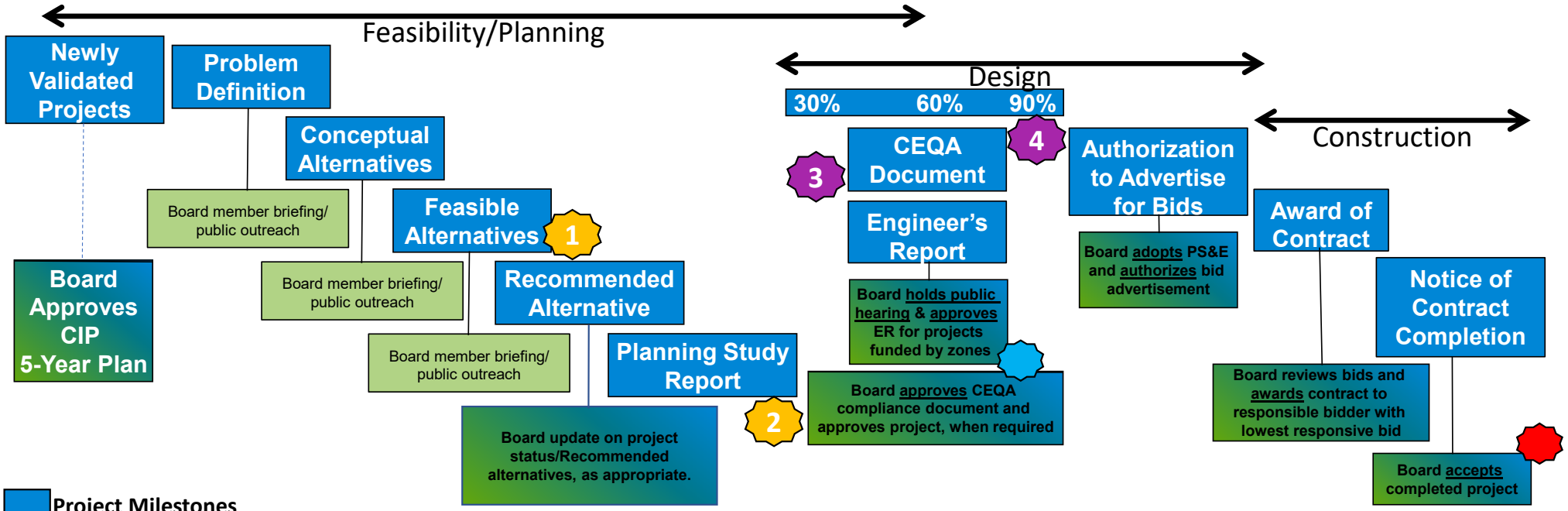
CIP Processes Overview

BOARD ACTION & ENGAGEMENT: CAPITAL PROJECT DELIVERY PROCESS*

* This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.



- Project Milestones
- Board Member Engagement
- Board Engagement/Action
- Additional Board Engagement Points for Complex Projects
- Additional Board Engagement Points for Operations & Maintenance Impacts
- Board Action: Approval/Adoption of Environmental = Approval of Project
- Staff: Reassess Risk for Remaining Contingency

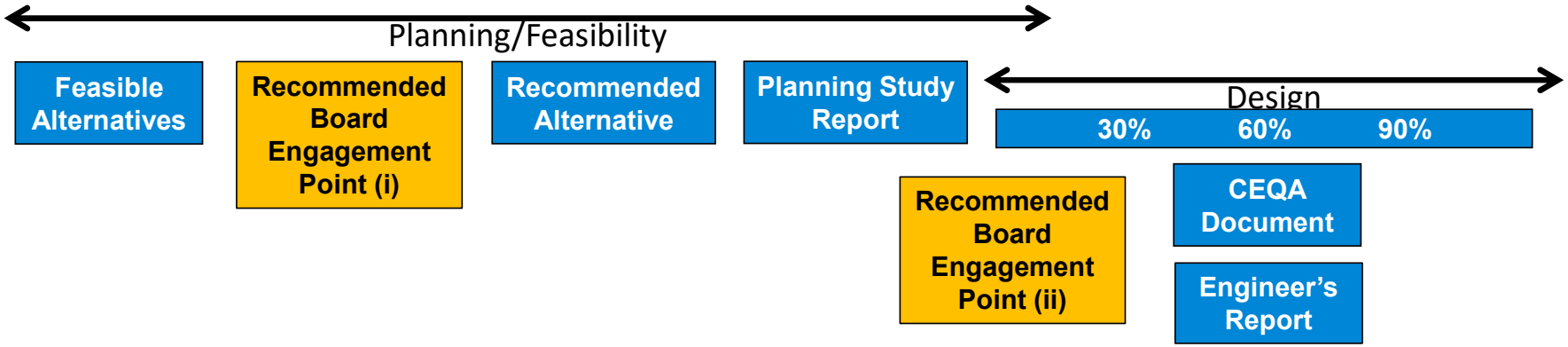
Valley Water

Capital Improvement Program (CIP)

Project Delivery Process*

Board Engagement/Actions

Additional Recommended Points for Board Engagement



For capital projects with unusually complex fiscal, jurisdictional, environmental, or community considerations:

i. During the Planning/Feasibility Phase, after identifying the Feasible Alternatives but before selecting the Recommended Alternative, present the Feasible Alternatives and staff's initially proposed Recommended Alternative to the Capital Improvement Program (CIP) Committee. If recommended by the CIP Committee, present them to the Board for feedback to inform the selection of the Recommended Alternative; and

ii. For the projects for which the Board provided feedback regarding the Recommended Alternative, should changes to the project occur during the Planning and initial Design Phases that result in a significant deviation from the Recommended Alternative, staff will return to both the CIP Committee and the Board to provide information and receive feedback, as necessary, prior to the public review of the California Environmental Quality Act (CEQA) document.

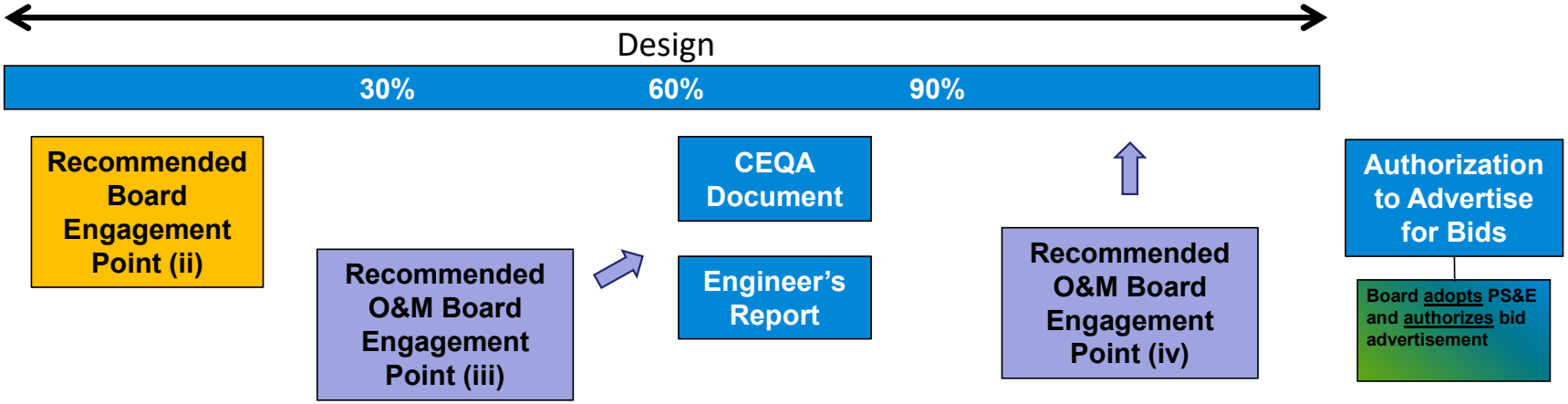
Valley Water

* For discussion purposes only. This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.

Capital Improvement Program (CIP)

Project Delivery Process*

Additional Recommended Points for O&M Engagement



For all capital projects:

iii. As part of the Board memo on either the Engineer's Report or CEQA document, include an O&M cost and impact assessment

iv. If significant changes occur after the Engineer's Report or CEQA document is approved by the Board, present an updated O&M cost and impact assessment to the Capital Improvement Program (CIP) Committee

Valley Water

* This is an example of the Project Delivery Process that may be followed and may not apply to all capital projects.

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