

**MASTER JOINT USE AGREEMENT
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND THE CITY OF GILROY**

This MASTER JOINT USE AGREEMENT (this “**Agreement**”) is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as “**Valley Water**”, and the CITY OF GILROY, a municipal corporation, hereinafter referred to as “**City**”. Valley Water and City may be referred to individually as “Party” or collectively as the “Parties” or the “Parties to this Agreement”. This Agreement will become effective on the later of the last-signed signature date set forth below (the “**Effective Date**”), _____, 2025.

RECITALS:

- A. Valley Water is the owner of certain real property (hereinafter “**Premises**”), as shown on Exhibit A, attached hereto.
- B. City desires to maintain existing “Recreational Improvements” (as defined in Section 3(b) herein) within the Premises.
- C. The Parties have established Existing Joint Use Agreements (JUAs) for specific portions of Valley Water properties, each portion with its own JUA.
- D. The Parties desire to enter into a single Master Joint Use Agreement (Agreement) to govern the joint use of all Premises as detailed in the enclosed Exhibit A attached hereto and incorporated in this Agreement by this reference.
- E. City desires to construct additional Recreational Improvements on other portions of the Premises within the City limits not currently incorporated under an existing JUA.
- F. The parties intend that the cooperative efforts and responsibilities outlined in this Agreement must serve as the foundation for the establishment of amendments entered into by the Parties for additional Recreational Improvements incorporated into Exhibit A of this Agreement.
- G. This Agreement supersedes and replaces the following existing JUAs between the Parties:
 - A3226M - West Branch Llagas Creek - Camino Arroyo Bridge.
 - A3287RE - Lions Creek - Pedestrian Bridge at Tapestry Drive and Cougar Court.
 - A3415M - Lions Creek, West Branch Llagas Creek, and Upper Miller Slough.
 - A4348X - South Morey Channel – Pedestrian Bridge at Avezan Way and Gascony Court.
 - A2923S - Uvas-Carnadero Creek Levee Top Trail.
- H. This Agreement incorporates the following new segment into the Agreement:
 - Lions Creek Trail from Kern Avenue to Tapestry Drive.
- I. City’s and the public’s use of the Premises for Recreational Improvements will not unreasonably interfere with Valley Water’s mission of flood protection, water resources management, and stream stewardship.

- J. The Parties find it to be in the public interest to provide for joint use of the Premises by means of this Agreement under the following terms and conditions.
- K. The Parties agree to develop all joint-use trails in accordance with the requirements outlined in the Valley Water Public Trail Policy Criteria and Guidance document. The Parties also agree that this Agreement and its Exhibits should be used to ensure consistency across all collaborative endeavors between the City and Valley Water.
- L. Valley Water may have current and/or future projects planned within the Premises. The Parties agree to work collaboratively to ensure Recreational Improvements are designed and constructed in a manner that accommodates and is compatible with Valley Water's projects and objectives.
- M. Valley Water and City recognize that applicable trail master plans, such as the City Parks and Trail Master Plan and/or Countywide Trails Master Plan, may serve as guidance documents for future trail segment planning and implementation of joint-use trails covered under this Agreement. The Parties intend to coordinate their efforts to maintain consistency between these trail master plans and Valley Water's mission and projects.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1) **Incorporation of Recitals.** The recitals set forth above are incorporated herein by this reference.
- 2) **Supersedes Existing JUAs.** City and Valley Water waive the 90-day notice of termination requirement of the Existing JUAs. City and Valley Water agree that this Agreement supersedes and replaces the Existing JUAs as of the Effective Date of this Agreement.
- 3) **Scope of Valley Water License Grant to City.** Subject to the terms and conditions of this Agreement, Valley Water hereby grants to City a non-exclusive license to access and do any or all the following on the Premises:
 - a. To include in this Agreement the jointly agreed-upon Recreational Improvements, as defined in Section 3(b) herein, and potential improvements for trails, as well as the standard maintenance responsibilities for said improvements. Any special provisions and/or maintenance arrangements for a specific trail segment must be noted in the corresponding Exhibit A.
 - b. To construct, operate, maintain, repair, replace, and remove improvements and other trail amenities for public recreational purposes on the Premises including, but not limited to, pedestrian and bicycle trails, pedestrian bridges, trailheads, fencing, fixtures (trash receptacles, benches, etc.), signage and public art (collectively, "**Recreational Improvements**"). Any and all work related to construction, operations, and maintenance of the Recreational Improvements will be completed in accordance with applicable federal, state, and local environmental regulations, including but not limited to the federal and state Migratory Bird Treaty Acts, Clean Water Act, federal and state Endangered Species Acts, the California Fish and Wildlife Code, and the Porter-Cologne Water Quality Control Act. All Recreational Improvements must comply with all building and fire codes and other applicable legal requirements. For any Recreational Improvements that qualify as regulated projects under the City's Phase II Small Municipal Separate Storm System (MS4) Permit, City must develop and implement appropriate

stormwater treatment measures in compliance with its Phase II Small MS4 permit requirements. Under this signed agreement, City must apply for permits for each improvement. If Valley Water approves the City Improvements, Valley Water shall issue to the City permits for all Recreational Improvements, ("**Valley Water Permit**"). Issuance of Valley Water's permit will be at Valley Water's sole discretion, provided that Valley Water's approval will not be unreasonably delayed, conditioned, or withheld. The issued permit becomes part of this agreement.

- c. To provide for public access such as bicycling, walking, jogging, hiking, and similar uses of Recreational Improvements in accordance with all applicable legal requirements to the extent such activities do not interfere with Valley Water's mission of flood protection, water resources management, and stream stewardship.
- d. To host special public recreational events (e.g., races, bike-to-work events, etc.) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as Valley Water issues City a Valley Water Permit to host the event.
- e. Subject to the conditions and restrictions contained in this Agreement, City has full responsibility and authority to restrict, control, regulate, and/or supervise public use of the Recreational Improvements. City may, at its discretion, consistent with Valley Water's Superior Rights and City's Subordinate Rights described in Section 12, and without diminution of Valley Water's ability to provide flood protection, stream stewardship, water resources management, including the operations and maintenance thereof, or hazardous materials cleanup on the Premises, take any measures of every kind that, in the opinion of City, may be necessary for the health and safety of the public using the Premises. City is responsible for any damage to either Valley Water improvements or Recreational Improvements that result from City's or the public's use of the Premises. City will be responsible for all costs for repair of damage to Valley Water facilities or Recreational Improvements incurred by City or the public's use of Recreational Improvements.

4) Prohibited Uses of Trail. City must post notices at all Trail entrances notifying users that the following are prohibited:

- Entry of motor vehicles (except for maintenance repairs, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
- Dogs (except on leash) or other domestic animals
- Public access during Trail closures when maintenance equipment and vehicles and/or emergency vehicles are present

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City will have the sole authority and responsibility to adopt Trail rules and regulations consistent with federal, state, and local regulations to govern the public's use of the Premises that are compatible with Valley Water's mission of flood protection, water resources management, and stream stewardship, as determined by Valley Water.

5) Trash and Litter Removal. City will remove trash from the Premises that is likely to have been generated from public use of the Premises. City will be responsible for maintaining, servicing, and emptying trash receptacles and for rubbish removal as reasonably necessary, including providing

for lawful disposal of hazardous waste and/or biowaste. Separately and as funding is available, Valley Water will manage an Adopt-a-Creek program to provide opportunities for volunteer public trash removal.

- 6) **Vegetation Management.** If existing vegetation or trees interfere with Recreational Improvements, the public's use of the Premises, or have been deemed hazardous and a danger to the safety of the public, City is responsible for trimming or removal, as City deems necessary, in accordance with applicable federal and state laws and Valley Water Permit requirements. Valley Water will provide vegetation management as needed for flood protection and fire code compliance consistent with its management of comparable flood protection facilities. All pruning by City or City contractors on the Premises must follow International Society of Arboriculture (ISA) guidelines. Herbicide use on the Premises must be performed by or under the direct supervision of a licensed Qualified Applicator Certificate/Qualified Applicator License (QAC/QAL) to ensure herbicides are only applied on the Recreational Improvements, are suitable for the purpose and environment they to which they are applied, and do not drift onto adjacent Valley Water mitigation habitat, waters, or natural habitat. City must only use herbicides approved for aquatic use in all areas below top of bank of a creek, within 20 feet of top of bank of a creek, and where required by law. For any revegetation or landscaping associated with Recreational Improvements, native plants should be used and must be permitted by Valley Water. City will be responsible for all maintenance associated with any permitted landscaping installations. City will remove any landscape installations associated with Recreational Improvements at Valley Water's request if installations interfere with Valley Water's operations and/or maintenance of the Premises.
- 7) **Graffiti Removal.** City will have the primary responsibility for removal of graffiti on the Premises reasonably attributed to use of the Recreational Improvements. City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from Recreational Improvements consistent with its implementation of the same program at comparable City facilities. No permit from Valley Water, nor any advance notice, will be required for City to remove routine graffiti from any City or Valley Water facility within the Premises. Any and all materials used by City in the removal of graffiti within the limits of this Agreement must be approved for use in the State of California and consist of environmentally safe products which will not harm the creek environment of the Premises in anyway.
- 8) **Pioneer Trails.** City and Valley Water will meet and confer to determine the need for fencing or other protective measures associated with Recreational Improvements whenever unauthorized or pioneer trails are observed. City will have primary responsibility for installing and maintaining measures that deter off-trail uses. Valley Water will have the discretion to install at its sole cost, unless otherwise agreed upon by City, any additional measures to control public ingress or egress that may be necessary to protect environmentally sensitive areas or Valley Water facilities.
- 9) **Security.** City personnel and/or volunteers supervised by City will patrol the Premises to provide the same level of public safety afforded to similar areas of the City. Valley Water has no obligation to provide or pay for such patrols.

10) Encampments. City is responsible for abating any encampment in accordance with applicable laws which blocks access to Recreational Improvements, is a safety threat or hazard to the public's use of access to Recreational Improvements, or otherwise adversely impacts the public's use of access to Recreational Improvements, as determined by City.

11) Public Complaints. City is responsible for responding to all public complaints and inquiries regarding Recreational Improvements, and to all complaints and inquiries regarding the public's use of Recreational Improvements.

12) Construction, Maintenance, and Repairs.

- a. Valley Water is responsible for performing construction, operations, maintenance, and repairs on the Premises for flood protection, stream stewardship, and water resources management in a manner consistent with its construction, maintenance, and repairs of comparable facilities or creeks. It is expressly understood that Valley Water is engaged in flood protection, the protection of water resources, and stream stewardship, and that the terms and conditions of this Agreement will not in any way interfere with the absolute, free, and unrestricted right of Valley Water to operate and maintain for flood protection, water resources management, and stream stewardship purposes, the stream bed and banks, or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises ("**Superior Rights**"). City will have the right to build additional Recreational Improvements on the Premises necessary or convenient to the enjoyment of this Agreement, provided that any such improvement is, in each case during the term of this Agreement, first approved by Valley Water by issuance of a Valley Water Permit in its sole, unfettered discretion ("**Subordinate Rights**"). City acknowledges Valley Water's Superior Rights and that City's rights are subordinate thereto.
 - i) If removal or relocation of City's fencing is necessary to allow Valley Water to conduct construction, operations, maintenance, or repairs on the Premises, City must remove or relocate its fencing at its own expense within 5 working days after receiving written notice from Valley Water.
 - ii) If removal or relocation of a City pedestrian bridge is necessary to allow Valley Water to conduct construction, operations, maintenance, or repairs on the Premises, City must remove or relocate its bridge at its own expense within 60 calendar days after receiving written notice from Valley Water. Valley Water, however, will attempt to provide more than 60 calendar days' notice to City, if reasonably feasible.
 - iii) If Valley Water requires that any other Recreational Improvements be removed or relocated for any Valley Water purpose, City will do so at its own expense within 90 days after receiving written notice from Valley Water.
 - iv) If construction of Recreational Improvements or modification of existing Recreational Improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act or as a regulatory permit requirement, City will be responsible for all costs required to fulfill any required mitigation responsibilities, including providing lands to place mitigation and providing mitigation monitoring and reporting.

- v) If Valley Water engages in any construction on the Premises, Valley Water will inform City during preconstruction planning to minimize any adverse impact of Valley Water's project on Recreational Improvements.
 - vi) Valley Water agrees to exercise reasonable care during construction, operations, maintenance, and repair activities to minimize damage to Recreational Improvements. Valley Water is not responsible for any damage to or replacement of City Improvements that results from Valley Water's construction, operation, maintenance, or repair of flood protection or stream stewardship facilities located on or near the Premises, including, without limitation, any flood flows or inundation from creeks on the Premises, unless the damage to Recreational Improvements is caused by Valley Water's sole negligence or willful conduct.
 - vii) Any replacement of Recreational Improvements following Valley Water's construction, maintenance, or repairs on the Premises will be City's responsibility and cost and also require a Valley Water Permit under Section 3(b). City is solely responsible for informing the public of temporary or permanent closure of operational Recreational Improvements
 - viii) In non-emergencies, City and Valley Water staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:
 - (a) Maintenance issues related to Premises and/or Recreational Improvements;
 - (b) Non-emergency work requiring the use of heavy equipment, barricading, pedestrian detour plans, and/or restricting access to the Premises. Valley Water and City further agree to notify one another's designated representative at least ten workdays prior to commencement of such work to minimize public impacts.
 - ix) In an emergency on or affecting the Premises, Valley Water may require removal or relocation of any Recreational Improvements without notice to City.
- b. City has sole responsibility for:
- i) the construction, operation, maintenance, and repair of all Recreational Improvements;
 - ii) maintenance and operation of all Recreational Improvements in usable and safe condition; and
 - iii) the duty, cost, and expense of providing any security; police; preparation of traffic and pedestrian detour plans depicted on attached Exhibit B, including installation of required appurtenances; public notices/communications/signage to inform the public of any closure of Recreational Improvements, and available detours during closure of Recreational Improvements; trail amenities (including fencing); modifications or replacements; or other expenditure necessary to temporarily prohibit or control public access to the Premises that Valley Water would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision; and
 - iv) implementation of the Maintenance Plan in Exhibit C.
 - v) Implementation of post-construction stormwater management measures for Recreational Improvements. All stormwater management measures within the Premises are subject to Valley Water's review and approval. Valley Water has the right to deny any proposed stormwater management measure, or request the relocation of existing stormwater management measures if it is determined to conflict with its flood protection,

water resources management, and stream stewardship function. City is responsible for conducting regular inspections and maintaining green infrastructure and stormwater control measures, maintaining documentation of all inspection and maintenance activities, implementing necessary corrective actions, submitting annual reports of stormwater management activities to the required regulatory agencies, and ensuring compliance with all stormwater treatment requirements as specified in the City's Phase II Small MS4 permit.

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

14) Signage. City has sole responsibility for providing signage pursuant to Section 12(b)(iii) to notify the public of the closure of Recreational Improvements. The Parties will cooperate to create and install signage that benefits the programs of each Party such as Trail closure detour signage, maintenance vehicle warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer of Valley Water and the City Administrator or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage that serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g., Trail) by name) must include Valley Water's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs placed on the Premises or City publications relating to the closure of Recreational Improvements that describe water resources must be developed in conjunction with Valley Water. Each Party is responsible for the maintenance and upkeep of its signage installed on the Premises.

15) Bird Nesting Season. To the extent feasible, the Parties must avoid construction or maintenance activities on the Premises during bird nesting season (generally between January 15th and August 31st). If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend that the City implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible Party (City or Valley Water, and/or their agents) performing said work.

16) Term of Agreement. The term of this Agreement (including the rights and obligations contained herein), will commence on the Effective Date and will expire on the 25th anniversary of the Effective Date, unless either Party requests a renewal of and/or amendment to the agreement no less than 180 days prior to the expiration of the then-existing term. If either Party requests a renewal and/or amendment to the agreement, and a renewal and/or amendment has not been implemented prior to the expiration of this Agreement, then City will either close and prevent public access to the Premises until a new agreement is executed or, subject to written approval by Valley Water's Chief Executive Officer and upon written request by City, this Agreement may be extended for no more than one (1) year to maintain public access to the Premises while ongoing efforts are made to execute a new Agreement.

17) Termination of Agreement. Either Party may terminate this Agreement after providing the other Party with at least 90 days prior written notice of its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, City must remove all Recreational Improvements from the Premises and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. Notice of intent to terminate may be given by City Administrator. Notice of intent to terminate may be given by Valley Water's Chief Executive Officer.

18) Indemnification by City. Notwithstanding any other provision of this Agreement, City 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, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public's use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of City's officers, agents, employees, or independent contractors, except to the extent caused by Valley Water's active or gross negligence or willful misconduct. This Agreement to defend, indemnify, and hold harmless Valley Water will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature.

19) Indemnification by Valley Water. Notwithstanding any other provision of this Agreement, Valley Water agrees to indemnify, defend, and hold harmless City, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses, and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of and are caused by Valley Water's active or gross negligence or willful misconduct, or from any physical condition of the Premises caused in whole or in part by Valley Water's acts or omissions. This Agreement to defend, indemnify, and hold harmless City will operate only to the extent that the basis of the claim, liability, loss, damage, or injury is a result of Valley Water's active or gross negligence or willful misconduct.

20) Insurance. City and Valley Water must, throughout the duration of this Agreement, maintain and cause its contractors to maintain sufficient insurance and coverage as described in Exhibit D, attached hereto and incorporated herein. City and Valley Water can meet the insurance requirements of this Section 20 through self-insurance which can be substantiated by issuance of a certificate of self-insurance.

21) Equal Opportunity Employer. Valley Water is an equal opportunity employer and requires public agencies that it enters into this Agreement with to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, City 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.

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

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

22) Future Recreational Improvements. If the Parties agree to include additional Recreational Improvements to this Agreement in the future, such additions may be made by amending the Exhibits to this Agreement and obtaining the signatures of Valley Water's Chief Executive Officer and City's City Administrator. No further approval will be required for such amendments, provided that the terms of this Agreement will apply to all trail segments added in this manner.

23) Notices. Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either Party in writing:

City:

City of Gilroy
Attention: City Administrator
7351 Rosanna Street
Gilroy, CA 95020

Valley Water:

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

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

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

34) Electronic Signature. Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

35) No Third-Party Beneficiaries. This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

36) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City and the Valley Water.

37) Entire Agreement and Incorporation of Exhibits. This Agreement, together with all Exhibits referenced herein and attached hereto, constitutes the entire agreement between the Parties and supersedes all prior written and oral understandings.

signatures next page

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

"City"

CITY OF GILROY

A municipal corporation

"Valley Water"

SANTA CLARA VALLEY WATER DISTRICT,

a Special District, created by the California Legislature

Signed by:
By: Brad Kilger Date: 10/3/2025
694562116895474...
Brad Kilger
Interim City Administrator

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

ATTEST:

Signed by:
Kim Mancera
6430695D7EC6481...
Kim Mancera
City Clerk

ATTEST:

Candice Kwok-Smith
Clerk of the Board of Directors

APPROVED AS TO FORM:

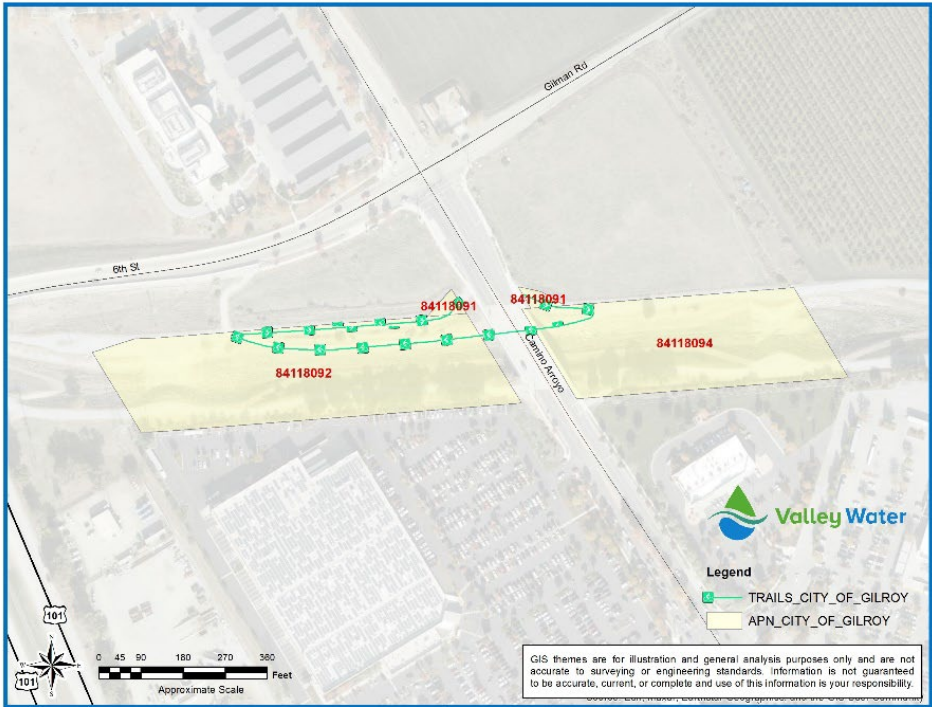
Signed by:
Andrew Faber
4898480E732C1120
Andrew Faber
City Attorney

APPROVED AS TO FORM:

Omar El-Qoulaq
Assistant District Counsel

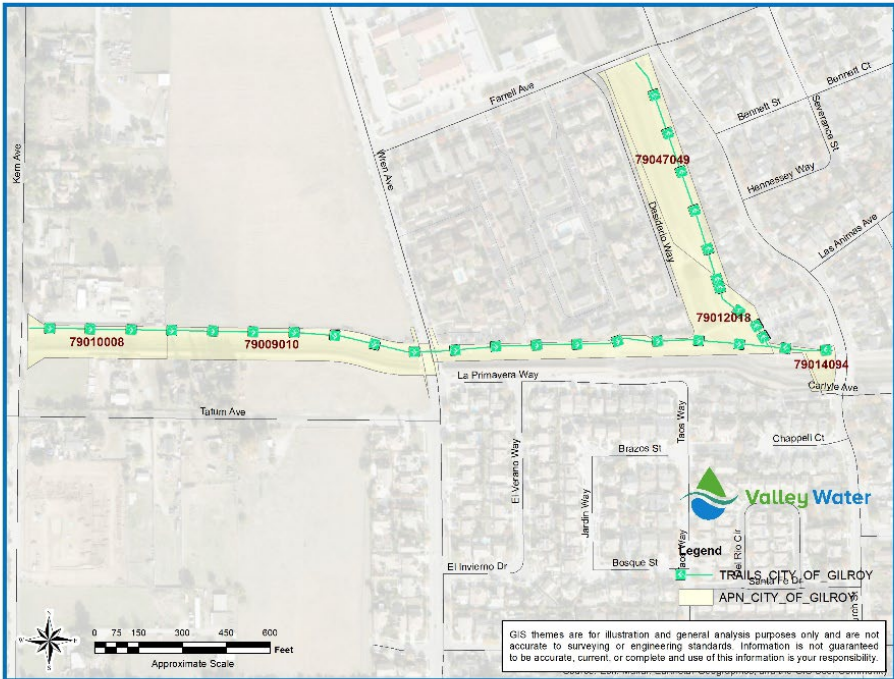
EXHIBIT A (PREMISES AND SPECIAL PROVISIONS)

Exhibit #	Segment Name	Special Provisions
A.1	West Branch Llagas Creek - Camino Arroyo Bridge	- Public access to the Premises is restricted to daylight hours. - Swimming, boating, rafting, and fires are prohibited on the Premises. - City cannot provide any picnicking facilities on the Premises.



Document Name: Join Use Agreement MERGE

Exhibit #	Segment Name	Special Provisions
A.2	Lions Creek, West Branch Llagas Creek, and Upper Miller Slough	- Public access to the Premises is restricted to daylight hours. - Swimming, boating, rafting, and fires are prohibited on the Premises. - City cannot provide any picnicking facilities on the Premises. - Public access on the Premises must only be passive in nature. - City must maintain vegetation within 30 feet of the property line near the pedestrian bridge for fire protection and aesthetic purposes, and remove any trash or dumping.



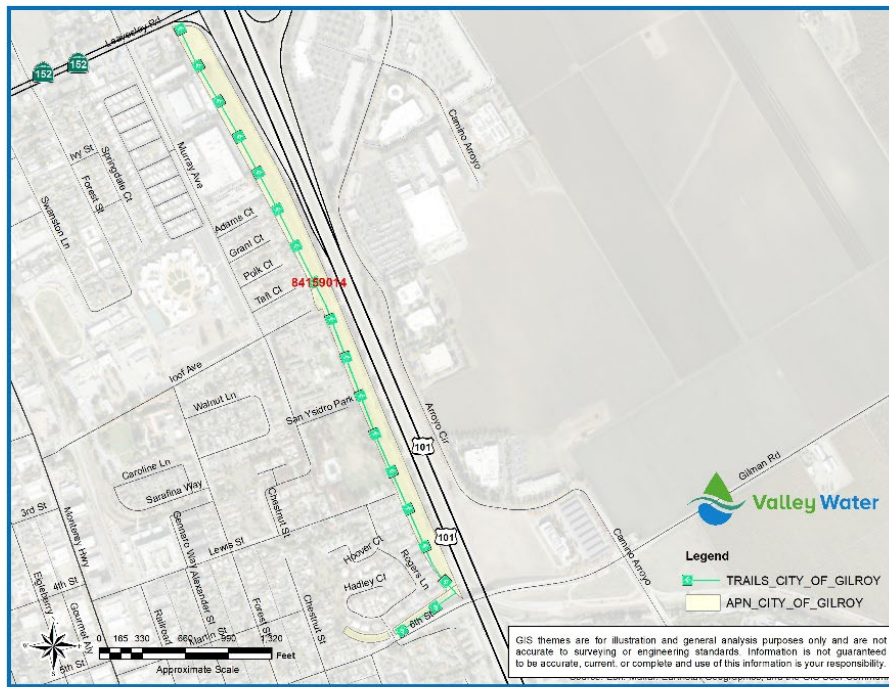


Exhibit #	Segment Name	Special Provisions
A.3	South Morey – Pedestrian Bridge at Channel Avezan Way and Gascony Court	City cannot provide any picnicking facilities on the Premises.

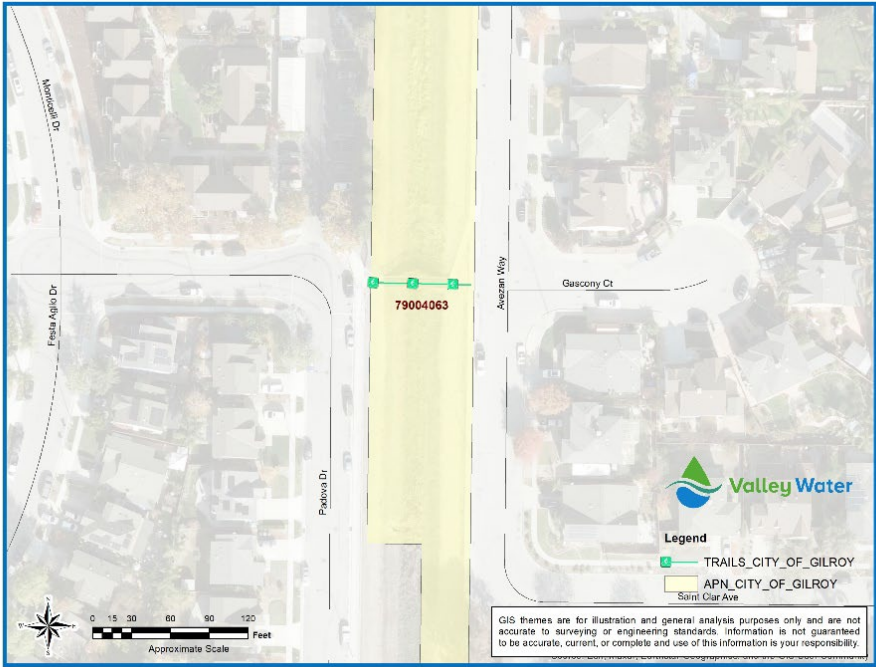
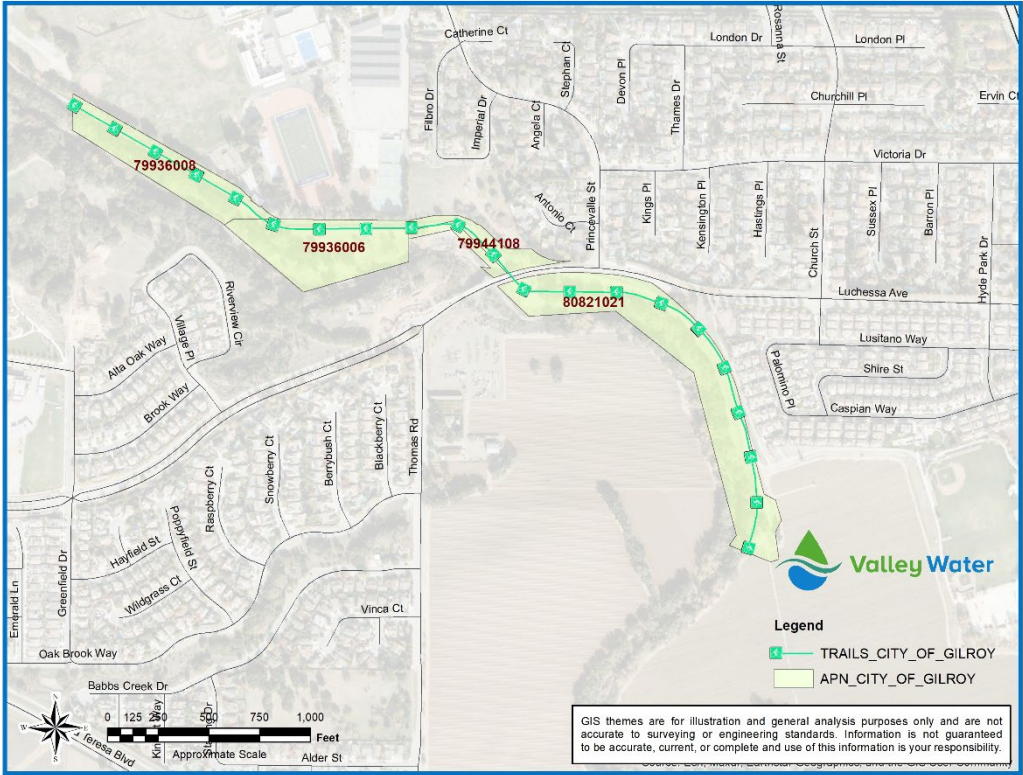


Exhibit #	Segment Name	Special Provisions
A.4	Lions Creek Trail - Pedestrian Bridge at Tapestry Drive and Cougar Court	- City cannot provide any picnicking facilities on the Premises. - Users of the Premises must not use the bridge to enter Lions Creek or make any fires on the Premises.

Document Name: Join Use Agreement MERGE

Exhibit #	Segment Name	Special Provisions
A.5	Uvas-Carnadero Creek Levee Top Trail	None



Document Name: Join Use Agreement MERGE

Exhibit #	Segment Name	Special Provisions
A.6	Lions Creek Trail from Kern Avenue to Tapestry Drive	- City needs to restrict public access to the Premises to daylight hours. - Public access on the Premises must only be passive in nature. - City cannot provide any picnicking facilities on the Premises. - Swimming, boating, rafting, and fires are prohibited on the Premises. - City must pave the trail and be responsible for repair and maintenance of any improvements made by City.

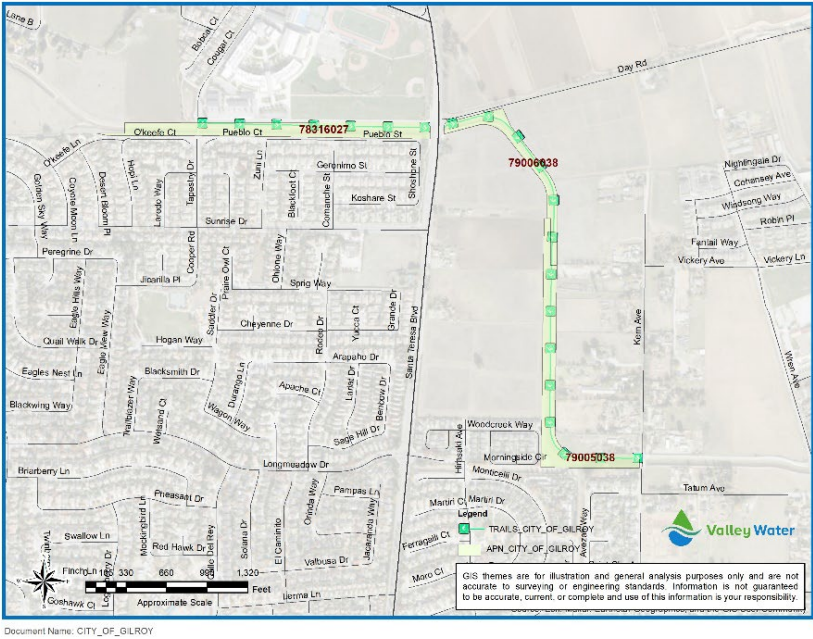


EXHIBIT B—CITY DETOUR MAPS FOR TRAIL CLOSURES

Valley Water will notify the City with prior notice for non-emergency construction work that necessitates trail closure as soon as reasonably possible. Valley Water and the City will coordinate the closure of the trail for public safety purposes should it be required for City's construction work, or operations and maintenance activities, or Valley Water's construction work, or operations and maintenance activities. City will notify Valley Water's Watersheds Operations and Maintenance Unit prior to work on the trail. City will be responsible for developing and communicating detour routes to the public. If the detour route differs from the one attached to this Agreement, City must provide Valley Water with a copy of the revised detour map.

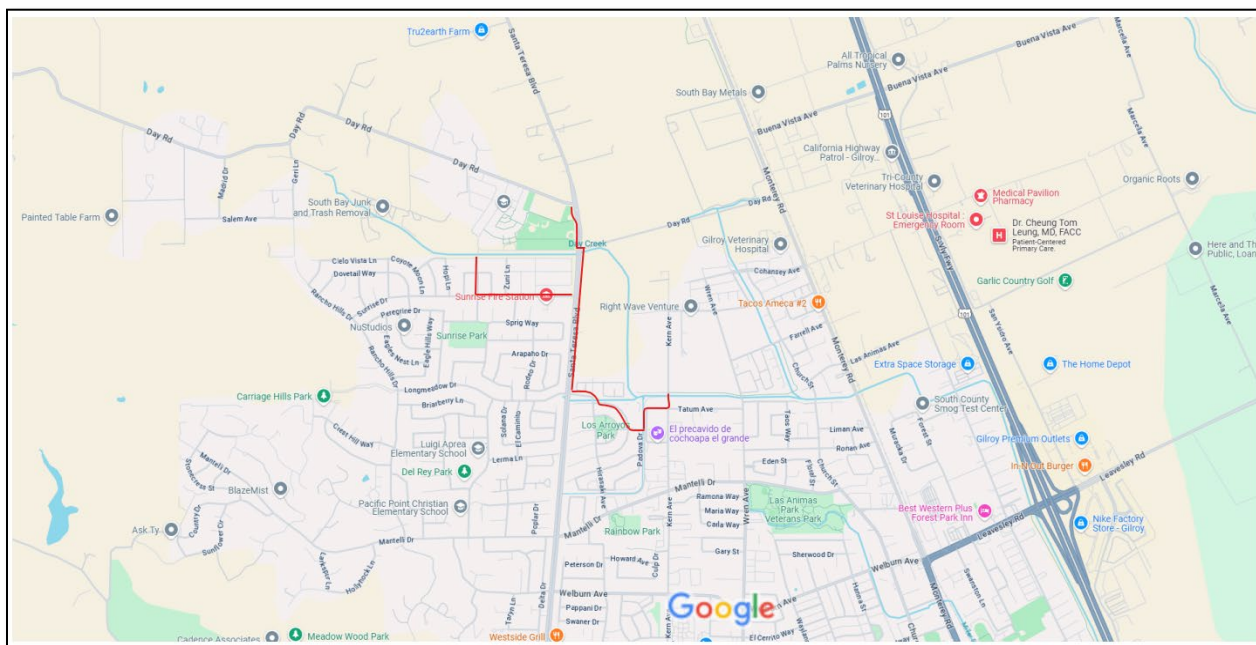


EXHIBIT C—PARTNER AGENCY TRAIL MAINTENANCE PLAN

1. Annual Trail Maintenance Activities:
 - a. Trail Brushing and Vegetation Management:
 - Ensure 90% clearance of weeds and branches within 5' on either side of the trail
 - Maintain 90% clearance of weeds and branches on paved portions
 - Prune trees to have a minimum eight- (8-) foot clearance above paved area
 - Remove any broken or hanging limbs greater than one (1) inch in diameter
 - Promptly remove cut branches and other debris from the Premises
 - b. Invasive Species Control:
 - Ensure 80% or more of landscaped areas are free of weeds and 100% free of overtaking vines
 - c. Pavement Maintenance:
 - Repair cracks, depressions, and potholes in paved portions of the trail
 - Ensure pavement is smooth and not crumbling or lifting
 - d. Drainage System Maintenance:
 - Ensure 80% of landscaped areas and 100% of paved areas are free of standing water two days after rain or two hours after irrigation
 - e. Hazardous Tree Removal:
 - Assess trees for hazards and remove as needed
 - f. Trail Surface Repair:
 - Address any surface quality issues on paved portions of the trail
 - g. Maintenance and Monitoring of Plantings:
 - Ensure 80% or more of plantings show no signs of death or damage
 - Monitor for appropriate size and shape of plants for their location
 - h. Trash and Graffiti Removal:
 - Remove litter and debris (no more than 10 pieces per 100' line of sight)
 - Empty trash receptacles before overflowing
 - Remove graffiti within 24-48 hours of observation
2. Maintenance Inspection Schedule:
 - Conduct weekly visual inspections of the trail
 - Perform detailed quarterly inspections of all trail features
 - Conduct annual comprehensive trail condition assessment
3. Trail Closure Action Plan:
 - Implement trail closures as required for Valley Water maintenance actions or during high creek flows
 - Use bicyclist and pedestrian detour routes as outlined in Exhibit B
 - Provide signage in advance of trail closures
4. Trail Security Responsibilities:
 - Conduct regular patrols of the trail
 - Respond to security concerns reported by trail users
 - Coordinate with local law enforcement as needed
5. Permits:
 - Maintain necessary permits for routine maintenance activities
 - Coordinate with Valley Water for any activities requiring additional permitting

EXHIBIT D - Joint Use Agreement Insurance Requirements

For purposes of this Exhibit, "Contractor" means any third-party entity engaged by the City to perform work on the Premises. If the City performs work using its own personnel, the City shall maintain equivalent insurance coverage as required herein per Section 20 of this Agreement.

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("Valley Water") and the City of Gilroy the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions as listed below.

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

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

document.

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

CERTIFICATES OF INSURANCE

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

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

The certificates will:

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

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

and

**City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020**

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

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

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

MAINTENANCE OF INSURANCE

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

RENEWAL OF INSURANCE

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

Contractor must 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**

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

REQUIRED COVERAGES

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

\$500,000 per occurrence/**\$500,000** aggregate limits for bodily injury and property damage.

\$500,000 Products/Completed Operations aggregate (to be maintained for at least three (3) years following acceptance of the work by Valley Water.

General Liability insurance must:

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

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

2. Business Auto Liability Insurance with coverage as indicated:

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

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

3. Workers' Compensation and Employer's Liability Insurance

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

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

GENERAL REQUIREMENTS

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

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

to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.

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

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CHECKLIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits (\$500,000)	
	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 (\$500,000)	
	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	

Exhibit D, Joint Use Agreement GL/AL \$500K/WC_11.26.2024

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