

**JOINT TRAILS PROJECT PLAN AND AGREEMENT  
FOR THE JOINT TRAILS PROJECT  
COYOTE CREEK TRAIL  
(Empire Street to Mabury Road)**

**BETWEEN  
THE CITY OF SAN JOSE  
AND  
SANTA CLARA VALLEY WATER DISTRICT**

THIS JOINT USE AGREEMENT (“Agreement”) entered into this 4th day of April, 2022, is made by and between the CITY OF SAN JOSE ("City"), a municipal corporation and SANTA CLARA VALLEY WATER DISTRICT ("Valley Water"), a Special District created by the California Legislature, concerning cooperative efforts and cost sharing to plan, design, construct, and maintain open space, trails and parks along creeks, improve water quality and riparian habitat. For purposes of this Agreement, the Joint Trails Project ("Project") shall include the trail through Watson Park from Empire Street to Mabury Road along Coyote Creek. This trail segment is defined in the Coyote Creek Trail Master Plan (Montague Expressway to Watson Park) approved by City Council on September 13, 2011.

**RECITALS**

WHEREAS, On January 21, 2003, Valley Water and City entered into a *Collaborative Action Plan and Agreement Between the City of San José and the Santa Clara Valley Water District<sup>1</sup> for the Development and Operation of Joint Trail-Related Projects*, (Valley Water Agreement No. A2648A and San José Agreement No. 624270 hereinafter referred to as "*Collaborative Agreement*"). The *Collaborative Agreement* establishes the framework for cooperative efforts in the planning, design, construction, and operation of trails and related recreational features on property located within the City and also provides for the development of trails projects in a manner that improves the water quality and riparian habitat of creeks and waterways. The *Collaborative Agreement* allows City and Valley Water to enter into a project specific *Joint Trails Project Plan and Agreement* setting forth the project specific planning, design, construction, operational and maintenance responsibilities of City and Valley Water.

WHEREAS, The City Manager and the Chief Executive Officer of Valley Water have established a Joint Trails Planning Team for the Project covered by this Agreement, under the direction of the Oversight Committee, which has been assigned the responsibility for developing this Agreement.

WHEREAS, The City Manager and the Chief Executive Officer of Valley Water have been authorized by the City Council and the Valley Water Board of Directors to approve *Joint*

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<sup>1</sup> “Santa Clara Valley Water District” is the official name of the Special District created by the California Legislature, and “Valley Water” is the new moniker to be used as a shorter reference (From Valley Water website article, February 2019).

*Trails Project Plans and Agreement* subject to funding availability, and appropriation of funds by City Council and Valley Water Board of Directors.

WHEREAS, The *Joint Trails Project Plan and Agreement* identifies project specific or unique requirements of the proposed Joint Trails Project related to its planning, design, and construction, maintenance, and security, marketing, education or volunteer components.

WHEREAS, This Agreement relates to certain real properties located along Coyote Creek between Empire Street and Mabury Road that are depicted in Exhibit 1, attached hereto and incorporated in this Agreement by this reference, which delineates Valley Water's and City's ownership rights of these real properties. The purpose of this Agreement is to allocate between Valley Water and City the necessary real property licensing rights and the responsibilities for the joint use of these real properties to ensure consistency with Valley Water's purpose of flood protection, water resource management, and stream stewardship; and City's interest of making property reasonably available to the public for certain recreational activities.

WHEREAS, Valley Water intends to complete a multi-phased flood protection project [Coyote Creek Flood Management Measures Project (CCFMMP) and Coyote Creek Flood Protection Project (CCFPP), collectively referred to as Coyote Creek Flood Projects] to implement flood improvements along Coyote Creek to protect against a 20-year flood event, similar to the one that inundated areas in San José in February 2017.

WHEREAS, The Coyote Creek Flood Projects' limits comprise approximately nine miles of Coyote Creek, between Montague Expressway and Tully Road, all within the City of San José.

WHEREAS, On February 20, 2020, the Federal Energy Regulatory Commission ordered Valley Water to reduce risks to public safety by implementing certain risk reduction measures for Anderson Dam operation related to the completion of the Anderson Dam Tunnel Project.

WHEREAS, Risk reduction measures had to be implemented along Coyote Creek before water was released from the completed Anderson Dam Tunnel, expected in December 2023.

WHEREAS, Valley Water identified approximately 40-percent of the Coyote Creek Flood Projects as satisfying these risk reduction measure needs and is implementing them as an accelerated flood management project, the CCFMMP.

WHEREAS, Completion of the CCFMMP will coincide with completion of the Anderson Dam Tunnel, by December 2023.

WHEREAS, Construction of the remaining 60-percent of the Coyote Creek Flood Projects, or the CCFPP, is expected to be completed by Fall 2025.

WHEREAS, The overall flood risk reduction objective of protecting areas of Coyote Creek against a flood event approximately equivalent to the February 2017 flood event will be met by the completion of both the CCFMMP and the CCFPP.

WHEREAS, City intends to construct its Project in advance of the Coyote Creek Flood Projects.

WHEREAS, Valley Water and City are entering into this Agreement to memorialize their respective understandings concerning their rights to use the other party's real property located along Coyote Creek and their maintenance obligations with respect to their respective existing and future improvements.

WHEREAS, because the Recreational Improvements will preclude Valley Water from utilizing Valley Water's real property for the construction of a portion of the Coyote Creek Flood Project, City intends to provide lands to support the Coyote Creek Flood Project equal in area to the Valley Water property being used for the project.

WHEREAS, City and Valley Water will enter into a separate agreement for other detailed considerations of the Coyote Creek Flood Projects.

**NOW, THEREFORE**, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the covenants and conditions of this Agreement, the parties hereby agree as follows;

## **SECTION 1. SUBORDINATION TO COLLABORATIVE AGREEMENT AND APPLICATION OF THIS AGREEMENT**

A. Except to the extent expressly provided herein, this Agreement shall be subordinate to and shall be governed by the provisions of the *Collaborative Agreement* and all of the terms and provisions of the *Collaborative Agreement* are deemed incorporated as though fully set forth herein. In the event of any ambiguity between the terms of this Agreement and the *Collaborative Agreement*, the provisions of the *Collaborative Agreement* shall control.

B. A Joint Trails Project is a project of mutual benefit to the parties and is a project that both parties agree shall be covered by the terms of the *Collaborative Agreement*, and by a *Joint Trails Project Plan and Agreement*. The elements of the Joint Trails Project covered by this Agreement are further specified in this Agreement.

## **SECTION 2. PROJECT SPECIFIC DEFINITIONS**

Terms used herein shall have the meanings set forth in either the *Collaborative Agreement* or if not defined in the *Collaborative Agreement* shall have the meanings set forth below,

A. **"Basic Cost Sharing and Division of Responsibility"** is defined in the *Collaborative Agreement*.

B. **"City Property"** shall mean the property identified as City Property on Exhibit I attached hereto, if any.

- C. **"Valley Water Property"** shall mean the property identified as Valley Water Property on Exhibit 1 attached hereto, if any.
- D. **"Environmental Improvements"** is defined in the Collaborative Agreement. For this Joint Trails Project, the Environmental Improvements are identified on Exhibit 2.
- E. **"Equitable Contribution"** is defined in the *Collaborative Agreement*.
- F. **"Joint Trails Project"** is defined in the *Collaborative Agreement*, and for this Agreement shall mean the Project named "Coyote Creek Trail (Mabury Road to Empire Street)", which the parties have mutually agreed to be a Joint Trails Project as further described in Exhibit 2 and which includes the Recreational Improvements identified in Exhibit 2 if any, and which also includes the Environmental Improvements identified on Exhibit 2, if any.
- G. **"Property"**, as used herein, shall mean the property identified on Exhibit 1, and shall mean collectively the Valley Water Property and City Property if the Joint Trails Project includes both types of property, as further identified on Exhibit 1.
- H. **"Recreational Improvements"** is defined in the *Collaborative Agreement*. For this Joint Trails Project, the Recreational Improvements are identified on Exhibit 2.

### **SECTION 3. TERM AND RIGHTS GRANTED**

A. **Valley Water Property:** Pursuant to the Joint Trails Project identified and described in Exhibit 2, and subject to the terms of this Agreement and the *Collaborative Agreement*, Valley Water hereby grants to City the following rights on the identified Valley Water Property for a period of twenty five (25) years: (i) the right to construct, operate and maintain the Recreational Improvements; and (ii) right of the public to use the Property and Recreational Improvements for recreational purposes. The term may be extended by mutual written agreement of both parties. This Agreement may be modified or terminated without cause by mutual agreement, evidenced in writing, executed by both parties. It may also be terminated for cause by either party as follows: if after the parties have followed the dispute resolution procedures set forth in the *Collaborative Agreement*, the parties have not reached agreement on an alleged material breach of this Agreement, then the non-defaulting party may provide notice of default to the other party, which notice shall specify the material breach. If the defaulting party has not cured the material breach within 30 days of the notice of default, or if the breach is not reasonably curable within 30 days, the non-defaulting party may deliver a written termination notice, with the termination effective sixty (60) days from the date of the termination notice. For the purposes of this Agreement, "cause" or "default" means material breach of the provisions of the Agreement.

B. **City Property:** Pursuant to the Joint Trails Project identified and described in Exhibit 2, and subject to the terms of this Agreement and the *Collaborative Agreement*, City hereby grants the following rights to Valley Water on the identified City Property for a period of

twenty-five (25) years: the right to construct, operate and maintain the Environmental Improvements. The term may be extended by mutual written agreement of both parties. This Agreement may be modified or terminated without cause by mutual agreement, evidenced in writing, executed by both parties. It may also be terminated for cause by either party as follows: if after the parties have followed the dispute resolution procedures set forth in the Collaborative Agreement, the parties have not reached agreement on an alleged material breach of this Agreement, then the non-defaulting party may provide notice of default to the other party, which notice shall specify the material breach. If the defaulting party has not cured the material breach within 30 days of the notice of default, or if the breach is not reasonably curable within 30 days, the non-defaulting party may deliver a written termination notice, with the termination effective sixty (60) days from the date of the termination notice. For the purposes of this Agreement, "cause" or "default" means material breach of the provisions of the Agreement.

#### **SECTION 4. EQUITABLE CONTRIBUTION TO THE JOINT TRAIL PROJECT EFFORT**

A. The parties shall comply with the Basic Cost Sharing and Division of Responsibility and shall look for opportunities for Equitable Contributions to the Joint Trails Project, as set forth in the *Collaborative Agreement*.

B. Exhibit 3 attached hereto and incorporated herein by reference, sets forth elements to be considered in evaluating equitable contributions, which lists Project elements that the parties shall review on an ongoing basis for each Joint Trails Project, to identify opportunities for increased efficiency or cost savings through an equitable contribution of costs or services, pursuant to Section 3.e. of the *Collaborative Agreement*.

C. If due to special circumstances the parties desire to modify the Basic Cost Sharing and Division of Responsibilities for this Joint Trails Project, the parties shall refer to such changes in Section 7 herein, entitled "Special Provisions" and the modified terms shall be set forth in detail in Exhibit 4. In such event, the terms of Section 7 and Exhibit 4 shall modify the Basic Cost Sharing and Division of Responsibilities of this Section 4 of this Agreement.

#### **SECTION 5. PERMITS**

A. The permits identified in Exhibit 5 (as it may be amended by the parties), if any, shall be issued by the identified party hereto or must be obtained from a third party by the identified party, prior to the construction of the Joint Trails Project:

B. The Joint Trails Team shall work cooperatively to identify applicable permits, coordinate permit applications to the extent feasible, and to streamline permitting processes, for any construction, maintenance or operational activities on the Joint Trails Project.

#### **SECTION 6. DISPUTES**

Any disputes shall be addressed pursuant to the terms of the Collaborative Agreement.

#### **SECTION 7. SPECIAL PROVISIONS**

Special provisions are set forth in Exhibit 4 attached hereto and incorporated by reference.

## **SECTION 8. NOTICES**

Any and all notices required to be given hereunder shall 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 of San José,  
Department of Parks, Recreation and  
Neighborhood Services  
200 East Santa Clara Street, 9th Floor  
San José, CA 95113  
Attention: Jon Cicirelli, Director

With a copy to Deputy Director,  
Capital Projects Division.

Valley Water  
5750 Almaden Expressway  
San José, CA 95118  
Attention: Clerk of the Board

With a copy to Deputy Operating Officer,  
Operations and Maintenance Division.

## **SECTION 9. AMENDMENTS**

A. The parties anticipate that the Exhibits to this Agreement shall be revised or amended from time to time by mutual written agreement of the parties as the Project progresses through the planning, design, construction, operation and maintenance stages of the Joint Trails Project. These amendments are intended to more accurately and completely describe the Joint Trails Project as it develops.

B. Nothing herein shall require an amendment to this Agreement to document each and every issue related to the Joint Trails Project. The Oversight Committee may determine an alternative means of preserving the record related to a Joint Trails Project, with the intent of clearly recording the intention of the parties.

## **SECTION 10. EXHIBITS**

The following Exhibits are attached hereto and incorporated herein in full. The Exhibits may be amended or updated by mutual agreement of the parties in writing.

**Exhibit 1** - Property Description of City Property and Valley Water Property

**Exhibit 2** - Description of Joint Trails Project, including description of Recreational Improvements and Environmental Improvements

**Exhibit 3** - Equitable Contribution to Joint Trails Project

**Exhibit 4** - Special Provisions

**Exhibit 5** - Permits

**Exhibit 6** - Operations and Maintenance Plan

## **SECTION 11. COUNTERPARTS**

This AGREEMENT may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument. Delivery of an executed counterpart of a signature page by email or facsimile transmission shall be effective as delivery of a manually executed originally signed counterpart. Unless otherwise prohibited by law or policy of either Party, the Parties agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term “electronic copy of a signed agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term “electronically signed agreement” means an agreement that is executed by applying an electronic signature using technology approved by both parties.

**IN WITNESS WHEREOF**, the Parties have executed the AGREEMENT the day and year set forth above.

**CITY:**

CITY OF SAN JOSE,  
a California municipal corporation

By:   
SARAH ZARATE Director of Administration, Policy &  
Intergovernmental Relations

Date: 4/4/22

**APPROVED AS TO FORM:**

  
JON CALEGARI  
Deputy City Attorney

**VALLEY WATER:**

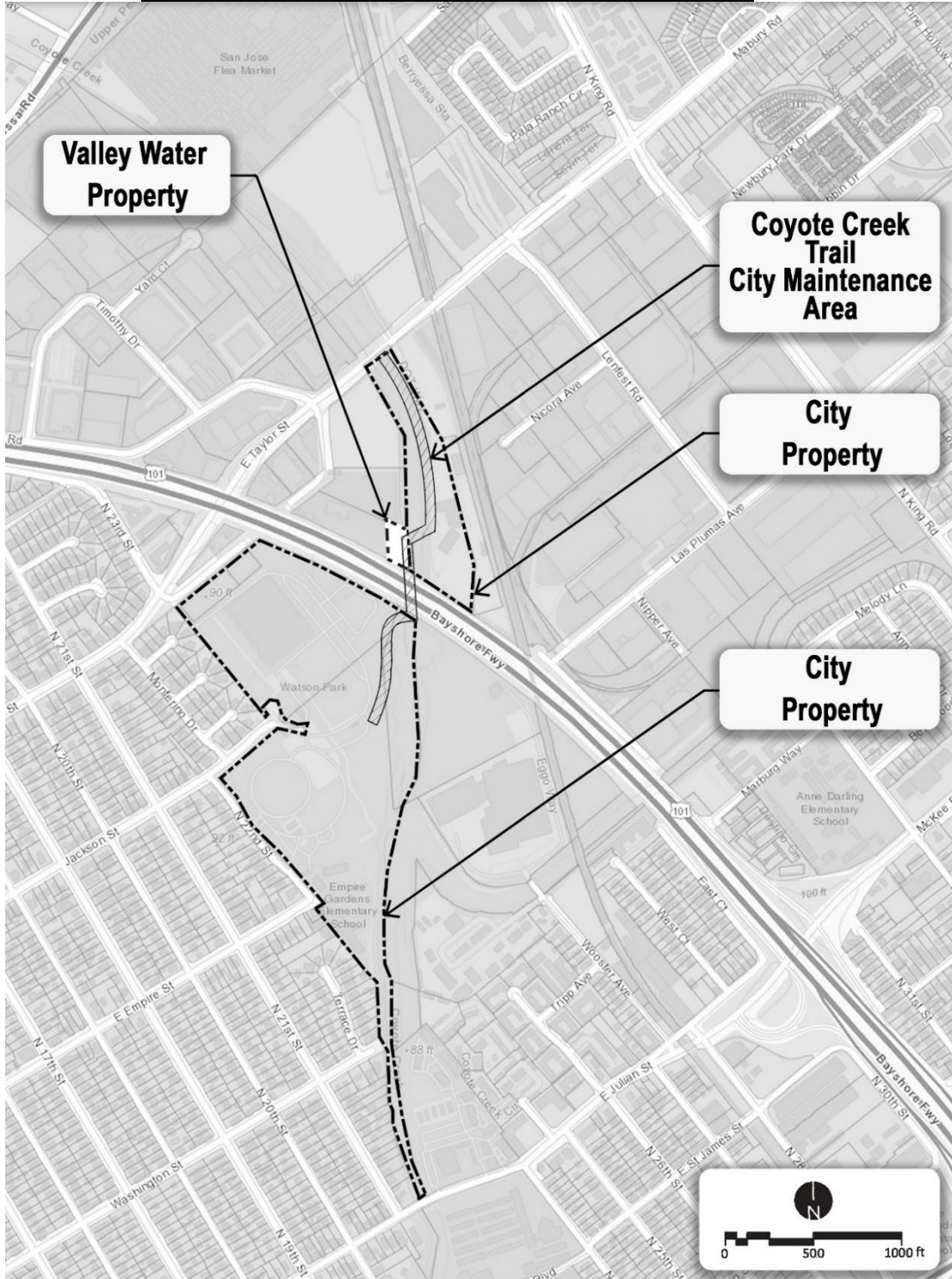
SANTA CLARA VALLEY WATER DISTRICT,  
a special district

By:   
RICK J. CALLENDER, ESQ.  
Chief Executive Officer

Date: 3/30/22



**EXHIBIT 1**  
**CITY PROPERTY DESCRIPTION (City Property in Vicinity of the Project)**  
**VALLEY WATER PROPERTY DESCRIPTION**  
**Coyote Creek Trail: Mabury Road to Empire Street**



\*: Property boundaries are based on the Santa Clara County Parcel GIS Map as of 4/19/2021.

**EXHIBIT 2**  
**DESCRIPTION OF ELEMENTS OF THE JOINT TRAILS PROJECT**

1. **Recreational Improvements:** shall mean all of the following, as defined below:
  - 1) 12-foot to 16-foot wide concrete/asphalt paved trail, including shoulders;
  - 2) Rock Slope Protection;
  - 3) Trail Lighting Fixtures;
  - 4) Concrete Retaining Wall;
  - 5) Trail Pedestrian Bridge Structure; and,
  - 6) Miscellaneous Trail Appurtenances, including but not limited to, trail embankments, trail retaining walls, rock rip rap slope protection installed as part of trail improvements, outfalls, rock drainage swales, and all improvements installed by City as shown on City's trail improvement plans.
  
2. **Existing Valley Water Improvements:** No improvements exist at the time of this agreement execution.
  
3. **Flood Protection Project:** At the time this agreement is being developed, Valley Water is designing flood protection improvements along Coyote Creek. The future floodwall for Phase 1 improvements (west bank of the creek, north of Highway 101) is planned for construction during Fiscal Years 2023-2024 with completion anticipated in December 2023. The future floodwall for Phase 2 improvements (east bank of the creek, north of Highway 101) is planned for construction during Fiscal Years 2024-2025 with completion anticipated in December 2025. Valley Water agrees to communicate with City on a regular basis as flood protection improvements are designed and constructed. Valley Water agrees to preserve the continuity of a trail system as improvements are developed. The pedestrian bridge's soffit elevation is 4' above the FEMA 100-year water surface elevation. Design and flood modeling was based on the FEMA Letter of Map Revision (LOMR) Number 10-09-3074P (01/05/2018) Model of Coyote Creek, Empire Street to Mabury Road. The Parties recognize that future flood protection improvements other than those currently planned may be planned or implemented during the term of this agreement or as amended.
  
4. **Signage:** City or Valley Water may install interpretive signage and any regulatory signage pertaining to the facilities at a later date.
  
5. **Environmental Improvements:** No environmental improvements have been identified or will be installed at this time.
  
6. **Master Plans:** The Coyote Creek Trail Master Plan (Montague Expressway to Watson Park) was approved by City Council on September 13, 2011 by Resolution No. 75982.

7. **CEQA:** The Mitigated Negative Declaration prepared for the Coyote Creek Trail Master Plan (PP09-218) was approved by City Council as part of approving the Master Plan on September 13, 2011 by Resolution No. 75982.
8. **Mitigation:** Mitigation measures were identified through a CEQA clearance process and the Project shall be built in compliance with the requirements. City will provide off-site mitigation with 71 trees in floodplain and 353 on the bank spread approximately 1 ½ acres along Coyote Creek near Happy Hollow Park & Zoo. (APN: 477-10-001, 477-12-028). City agrees to maintain the plantings in the mitigation area to ensure the trees do not spread beyond the planting area shown on MP-1 of the 8087-Trail: Coyote Creek (Mabury Road to Empire Street) plans dated 01/12/2022. Additionally, City shall remove new volunteer trees within the planting area often enough to prevent them from reaching 6” dbh.
9. **Rights-of-Way:** The lands necessary for construction of the Joint Trails Project's Recreational Improvements are under ownership of City, State of California Department of Transportation (Caltrans), a private party (EFUEL INVESTMENTS SAN JOSE LLC) and Valley Water.
  - Valley Water holds fee title of its lands.
  - City holds fee title of its lands.
  - State of California Department of Transportation (Caltrans) holds fee title of its lands and City has or will obtain prior to construction an encroachment permit for construction of the Recreational Improvements located on State land.
  - Private party (EFUEL INVESTMENTS SAN JOSE LLC) holds fee title of its lands and City has or will obtain prior to construction a Temporary Construction Easement for ingress and egress purposes to construct Recreational Improvements adjacent to the private land.
10. **Permits:** The permits necessary to construct, maintain and operate the trail shall be acquired by City and are listed in Exhibit 5.
11. **Project Design:** Project design was completed by City staff and Jacobs Engineering Group, Inc. under contract to City.

### **EXHIBIT 3**

## **EQUITABLE CONTRIBUTION TO JOINT TRAILS PROJECT**

#### **Elements To Be Considered in Evaluating Equitable Contributions**

The following elements for consideration as Equitable Contributions are extracted from Section 3.c. and 3.d. of the *Collaborative Agreement*; they include:

- Mapping
- Design
- Permits
- Fundraising
- Maintenance
- Emergency Response and Security
- Marketing
- Education
- Volunteers

It is important that all elements are considered in evaluating the opportunities for Equitable Contribution by the parties to the Joint Trails Project. Equitable Contribution levels may be considered on project-by-project, year-by-year, or program-by-program basis on joint trails projects, as determined appropriate by the Oversight Committee.

Equitable Contributions shall be identified per Section 2 of the *Collaborative Agreement*:

"Equitable Contribution means the reasonable cost of services contributed to a Joint Trail Project by one party, to perform work that would otherwise be the responsibility of the other party to this Agreement. An Equitable Contribution shall be mutually agreed in advance by both parties hereto. The parties both desire to look for opportunities for equitable contributions of services to each Joint Trails Project throughout the term of the Joint Trails Project, with the goal of achieving improved efficiency and/or cost savings. Each party agrees on an annual basis to reconcile the Equitable Contributions made by each party to all of the Joint Trails Projects, as further provided in section 3.e. hereto."

The initial equitable contribution plan signifies the proposed Equitable Contributions of each party during the first year of the term of the Joint Trails Project Plan and Agreement, if any.

City's contribution toward Recreational Improvements (see Exhibit 2) benefits Valley Water, City and the community at large.

- City has secured a \$5,256,000 Active Transportation Program (ATP) grant to fund the design and construction of the project.
- City is contributing \$3,927,600 toward the design and construction of the Joint Trails Project.
- Valley Water is contributing 27,500 SF of land. City's use of this land is not covered by the CAP and Parties agree through this agreement that City will identify 27,500 SF of City owned land for use by Valley Water for mitigation and flood control purposes

associated with and in locations that benefit the CCFPP. This transaction will be documented as part of the agreement that will be needed to facilitate construction of the CCFPP elements that are proposed on City land.

Valley Water's contribution towards development of the Recreational Improvements benefits City and the community at large, while supporting a partial improvement for Valley Water to access the site. Valley Water lands contributed represent significant public value and are essential open space assets and space to construct the pedestrian bridge that benefit both City and the community at large. The land provided for public access and open spaces substantially reduces City's right-of-way acquisition costs for the proposed Project. This Joint Trails Project helps Valley Water achieve its policy of providing appropriate and equal public access to Valley Water's streamside and watershed lands.

City's use of Valley Water land for the Project will negatively impact the CCFMMP by limiting its floodwall alignment options, restricting design alternatives, losing use of Valley Water property for CCFMMP mitigation purposes and potentially requiring additional right-of-way acquisition. Also, the Project may impact the CCFMMP contractor's means and methods for daily construction activities.

City shall repair at its expense damage to or removal of City Improvements on Valley Water Property that may result from construction of Valley Water improvements. Valley Water will take measures to minimize or avoid damage to the trail improvements from their work.

Despite the aforementioned challenges, Valley Water is committed to working collaboratively with City to ensure equal public access to recreational opportunities along Coyote Creek.

**EXHIBIT 4**  
**SPECIAL PROVISIONS**

1. **Property Use:** Use of the Property shall be restricted to daylight hours.
  
2. **Prohibited Uses:** City shall post notices if notices do not currently exist on the trail entrances that notify the public that the following is prohibited on Valley Water Property encompassing the trail. These prohibitions do not extend to City's adjacent park.
  - Entry of motor vehicles
  - Unleashed dogs
  - Swimming
  - Picnicking
  - Fires
  - Horseback riding

City's Police Department shall be the contact for calls regarding illegal activity and/or trespassing.

4. **Further Appropriation Necessary:** Nothing in this Agreement binds City to appropriate funds in excess of the currently appropriated funding set forth in Exhibit 3, for costs related to the planning, design, construction, maintenance or operation of the Joint Trails Project. City and Valley Water acknowledge that each party is subject to the constitutional debt limitation further described in Section 7 of the Collaborative Agreement. However, during Valley Water and City's annual budget process, the Director of PRNS and Valley Water's Chief Executive Officer shall propose budgets that request that City Council and Valley Water's Board of Directors, respectively, appropriate funding sufficient to cover each entity's portion of the mutually agreed upon maintenance duties, operation and management activities associated with this Agreement.
  
5. **Equitable Contribution:** The parties shall follow the Basic Cost Sharing and Division of Responsibility as defined in the Collaborative Agreement unless the parties mutually agree otherwise. The parties shall enter into written amendments to this Agreement to identify any mutually agreed upon areas of Equitable Contribution.
  
6. **Water Quality Protection:** All proposed Recreational Improvements shall include a Storm Water Pollution Prevention Plan (SWPPP), which is adequate to protect the creek from construction related impacts. The SWPPP shall include silt and erosion control measures to prevent construction materials, sediments, or wastes from directly or indirectly entering the creek. The Project specifications include a requirement for the implementation and maintenance of a SWPPP. City shall be responsible for preparation and implementation of the SWPPP.
  
7. **Pre-Construction:** City shall notify Valley Water of the pre-construction meeting for the proposed Project a minimum of 10-days in advance, Notification shall be made in writing to Valley Water's Community Projects Review Unit.

8. **Construction Inspection:** City shall be responsible for inspection of the Project during construction to ensure that the Project meets the construction specifications. Valley Water shall conduct additional inspections as part of the proposed trail Project in accordance with the provisions of the Valley Water permit. These inspections are separate from City's inspection process and are intended to confirm that the improvements are constructed as approved by Valley Water.
9. **Permit Conditions:** Valley Water shall be responsible for compliance with all aspects of the conditions set forth in the Permit(s) issued to Valley Water, if any. City shall be responsible for compliance with all aspects of the conditions set forth in the Permits issued to City, if any.
10. **Construction:** City shall be responsible for construction of the trail and all other Recreational Improvements. Valley Water shall be invited to attend the final inspection and City shall provide written notice to Valley Water's Community Projects Review Unit at least 10-days in advance of the meeting.
11. **Opening Ceremonies:** City shall invite Valley Water to participate in any opening ceremonies. City shall provide at least a 45-day advance notice of any ceremonies. City shall provide opportunities for Valley Water Board of Directors to speak during the opening ceremonies.
12. **Future Construction:** Future construction or modification of the Recreational Improvements and Environmental Improvements, as stated in Exhibit 2 by City within the Valley Water Property shall require Valley Water approval through the issuance of a Valley Water permit, as stated in Exhibit 5. Construction by Valley Water on City Property shall require prior written approval from City. Amendments to this Agreement shall be limited to major new construction projects on the property covered herein.
13. **Coyote Creek Flood Projects Construction:** As described in Exhibit 2, Valley Water has identified the need for a flood protection element and is moving forward with design. There is a potential need to remove and relocate trail improvements depending on the scope of the flood protection project. Valley Water shall seek to minimize impacts to the trail and associated improvements as the flood protection project is developed.

Should future removal of trail improvements be required, Valley Water shall work with City to ensure that new flood protection improvements do not preclude a continuous trail alignment for recreational use. Continuity of the trail would be preserved by Valley Water but the replacement trail may not necessarily be along the same alignment. Both Parties agree that a replacement trail shall be off-street to the maximum extent possible.

Valley Water and City have coordinated regarding the design of the pedestrian bridge. If in the future, flooding issues arise within the vicinity of City's pedestrian bridge, City and Valley Water agree to collaborate early to identify solutions that will not necessitate the removal of the pedestrian bridge. Solutions may include, but are not limited to, City

offsetting the cost of any alternative flood protection measures needed to accommodate or avoid removal of the bridge. Should future work on the pedestrian bridge partially located on Valley Water Property be required, City shall bear the cost of any removal, relocation, reconstruction, or modification of the bridge. The decision to modify the bridge or offset the cost of flood protection measures shall be made by mutual agreement between both Parties.

Additionally, City shall be responsible for any impacts to the flood protection elements as a result of any future modifications to the pedestrian bridge.

The trail and pedestrian bridge are funded through the Federal Active Transportation Program (ATP) grant, which requires that ATP funded components of the grant remain in place for at least 20 years. The specified grant language states: “All facilities constructed using ATP funds cannot revert to non-ATP use for a minimum of 20 years or its actual useful life as documented in the project application, whichever is less, without approval of the Commission.”

Additionally, the Valley Water parcel (APN 254-01-018) is 27,500 sf (per GIS). City recognizes that this trail alignment necessitates loss of use of the 27,500 sf to Valley Water as a result of construction of bridge, trail approach and appurtenant features. City’s use of this land is not covered by the CAP and Parties agree through this agreement that City will identify 27,500 sf of City owned land for use by Valley Water for mitigation and flood control purposes associated with and in locations that benefit the CCFPP. This transaction will be documented as part of the agreement that will be needed to facilitate construction the CCFPP elements that are proposed on City land. The Parties agree that this situation is unique to this project and does not serve as precedent for City to purchase land in the future to meet Valley Water’s mitigation needs.



**EXHIBIT 5  
PERMITS**

| <b>Type of Permit</b>                               | <b>Party Responsible for Obtaining Permit</b> | <b>Issuing Agency</b>                              |
|-----------------------------------------------------|-----------------------------------------------|----------------------------------------------------|
| 1. Notification of Lake or Streambed Alteration     | City of San José                              | California Department of Fish & Wildlife           |
| 2. Section 401 Water Quality Certification or Waver | City of San José                              | Regional Water Quality Control Board               |
| 3. Regional General Permit #18                      | City of San Jose                              | USACE                                              |
| 4. Santa Clara Valley Habitat Plan                  | City of San Jose                              | Santa Clara Valley Habitat Agency                  |
| 5. Encroachment                                     | City of San José                              | California Department of Transportation (Caltrans) |
| 6. Encroachment                                     | City of San José                              | Santa Clara Valley Water District (Valley Water)   |

**EXHIBIT 6**  
**OPERATIONS AND MAINTENANCE PLAN**

1. **Inspection:** Joint annual inspections shall occur between City's Department of Parks, Recreation and Neighborhood Services and Valley Water's Watershed Operations and Maintenance staff. Inspections shall identify maintenance activities by type (preventative, corrective, or capital), the party responsible for making the repair, and a preliminary repair schedule. Funding for any repairs shall rest with the party identified to perform the repair
2. **Trash and Litter Removal:** City shall be responsible for trash receptacles and rubbish removal as necessary on the Property.
3. **Debris Removal:** Valley Water, at its discretion, shall remove debris on Valley Water Property deposited in the channel to maintain integrity of the flow conveyance.
4. **Fence Repair:** Valley Water shall be responsible for fence repair (typically chain link) and replacement of fencing located at the external property line(s) of the Valley Water Property, as it deems necessary, except for privately owned fencing. City shall be responsible for fence repair and replacement of fencing that has been installed as an element of the Joint Trails Project.
5. **Vegetation Management:** Valley Water shall be responsible for vegetation management on Valley Water Property, excluding areas encumbered by City Recreational Improvements, necessary for fire control and flood protection Regulatory permit conditions do not allow management for aesthetics in riparian areas. City shall be responsible for weed control in landscaped areas installed by City as a portion of the Joint Trails Project. City shall be responsible for weed control in mitigation areas required for the Joint Trails Project improvements. Weed management activities conducted for aesthetics by City on Valley Water Property shall comply with regulatory permit requirements and Valley Water pesticide and herbicide use requirements.
6. **Channel Embankments:** City shall be responsible, subject to a Valley Water issued encroachment permit for construction, for channel embankment repairs associated with a natural flood event that directly affect the embankment at the pedestrian bridge or other trail improvements on Valley Water Property.
7. **Trail Closures:** Valley Water shall provide advance notice to City of any maintenance work within Valley Water Property along this Joint Trails project. Valley Water shall notify City's Department of Parks, Recreation and Neighborhood Services (Trail Program) should closures be necessary. City shall initiate the closure of the trail for public safety purposes should it be required for maintenance and operation of the creek.

City shall notify the Watersheds Operations and Maintenance Division of Valley Water prior to maintenance work on the portion of the trail and bridge located on Valley Water lands.

8. **Landscaping/irrigation:** City shall be responsible for maintenance and irrigation of landscape improvements and mitigation installed by City as part of the Joint Trails Project.
9. **Trail Surfacing Repair:** City shall have responsibility for maintenance and replacement of trail pavement and subgrade. Valley Water shall take reasonable care to prevent unnecessary damage to trail pavement, trail shoulders, and aggregate base during heavy equipment operations. Valley Water shall be responsible for the maintenance and repair of Valley Water maintenance roads and access roads to a standard acceptable for Valley Water's maintenance purpose. If City desires an enhanced level of maintenance of Valley Water's maintenance roadway for trail purposes, then City shall be responsible for such additional maintenance.
10. **Graffiti Removal:** City shall include the Joint Trails Project in its ongoing graffiti abatement program. Request for graffiti removal can be made by calling City's Department of Parks, Recreation and Neighborhood Services' Anti-Graffiti Program at 408-277-2758 or City's general information number at 408-535-5300. Valley Water shall include graffiti removal on flood protection infrastructure in its Good Neighbor Maintenance Program.
11. **Pioneered Trails:** City and Valley Water shall meet and confer to determine the need for fencing or other protective measures on a trail project whenever the public pioneers unauthorized trails. City shall have primary responsibility for installing and maintaining measures that deter off-trail uses. Valley Water shall have the discretion of installing at its sole cost unless otherwise agreed by City, any additional measures to control public ingress or egress that may be necessary to protect environmentally sensitive areas or facilities on Valley Water Property.
12. **Vandalism:** City and Valley Water will inspect acts of vandalism on their respective properties. City shall be responsible for making the necessary repairs to the Recreational Improvements.
13. **Memorials:** City shall not allow the installation of memorial plaques, benches, or signage along the trail on Valley Water lands without the express written permission from Valley Water. Valley Water is reluctant to allow the proliferation of such material since the trail improvements are intended as natural environmental experiences. Valley Water may consider a common memorial location at trailheads with designated parking.
14. **Mitigation/Revegetation Protection:** Either party shall have the right to protect their respective mitigation or revegetation sites, if any, from incursion, and may install at their cost temporary fencing to prevent foot and bicycle traffic from damaging installed vegetation. City shall consult with the Valley Water on the location, height, or replacement of fencing installed by City pursuant to this paragraph, prior to installation.
15. **Trail Access and Gates:** Trail access shall be limited to those locations that are identified in the plans and specifications for the Joint Trails Project. City and Valley Water shall

have the right, at their own respective cost unless otherwise agreed, to take measures to secure unauthorized access points.

16. **Funding:** Incurring fiscal obligations for the aforementioned maintenance activities shall not occur until separate trail maintenance budgets are adopted, and funds are appropriated by both City and Valley Water.
17. **Respective Operations:** Valley Water shall manage and oversee existing Valley Water Improvements, as defined in Exhibit 2. City shall manage and oversee Recreational Improvements of the Joint Trails Project, as defined in Exhibit 2.
18. **Trail Security:** City shall provide police and fire response consistent with that provided throughout City using the 911 Emergency Response Program.
19. **Community Events:** City and Valley Water shall notify each other a minimum of 10 days in advance of any community event that requires use of the trail and open space. A Valley Water or City permit, as appropriate, and proof of insurance may be required for the activity or event and the sponsor shall be informed of this requirement.
20. **Public Complaints:** As the primary property owner within this section of trail, City shall be responsible for addressing public complaints related to the creek or trail use. Calls shall be referred to City's Department of Parks, Recreation and Neighborhood Services (Trail Program). In the event of maintenance or construction that is anticipated to close the facility for a prolonged period of time, the agency responsible for that work shall post signage with its telephone number to receive questions and complaints from the public.
21. **Flood Events:** In the event of anticipated high water that threatens public safety, City shall have the primary responsibility to provide public notice to the trail users of the threat to public safety and close the trail as necessary. In the event it is necessary for City or Valley Water to take emergency actions, notification may be made after the actions have been taken.
22. **Public Art:** None
23. **Maintenance and Repair:**  
Valley Water shall be responsible for the maintenance and repair of:
  - Existing flood protection and water management facilities on the Valley Water Property.City shall be responsible for the maintenance and repair of Recreational Improvements including:
  - Elements installed as described in Exhibit 2.City shall be responsible for the repair of any damage caused to Valley Water Property as a result of City maintenance activities.

24. **Miscellaneous**: Uses of the Valley Water Property other than recreation may require separate permit prior to the activities taking place.
25. **Valley Water Use of City Property**: City agrees to allow Valley Water maintenance access along the trail through Watson Park and Mabury Road.



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Stephanie Duran  
EMAIL: Stephanie.Duran@Sanjoseca.gov

## SCANNED SIGNATURE AUTHORIZATION

DATE: 3/30/22

TOTAL PAGES:  
(INCLUDING THIS PAGE) 22

TO: Rick Callender

TO: \_\_\_\_\_

EMAIL: rcallender@valleywater.org

EMAIL: \_\_\_\_\_

PHONE: (408) 630-2017

PHONE: \_\_\_\_\_

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: \_\_\_\_\_

### DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

### To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

- TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
 Dept. (circle one)

- Insurance Certificates / Waivers  Electronically Signed: Yes  
Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667560-000

Contractor: Santa Clara Valley Water District

Address: 5750 Almaden Expressway San Jose, CA 95118

Phone: \_\_\_\_\_

Email: julianneobrien@valleywater.org

Contract Description: The purpose of this Joint Trail Agreement defines the rights and responsibilities for joint use of City trail on Valley Water land.

Term Start Date: Upon Execution Term End Date: 3/31/2047 Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: NA Date Conducted: NA

Agenda Date (if applicable): NA Agenda Item No.: NA

Resolution No.: NA Ordinance No.: \_\_\_\_\_

Original Contract Amount: NA Amount of Increase/Decrease: 0

Option #: \_\_\_\_\_ of \_\_\_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: NA

Fund/Appropriation: N/A

Form 700 Required (Selection mandatory for processing): N/A Revenue Agreement: No

Tax Certificate No.: NA Expiration Date: NA

Department: PRNS (64)

Department Contact: Beth Tidwell or Stephanie Duran Customer (Finance Only): \_\_\_\_\_

Please copy: PRNScontracts@sanjoseca.gov

Notes: DB#647156

Department Director Signature: \_\_\_\_\_  On behalf of Jon Cicirelli \_\_\_\_\_ 04/04/2022  
Date

Office of the City Manager Signature: \_\_\_\_\_  
Date

Jessica Lowry 4/4/22