

**COST SHARING AGREEMENT BY AND BETWEEN  
THE CITY OF SUNNYVALE AND  
THE SANTA CLARA VALLEY WATER DISTRICT  
FOR CONSTRUCTION OF A JOINT WALL**

This Cost Sharing Agreement (“AGREEMENT”), dated for reference purposes on \_\_\_\_\_, 2025, is by and between the CITY OF SUNNYVALE (“CITY”), a California chartered municipal corporation, and the SANTA CLARA VALLEY WATER DISTRICT (“VALLEY WATER”), a special district created by the Legislature of the State of California. CITY and VALLEY WATER may be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

WHEREAS, CITY is currently undertaking its Cleanwater Program (“Program”) for the reconstruction of the Water Pollution Control Plant. One of the projects within the Program is titled SCWP Existing Plant Rehabilitation – Split Flow (“CITY PROJECT”), which is divided into three construction packages, the second of which is the construction of a perimeter wall; and

WHEREAS, VALLEY WATER is currently undertaking its Sunnyvale East and West Channel Flood Protection Project (“VALLEY WATER PROJECT”), which will involve the construction of a West Channel flood wall, a portion of which runs adjacent to the CITY PROJECT’s perimeter wall; and

WHEREAS, it is in the public’s best interest to achieve the economic benefits and efficiencies resulting from combining the design and construction of the Parties’ respective public improvement projects; and

WHEREAS, the Parties shall share the cost of design, construction, and maintenance of a joint wall (“JOINT WALL PROJECT”) in place of a portion of the Parties’ respective public improvement projects in accordance with the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties hereto agree as follows:

**AGREEMENT**

**1. DEFINITIONS**

For the purposes of this AGREEMENT:

1. The term “Construction-Phase Costs” shall mean those costs paid to the CITY’s contractor and construction management consultant identified in the final awarded bid and schedule of values as directly related to the construction of the JOINT WALL PROJECT.

2. The term “Engineering Costs” shall mean those costs paid to the CITY’s design consultant for all professional services attributable to the planning, design, and engineering services performed for the construction of the JOINT WALL PROJECT.
3. The term “Program Management Costs” shall mean those costs paid to the CITY’s program management consultant for all professional services attributed to the coordination, planning, and third-party review performed for the construction of the JOINT WALL PROJECT.
4. The term “JOINT WALL PROJECT” shall mean that work for the construction of the length of a single wall, approximately 1,100 feet in length, bordering the Water Pollution Control Plant and Sunnyvale West Channel; serving the dual function of flood protection (non-tidal flooding) for residents and businesses adjacent to the Sunnyvale West Channel and flood protection/perimeter security for the Water Pollution Control Plant; and bounded on each end as set forth in Exhibit B, attached and incorporated herein by this reference.
5. The term “Unexpended Funds” shall mean the portion of moneys remitted by VALLEY WATER to the CITY for the JOINT WALL PROJECT that, as of either the termination of the AGREEMENT or the completion of the JOINT WALL PROJECT, have not been committed by binding third-contracts or spent in good-faith performance of the JOINT WALL PROJECT, together with any interest actually earned thereon.

## **1. DESCRIPTION OF PROJECT SITE**

The Sunnyvale West Channel portion of VALLEY WATER’S PROJECT extends from San Francisco Bay to Inverness Way, approximately 3.0 miles in length. The CITY PROJECT requires construction of a flood control perimeter wall around the Water Pollution Control Plant. The area of the JOINT WALL PROJECT will be approximately 1,100 feet in length as also shown more specifically in Exhibit A.

## **2. SCOPE OF WORK**

- 2.1 CITY shall perform the following:
  - 2.1.1 Administer, design, and contract for the construction of the JOINT WALL PROJECT described in Section 1 above, and coordinate with appropriate local, state, federal, and regulatory agencies, regarding any permits or approvals for the JOINT WALL PROJECT.
  - 2.1.2 As Lead Agency for the CITY PROJECT pursuant to the requirements of the California Environmental Quality Act (CEQA), proceed with construction of its CITY PROJECT under the CITY’S Program Environmental Impact Report (EIR) dated July 2016, certified by the Sunnyvale City Council on August 23, 2016, and any applicable CEQA Addendum.
  - 2.1.3 Ensure its obligations are met as Lead Agency under CEQA.

- 2.1.4 Use its best efforts for the JOINT WALL PROJECT to be constructed prior to completion of the VALLEY WATER PROJECT. If VALLEY WATER and CITY determine this schedule cannot be met, the Parties will negotiate a revised schedule for performance and execute an amendment to this AGREEMENT. If the Parties cannot agree on a revised schedule of performance within ninety (90) calendar days from the start of negotiations, then the AGREEMENT may be terminated in accordance with Section 6 below.
  - 2.1.5 Ensure that its contractor(s) prepares as-built drawings and ensure that its design professional(s) for the JOINT WALL PROJECT prepares record drawings, signed, and stamped by a professional engineer registered to practice in California. Following the completion of the JOINT WALL PROJECT, CITY will provide such drawings to Valley Water in electronic AutoCAD ".dwg" file version and electronic ".pdf" version and in conformance to standards acceptable to Valley Water.
  - 2.1.6 CITY shall convey legal title to any permanent easements reasonably required by VALLEY WATER for the JOINT WALL PROJECT no less than 45 days prior to commencement of CITY'S construction of the JOINT WALL PROJECT. CITY shall waive any fees related to the conveyance of legal title.
- 2.2 VALLEY WATER shall perform the following:
- 2.2.1 Act promptly to execute any necessary permanent and temporary right of access reasonably required by the CITY to construct the JOINT WALL PROJECT. Complete the survey and appraisal of any necessary easements. VALLEY WATER shall convey legal title to any permanent easements reasonably required for the JOINT WALL PROJECT no less than 45 calendar days prior to commencement of CITY'S construction advertisement of the JOINT WALL PROJECT. VALLEY WATER shall waive any fees related to the conveyance of legal title.
  - 2.2.2 Ensure its obligations are met as Responsible Agency under CEQA, as applicable.
  - 2.2.3 Provide CITY with all documentation and information regarding its VALLEY WATER PROJECT so that CITY'S staff and consultants preparing the JOINT WALL PROJECT design can include any necessary VALLEY WATER requirements.
  - 2.2.4 Provide design criteria for the JOINT WALL PROJECT. Provide any review comments on 90% and 100% design packages within 30 calendar days of receipt. Verify the CITY'S design documents prepared for public bidding and award and satisfy the JOINT WALL PROJECT design criteria provided, prior to CITY proceeding with advertisement and bidding.

2.2.5 Contribute to CITY costs associated with the design and construction of the JOINT WALL PROJECT as set forth in Section 3 below.

- 2.3 The designated project manager for CITY for the duration of the CITY PROJECT and the JOINT WALL PROJECT is Michaela Donahue, Engineering Assistant II. CITY's project manager shall have all the necessary authority to direct technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with VALLEY WATER. The designated project manager for VALLEY WATER for the duration of the JOINT WALL PROJECT is Stephen Ferranti. VALLEY WATER'S project manager shall have all the necessary authority to review technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with CITY.

If the designated project manager of either Party is changed, written notice must be provided as described in this AGREEMENT, within five (5) business days of such change.

- 2.4 If VALLEY WATER is unable to obtain all regulatory agency permits necessary for construction of the VALLEY WATER PROJECT, the parties shall cooperate in good faith to pursue any practicable alternative that would allow construction of the JOINT WALL PROJECT to proceed. If CITY determines, after using commercially reasonable efforts, that it cannot complete the JOINT WALL PROJECT because the requisite permits cannot be obtained, CITY shall, within ninety (90) days after providing Valley Water written notice of that determination, return to VALLEY WATER all Unexpended Funds previously advanced for the JOINT WALL PROJECT. Upon reasonable notice, VALLEY WATER may audit CITY's books and records related to the JOINT WALL PROJECT to verify the calculation of Unexpended Funds. This Section shall survive any termination of this Agreement.

### **3. COST-SHARING OF JOINT WALL PROJECT**

- 3.1 CITY will pay 100% of the following costs: program management and utility relocation fees.
- 3.2 VALLEY WATER will pay 100% of the following costs: survey and appraisal.
- 3.3 CITY and VALLEY WATER will share on a 50%/50% basis the following costs: Engineering Costs and Construction-Phase Costs.
- 3.3.1 Design of the JOINT WALL PROJECT is produced as an element of the CITY PROJECT, under a single professional services agreement. Engineering Costs attributable to the JOINT WALL PROJECT are estimated by prorating the total value of this professional services agreement by the estimated construction value of the JOINT WALL PROJECT as a percentage of the estimated construction value of the entire CITY PROJECT.

Cost Item	Estimated cost	50% of Estimated Cost
Prorated Engineering Costs allocated to JOINT WALL	\$813,476	\$406,738

- 3.3.2 VALLEY WATER will remit \$406,738.00 for its share of the Engineering Costs within thirty (30) calendar days of the execution of this AGREEMENT.
- 3.3.3 CITY will advertise and publicly bid a construction package that includes the JOINT WALL PROJECT as a “separate bid item” in order to ascertain the bidders’ proposed amounts for this work for cost sharing purposes. Thirty (30) calendar days prior to advertising the bid for this construction package, VALLEY WATER will deposit with the CITY the amount of \$3,905,000 for its share of the JOINT WALL PROJECT and Construction-Phase Costs based on the engineer’s estimate, as shown below. The estimated costs in this table include a 10% contingency for change orders.

Cost Item	Estimated Cost	50% of Estimated Cost
JOINT WALL bid item	\$7,300,000	\$3,650,000
Construction management (7% of construction value)	\$510,000	\$255,000
Total deposit amount		\$3,905,000

3.4 Regarding CITY’s public bid opening:

- 3.4.1 If bid item pricing is less than the estimated cost of \$7,300,000, CITY will remit excess deposit amount (the difference between \$3,905,000 and 50% of the bid item pricing) to VALLEY WATER, reserving a 10% contingency to fund potential future change orders required in association with the JOINT WALL PROJECT.
- 3.4.2 If bid item pricing exceeds the estimated cost of \$7,300,000 by less than \$3,000,000, VALLEY WATER will remit additional deposit to the CITY for 50% of the excess cost, within ten (10) calendar days after CITY’s award of a construction contract to its PROJECT construction contractor (CONTRACTOR).
- 3.4.3 If bid item pricing exceeds the estimated cost of \$7,300,000 by \$3,000,000 or more, the CITY must either:
- (1) Reject all bids; or

- (2) Negotiate and reach agreement with VALLEY WATER for a mutually agreed-upon cost share for VALLEY WATER's portion of the JOINT WALL bid item, not to exceed 50% of the JOINT WALL lowest responsive and responsible bid item price but at least \$4,800,000, within twenty one (21) calendar days after CITY's public bid opening.
- 3.5 If VALLEY WATER does not approve the CONTRACTOR'S costs for the JOINT WALL PROJECT or, absent agreement between the Parties to modify the payment deadline stated in Section 3.3 above, fails to remit to CITY payment in full within 10 calendar days of CITY's issuance of the award of contract, then this AGREEMENT will be terminated pursuant to Section 6 below.
- 3.6 CITY has authority to expend contingency funds as necessary to achieve the project goals. Regarding modifications to CITY'S contract with its CONTRACTOR which potentially may result in an additional expense exceeding available contingency funds:
  - 3.6.1 CITY agrees to provide VALLEY WATER with notice and documentation regarding any modifications, revisions, change orders, and/or extra work required in association with the JOINT WALL PROJECT to VALLEY WATER within seven (7) calendar days of CITY becoming aware of or initiating such matter.
  - 3.6.2 VALLEY WATER will respond to CITY regarding such matters within seven (7) calendar days of receipt of such information.
  - 3.6.3 If any modifications, revisions, change orders, and/or extra work required in association with the JOINT WALL PROJECT result in an expense above the amounts for which it already remitted payment to CITY, VALLEY WATER agrees to remit payment in full to CITY within thirty (30) calendar days of receipt of CITY invoice, along with any supporting documentation for 50% of said additional costs associated with the JOINT WALL PROJECT.
- 3.7 The CITY shall return any Unexpended Funds within ninety (90) days of the termination of this AGREEMENT or within ninety (90) days from when the CITY issues a Notice of Completion for the JOINT WALL PROJECT.
- 3.8 The Parties shall mutually agree upon any necessary JOINT WALL PROJECT staging area to be used by CITY'S Contractor free of charge during JOINT WALL PROJECT construction. VALLEY WATER's right of way may be used for staging only where such use would not interfere with VALLEY WATER's need for continuous access, where such use does not entail any state or federal regulatory permits, and where such use does not require review under the California Environmental Quality Act.
- 3.9 The Parties agree to share mutual maintenance and repair costs and obligations after the JOINT WALL PROJECT is completed in accordance with the 2025

JOINT WALL Operation & Maintenance (O&M) Agreement, the terms of which are incorporated herein as if fully set forth.

- 3.10 CITY shall assume ownership of the joint wall upon completion of its construction.

#### 4. INDEMNIFICATION AND INSURANCE

- 4.1 In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, VALLEY WATER and CITY agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this AGREEMENT. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this AGREEMENT. The defense and indemnification obligations of this AGREEMENT are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this AGREEMENT. Parties' responsibility for such defense and indemnity obligations shall survive the termination or completion of this AGREEMENT.
- 4.2 Party, and Parties as used in this section, include the employees, agents, sub-contractors, and any other person who are directly employed by or otherwise legally responsible, respectively to each Party. The Parties must maintain insurance requirements on the other Party's electronic insurance verification system. The Parties must procure and maintain, at its own expense, during the life of this AGREEMENT, policies of insurance as specified in Section 4.3-4.5 and shall provide all certificates and endorsements as specified in Section 4.3-4.5 electronically for approval by the each Party's Risk Manager prior to execution of the AGREEMENT.
- 4.3 The Parties agree to procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Parties, their agents, representatives, or employees. The Parties shall maintain limits no less than:
1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for

bodily injury, personal injury and property damage. ISO Form shall be at least as broad as CG 0001.

2. **Automobile Liability:** coverage with a combined single limit of not less than \$2,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

4.4 Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and reviewed by each Party. The Parties shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

4.5 Other Insurance Provisions:

- 4.5.1 During the term of the contract, each Party shall name the other, its officials, employees, agents and volunteers as an additional insured in the Party's commercial general liability policy with respect to liability arising out of activities performed by or on behalf of a Party; products and completed operations of a Party; premises owned, occupied or used by a Party. The coverage shall contain no special limitations on the scope of protection afforded to a Party, its officers, employees, agents or volunteers.
- 4.5.2 During the term of the AGREEMENT, the Parties shall have no right of subrogation not subrogate against the other Party for any Workers' Compensation claim filed with respect to liability arising out of activities performed by or on behalf of such other Party pursuant to this AGREEMENT. Policy shall be endorsed with a waiver of subrogation in favor of the other Party.
- 4.5.3 For any claims related to this PROJECT, each Party's insurance shall be primary. Any insurance or self-insurance maintained by a Party, its officers, officials, employees, agents and volunteers shall be excess of the other Party's and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
- 4.5.4 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the other Party, its officers, officials, employees, agents or volunteers.



- 4.5.5 A Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 4.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either Party, reduced in coverage or in limits except after thirty (30) days' prior written notice by email, has been given to the other Party. Notices to the CITY shall be sent to [riskmanagement@sunnyvale.ca.gov](mailto:riskmanagement@sunnyvale.ca.gov), while notices to VALLEY WATER shall be sent to [riskmanager@valleywater.org](mailto:riskmanager@valleywater.org).
- 4.5.7 Any umbrella or excess insurance liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Contractor's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
- 4.5.8 The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce a Party's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this AGREEMENT, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured and also available to the Additional Insured, whichever is greater.
- 4.6 Acceptability of Insurers:
- Insurance is to be placed with insurers with a current A.M. Best's rating of no less than Superior or Excellent, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the other Party.
- 4.7 Verification of Coverage:
- Each Party shall email the other requesting proof of insurance for this AGREEMENT through an electronic insurance verification system, which includes instructions on how to upload insurance documents electronically. Parties shall furnish the requesting Party with an electronic Certificate of Insurance effecting the coverage required.
- The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 or Santa Clara Valley Water District, Attn: Risk Manager, 5750 Almaden Expressway, San Jose, CA 95118, as the certificate holder. All certificates are to be received and approved by the Risk Manager for the other Party prior to commencement of work.

Each Party shall provide the other Party with electronic certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Parties shall submit insurance certificates, reflecting the policy renewals through the other Party's electronic insurance verification system. Each Party reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.8 Contractors and Subcontractors:

Each Party shall require all Contractor and Subcontractors to procure and maintain insurance policies subject to these requirements. Failure of either Party to verify existence of their Contractor or Subcontractor's insurance shall not relieve a Party from any claim arising from their Contractor or Subcontractors work on behalf a Party.

4.9 CITY'S construction contractor and subcontractors, if applicable, performing the work, shall procure and maintain for the duration of the PROJECT contract insurance in accordance with Exhibit B.

4.10 Self-insurance:

The requirements of this Section 4 may be satisfied by each Party with the provision of similar coverage through a self-insurance program and such self-insurance shall be certified in writing in form and content acceptable to the other Party.

4.11 The rights, duties, and obligations of the Parties as set forth above in this Section 4 of this AGREEMENT will survive termination, suspension, and expiration of this AGREEMENT.

## 5. ADDITIONAL PROVISIONS

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

5.2 This AGREEMENT contains the entire AGREEMENT between VALLEY WATER and CITY relating to the cost sharing for the JOINT WALL PROJECT. Any prior agreements, promises, negotiations, or representations regarding cost sharing for the JOINT WALL PROJECT not expressly set forth in this AGREEMENT are of no force or effect.

5.3 If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall be valid and binding on VALLEY WATER and CITY.

- 5.4 This AGREEMENT shall be governed and construed in accordance with the laws of the State of California.
- 5.5 This AGREEMENT may be executed in counterparts and will be binding as executed.
- 5.6 The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both Parties and terminate upon PROJECT completion notification by CITY and receipt by CITY of payment in full by VALLEY WATER, with the exception of the rights, duties and obligations set forth in this AGREEMENT.
- 5.7 All modifications or extensions to this AGREEMENT must be in writing in the form of an amendment executed by both Parties.
- 5.8 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.
- 5.9 Ambiguities and uncertainties in this AGREEMENT, if any, shall not be interpreted against either Party, irrespective of which Party may be deemed to have caused the ambiguity or uncertainty to exist.
- 5.10 Time is of the essence with respect to each of the terms, covenants, and conditions of this AGREEMENT.
- 5.11 This AGREEMENT is not intended to create a joint venture, partnership or any other similar arrangement between the Parties, and neither Party shall be authorized to act as an agent of the other Party, except as expressly provided herein. Notwithstanding the foregoing, each Party shall be free to designate the other as its agent for appropriate purposes.
- 5.12 Neither Party shall assign any portion of this AGREEMENT without the prior written consent of the other Party.

## **6. TERMINATION**

- 6.1 This AGREEMENT may only be terminated in accordance with Section 3.5 above or by mutual written consent. Any temporary easements granted for the JOINT WALL PROJECT shall be deemed terminated at the same time as this AGREEMENT.

## **7. NOTICES**

- 7.1 All correspondence relating to the JOINT WALL PROJECT, including all notices required by the terms of this AGREEMENT may be delivered by first class mail addressed to the appropriate Party at the following addresses:

**To VALLEY WATER:** Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
Attn: Watersheds Deputy Operating Officer Bhavani  
Yerrapotu  
Phone: 408-630-2735  
Email: BYerrapotu@valleywater.org

**To CITY:** City of Sunnyvale  
Department of Public Works  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707  
Attn: Charles Taylor, Public Works Director  
Phone: (408) 730-7552  
Email: ctaylor@sunnyvale.ca.gov

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or telephone, to accomplish timely communication. Each Party may change the address for the provision of written notice in accordance with this paragraph.

Notices shall be deemed communicated as of three business days after mailing.

(Remainder of page intentionally left blank; signatures follow on next page.)

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

**CITY:**

**CITY OF SUNNYVALE, a California chartered municipal corporation**

By: \_\_\_\_\_  
Tim Kirby, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Susan Yoon, Assistant City Attorney

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
David Carnahan, City Clerk

Date: \_\_\_\_\_

**VALLEY WATER:**

**SANTA CLARA VALLEY WATER DISTRICT, a special district**

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Omar El-Qoulaq, Assistant District Counsel

Date: \_\_\_\_\_

EXHIBIT A





## **EXHIBIT B**

### **INSURANCE REQUIREMENTS FOR CONSTRUCTION CONTRACTORS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope and Limits of Insurance: Contractor shall maintain limits no less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$5,000,000 per occurrence and \$10,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$5,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation:** Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

☒ **Pollution Liability** coverage with limits not less than \$2,000,000 per occurrence.

☒ **Builder's Risk / Course of Construction** coverage written on an "all risk" basis with limits equal to the completed value of the project and no coinsurance penalty provisions.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale Risk Manager. The Contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention. Policies containing any self-insured retention provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the Named Insured or the City of Sunnyvale and Santa Clara Valley Water District.

The aforementioned insurance requirements can be met through any combination of self-insured, primary, and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions

1. During the term of the contract, the City of Sunnyvale and Santa Clara Valley Water District, its officials, employees, agents and volunteers are to be covered as an additional insured in the Contractor's commercial general liability policy (and if Industry Specific Coverage box is checked above, pollution liability and builder's risk policies) with respect to liability arising out of activities performed by or on behalf of the Contractor; products and completed



operations of the Contractor; premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale or Santa Clara Valley Water District, its officers, employees, agents or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the contract, the Contractor's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale and Santa Clara Valley Water District.
3. If Industry Specific Coverage box is checked above, during the term of the contract, the Contractor's Builder's Risk / Course of Construction policy shall provide coverage for any building, structures, machinery or equipment that is damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing. The policy shall name the City of Sunnyvale and Santa Clara Valley Water as a Loss Payee with respect to any repairs or replacement of any damaged property or other amounts payable under the policy.
4. For any claims related to the PROJECT, the Contractor's insurance shall be primary with respects to the City of Sunnyvale and Santa Clara Valley Water District, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Sunnyvale and Santa Clara Valley Water District, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale and Santa Clara Valley Water District, its officers, officials, employees, agents or volunteers.
6. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by email to [riskmanagement@sunnyvale.ca.gov](mailto:riskmanagement@sunnyvale.ca.gov), return receipt requested, has been given to the City of Sunnyvale.
8. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of the City of Sunnyvale and Santa Clara Valley Water District (if agreed to in a written contract or agreement) until all coverage carried by or available to the Contractor's primary and excess liability policies are exhausted and before the City of Sunnyvale's and Santa Clara Valley Water's own Insurance or self-insurance shall be called upon to contribute to a loss.

9. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Contractor's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured and also available to the Additional Insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than Superior or Excellent, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

City utilizes an electronic insurance verification system to track and verify all insurance related documents. City is no longer accepting insurance documents by mail and will only accept electronic insurance documents. City will email the Contractor requesting proof of insurance for this Agreement through an electronic insurance verification system, which includes instructions on how to upload insurance documents electronically. Contractor shall furnish the City with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 as the certificate holder. All certificates are to be received and approved by the City, Risk Manager prior to commencement of work.

The Contractor shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Contractor shall submit insurance certificates, reflecting the policy renewals through the City's electronic insurance verification system. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors:

Contractor shall require and verify that all subcontractors or other parties hired for this Work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in Subcontractors Minimum scope, Limits and Provisions of Insurance herein, to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Contract. Failure of Contractor to verify existence of subcontractor's insurance shall not relieve Contractor from any claim arising from subcontractors work on behalf of Contractor.

Contractor shall include the following language in their agreement with Subcontractors: "Subcontractors hired by Contractor agree to be bound to Contractor, City of Sunnyvale and Santa Clara Valley Water District in the same manner and to the same extent as Contractor is bound to City under the Agreement Documents and provide a valid certificate of insurance and the required endorsements included in the Agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the Insurance provisions will be furnished to the Subcontractor upon request." Contractor shall provide proof of such Compliance and verification to the City upon request.