

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

This Cost Reimbursement Agreement (“Agreement”) is entered into by and between SANTA CLARA VALLEY WATER DISTRICT, an independent special district of the State of California (“VALLEY WATER”), and the CITY OF SAN JOSE, a municipal corporation (“CITY”). VALLEY WATER and CITY may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.” The Agreement shall become effective as of the date of the last signature of the Parties below (“Effective Date”).

RECITALS

- A. CITY owns a storm drain and an outfall located as shown in **Exhibit A**, Thompson Creek Outfall Repair Project-Location Map, attached hereto and incorporated herein, identified as “2019 Outfall Repair” on the legend, and located in San Jose, California (collectively, Property); and
- B. VALLEY WATER owns property in fee title located along a portion of Thompson Creek, within which the City’s storm drain and outfall are located, as shown in **Exhibit A**; and
- C. CITY desires to provide VALLEY WATER with financial assistance to repair the CITY’s outfall and associated damages on Thompson Creek as further shown in **Exhibit B**, Thompson Creek City Outfall, Repair Areas. Outfall repair activities will include repair of associated Thompson Creek bank damages, including VALLEY WATER bank repair work conducted in 2018 (“2018 bank repair work”), filling the large cavern created by the outfall, removing the dilapidated corrugated metal pipe (CMP) outfall, providing the CITY with a new outfall, replacing the sacked concrete bank structure, and conducting remaining bank repair work; collectively referred to hereafter as the “PROJECT” and
- D. VALLEY WATER completed approximately 85 linear feet of bank repair work downstream from the outfall in 2018; and
- E. CITY wishes to utilize VALLEY WATER’s knowledge, resources, California Environmental Quality Act (CEQA) documentation, and any regulatory permits VALLEY WATER currently possesses to conduct and deliver PROJECT; and
- F. CITY and VALLEY WATER agree to cooperate on the PROJECT, with VALLEY WATER administering, designing, and constructing the PROJECT and the CITY funding the PROJECT’s reasonable associated costs, as described more fully herein; and

G. CITY and VALLEY WATER understand and agree that by entering into this Agreement, neither VALLEY WATER nor CITY create any obligation for CITY or VALLEY WATER to conduct and deliver the PROJECT;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

AGREEMENT

1. DESCRIPTION OF THE PROJECT

1.1. Project Site. The PROJECT site comprises approximately 85 linear feet of bank repair (“2018 bank repair work”), with an additional 30 linear feet of bank repair and 64 linear feet of outfall replacement to be completed, as shown in **Exhibit B**.

1.2. Project Scope. The PROJECT tasks, as listed in Exhibit C, include the administration, design, and construction of the outfall replacement and bank repairs on Thompson Creek, covering a total creek length of approximately 115 linear feet, comprising the 2018 bank repair work and the proposed bank repair work, and 64 linear feet of proposed replacement of the CITY’s outfall.

1.3. CITY’s Inspection of Replaced Outfall. After completing the replacement of the CITY’s outfall, VALLEY WATER will provide the CITY with notice and up to 5 business days to inspect the newly installed outfall. VALLEY WATER shall accompany the CITY during the inspection. If the CITY believes VALLEY WATER’S installation of the outfall does not meet industry standards, CITY shall identify and document any such deficiencies in writing to VALLEY WATER. The Parties shall then work together to resolve any deficiencies. The outfall replacement shall be deemed accepted by the CITY once all deficiencies, if any, are resolved or if no written notice of deficiencies with the outfall installation is provided to VALLEY WATER within 5 business days after CITY receives notice that the installation of the outfall has been completed.

2. TERM

The term of this Agreement shall commence upon the Effective Date and terminate upon completion of the PROJECT, or no later than one (1) year from the Effective Date, whichever is shorter.

3. VALLEY WATER, CITY OBLIGATIONS

3.1. VALLEY WATER shall perform the following:

- 3.1.1. Administer, design, and construct the PROJECT, including coordination with appropriate local, state, federal, and regulatory agencies, regarding securing any necessary permits or approvals for PROJECT.
- 3.1.2. Ensure all necessary environmental clearances and permits to perform PROJECT are obtained in time for VALLEY WATER to complete the work in a timely manner.
- 3.1.3. Ensure its obligations are met as Lead Agency under CEQA.
- 3.1.4. Proceed in a timely manner to initiate and complete PROJECT. VALLEY WATER will use its best efforts to complete the PROJECT prior to December 31, 2019. If VALLEY WATER and CITY determine this schedule cannot be met, the Parties agree to make reasonable efforts to negotiate a revised schedule for performance and execute an amendment to this Agreement. If the Parties cannot agree on a revised schedule of performance, then the Agreement may be terminated in accordance with Section 6 of this Agreement.
- 3.1.5. Perform its work related to the PROJECT in a manner as to minimize interference with VALLEY WATER's other creek maintenance projects.
- 3.1.6. Perform the outfall replacement work in compliance with the CITY's Standard Specifications and VALLEY WATER's Standard Specifications where appropriate.

3.2. CITY shall perform the following:

- 3.2.1. Ensure its obligations are met as a Responsible Agency under CEQA.

4. PROJECT COST, INVOICES, PAYMENT

- 4.1. Completed Work. In 2018, VALLEY WATER repaired damages to the adjacent bank downstream from the outfall. VALLEY WATER proceeded to conduct preliminary engineering for the outfall repair. Previous costs incurred by Valley Water for doing this work totaled \$330,000.
- 4.2. Not-to-Exceed Project Cost. Parties' financial responsibilities and estimated costs of PROJECT are outlined in Thompson Creek City Outfall, Cost Share (**Exhibit C**) of this Agreement. CITY agrees to compensate VALLEY WATER in accordance with the "Only CITY" column in **Exhibit C** for VALLEY WATER's actual, reasonable, and documented costs associated with administration, design, and construction of the PROJECT in a total amount not-to-exceed four hundred ten thousand dollars (\$410,000).

- 4.3. Invoice. In order to request payment from CITY, VALLEY WATER agrees to submit an invoice to CITY describing the services and/or equipment related to the PROJECT and the applicable charges. The information in the VALLEY WATER's final invoice shall be subject to verification by CITY. VALLEY WATER agrees to submit the final invoice to the CITY's Project Manager at the address specified in Section 8 below.
- 4.4. Payment. CITY shall process and pay each invoice no later than 60 days after receipt.
- 4.5. Audit. VALLEY WATER will allow CITY to audit, at a reasonable time during the term of the Agreement and for three (3) years after, and VALLEY WATER will maintain VALLEY WATER's records pertaining to the matters covered by the Agreement.
- 4.6. Release and Settlement. In consideration of CITY's financial contribution to the PROJECT, all claims by and between the Parties related to the PROJECT shall be considered fully and completely compromised and settled, without the admission of fault or liability by any Party, and each Party agrees to waive and release, in favor of the other Party and all employees, directors, agents, contractors, and representatives of the other Party, all claims, demands, causes of action, rights, damages, costs, expenses, compensation and legal entitlements of any kind or nature (including attorney fees) arising out of or connected with PROJECT, and to accept the duties and liabilities stated in this Agreement in full accord and satisfaction thereof.

5. INDEMNIFICATION, INSURANCE

- 5.1. Indemnification. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to California 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 California Government Code Section 895.4, each Party ("Indemnifying Party") shall fully indemnify, defend and hold the other Party ("Indemnified Party"), their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability, including that 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 other party under this Agreement.
- 5.2. Insurance. VALLEY WATER and its consultant(s) or contractor(s), if any, performing the work, will secure and maintain in full force and effect, at all times during PROJECT execution and until PROJECT completion, bodily injury insurance, property damage insurance and contractual liability worker

compensation and auto coverage in forms and limits of liability acceptable to both VALLEY WATER and CITY, naming VALLEY WATER and CITY and their respective officers, employees, and agents as additional insured from and against all damages and claims, loss of liability, cost of expense arising out of or in any way connected with the PROJECT. VALLEY WATER is self-insured for up to \$2,000,000.

5.3. Survival. The rights, duties, and obligations of the Parties as set forth in Section 5 of this Agreement will survive termination and expiration of this Agreement.

6. TERMINATION

6.1. Either VALLEY WATER or CITY may, upon thirty (30) days' written notice, with or without cause, suspend or terminate this Agreement.

6.2. Upon such suspension or termination of the Agreement, VALLEY WATER will be paid for actual costs accrued prior to such suspension or termination that are associated with the PROJECT tasks the CITY agreed to pay.

6.3. CITY's City Manager, or his/her designee, is authorized to terminate the Agreement on behalf of CITY. VALLEY WATER's Chief Operating Officer for Watersheds, or his/her designee, is authorized to terminate the Agreement on behalf of VALLEY WATER.

7. ADDITIONAL PROVISIONS

7.1. Recitals. The Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference.

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

7.3. Integration. This Agreement contains the entire Agreement between VALLEY WATER and City relating to the PROJECT. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

7.4. Compliance with Applicable Law. VALLEY WATER and its consultants and/or contractors will comply with all laws applicable to the administration, design and construction of the PROJECT. Except as expressly set forth herein, VALLEY WATER will secure all permits and licenses, pay all charges and fees and give all notices required by law in connection with the PROJECT.

- 7.5. Severability. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on VALLEY WATER and CITY.
- 7.6. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California and applicable federal laws and regulations, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. The Parties agree that the venue of any action, proceeding or counterclaim shall be in the County of Santa Clara, California.
- 7.7. Counterparts. This Agreement may be executed in counterparts and will be binding as executed.
- 7.8. Amendment. All changes or extensions to this must be in writing in the form of an amendment approved by both Parties.
- 7.9. 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.
- 7.10. Labor Compliance. The VALLEY WATER's consultants and/or contractors, if any, shall comply with State Labor Codes, including working hours, prevailing wage requirements and certified payroll records.
- 7.11. Overtime. VALLEY WATER shall ensure that VALLEY WATER's contractors, if any, shall comply with California Labor Code Section 1810, *et seq.* which provides that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated as overtime, at not less than 1½ times the basic rate of pay.
- 7.12. Payroll Records. VALLEY WATER shall ensure that VALLEY WATER's contractors, if any, shall comply with California Labor Code Section 1776 which requires certified payroll records be maintained with the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this Agreement. The Payroll Records shall be made available for inspection as provided in California Labor Code Section 1776.
- 7.13. Apprentices. VALLEY WATER shall ensure that VALLEY WATER's contractors, if any, shall comply with California Labor Code Section 1777.5 regarding apprentices.

8. NOTICES

All notices given in conjunction with this Agreement shall be written, and shall be effective upon personal delivery to the other Party or, if by mail, three (3) days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as a Party may designate by written notice:

To VALLEY WATER: Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
Attn: Sue Tippetts, Deputy Operating Officer, Watersheds O&M
Division

To CITY: City of San José
200 East Santa Clara Street
San Jose, CA 95113
Attn: Michael O'Connell, Deputy Director, Department of Public
Works

IN WITNESS WHEREOF, the parties have executed this instrument the day and year last below written.

APPROVED AS TO FORM: "CITY"
CITY OF SAN JOSÉ, a municipal corporation

JENNIFER POU SHO
Senior Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date

APPROVED AS TO FORM: "VALLEY WATER"
SANTA CLARA VALLEY
WATER DISTRICT, an
independent special district

ANTHONY FULCHER
Sr. Assistant District Counsel

NORMA J. CAMACHO
Chief Executive Officer

Date

EXHIBIT A

Thompson Creek Outfall Repair Project- Location Map

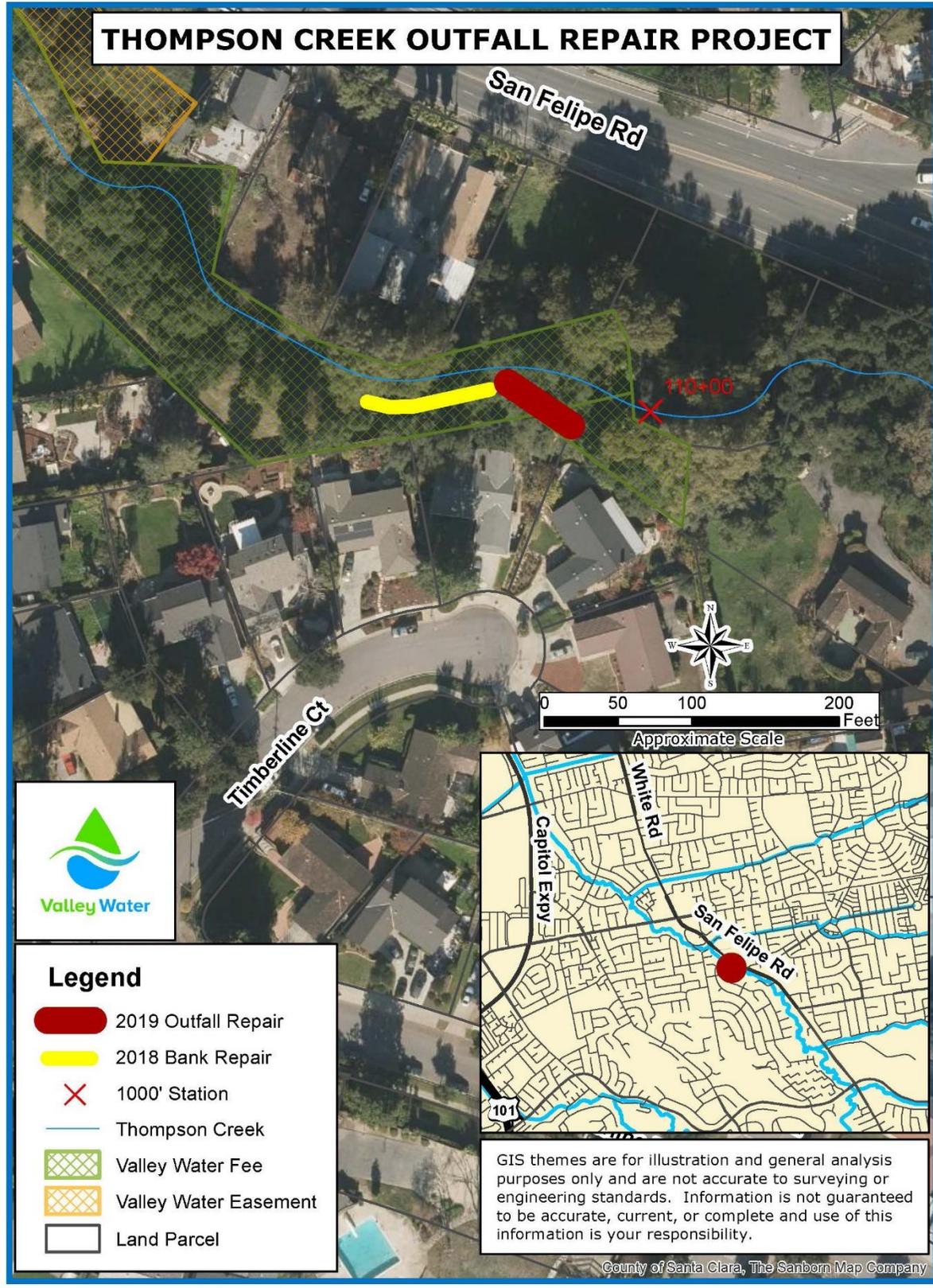


EXHIBIT B

Thompson Creek City Outfall- Repair Areas

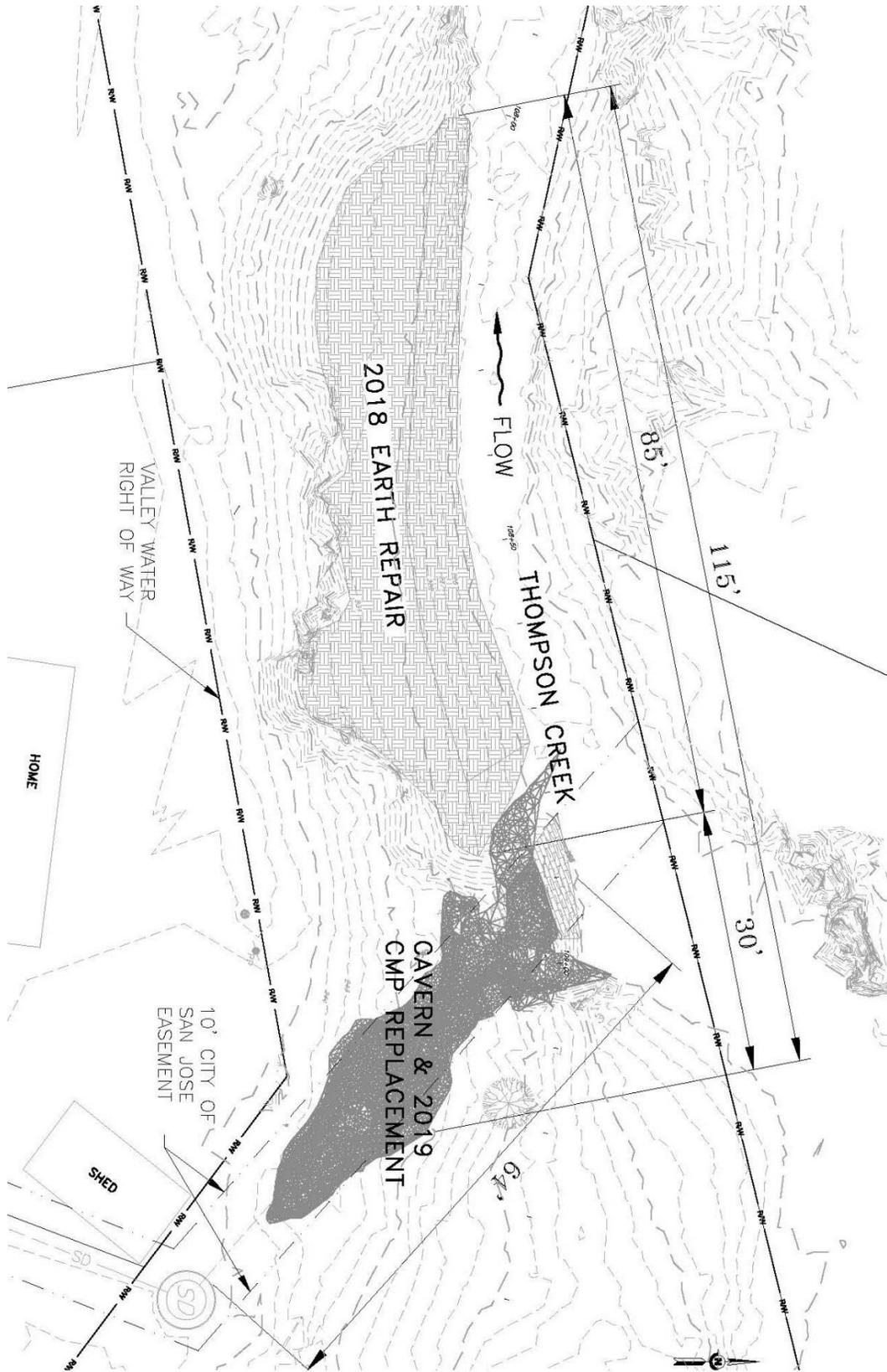


EXHIBIT C

THOMPSON CREEK CITY OUTFALL
Cost Share

Activities	Overall Costs	VALLEY WATER'S SHARE	CITY'S SHARE
2018 construction work to repair bank erosion caused largely by outfall (completed)	\$270,000	\$270,000	
2019 advanced cavern survey using 3D Laser scanner (completed)	\$30,000	\$30,000	
Engineering preliminary design for remaining work (completed)	\$30,000	\$30,000	
Engineering final design and construction support, etc. for remaining work	\$50,000		\$50,000
Remaining field construction work, including replacement of CITY's outfall	\$330,000		\$330,000
CEQA and permits (10% Project costs)	\$30,000		\$30,000
TOTAL	\$740,000	\$330,000	\$410,000