



5750 ALMADEN EXPRESSWAY, SAN JOSE, CA 95118-3686 (408) 265-2600

PERMIT

Facility: Madrone Channel**Permit No.:** 23505

Permittee: City of Morgan Hill
 Attention: Lynette
 Rotairo Kong
 17575 Peak Avenue
 Morgan Hill, CA 95037

Telephone: (408) 310-4714**Email:** Lynette.Kong@morganhill.ca.gov

File: 32541
 Madrone Channel
 Ely Hwy 101
 Between Cochrane
 Rd and Tenant Ave
Re: Madrone Channel
 Trail Improvement
 Phase II

Purpose of Permit:

- ☒ Encroachment Construction of a 7-foot-wide asphalt paved Class I trail with 2-foot-wide drain rock shoulder over City of
☒ Construction Morgan Hill's existing unpaved trail between Main Avenue and Tennant Avenue, including a paved trail
☐ Temporary connecting to Diana Avenue and installation improvements including signage.

Construction Expiration Date: June 26, 2024

Encroachment Expiration Date: Per the terms and conditions of the JUA between the City of Morgan Hill and Valley Water entered on November 15, 2011.

PERMITTEE MUST NOTIFY AND FURNISH SCHEDULE OF WORK TO:

Valley Water's CPRU Inspector, at (408) 630-2779 or at CPRUInspector@valleywater.org, at least 2 Valley Water business days before starting any work under this permit. **Failure to notify is cause for revocation of permit and removal of work.** This permit is subject to the General Conditions included herein, and if specified, the Special Conditions included herein. Violation of any condition specified in this permit shall be cause for immediate revocation of this permit. This permit is not effective unless signed by both the Permit Authority and Permittee.

Permittee

I, the Permittee (or agent of the Permittee), read and understand the permit conditions (i.e., General Conditions, and if specified, the Special Conditions) contained in this permit and by signing below, I agree to abide by each and every term and condition in this permit. If signing as a duly authorized agent of the Permittee, I hereby represent and warrant that I have the authority to bind Permittee to all of the terms and conditions specified in this permit.

City of Morgan Hill

Name of Permittee

DocuSigned by:

Yat Cho

6/27/2023

Signature

Date

Yat Cho

Project Engineer

Print Name/Title of Signatory

SCVWD

DocuSigned by:

Yvonne Arroyo

6/27/2023

Yvonne Arroyo

Engineering Unit Manager (Permit Authority)

Community Projects Review Unit

Effective Date

Cc: CPRU Inspector, Y. Arroyo, C. Haggerty, B. Hwang, J. Araujo, K. Yasukawa, S. Elkins, J. Guzman, M. Sasaki,
 File
 File #32541_Record #65628_ms_Date 06-26-2023

GENERAL CONDITIONS

1. **ACCEPTANCE OF CONDITIONS.** Permittee's activity or work under this permit constitutes Permittee's acceptance of the general and special conditions contained in this permit.
2. **PERMIT RIGHT.** Valley Water grants to Permittee a revocable, personal, and non-exclusive license to enter upon the right-of-way owned by Valley Water that is described in **Exhibit A** attached hereto ("Permit Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below.
3. **VALLEY WATER TITLE.** Valley Water has title to the Permit Area based upon recorded right-of-way deeds and/or an implied dedication. This permit is effective only as to the rights of Valley Water in the Permit Area, and Permittee shall obtain any further permission that is necessary to use the Permit Area. This permit does not address any rights in the Permit Area belonging to any other entity or person and is subject to all prior unexpired permits, agreements, easements, privileges, or other rights, whether recorded or unrecorded, in the Permit Area. Permittee shall make arrangements with holders of such prior rights. Permittee places its encroachment at its own risk.
4. **KEEP PERMIT ON THE WORK SITE.** Permittee must maintain a copy of this permit and approved plans on the Permit Area at all times and it must be shown to any representative of Valley Water or law enforcement officer upon demand.
5. **CONSTRUCTION OF IMPROVEMENTS.** All improvements shall conform to recognized standards of construction and constructed in accordance with the plans accepted by Valley Water. All the work shall be done subject to the satisfaction of Valley Water's Inspector. No change of the project, as outlined in the plans, drawings, or other documentation submitted with Permittee's encroachment permit application to Valley Water, will be allowed except upon Valley Water's written permission.
6. **MAINTENANCE.** Permittee shall exercise reasonable care to maintain properly any encroachment or improvement placed by it or its agent in the Permit Area and to exercise reasonable care in inspecting for and immediately repairing and making good any damage to any portion of the Permit Area as a result of activities performed under this permit, including any and all damage to the Permit Area which would not have occurred had such work not been done or such encroachment or improvement not been placed therein. Valley Water shall not be held responsible for any damage to any encroachment or improvement installed by Permittee under this permit, whether said damage is caused by Valley Water or its agent or otherwise.
7. **CLEAN UP PERMIT AREA.** Upon completion of any activity under this permit or the revocation of this permit, the Permit Area shall be placed in substantially the same condition as it was immediately prior to the work. If Permittee fails to restore the Permit Area to such condition, Valley Water may perform such work or have work performed, and Permittee agrees to reimburse Valley Water for all costs of the work so performed.
8. **PERMIT SUBORDINATE TO VALLEY WATER'S USE OF PERMIT AREA.** Whenever Valley Water desires to construct, reconstruct, or do maintenance work on the Permit Area, or use the Permit Area for any purpose, the Permittee shall, upon Valley Water's request, immediately move, remove, relocate or otherwise change, any improvements, encroachments, work or installation on the Permit Area, all at the sole expenses of the Permittee.
9. **TERM.** Unless a permit expiration date is expressly specified in this permit, the term of this permit is indefinite and may be revoked by Valley Water or abandoned by Permittee at any time. If Valley Water elects to revoke this permit, it will provide Permittee with written notice specifying the date this permit is no longer in effect.
10. **PERMITS AND LICENSES FROM OTHER PUBLIC AGENCIES.** This permit does not relieve Permittee of the responsibility from obtaining all applicable permits, licenses and/or other permissions that must be obtained from other public agencies and/or commissions in order for Permittee to carry its activities within or use the Permit Area.
11. **COMPLIANCE WITH LAWS.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, orders, and edicts (collectively, "Laws") of any governmental or other regulatory entity, including, without limitation: (i) all applicable water quality standards adopted by Valley Water, Regional Water Quality Control Board, State Water Resources Control Board, or other jurisdictional or properly empowered regulatory agency; (ii) all applicable labor laws; and (iii) all health and safety laws (including trench excavation and obtaining as legally required a "Permit to Excavate" issued by the Division of Occupational Safety and Health as required by the California Labor Code). Permittee's failure to adhere to this paragraph shall be a material breach of this permit.
12. **INDEMNITY.** Permittee and its successors and assigns shall indemnify, defend, and hold harmless, Valley Water, its directors, officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising in any manner out of or relating to any use or activity under this permit, including, but not limited to, the use, construction encroachment or maintenances done by Permittee or its agents, employees or contractors on or near the Permit Area.

GENERAL CONDITIONS - Continued

13. **WAIVER OF CLAIMS.** Permittee waives its right to assert any claim or action against Valley Water related to the condition of the Permit Area or its use by Permittee.
14. **NO HAZARDOUS SUBSTANCES.** Permittee shall not use, store, transport, or place any hazardous substances (including hazardous waste and hazardous materials) on the Permit Area or adjacent to Permit Area. If any spills or discharge of hazardous substances are used or produced during the permitted activity, then Permittee must: (i) notify Valley Water and the proper authorities; (ii) immediately investigate, remove, and monitor the hazardous substances to the satisfaction of Valley Water and any regulatory agency; and (iii) bear any and all costs associated with the remedial activities. Valley Water has the absolute right to immediately suspend any operation that does not adhere to these requirements or is found to be in violation of any Local, State, or Federal Environmental Regulations, until the problem is adequately or completely resolved.
15. **INSURANCE.** At any time, at the sole discretion of Valley Water, Permittee may be required to obtain insurance (including general liability insurance) with a reasonable policy limit as determined by Valley Water, naming Permittee as the insured and Valley Water (including its directors, officers, agents, employees and contractors) as an additional insured to cover Permittee's activities and/or the encroachments placed in the Permit Area. Permittee's failure to obtain such insurance is a material breach of this permit.
16. **IMPORTED MATERIALS.** If Permittee seeks to place or store on the Permit Area any soils that did not originate from such Permit Area, then Permittee must submit to Valley Water for its evaluation a fully completed "Import Material Certification Form" requesting Valley Water's permission.
17. **CHANGED CONDITIONS.** If conditions change or new facts are discovered concerning the effects of the activities and uses authorized under this permit, or for other good cause, Valley Water may modify this permit in order to protect life and property.
18. **REPAIR DAMAGE TO PERMIT AREA.** Any damage caused to the Permit Area, including (without limitation) damage to structures, vegetation, stream bank, fencing, maintenance road surfacing, and pipelines due to the use or activities carried out under this permit shall be repaired at the cost of Permittee and to the satisfaction of Valley Water. Should Permittee neglect to make repairs promptly, Valley Water may make repairs or have repairs made, and Permittee agrees to reimburse Valley Water for all costs of such repairs. Valley Water may require a security deposit in advance from Permittee to secure the performance of this paragraph. Unexpended portions of any deposit shall be refunded to Permittee within 30 business days of the expiration of this permit. The posting of such a security deposit shall not relieve the Permittee from any liability under this permit which exceeds the value of the deposit required.
19. **NO REAL PROPERTY INTEREST.** Nothing contained in this permit shall be construed as a relinquishment of any rights held by Valley Water. It is expressly understood that this permit does not in any way whatsoever grant or convey any easement, fee or other interest in the Permit Area to Permittee.
20. **PERMIT NON-TRANSFERABLE.** This permit may not be transferred or assigned by Permittee to any party, unless expressly specified in the special conditions section of this permit or agreed to by Valley Water in writing.

SPECIAL CONDITIONS

1. **Valley Water has installed a groundwater monitoring well within the Madrone Channel Trail project limits. Permittee shall notify Valley Water's Groundwater Management Unit c/o Scott Elkins at (408) 630-2885 prior to beginning work to coordinate adjusting the grade with a Valley Water-provided well box.**
2. **No work, encroachment, or equipment access is allowed within the banks of Madrone Channel. All equipment shall remain above/behind the top of bank.**
3. All backfill within Valley Water's right of way shall be compacted to at least 90 percent relative compaction which shall be determined using maximum dry density based on ASTM D 1557 laboratory test procedure. Field dry density and water content of soil should be determined following the ASTM D 1556 or ASTM D 2922/ASTM D 3017 standard procedure as applicable.
4. To minimize the spreading of a plant pathogen (only plants are affected) that has been detected in the County the following measures must be taken:
 - a. Prior to entering the "Permit Area" all shoes worn by persons entering the site must be clean of mud, soil and debris then sanitized with ethyl or isopropyl alcohol (at least 70% concentration). Spray bottles filled with alcohol may be used to thoroughly wet the surface of shoe soles and equipment/tools. Brushes and other implements used to help remove soil from shoes and equipment/tools must be cleaned after use with alcohol as described above.
 - b. Prior to entering the site, all vehicles, equipment, and tools are to be thoroughly cleaned at a commercial vehicle/truck washing facility. Tires, wheel wells vehicle undercarriages and other surfaces and the interior of vehicles/equipment (e.g. cabs) must be clean of soil, mud and debris.
 - c. Upon exiting the "Permit Area", all vehicles, equipment, tools and shoes worn by persons at the site must be clean and free of mud, debris and soil.
5. Valley Water shall, at all times, have access to Madrone Channel for purposes deemed necessary to perform its flood protection, groundwater recharge operations, and maintenance responsibilities. Permittee or Permittee's contractor shall be available at all times to remove any obstruction at Valley Water's request. No encroachments on Valley Water's right of way shall be made which might endanger the creek bank or hinder its proper and efficient functioning to convey storm water or provide maintenance vehicle access. Permittee must ensure that Valley Water access to Madrone Channel is maintained at all times (i.e. no unattended vehicles, equipment, or stockpiled materials on Valley Water fee title right of way, etc.).
6. **Permittee is responsible for installing and/or implementing adequate erosion and sediment control measures during construction and as necessary upon completion of the activities permitted herein to ensure sediment is not released into Madrone Channel. If rain or showers is forecast by the National Weather Service (<http://www.wrh.noaa.gov/>) within 72 hours with a chance of 30 percent or greater, then the disturbed (bare earth) portions of the work site will be adequately covered and secured with appropriate erosion control and sediment control measures with the intent to minimize, to the maximum extent practicable, erosion such that minimal sediment control is necessary.**
7. Permittee, its contractors, and agents shall provide for their own safety while performing the work under this permit including but not limited to traffic control and all other safety requirements in accordance with CAL/OSHA regulations. Permittee shall notify Underground Service Alert at 1-800-227-2600 or 811, prior to any digging.
8. Permittee must prevent all construction wastes and debris, including sediment and non-storm water, from directly or indirectly entering Madrone Channel during the construction activities allowed hereunder.
9. Permittee is responsible for the proper removal and disposal of all construction materials and debris following completion of the permitted activities.
10. Construction, operation, and maintenance of the trail and its appurtenances are to be in accordance with the provisions of the Joint Use Agreement between the City of Morgan Hill and Valley Water entered into on November 15, 2011.
11. Permittee and Permittee's contractor shall, at permittee's own expense, secure and maintain, in full force and effect at all times during its activity under this permit, general and automobile liability and workers' compensation insurance in forms, to limits of liability shown in Exhibit B, and with a carrier satisfactory to Valley Water, insuring Permittee, Permittee's contractor and Santa Clara Valley Water District, its Directors, officers, agents, employees and volunteers from and against any claim, loss, liability, cost or expense arising out of or in any way connected with this permit. A certificate of insurance and separate additional insured endorsement shall be delivered to and approved by Valley Water before this permit shall be effective. With respect to all coverage noted above, the following additional requirements apply:
 - a. Permittee's and Permittee's contractor's insurance shall be primary with respect to any other insurance which may be carried by Santa Clara Valley Water District.

SPECIAL CONDITIONS Continued

- b. The insurance procured by Permittee and Permittee's contractor for the benefit of Santa Clara Valley Water District shall not be deemed to release or limit any liability of Permittee or Permittee's contractor. Damages recoverable by Santa Clara Valley Water District for any liability of Permittee or Permittee's contractor shall, in any event, not be limited by the amount of the required insurance coverage.
- c. To the extent permitted by its respective policies of insurance, Permittee and Permittee's contractor hereby waives any right or recovery against the Santa Clara Valley Water District for any loss or damage that is covered by any insurance policy maintained or required to be maintained with respect to this permit.

EXHIBIT A PERMIT AREA

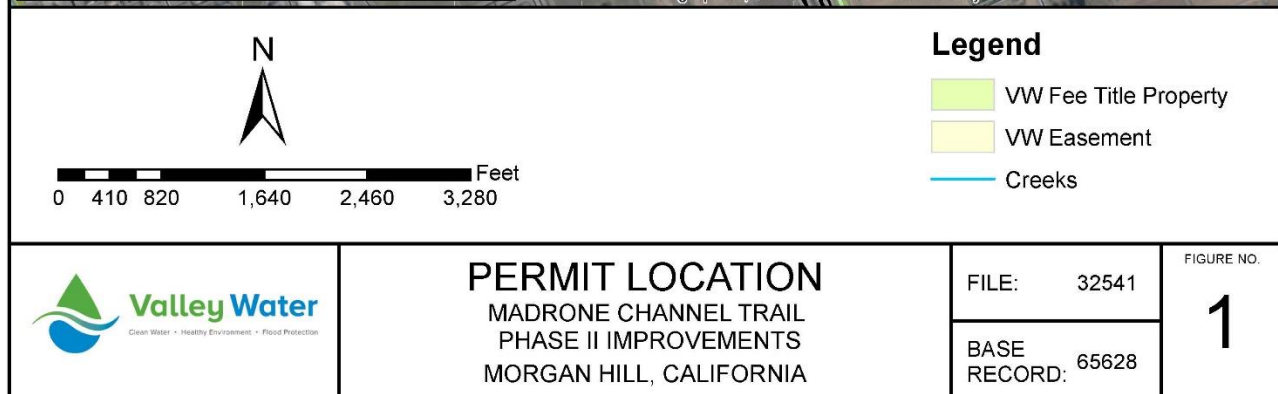
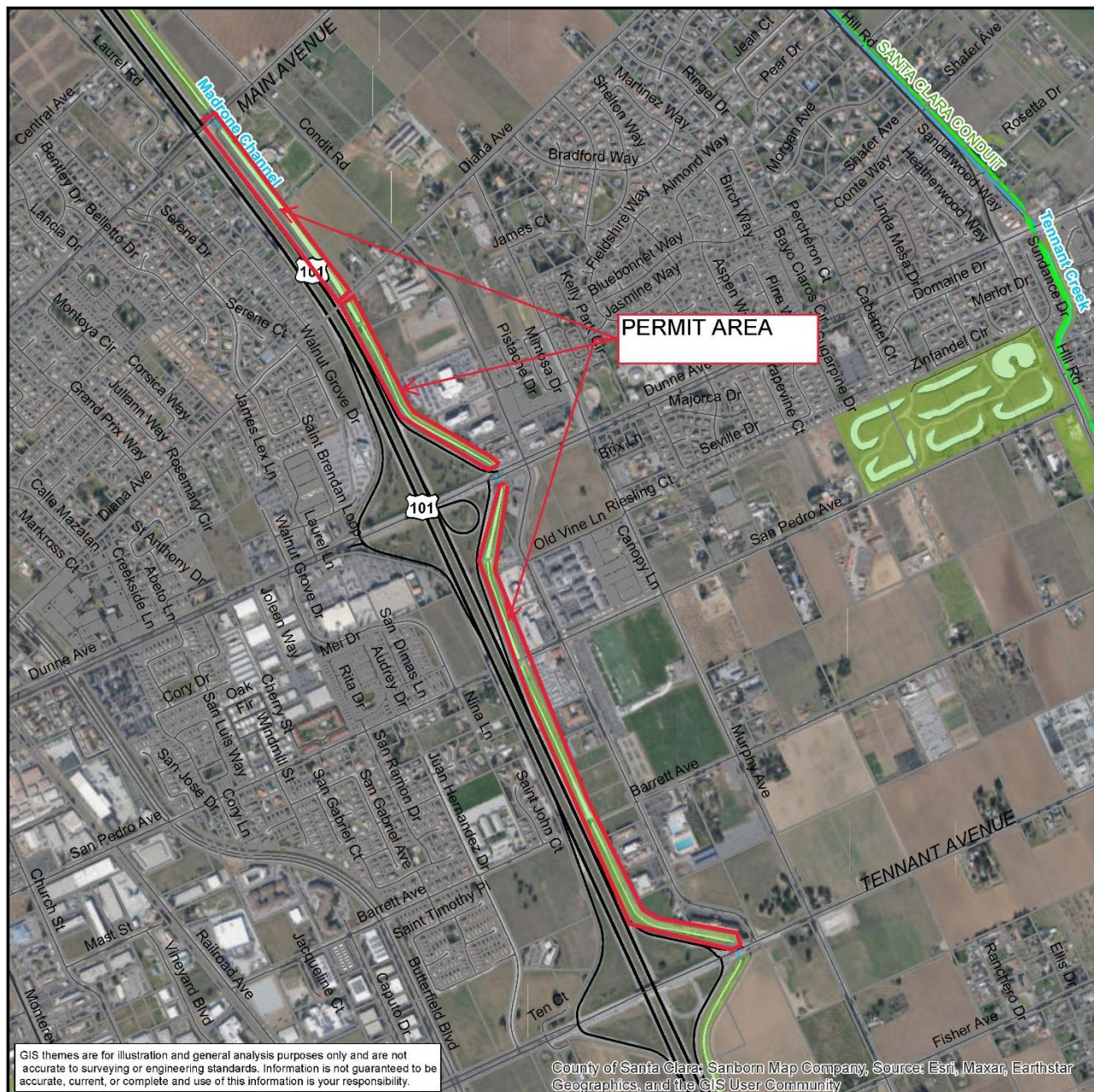


EXHIBIT B INSURANCE REQUIREMENTS



Community Projects Review Unit
5750 Almaden Expressway
San Jose, CA 95118
Phone: (408) 630-2650
Fax: (408) 979-5635

Insurance Requirements to Obtain a Santa Clara Valley Water District (Valley Water) Permit for Work on Valley Water Fee Title Right of Way or Easement

Please refer to the insurance requirements listed below. It is suggested that you provide your insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements. Please reference "CPRU File No. [Click or tap here to enter text.](#)" on insurance form. For expedient processing, forward via email to cpru@valleywater.org to the attention of the undersigned. **Issuance of your permit cannot proceed without these documents.**

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

☒ **\$1,000,000** per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage.

☐ [Click or tap here to enter text.](#) per occurrence bodily injury / [Click or tap here to enter text.](#) per occurrence property damage

Note: Commercial General / Business Liability Insurance must be written on standard ISO forms at least as broad as found in ISO form CG 0001

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

☒ **\$1,000,000** combined single limit for bodily injury or property damage.

☐ [Click or tap here to enter text.](#) per person / [Click or tap here to enter text.](#) per accident for bodily injury

☐ [Click or tap here to enter text.](#) per occurrence for property damage

3. **Workers Compensation Insurance**

4. **Additional Insured Endorsement(s)** for Commercial General/Business/Homeowners Liability coverage naming as indicated:

Permittee MUST provide an endorsement to the insurance policy(ies) listing the following as additional insureds:
Santa Clara Valley Water District, its Directors, officers, agents, employees and volunteers

Note: Additional insurance language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement. For example, use Form CG 20 26 07 04 (see Page 3) or Form CG 20 12 04 13 (see Page 4). Forms covering "Owners, Lessees, or Contractors" are **NOT** acceptable-see note below.

Note: Endorsements that only cover work done for or on behalf of the name additional insured is **NOT** acceptable. For example, **DO NOT** use Form cg 20 10 04 13 (see Pages 5 & 6).

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

☒ **\$1,000,000** per loss / aggregate with no known impairment of limits

☐ [Click or tap here to enter text.](#) per loss / [Click or tap here to enter text.](#) aggregate with no impairments of limits

6. **Cancellation Endorsement**

MUST provide a separate endorsement to the insurance policies providing that the policy(ies) will not be cancelled without thirty (30) days notice to Valley Water, except 10 days notice for non-payment of premium.

Note: Cancellation language on the Certificate of Insurance is NOT acceptable.

7. **Primacy Clause**

Permittee's insurance shall be primary with respect to any other insurance which may be carried by Valley Water, its officer, agents and employees, and Valley Water's coverage must not be called upon to contribute or share in the loss.

8. **Amount of Liability not Limited to Amount of Insurance (Non-Contributory Language)**

The insurance procured by Permittee/Contractor for the benefit of Valley Water must not be deemed to release or limit any liability of Permittee/Contractor. Damages recoverable by Valley Water for any liability of Permittee/Contractor must, in any event, not be limited by the amount of the required insurance coverage.



Community Projects Review Unit
5750 Almaden Expressway
San Jose, CA 95118
Phone: (408) 630-2650
Fax: (408) 979-5635

9. Waiver of Subrogation

To the extent permitted by its respective policies of insurance, Permittee/Contractor hereby waives any right or recovery against Valley Water for any loss or damage that is covered by any insurance policy maintained or required to be maintained with respect to the permit.

10. Certificate Holder

Santa Clara Valley Water District
Attention: Community Projects Review Unit
5750 Almaden Expressway
San Jose, CA 95118

If you have any questions, please contact [Click or tap here to enter text.](#) at (408) 630-[Click or tap here to enter text.](#) or at Click or tap here to enter text.@valleywater.org. If your insurance broker has any questions, please advise him/her to call Valley Water's Risk Manager, Mr. David Cahen at (408) 630-2213.

Note: These are minimum requirements. Additional insurance requirements could be required based on review of work. These insurance requirements may not be required for pedestrian access permits.

CHECKLIST OF DOCUMENTS NEEDED

| | | | |
|---------------------------|----|--|--|
| General Liability: | A. | Limits (\$1,000,000 per occurrence / \$2,000,000 aggregate limits for bodily injury and property damage.) | |
| | B. | Additional Insured (Endorsement) | |
| | C. | Waiver of Subrogation (Endorsement or policy language) | |
| | D. | Primacy (Endorsement or policy language) | |
| | E. | Cancellation Endorsement | |
| Auto Liability: | A. | Limits (\$1,000,000) | |
| | B. | Additional Insured (Endorsement) | |
| | C. | Waiver of Subrogation (Endorsement or policy language) | |
| | D. | Primacy (Endorsement or policy language) | |
| | E. | Cancellation Endorsement | |
| Umbrella: | A. | Limits (\$) | |
| | B. | Primacy (Endorsement or policy language) | |
| Workers' Comp: | A. | Limits (\$1,000,000) | |
| | B. | Waiver of Subrogation (Endorsement or policy language) | |
| | C. | Cancellation Endorsement | |