

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2009

Approved

Date

6/9/09

**COUNCIL DISTRICT:** 3  
**SNI AREA:** Washington  
& Gardner

**SUBJECT: MAINTENANCE AGREEMENT BETWEEN THE STATE OF CALIFORNIA AND THE CITY FOR GUADALUPE RIVER TRAIL REACH 6 – WOZ WAY TO VIRGINIA STREET**

## RECOMMENDATION

Approval of a Maintenance Agreement between the State of California and the City of San Jose for the Guadalupe River Trail Reach 6 – Woz Way to Virginia Street.

## OUTCOME

Approval of the recommended Agreement provides the mechanism for the City to formalize and document maintenance responsibilities between the respective agencies for the trail. Development of Guadalupe River Trail Reach 6 – Woz Way to Virginia Street extends downtown's Guadalupe River Park southward by 0.7-mile increasing park access for area residents.

## BACKGROUND

In November 2000, the City voters approved Measure P, a \$228 million Parks and Recreation Bond, for trail improvements and renovations to City park and recreation facilities. The Guadalupe River Trail received \$24 million of bond funding for a pedestrian/bike trail improvements project.

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In October 2004, the City Council approved a trail Master Plan that defined the trail alignment from Woz Way to Virginia Street. The alignment was shown to travel through Caltrans property along the embankment between Highway 87 and the Guadalupe River.

During the Master Planning process, a Technical Advisory Committee (TAC) was established to address and resolve master plan design issues and to provide ongoing coordination. Five meetings were held; the representatives and agencies involved were as follows: City of San Jose, State of California (Caltrans), Santa Clara Valley Water District, Peninsula Corridor Joint Powers Board, Union Pacific Railroad, U.S. Army Corp of Engineers, Valley Transportation Authority and the Guadalupe Watershed Integrated Working Group (GWIWG).

On March 30, 2004, Caltrans provided a conceptual acceptance of the Master Plan.

On June 20, 2006, the City Council (Item 2.17) approved a master agreement with the consultant firm of CH2MHill, Inc. to provide planning, design and construction services related to trail projects. Through a master agreement service order, the firm was directed to commence preparation of construction documents and seek all necessary permits.

In May 2009, plans were finalized and an Encroachment Permit was secured from Caltrans for development of the Trail on the State's property. The permit requires an executed Maintenance Agreement between the State and City stating that the City will maintain the trail and its related facilities within the State's property.

## ANALYSIS

Caltrans provided guidance as part of the master plan regarding the approach necessary to pursue and secure access for development of a recreational trail. The Caltrans process defines two tracks to secure access dependent on a project's budget. Projects below a \$1 million construction cost estimate may go forward following the State's Encroachment Permit Process. Projects over the \$1 million threshold must follow a full Project Development Process.

Staff was able to pursue the less time consuming Encroachment Permit Process. As part of the process, Caltrans recognized the trail as a linear improvement analogous to a public utility. The trail will serve a functional role for the State as it permits easier access for its vehicles and staff to inspect the overhead highway structures that dominate the landscape. Caltrans issued a longitudinal exception permit.

The Maintenance Agreement establishes the responsibilities between the State and the City for the maintenance of the completed improvements within the State's jurisdiction. The City's responsibility under the terms of the Agreement are regular and preventative maintenance of trail infrastructure and the resulting recreational corridor.

Per the Maintenance Agreement, the City is responsible for maintaining and preserving – at its own expense - the Trail and all its related improvements, including the following:

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- a. Trail paving including decorative paving, and curb and gutter elements,
- b. Signage, bollards, striping and pavement markings and security lighting (beneath highway bridge structures only),
- c. Entry plaza wall, retaining walls, drainage systems, and fencing,
- d. Landscape and irrigation,
- e. Benches, trash receptacles, dog waste dispenser and other miscellaneous improvements required for trail operation,
- f. Recreational infrastructure, and
- g. Slope stability

The City also would be responsible for providing – at its own expense – weed control, litter/debris and graffiti removal from the trail, related trail improvements, and freeway structure surfaces adjacent to trail.

The Agreement would allow the State to have unrestricted access to the trail for future construction, inspection, and maintenance purposes of its facilities. The State would be responsible for repairing any damage to the trail facilities caused by its use of the Trail.

If the City fails to perform its maintenance obligations or desires to terminate the Maintenance Agreement, then it would be required to remove the trail improvements located within the State's right of way.

The terms and conditions of this Maintenance Agreement are consistent with similar maintenance agreements entered into between the City and State. Accordingly, staff recommends that the City Council approve the Agreement. As with trails throughout the City, this reach will be a candidate for community adoption for supplemental cleaning and graffiti removal. PRNS staff will include this opportunity in outreach efforts.

### **POLICY ALTERNATIVES**

*Alternative #1:* Do nothing.

**Pros:** Does not require the City to construct, operate, and maintain the Trail. Reduces impacts to the general fund related to the provision of operations and maintenance services.

**Cons:** Prevents extension of the Guadalupe River Trail system that is an objective defined by the Green Vision and Greenprint.

**Reason for not recommending:** Development of trails is consistent with Goal 10 of the Green Vision and the project is a defined outcome of the Park Bond measure.

### **PUBLIC OUTREACH/INTEREST**



**Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

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- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

During the master plan process, two community meetings were held. On August 27, 2003 the first community meeting was held to present the master plan to the public and collect input. On March 4, 2004 a second community meeting was held to present the master plan reflecting some of the comments expressed from the first meeting. Both meetings resulted in strong community support for the master plan. A third community meeting occurred as preparation of construction documents commenced in order to obtain input on the Virginia Street gateway element.

The Trail Program website includes a trail system web page for the Guadalupe River Trail system. The page includes the master plan, alignment plan and other project information. This memorandum will be posted on the City's website for the June 23, 2009 City Council agenda.

### **COORDINATION**

This memorandum was developed in coordination with the City's Departments of Public Works, Transportation, and Planning, Building and Code Enforcement, the City Manager's Budget Office and the City Attorney's Office. Coordination was also conducted with Caltrans and Santa Clara Valley Water District Staff.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur planning, environmental study, and design work necessary to encourage construction spending in our local economy. Development of trails contributes to overall growth of the citywide Trail Network as defined by Goal 10 of the Green Vision.

### **COST SUMMARY/IMPLICATIONS**

Approval of the maintenance agreement permits construction of 0.7-mile trail project. The annual cost to maintain the Trail is \$5,332. The annual cost to patrol the Trail is \$1,540. These costs are also to be reported in a future council memo related to the award of a construction contract. This funding was allocated to the Parks, Recreation and Neighborhood Services Department as part of the 2008-2009 Adopted Operating Budget. Additionally, in the event the City fails to perform its maintenance obligations or desires to terminate the Maintenance Agreement, then the City's cost to remove the trail improvements located within the State's right

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of way as required by the Agreement is estimated to be \$270,000. This cost is at 2009 costs and may need to be adjusted for inflation to capture future demolition costs.

**CEQA**

Mitigated Negative Declaration PP04-03-102.

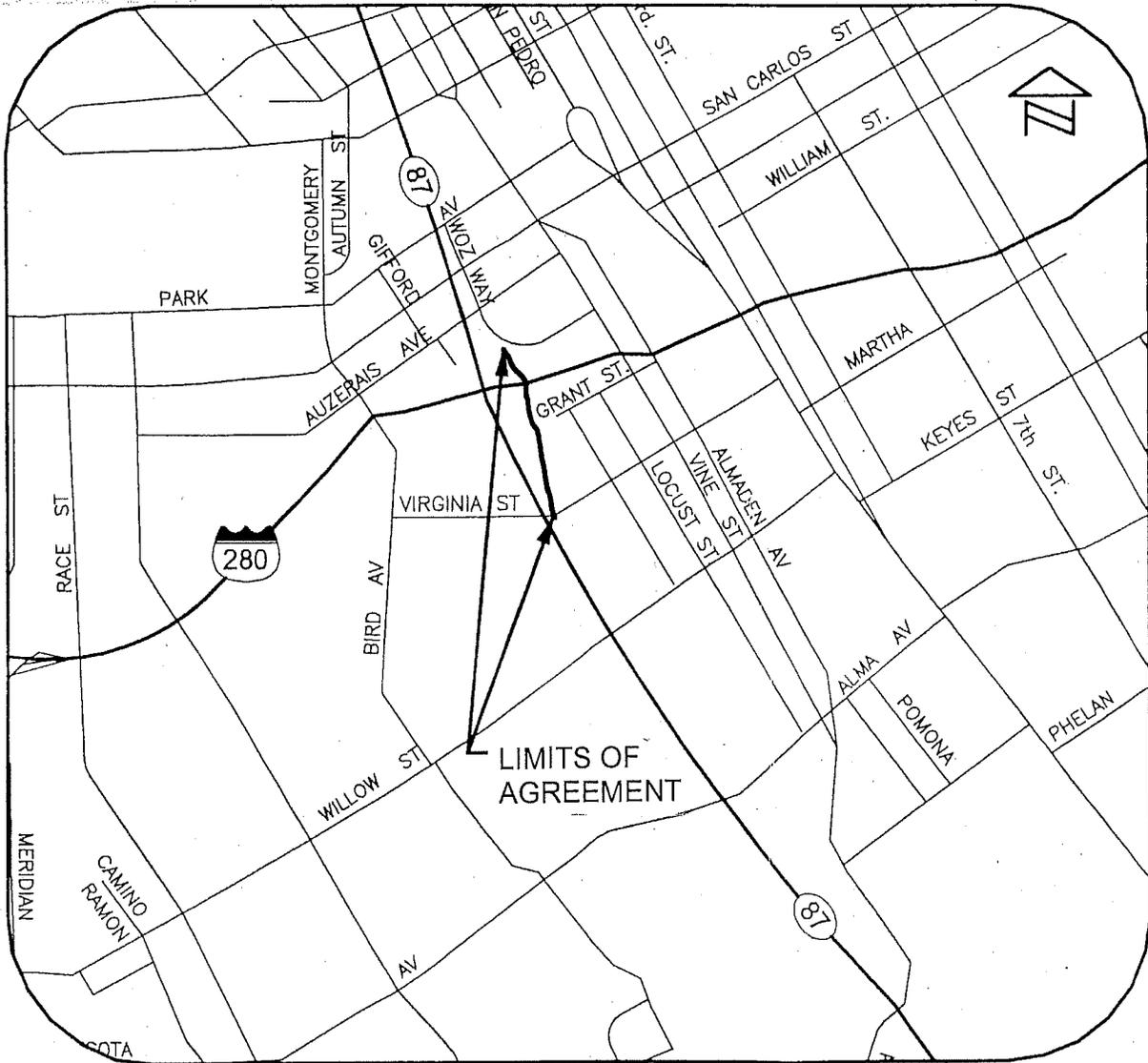


ALBERT BALAGSO

Director of Parks, Recreation and  
Neighborhood Services

Attachments: Exhibit A: Project Location and Alignment Plan  
Maintenance Agreement

For questions, please contact Yves Zsutty, Trail Manager at (408) 793-5561.



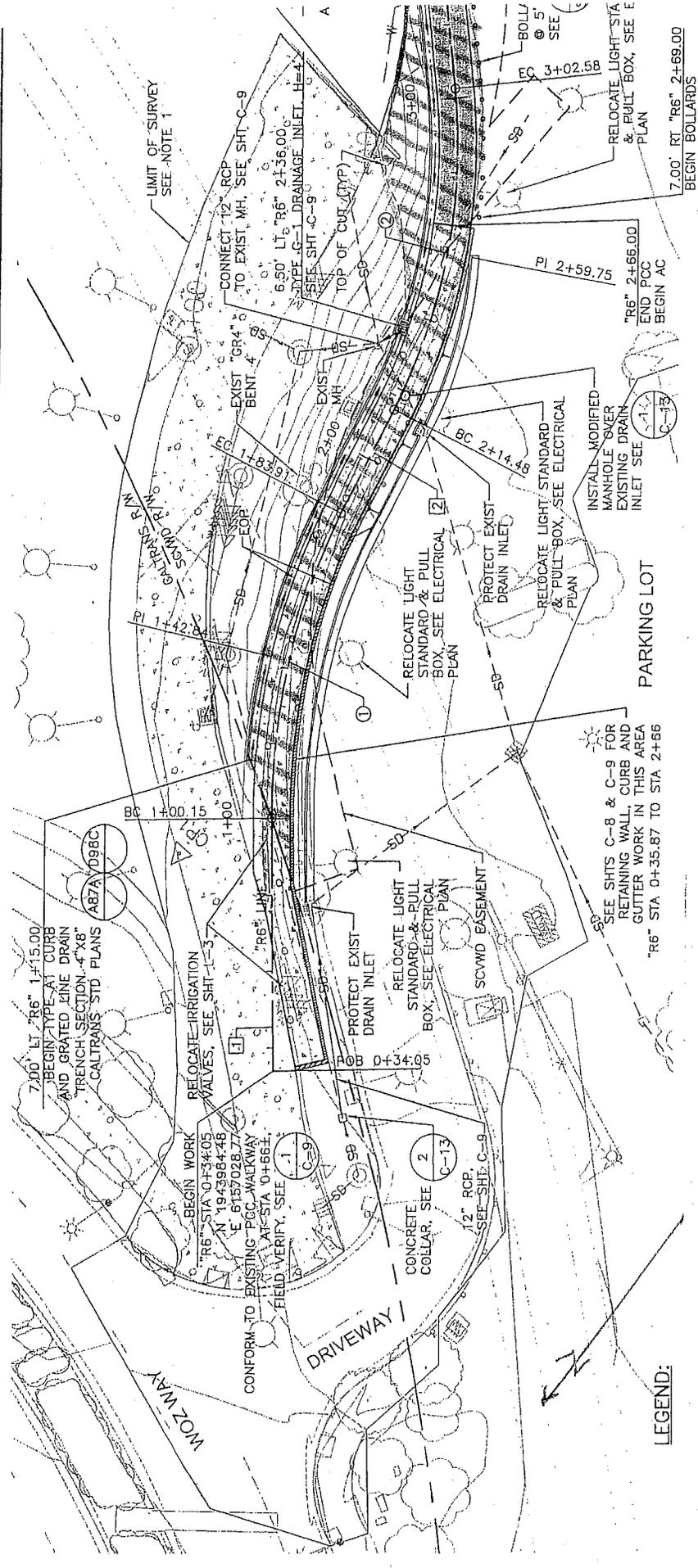
**LOCATION MAP**

NOT TO SCALE

EXHIBIT A (Sheet 1 of 12)  
LOCATION MAP

MA FOR GUADALUPE RIVER TRAIL  
WITH CITY OF SAN JOSE  
04-SCL-87 PM 4.7/5.2

A



PROT  
2" C  
AND

PLAN  
1"=20'

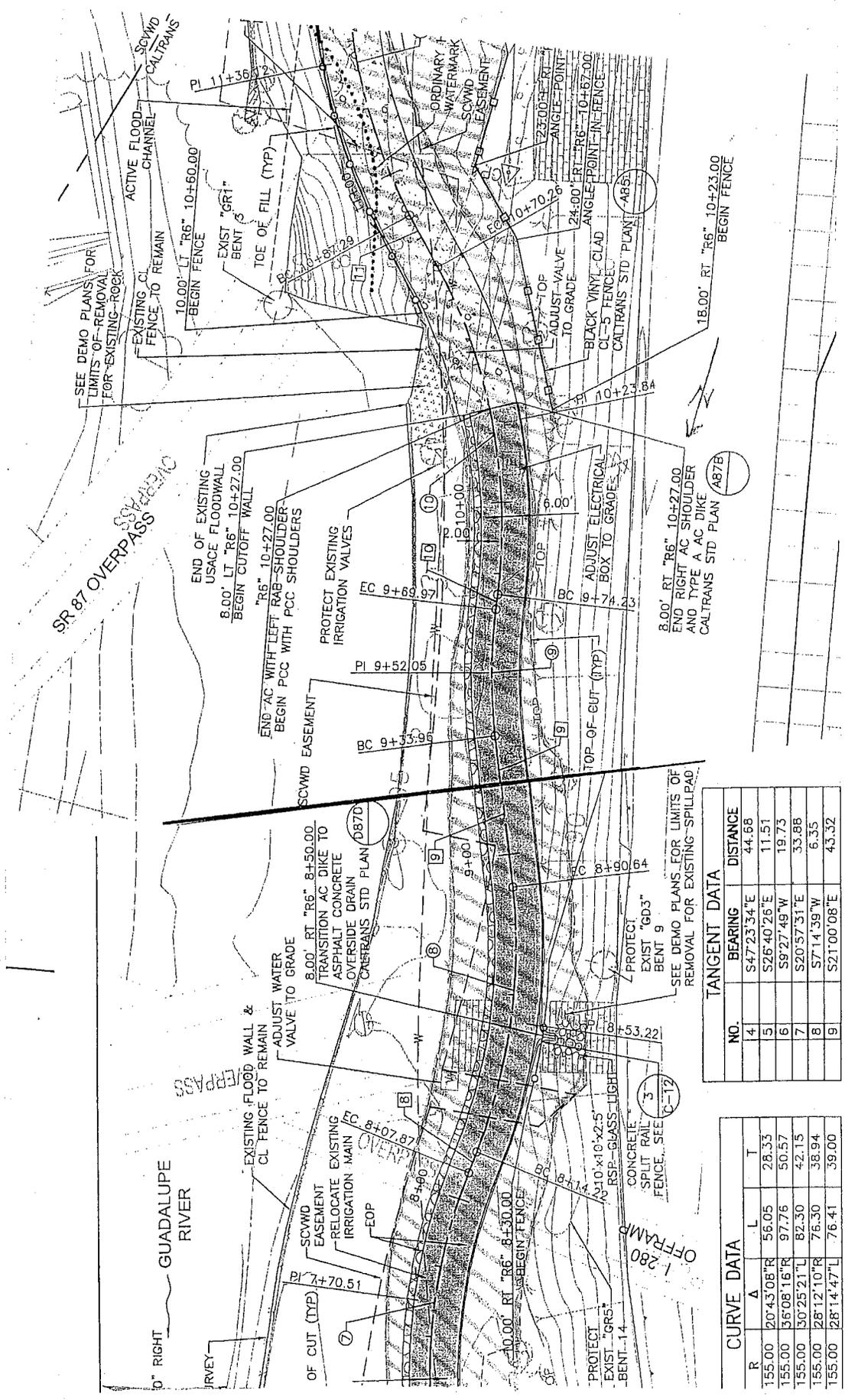
AREA WITHIN STATE RIGHT OF  
WAY TO BE MAINTAINED BY CITY



LEGEND:

EXHIBIT A (Sheet 2 of 12)  
 TRAIL PLAN  
 MA FOR GUADALUPE RIVER TRAIL  
 WITH CITY OF SAN JOSE  
 04-SCL-87 PM 4.7/5.2





**TANGENT DATA**

NO.	BEARING	DISTANCE
4	S47°23'34"E	44.68
5	S26°40'26"E	11.51
6	S9°27'49"W	19.73
7	S20°57'31"E	33.88
8	S71°4'39"W	6.35
9	S21°00'08"E	43.32

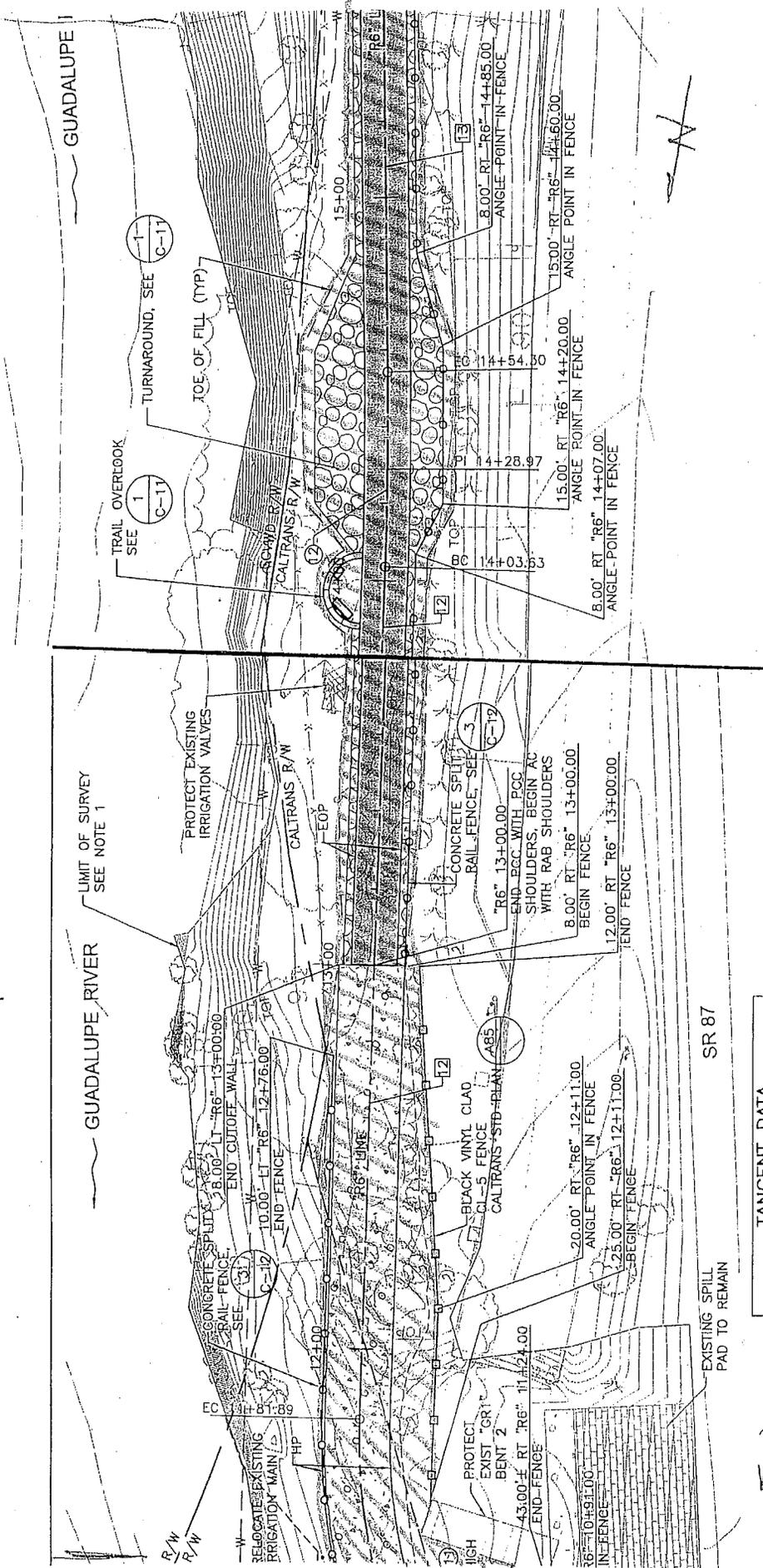
**CURVE DATA**

R	Δ	L	T
155.00	20°43'08"R	56.05	28.33
155.00	36°08'16"R	97.76	50.57
155.00	30°25'21"L	82.30	42.15
155.00	28°12'10"R	76.30	38.94
155.00	28°14'47"L	76.41	39.00

AREA WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY



EXHIBIT A (Sheet 4 of 12)  
 TRAIL PLAN  
 MA FOR GUADALUPE RIVER TRAIL  
 WITH CITY OF SAN JOSE  
 04-SCL-87 PM 4.7/5.2



TANGENT DATA		CURVE DATA	
NO.	BEARING	DISTANCE	
9	S21°00'08"E	43.32	
10	S		
11	S4		
12	S		

TANGENT DATA		CURVE DATA	
NO.	BEARING	DISTANCE	
9	S21°00'08"E	43.32	
10	S		
11	S4		
12	S		

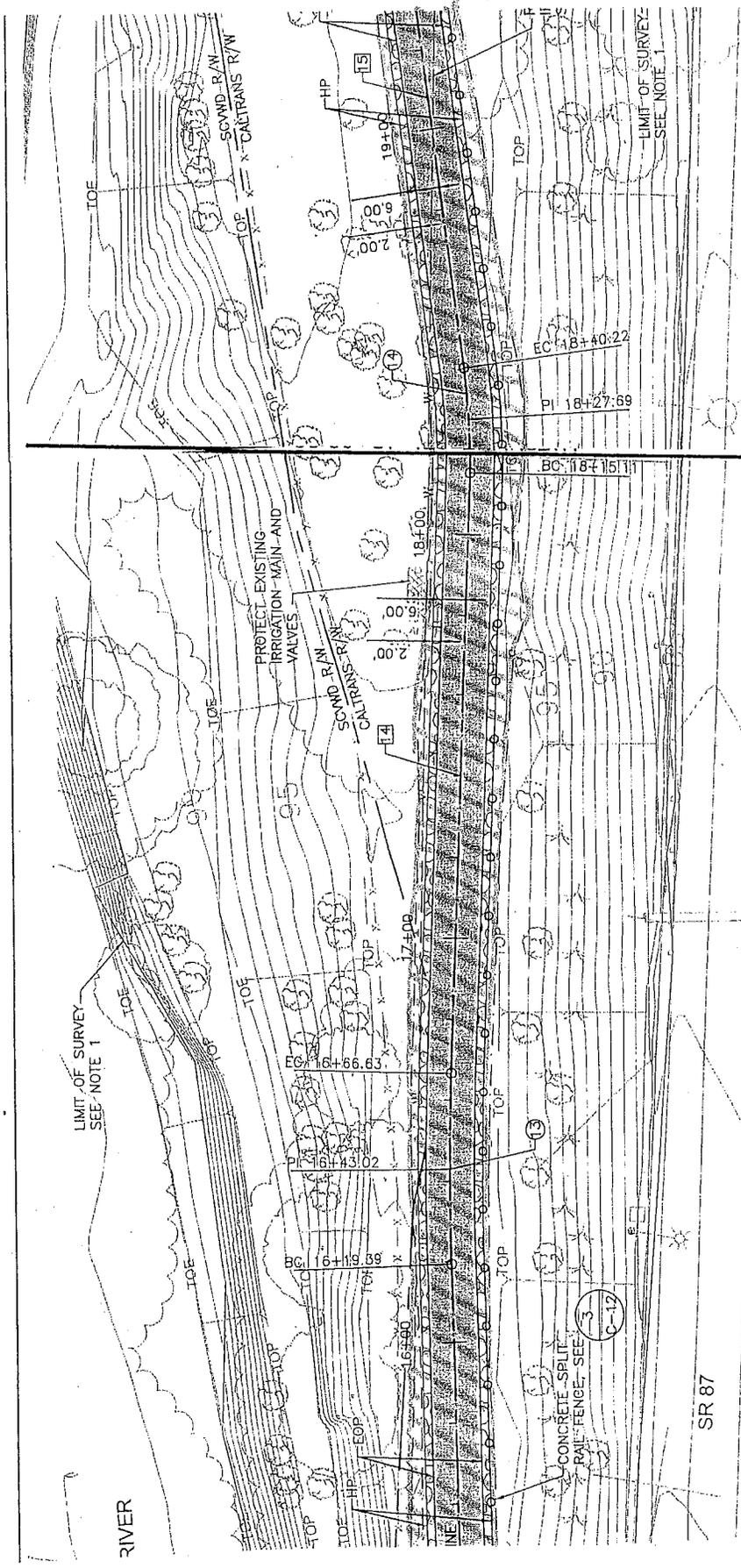
PLAN  
1"=20'



AREA WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY

EXHIBIT A (Sheet 5 of 12)  
TRAIL PLAN  
MA FOR GUADALUPE RIVER TRAIL  
WITH CITY OF SAN JOSE  
04-SCL-87 PM 4.7/5.2

SR 87



TANGENT DATA

NO.	BEARING	DISTANCE
12	S87°12'51"E	221.74
13	S11°07'04"E	165.09
14	S74°44'04"E	148.47

CURVE DATA

NO.	R	A	L	T
12	1000.00	2°54'12"L	50.67	25.34
13	800.00	3°23'00"R	47.24	23.63

PLAN  
1"=20'

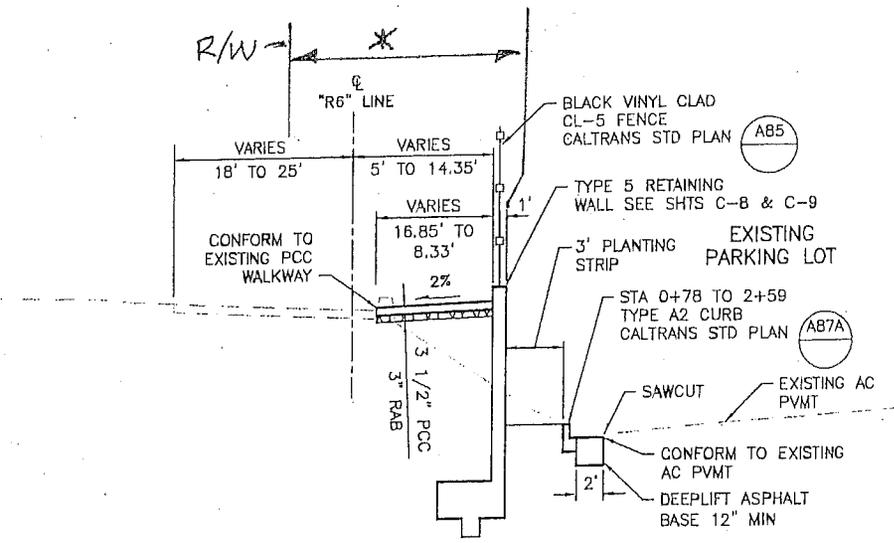
SR 87

AREA WITHIN STATE RIGHT OF  
WAY TO BE MAINTAINED BY CITY

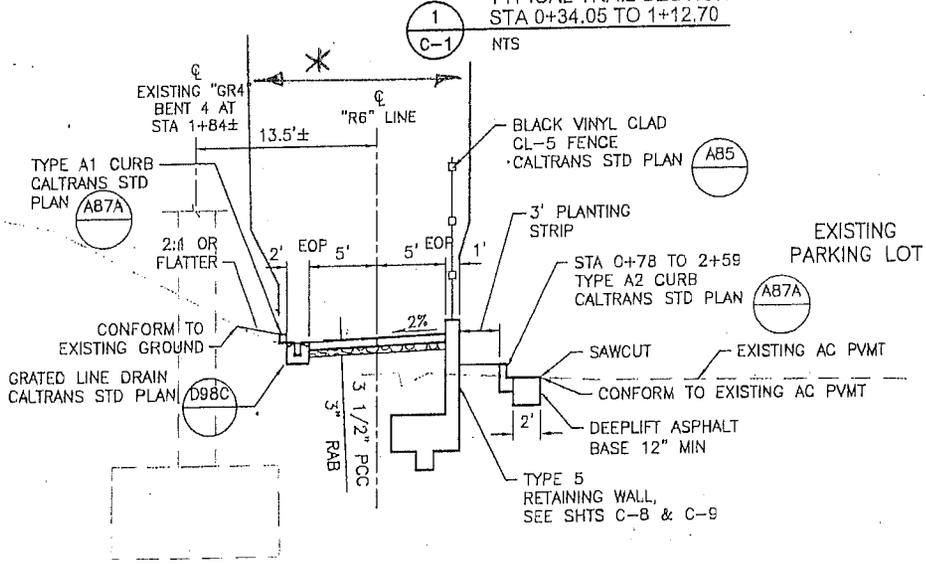


EXHIBIT A (Sheet 6 of 12 )  
TRAIL PLAN  
MA FOR GUADALUPE RIVER TRAIL  
WITH CITY OF SAN JOSE  
04-SCL-87 PM 4.7/5.2

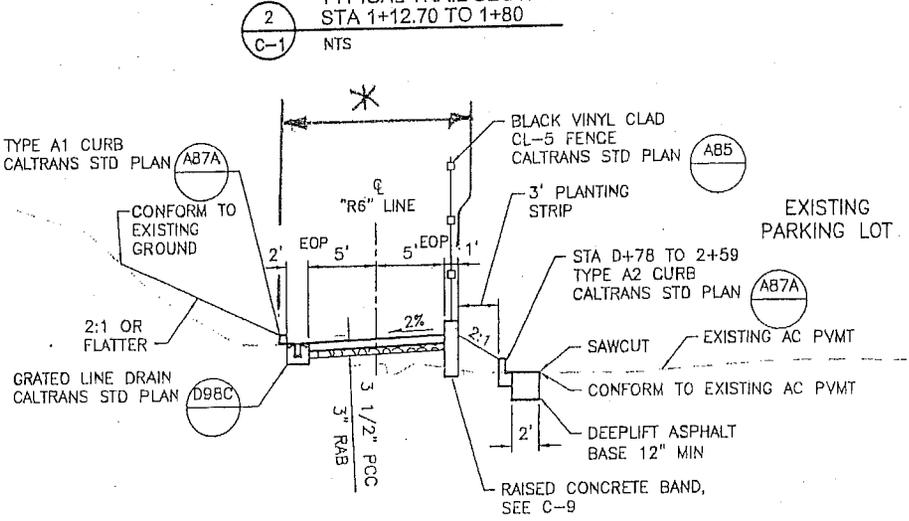




TYPICAL TRAIL SECTION  
STA 0+34.05 TO 1+12.70



TYPICAL TRAIL SECTION  
STA 1+12.70 TO 1+80

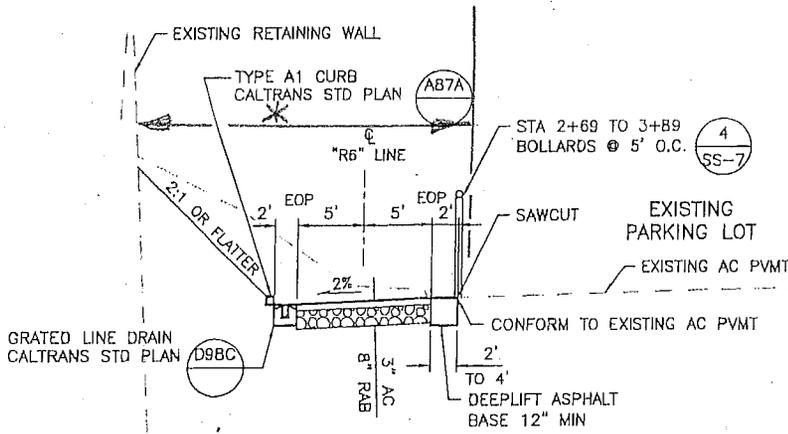


TYPICAL TRAIL SECTION  
STA 1+80 TO 2+66

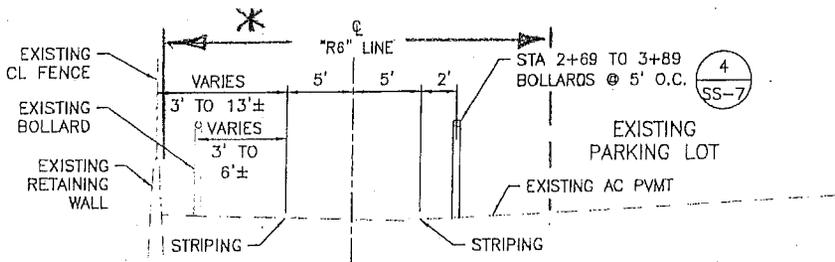
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AREA WITHIN STATE RIGHT OF  
WAY TO BE MAINTAINED BY CITY

EXHIBIT A (Sheet 8 of 12 )  
CROSS SECTIONS

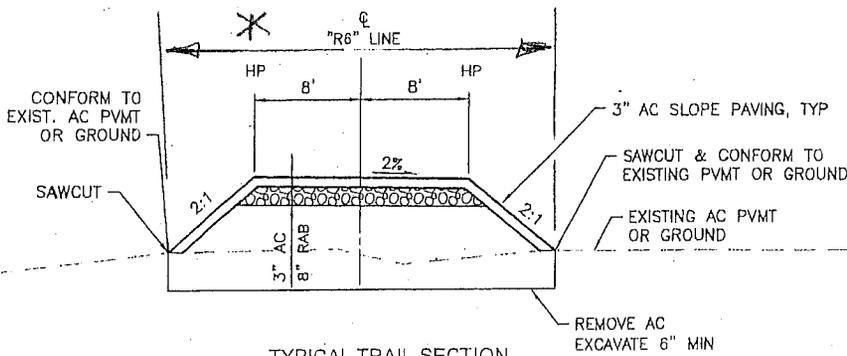
MA FOR GUADALUPE RIVER TRAIL  
WITH CITY OF SAN JOSE  
04-SCL-87 PM 4.7/5.2



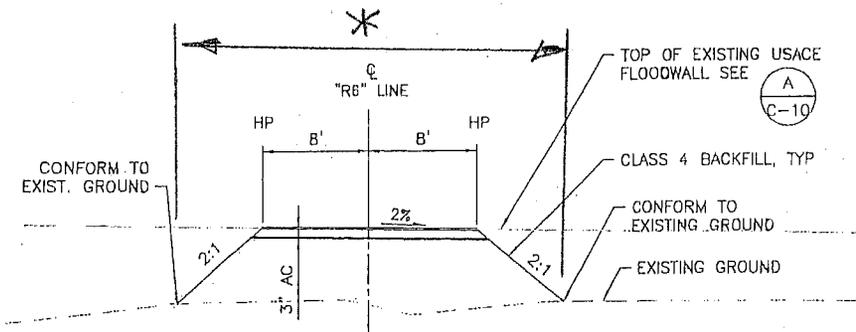
4  
C-1  
TYPICAL TRAIL SECTION  
STA 2+66 TO 3+66  
NTS



5  
C-1  
TYPICAL TRAIL SECTION  
STA 3+66 TO 5+04  
NTS



6  
C-1  
TYPICAL TRAIL SECTION  
STA 5+04 TO 6+02  
NTS

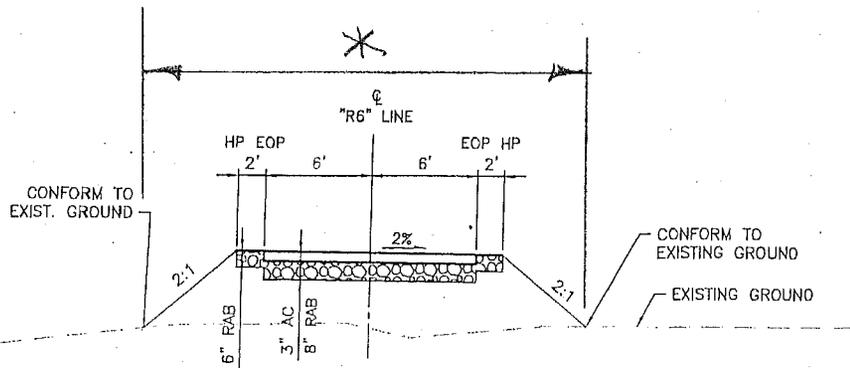


7  
C-1  
TYPICAL TRAIL SECTION  
STA 6+02 TO 6+11  
NTS

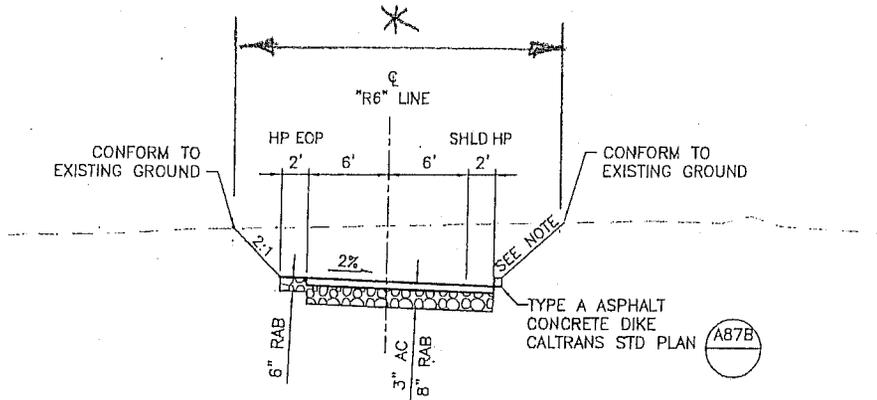
\*  
AREA WITHIN STATE RIGHT OF  
WAY TO BE MAINTAINED BY CITY

EXHIBIT A (Sheet 9 of 12)  
CROSS SECTIONS

MA FOR GUADALUPE RIVER TRAIL  
WITH CITY OF SAN JOSE  
04-SCL-87 PM 4.7/5.2



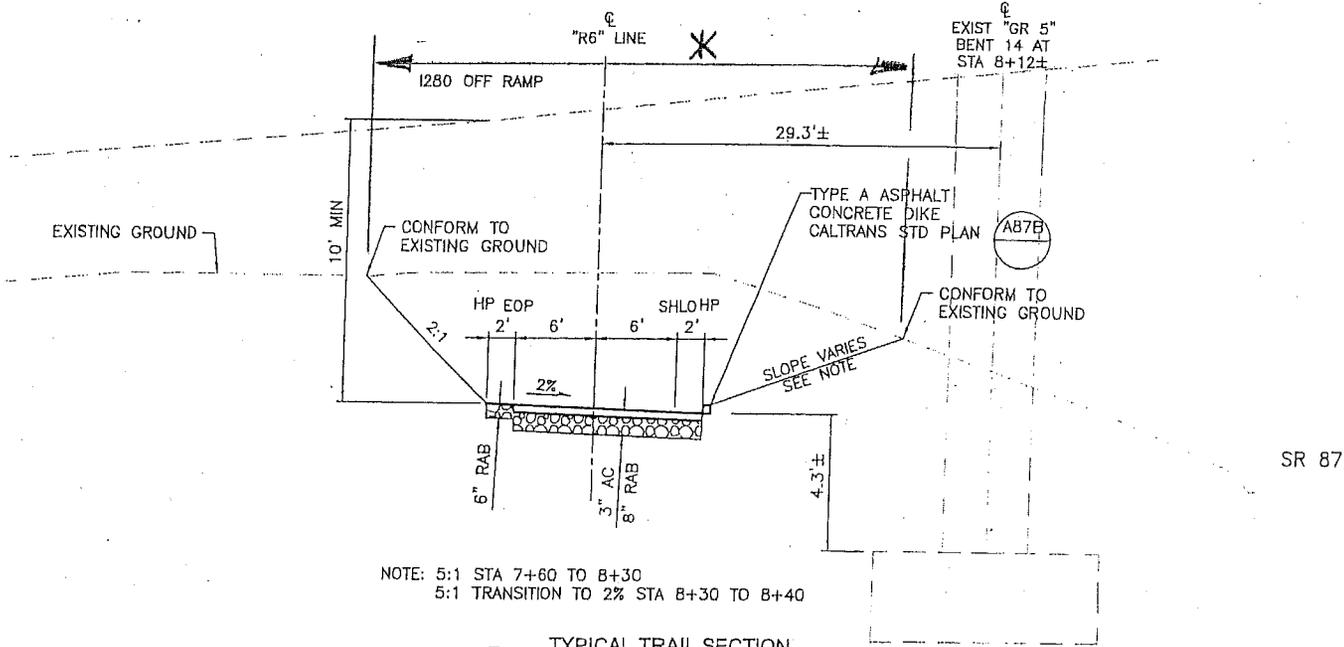
8  
C-1  
TYPICAL TRAIL SECTION  
STA 6+11 TO 6+87  
NTS



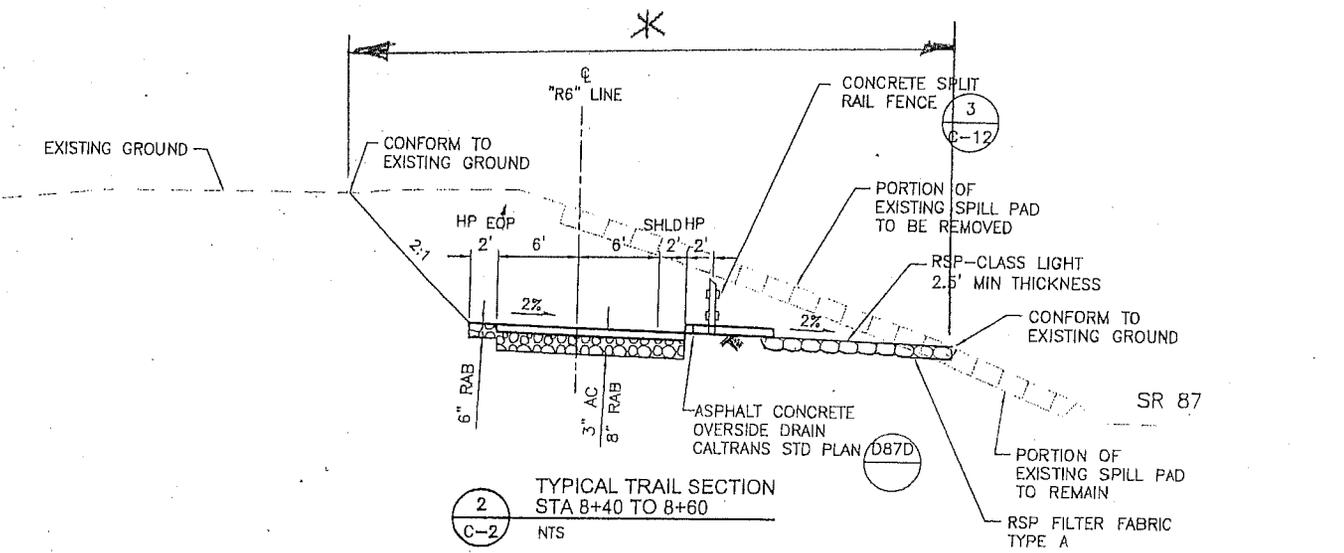
NOTE: 2:1 STA 6+87 TO 7+50  
2:1 TRANSITION TO 5:1 STA 7+50 TO 7+60

9  
C-1  
TYPICAL TRAIL SECTION  
STA 6+87 TO 7+60  
NTS

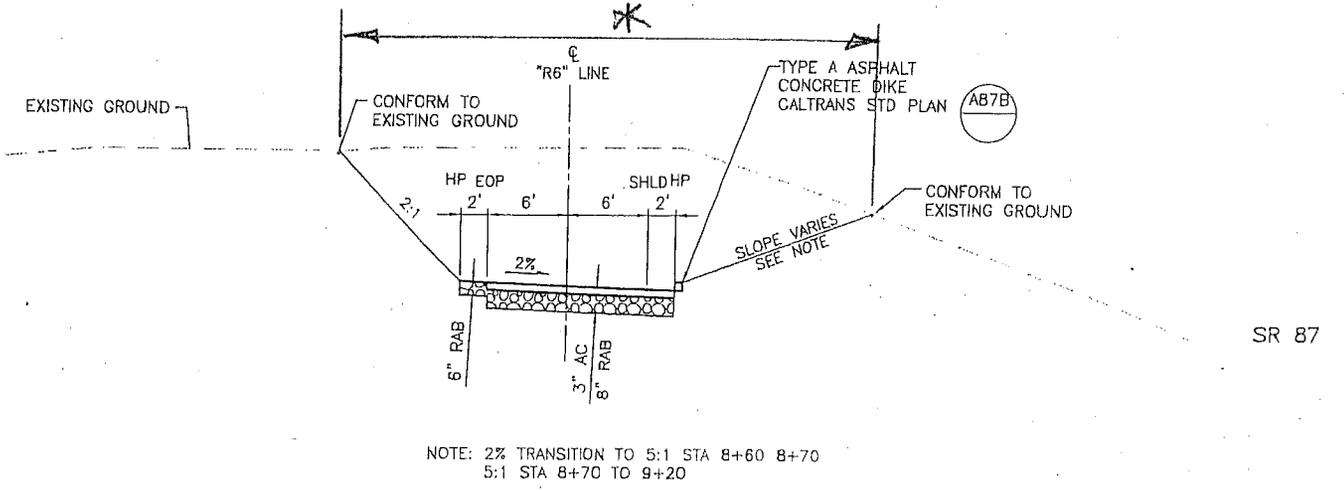
\* AREA WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY



1  
C-2  
TYPICAL TRAIL SECTION  
STA 7+60 TO 8+40  
NTS

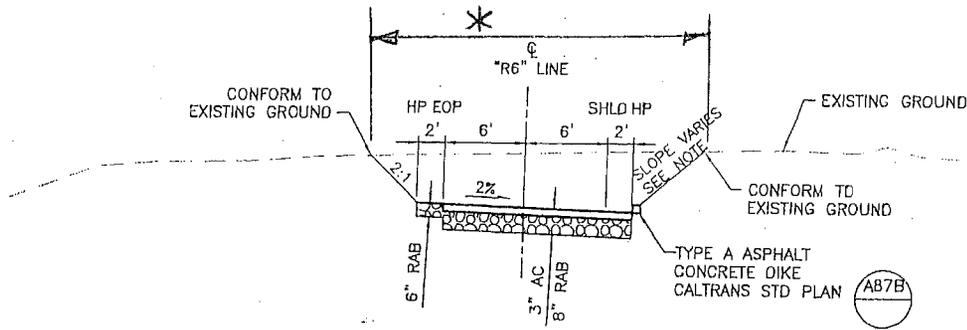


2  
C-2  
TYPICAL TRAIL SECTION  
STA 8+40 TO 8+60  
NTS



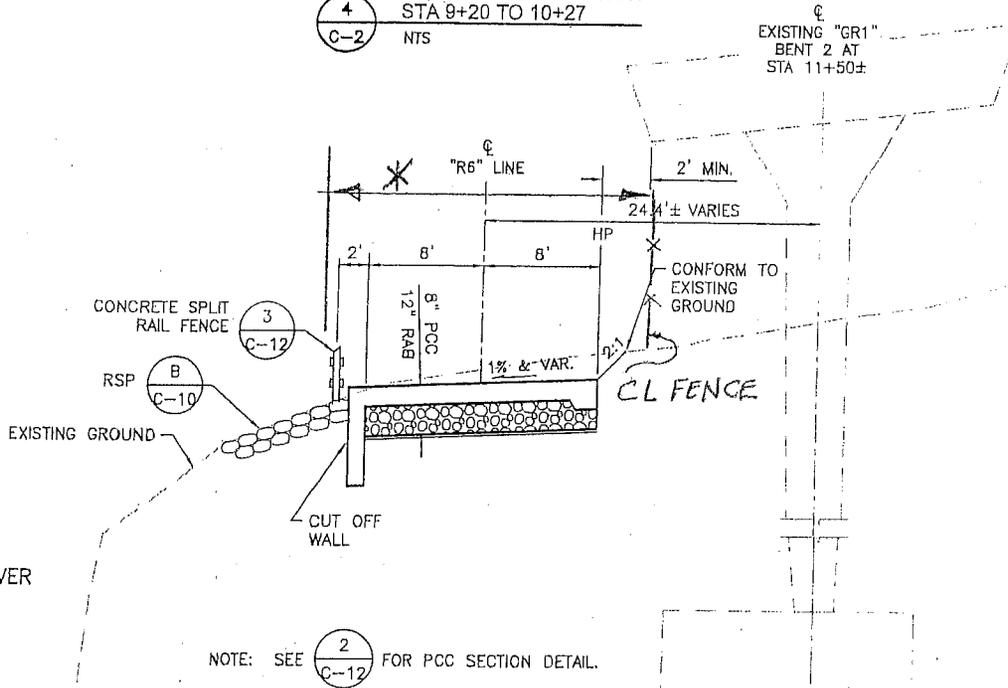
3  
C-2  
TYPICAL TRAIL SECTION  
STA 8+60 TO 9+20  
NTS

\* AREA WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY



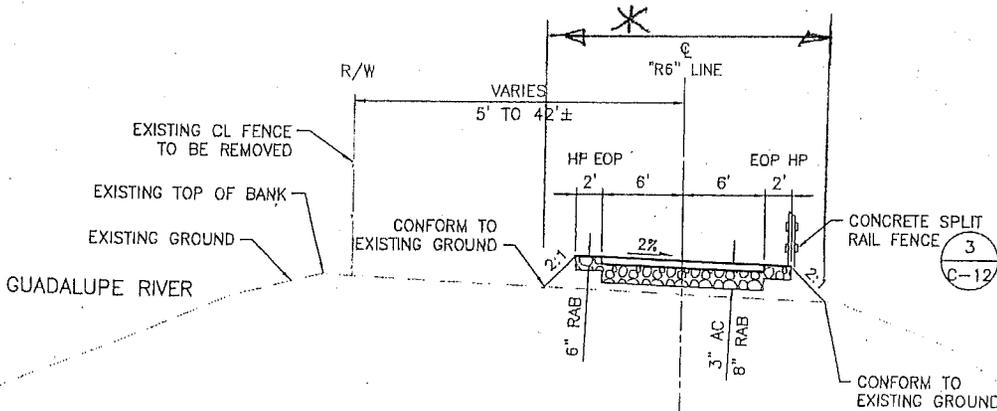
NOTE: 5:1 TRANSITION TO 2:1 STA 9+20 TO 9+30  
 2:1 STA 9+30 TO 10+27

4  
 C-2  
 TYPICAL TRAIL SECTION  
 STA 9+20 TO 10+27  
 NTS



NOTE: SEE 2 FOR PCC SECTION DETAIL.

5  
 C-2  
 TYPICAL TRAIL SECTION  
 STA 10+27 TO 13+00  
 NTS



6  
 C-2  
 TYPICAL TRAIL SECTION  
 STA 13+00 TO 21+76.00  
 NTS

SR 87

\* AREA WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY

EXHIBIT A (Sheet 12 of 12 )  
 CROSS SECTIONS

MA FOR GUADALUPE RIVER TRAIL  
 WITH CITY OF SAN JOSE  
 04-SCL-87 PM 4.7/5.2

**MAINTENANCE AGREEMENT  
FOR  
GUADALUPE RIVER TRAIL REACH 6 – WOZ WAY TO VIRGINIA STREET**

THIS AGREEMENT is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the State of California, acting by and through its Department of Transportation, hereinafter referred to as "STATE," and the City of San Jose, hereinafter referred to as "CITY", and collectively referred to as "PARTIES."

**WITNESSETH:**

WHEREAS, the CITY's Guadalupe River Trail Reach 6 from Woz Way to Virginia Street project, hereinafter referred to as "TRAIL," will travel along the existing west bank of the Guadalupe River undeveloped service road, along State Highway 87. Most of the TRAIL will be located within STATE's right of way and will be constructed under STATE Encroachment Permit No.0408-NMC-1515; and

WHEREAS, the PARTIIES hereto mutually desire to clarify the division of maintenance responsibility upon completion of TRAIL as to TRAIL, or portions thereof, within STATE right of way.

**MAINTENANCE DEFINED:**

Maintenance is defined, in part, in Section 27 of the Streets and Highway Code.

**NOW THEREFORE, IT IS AGREED:**

**1. EXHIBITS**

Exhibit "A" consists of plan drawings that delineate the areas within the STATE right-of-way which are the responsibility of the CITY to maintain in accordance with this Agreement.

When a planned future improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described, which affects the division of maintenance, STATE will provide a newly dated and revised Exhibit "A", which, when executed by both parties, shall be made a part hereof by this reference to supersede the original exhibit as part of this Agreement.

**2. BICYCLE/PEDESTIAN TRAIL**

The width of the TRAIL subject to CITY's maintenance varies and is delineated in the Exhibit A. CITY, at CITY expense, will maintain the TRAIL and all its related facilities including, but not limited to:

- Pavement including concrete paving, curb and gutter
- Traffic service facility includes signage, bollards, striping and pavement marking, and security lighting
- Plaza walls, retaining walls, drainage systems, chain link fence, and concrete post and rail fence,
- Landscaping and irrigation,
- Dog waste dispenser, benches, trash receptacles and other miscellaneous improvements required for trail operation.
- Weed control, litter and debris removal, as well as preservation of recreational infrastructure.
- Cleaning and painting to keep freeway structure surfaces adjacent to TRAIL, and TRAIL side retaining wall surface reasonably free of graffiti.
- Slope stability of TRAIL cut and fill slope

### 3. ACCESS

STATE reserves its unrestricted right of use of all areas within STATE right of way for future construction, reconstruction, expansion, or modification, including inspection and maintenance purposes. STATE will have the use of the trail as a service road for its operations and maintenance vehicles. STATE will be responsible for any repair and/or replacement for damages incurred to the trail and trail components (i.e. asphalt concrete trail, aggregate base shoulders, concrete paving, benches, signage, security lighting, bollards, walls, retaining walls, fencing, trash receptacles, landscaping and irrigation, etc. and as shown on the Plans) as a result of its use of the trail.

### 4. LEGAL RELATIONS AND RESPONSIBILITIES:

- A. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
- B. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual,

inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

- C. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

#### 5. FAILURE TO MAINTAIN

All maintenance obligations of CITY under the terms of this Agreement are subject to the appropriation of resources. If CITY fails to perform the maintenance required by this Agreement, then CITY, at CITY's sole expense, shall be obligated to remove the trail and all related improvements and to restore the right of way as closely as is reasonable to its original condition. If CITY fails to do so, then STATE may do so and recover its costs from CITY.

#### 6. EFFECTIVE DATE

This Agreement shall be effective upon the date of its execution by the STATE, and shall terminate only upon the mutual written agreement of the parties or upon CITY's removal of all portions of the TRAIL within STATE's right of way pursuant to Paragraph 5 above.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF SAN JOSE

STATE OF CALIFORNIA  
Department of Transportation

By \_\_\_\_\_  
Deanna Santana  
Deputy City Manager

WILL KEMPTON  
Director of Transportation

Approved as to form:

By \_\_\_\_\_ Date  
NADER ESHGHIPOUR  
Deputy District Director  
Maintenance

\_\_\_\_\_  
Senior Deputy City Attorney