

**ASSOCIATION OF BAY AREA GOVERNMENTS  
BAY TRAIL PROJECT**

**PLANNING GRANT AGREEMENT**

San Jose Bay Trail Reach 9 Plans, Specifications and Engineering Documents

Grantee's full, legal name: City of San Jose, Dept of Parks, Recreation and Neighborhood Services

Address: 200 East Santa Clara Street, 9<sup>th</sup> Floor, San Jose, CA 95113

Phone No.: (408) 793-5561

Name of Contact: Yves Zsutty

Title of Contact: Program Manager, Citywide Trail Network

**Taxpayer ID Number:** 94-6000419

**I. SCOPE OF AGREEMENT**

Pursuant to Chapter 9 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") awarded grant funds to be administered by the Association of Bay Area Governments (ABAG) for development of the Bay Trail Project. ABAG grants to the **City of San Jose** ("the Grantee") a sum not to exceed two hundred thousand dollars (**\$200,000**), Proposition 84 funds, the "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006", subject to the terms and conditions of this Agreement, to prepare the **San Jose Bay Trail Reach 9 Plans, Specifications and Engineering Documents** ("the Project") for the area, shown on Exhibit A, which is incorporated by reference and attached. The Project description is attached as Exhibit B, which is incorporated by reference.

The Grantee shall carry out the Project in accordance with this agreement and a work program to be approved by ABAG pursuant to this agreement. The Grantee shall provide any funds beyond those granted under this agreement which are needed to complete the Project.

**II. CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT**

The Grantee shall not commence the Project and ABAG shall not be obligated to disburse any funds under this agreement unless and until the following conditions precedent have been met:

- A. A resolution has been adopted by the **City of San José** authorizing the execution of this agreement and approving its terms and conditions.
- B. ABAG has approved in writing:
  - 1. The work program for the Project.
  - 2. All contractors that the Grantee intends to employ in connection with the Project.

### **III. TERM OF AGREEMENT**

This agreement shall be deemed executed and effective when signed by both parties and together with the resolution described in the "CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" section of this agreement.

This agreement shall run from its effective date through February 28, 2013 (the "completion date") unless otherwise terminated or amended as provided in this agreement. All work shall be completed by the completion date.

## STANDARD PROVISIONS

### **I. WORK PROGRAM**

If all or part of the Project to be funded under this agreement will be performed by third parties ("contractors") under contract with the Grantee, then the Grantee shall, prior to initiating any request for proposals or other solicitation, submit the solicitation package for review and written approval of ABAG. Upon approval by ABAG, the Grantee shall proceed with the solicitation process. Prior to final selection, the Grantee shall submit to ABAG for written approval the names of all contractors that the Grantee intends to hire.

Prior to commencement of the Project, the Grantee shall submit a detailed work program to ABAG for review and written approval as to its consistency with the terms of this agreement. The work program shall include:

- A. The specific tasks to be performed.
- B. A schedule of completion for the Project, specifically listing the completion date for each Project component and a final Project completion date.
- C. A detailed project budget ("Project Budget"). The Project Budget shall describe all labor and materials costs to be incurred to complete each component of the Project. For each Project component, the Project Budget shall list all intended funding sources including ABAG's grant, the Grantee's required contribution and all other sources of monies, materials, or labor.

The work program shall have the same force and effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the Grantee's submission of a modified work program and ABAG's written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

The Grantee shall carry out the Project in accordance with the approved work program.

### **II. COORDINATION AND MEETINGS**

The Grantee shall coordinate with ABAG staff and shall participate in meetings and other communications as necessary to ensure coordination.

### **III. WORK PRODUCTS**

A. All material, data, information, and written, graphic or other work produced under this Agreement shall be the property of the Grantee, provided that the Conservancy and ABAG shall have the unqualified and unconditional right to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy and ABAG are granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of

derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The Grantee shall include in any contract with a third party for work under this agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy and ABAG as a third-party beneficiaries of those provisions.

The Grantee shall not utilize the work produced under this agreement for any profit-making venture, or sell or grant rights to a third party for that purpose.

B. The Conservancy and ABAG acknowledge and agree that Grantee and its consultants do not in any way warrant the suitability of any material, data, information, and written, graphic or other work produced under this Agreement for reuse or publication (as described in Section III.A above) by the Conservancy, ABAG, or any third party for any purpose whatsoever. Additionally, the Conservancy and ABAG acknowledge and agree that Grantee and its consultants shall not be responsible or liable for the reuse or publication of any material, data, information, and written, graphic or other work produced under this Agreement by the Conservancy, ABAG, or any third party authorized by the Conservancy or ABAG.

#### **IV. COSTS AND DISBURSEMENTS**

Upon determination by ABAG that all "CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" have been fully met, ABAG shall disburse to the Grantee, in accordance with the approved Project Budget, a total amount not to exceed the amount of this grant, as follows:

The provision of this section with a check mark, "x" or equivalent mark opposite it will apply at the commencement of the agreement.

**MONTHLY INVOICES**

Disbursements shall be made on the basis of costs incurred to date, less ten percent (10%), upon the Grantee's satisfactory progress in accordance with the approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. Disbursement of the ten percent (10%) withheld shall be made upon (1) the Grantee's satisfactory completion of the Project, compliance with the "PROJECT COMPLETION" section of this agreement, and submission of a fully executed final "Request for Disbursement" form; and (2) ABAG's acceptance of the Project.

**COMPLETION OF EACH PROJECT TASK**

Disbursement shall be made on the basis of costs incurred to date, less ten percent (10%), upon the Grantee's satisfactory completion of each project task identified in the approved work program. The final disbursement, together with amounts earlier withheld, shall be made upon the Grantee's satisfactory completion of the Project and compliance with the

"PROJECT COMPLETION" section of this agreement and upon ABAG's acceptance of the Project.

□ **COMPLETION OF PROJECT**

Disbursement shall be made on the basis of costs incurred, upon the Grantee's satisfactory completion of the Project and compliance with the "PROJECT COMPLETION" section of this agreement and upon ABAG's acceptance of the Project.

The Grantee shall request disbursements by filing with ABAG fully executed "Request for Disbursement" forms (available from ABAG). The Grantee shall submit the final form within thirty (30) days after the completion date provided in the "TERM OF AGREEMENT" section, above. The Grantee shall state on the form its name and address, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description of all work done for which disbursement is requested. The form shall be signed by an authorized representative of the Grantee. Additionally, each form shall be accompanied by any supporting invoices or other source documents from contractors that the Grantee engaged to complete any portion of the Project funded under this agreement, and by written substantiation of completion of the portion of the Project for which disbursement is requested. With each form, the Grantee shall also submit a supporting progress report summarizing the current status of the Project and comparing it to the status required by the work program (budget, timeline, task, etc). Failure to fully execute and submit a "Request for Disbursement" form, including attachment of supporting documents, will relieve ABAG of its obligation to disburse funds to the Grantee unless and until all deficiencies in the form are rectified.

**V. EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The Grantee shall expend funds in the manner described in the approved Project Budget. The allocation of ABAG's total grant among the items in the Project Budget may vary by as much as ten percent (10%) without approval by ABAG. Any difference of more than ten percent (10%) must be approved in writing by ABAG. ABAG may withhold payment for changes in particular budget items which exceed the amount allocated in the Project Budget by more than ten percent (10%) and which have not received the approval required above. The total amount of this grant may not be increased except by amendment to this agreement. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

**VI. PROJECT COMPLETION**

The Grantee shall complete the Project by the completion date provided in the "TERM OF AGREEMENT" section, above. Upon completion of the Project, the Grantee shall supply ABAG with two copies of evidence of completion by submitting: (1) any other work products specified in the work program for the Project; and (2) a fully executed final "Request for Disbursement" form. Within forty-five (45) days of Grantee's compliance with this paragraph, ABAG shall determine whether the Project has been satisfactorily completed. If ABAG determines that the Project has

been satisfactorily completed, ABAG shall issue to the Grantee a letter of acceptance of the Project. The Project shall be deemed complete as of the date of the letter of acceptance.

## **VII. EARLY TERMINATION AND FAILURE TO PERFORM**

If the Grantee fails to complete the Project in accordance with this agreement, or fails to fulfill any other obligations of this agreement prior to the termination date, the Grantee shall be liable for immediate repayment to ABAG of all amounts disbursed by ABAG under this agreement. ABAG may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies ABAG may have for breach of this agreement.

## **VIII. LIABILITY**

A. The Grantee shall be responsible for, indemnify and save harmless ABAG, the Bay Trail Project and State of California ("the State"), their members, directors, officers, agents and employees, from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this agreement, except for active negligence, gross negligence, or will misconduct of ABAG, its members, directors, officers, agents or employees. The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

**PUBLIC ENTITY GRANTEEES:** This agreement supersedes the Grantee's right as a public entity to indemnity (see Gov. Code Section 895.2) and contribution (see Gov. Code Section 895.6) as set forth in Gov. Code Section 895.4.

B. The Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or any member of it rights as a third party beneficiary under this agreement.

## **IX. AUDITS/ACCOUNTING/RECORDS**

The Grantee shall maintain standard financial accounts, documents, and records relating to implementation of the Project. The Grantee shall retain these documents for three (3) years following the date of final disbursement by ABAG under this agreement, regardless of the termination date. The documents shall be subject to examination and audit by ABAG and the Bureau of State Audits during this period. The Grantee may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.

## **X. NONDISCRIMINATION**

During the performance of this agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code Sections 12900 *et seq.*) and the applicable regulations (California Code of Regulations, Title 2, Sections 7285.0 *et seq.*). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), are incorporated into this agreement. The Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this agreement.

#### **XI. INDEPENDENT CAPACITY**

The Grantee, and the agents and employees of the Grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of ABAG.

#### **XII. ASSIGNMENT**

Without the written consent of ABAG, this agreement is not assignable by the Grantee in whole or in part.

#### **XIII. TIMELINESS**

Time is of the essence in this agreement.

#### **XIV. ABAG'S DESIGNEE**

ABAG designates Laura Thompson as project manager who shall have authority to act on behalf of ABAG with respect to this agreement.

#### **XV. AMENDMENT**

Except as expressly provided in this agreement, no change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

#### **XVI. LOCUS**

This agreement is deemed to be entered into in the County of Alameda.

The parties have caused this agreement to be executed by their respective officers, duly authorized, the provisions of which agreement are effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ASSOCIATION OF BAY AREA GOVERNMENTS

GRANTEE

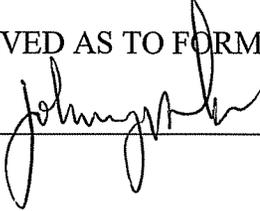
By \_\_\_\_\_  
Ezra Rapport, Executive Director

By \_\_\_\_\_

APPROVED AS TO FORM

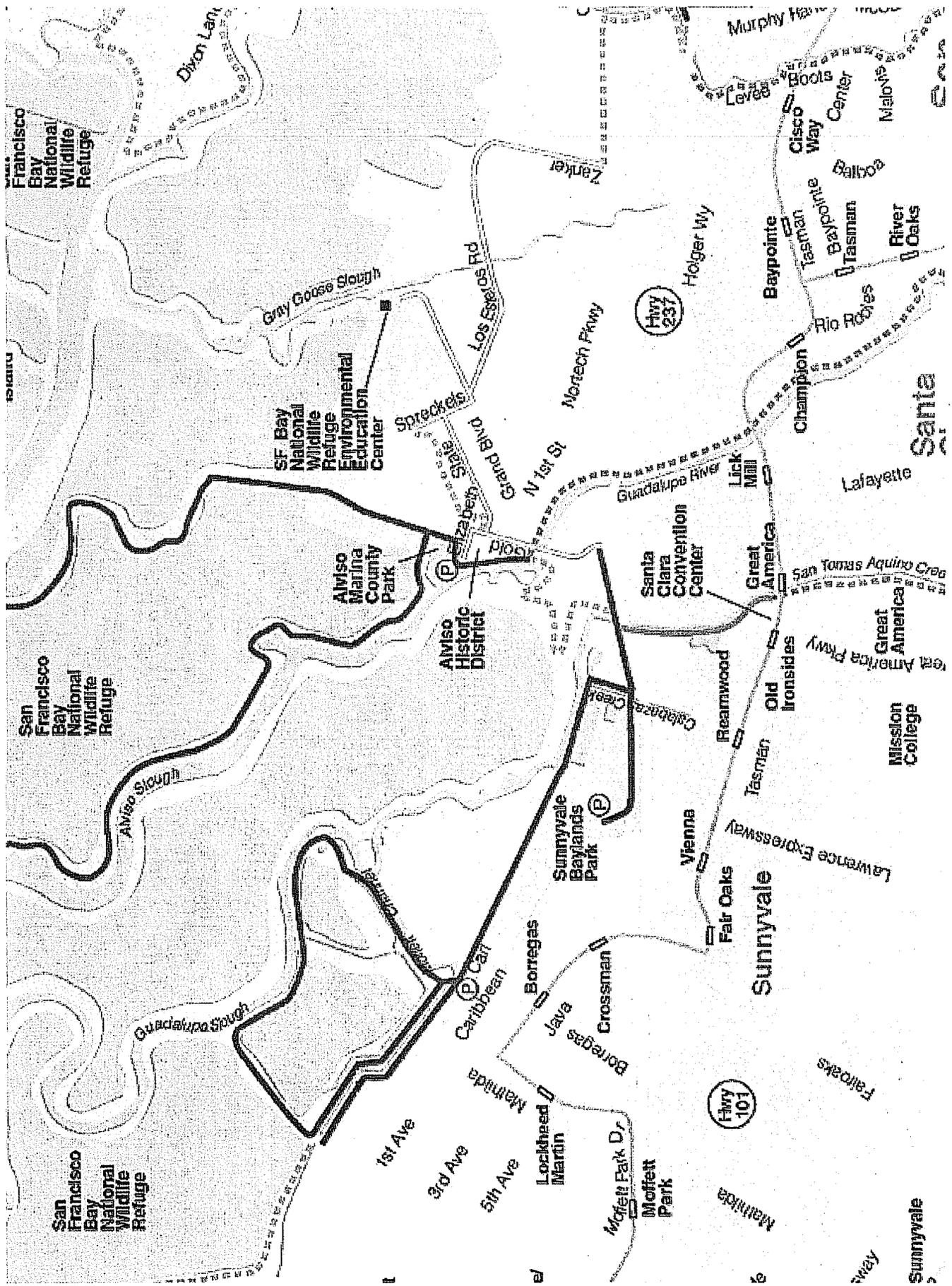
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By \_\_\_\_\_  
Kenneth K. Moy, Legal Counsel

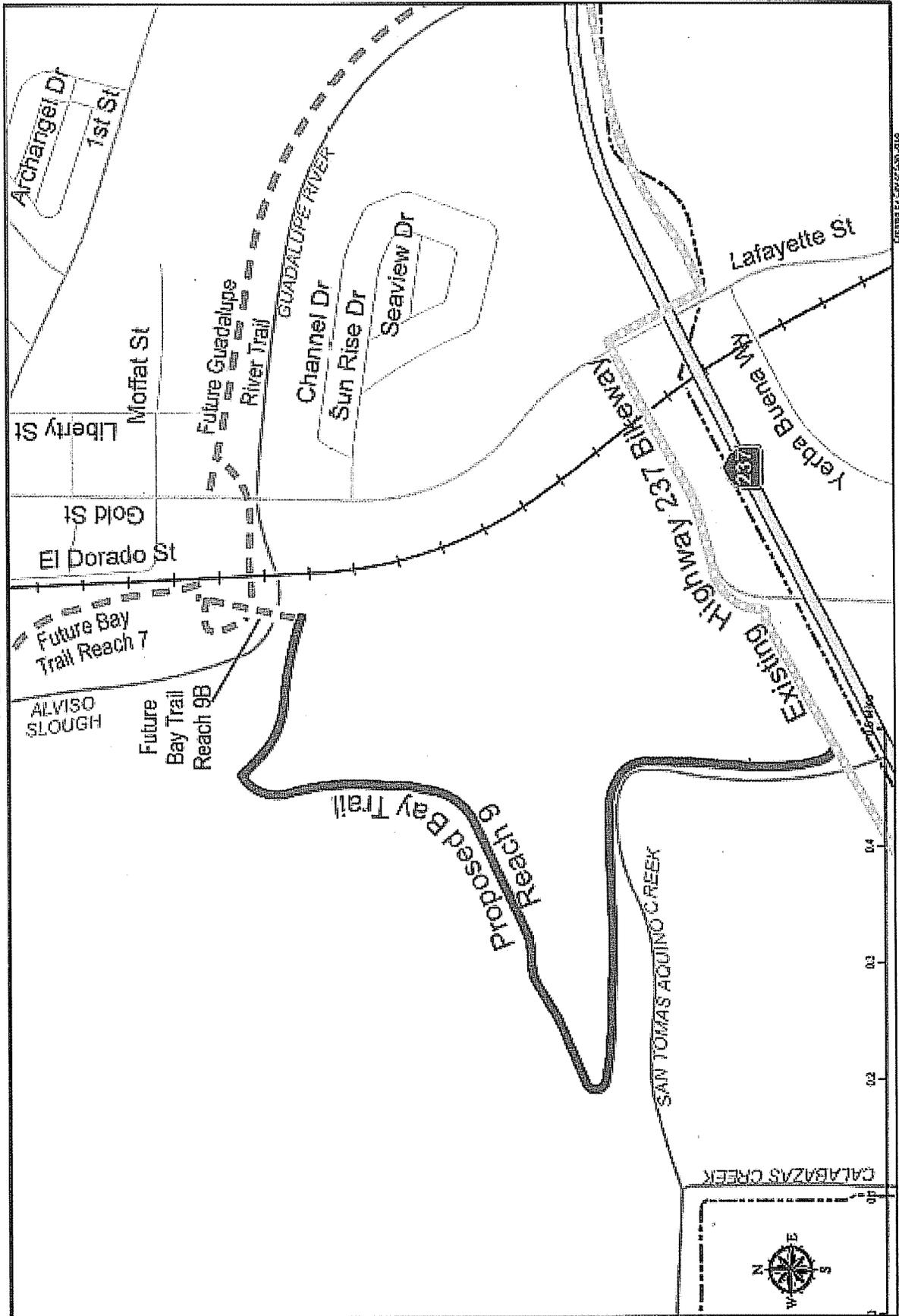
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**EXHIBIT A**  
**Project Location**



**Bay Trail  
Reach 9**



City of San Jose, Department of Public Works, Planning and Neighborhood Services  
 Map 3048, 05/12/2011  
 Trail not shown - for planning purposes only

## **EXHIBIT B**

### **Project Description**

The City of San Jose will prepare 95% construction documents for development of a 1.1-mile trail linking the existing Bay Trail at San Tomas Aquino Trail to a planned pedestrian bridge over Guadalupe Slough. A future paved trail would follow the perimeter maintenance road alignment along the Legacy Landfill, offer panoramic views of the Bay, and extend the Bay Trail to San Jose and the Alviso Marina County Park.