

**Joint Use Agreement  
Between  
City of Palo Alto and Santa Clara Valley Water District for the  
Highway 101 Pedestrian/Bicycle Bridge Overcrossing and Adobe Creek Reach Trail Project**

This JOINT USE AGREEMENT (this “**Agreement**”) is entered into by and between the SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as “**District**”, and the CITY OF PALO ALTO, a California chartered municipal corporation, hereinafter referred to as “**City**”.

**RECITALS:**

- A. City intends to construct the Highway 101 Pedestrian/Bicycle Bridge Overcrossing and Adobe Creek Reach Trail Project (“**Project**”) to create a year-round, grade-separated, shared bicycle and pedestrian bridge crossing over Highway 101 near Adobe Creek. The Project also includes construction of three new trailheads and pedestrian/bicycle connections to the San Francisco Bay Trail along East Bayshore Road; sidewalk and bikeway improvements along West Bayshore Road; a smaller prefabricated bridge spanning the Adobe and Barron Creeks confluence; and construction of a new Adobe Creek Reach Trail along the south side of Adobe Creek between Highway 101 and East Meadow Drive (collectively, the “**City Improvements**”). The combined overcrossing, access improvements and amenities will support regional bicycle commuting and encourage greater recreational use of the Baylands and trail system. The Project includes closing the existing seasonal Benjamin Lefkowitz Underpass for public use.
- B. District is the owner of certain real property, adjacent to or encompassed by the Project, located at East and West Bayshore Roads, Highway 101, the Baylands Nature Preserve, Adobe and Barron Creek banks, and 3600 West Bayshore Road, within the City of Palo Alto (hereinafter the “**Premises**”), as more particularly described on Exhibit “A,” attached hereto. The portions of the City Improvements to be located on the Premises consists of the Adobe Creek Reach Trail and the adjacent bridge segment identified as Western Bridge Approach Structure (“**WBA**”).
- C. A portion of the Premises is currently covered under an existing joint use agreement between City and District, originally executed on August 24, 1989, as amended on December 13, 2011, and renewed for 25 years beginning November 1, 2014 (the “**Existing JUA**”).
- D. City and District desire for this Agreement to supersede and replace the Existing JUA as of the Effective Date (defined below) of this Agreement.
- E. City has an interest in using the Premises to enable City to construct the Project and provide public access and use opportunities that do not unreasonably interfere with the District's mission of flood protection, water resource management, and stream stewardship.
- F. More specifically, City has requested use of the Premises for construction of Project facilities (City Improvements; see attached Exhibit “B”), and public access at the following locations (further depicted on Exhibit “A”:
  - 1. Adobe Creek Reach Trail and Trailheads – The proposed trail is located south of Adobe Creek on the District’s access road and extends from a proposed midblock

trailhead starting at the City's Right-of-Way on West Bayshore Road to a proposed midblock trailhead ending at the City's Right-of-Way on East Meadow Drive. This portion of the project is located partially on the District and City right-of-way.

2. Western Bridge Approach Structure and Adobe Creek Bridge – This approach structure alignment curves from the Highway 101 overcrossing and directs pedestrian/bicycle traffic along West Bayshore Road, abuts closely to Barron Creek's eastern bank within the parking lot located at 3600 West Bayshore Road, and spans the Barron and Adobe Creek confluence via a 140-foot long Adobe Creek Bridge with safety railings, toward a proposed mid-block trailhead at West Bayshore Road. The structure totals approximately 500 linear feet with a 12-foot clear pathway. This portion of the project is located partially on the District, City and 3600 West Bayshore right-of-way.

G. The parties find it to be in the public interest to provide for joint use of the Premises by means of this Agreement under the following terms and conditions.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1) **Incorporation of Recitals.** The recitals set forth above are incorporated herein by this reference.
- 2) **Supersedes Existing JUA.** City and District waive the 90 day notice of termination requirement in Provision 2 of the Existing JUA, and City and District agree that this Agreement supersedes and replaces the Existing JUA as of the Effective Date of this Agreement.
- 3) **Scope of the License Grant to City.** Subject to the terms and conditions of this Agreement, District hereby grants to City a non-exclusive license to access and do any or all of the following on the Premises:
  - a. To construct, operate, maintain, repair, replace, and remove City Improvements and other trail amenities for public recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, trailheads, the 140-foot long Adobe Creek Bridge on the confluence of Adobe and Barron Creeks with safety railing, fencing, fixture (trash receptacles, benches, drinking fountain, etc.) and signage. The construction of such City Improvements or other trail amenities shall require prior review and approval by District as signified by issuance of a Water Resources Protection Ordinance Encroachment Permit ("**District Permit**") and shall be compliant with all applicable legal and permitting requirements. It is fully understood and agreed that District in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement or trail amenity on the Premises.
  - b. To provide non-motorized bicycling, walking, jogging, hiking and similar trail use activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with the District's mission of flood protection, water resource management, and stream stewardship.
  - c. To host special public recreational events (e.g., races, bike-to-work events, etc.) that may

include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a District Permit to host that event.

**4) Prohibited Uses of Trail.** City shall post notices at all trail entrances that notify users of the trail that the following activities are prohibited:

- Entry of motor vehicles (except for maintenance repairs, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
- Unleashed dogs

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority and responsibility to adopt any trail rules and regulations pursuant to City of Palo Alto Municipal Code controlling public's use of the Premises that will not interfere with District's mission of flood protection, water resource management, and stream stewardship, as determined by the District.

**5) Trash and Litter Removal.** City will provide for trash removal on the Premises that is reasonably likely to have been generated from public use of the Premises. City will be responsible for maintaining, servicing, emptying trash receptacles, and rubbish removal as reasonably necessary. District will manage the Adopt-a-Creek program.

**6) Vegetation Management.** If existing vegetation impacts the trail use, City is responsible for trimming or removal, as City deems necessary, in accordance with applicable federal and state laws and regulations and District Permit requirements. District's vegetation management activities will be provided as needed for flood protection and flood protection maintenance purposes, consistent with its activities on comparable flood protection facilities.

**7) Graffiti Removal.** City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from floodwalls, signs, etc. installed in conjunction with and/or accessory to the establishment of a public pathway consistent with its implementation of the same program at comparable City facilities. City will have the primary responsibility for removal of graffiti on the Premises reasonably attributed to trail use. No permit from District, nor any advance notice, will be required for City to provide the routine removal of graffiti from any City or District facility within the length of the Premises included within this Agreement. Any and all materials used by City in the removal of graffiti within the limits of this Agreement shall be approved for use in the State of California and consist of environmentally safe products which will not impact the channel environment in any way.

**8) Security.** The Premises will be reasonably patrolled by City personnel and/or volunteers supervised by City, at the level of public safety that is afforded to all areas of the City. District has no obligations whatsoever to provide or pay for any such patrol services.

**9) Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City's improvements on the Premises, including the public trail, and to all inquiries regarding the public's use of the Premises.

**10) Removal or Relocation of City Improvements.**(a) If District requires that any City Improvement on Premises be removed or relocated for any District purpose, City will do so at its own expense within 360 days of receiving notice from District. If removal or relocation of City Improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act, City will be responsible for all costs required to fulfill any required mitigation responsibilities. District will inform City during preconstruction planning in the event a District project is performed on the Premises, in order to reasonably minimize District's project impact on City's Improvements located on the Premises. In the event a District project is constructed, any replacement of City's trail and amenities will be the responsibility of City, subject to District approval.

(b) Notwithstanding the above paragraph, District shall not require the Western Bridge Approach Structure ("**WBA Access Entry Point**"), which provides the only westerly access entry point to the Highway 101 pedestrian/bicycle bridge, to be removed, altered, or relocated during the useful life of the bridge with the exception of alterations required to mitigate or repair damage to District's flood protection facilities (e.g. channel lining or creek banks) which is caused by and/or attributed to the WBA Access Entry Point. Any removal, alteration, obstruction, or relocation of the WBA Access Entry Point shall only occur upon prior mutual agreement of the parties, as evidenced by written amendment to this Agreement.

**11) Water Level Fluctuations.** It is expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same. City is responsible for the control of or limiting the public's use of Premises because of such water levels, flood flows, or for any other reason. City is responsible for determining the conditions under which to exercise said control or to limit the use of the Premises to ensure the health and safety of the public using the Premises.

**12) Signage.** The parties will cooperate to create and install signage that benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer of District and the Public Works Director of City or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage which serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g. trail) by name) must include District's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs or City publications placed on the Premises that describe water resources must be developed in conjunction with District's Watershed customer relations staff. Each party is responsible for the maintenance and upkeep of its signage installed on the Premises.

**13) Bird Nesting Season.** To the extent feasible, construction or maintenance activities during nesting season (generally between February 1st and August 31st) will be avoided whenever possible. If construction or maintenance work must be done during the nesting season, a pre- construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend the City to implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible party (City or District, and/or their agents) performing said work. Any and all work related to this clause will be completed by the responsible party in accordance with

applicable federal, state, and local environmental health and safety regulations including but not limited to the federal Migratory Bird Treaty Act of 1918, Clean Water Act, Endangered Species Act, the California Fish and Wildlife Code and the Porter-Cologne Act and any amendments thereto.

**14) Maintenance and Repair.** District is responsible for performing routine maintenance on the Premises for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks. City is responsible for the maintenance and repair of the City Improvements on the Premises.

City will bear the cost and expense of and be responsible for providing any security, police, preparation of traffic and pedestrian detour plans depicted on attached Exhibit "C", including installation of required appurtenances, public notices/communications for trail closures or detours, trail amenity (including fencing) modifications or replacements, or other expenditure necessary to temporarily prohibit or control public access to the Premises that District would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision. In an emergency situation, District will respond without notice to City. In non-emergency situations, City and District staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:

- (a) Maintenance issues related to improvements;
- (b) Method and timing of issues related to affected wildlife;
- (c) Non-emergency work requiring the use of heavy equipment, barricading, pedestrian detour plans and/or restricting access to the Premises. District and City further agree to notify one another's designated representative at least ten (10) work days prior to commencement of such work, in order to minimize public impacts.

**15) Damage to City's Improvements on Premises.** District is not responsible for any damage occurring to City's improvements or structures located on the Premises that results from District's maintenance, construction or reconstruction activities, or from its water management and/or flood protection facilities located on or near the Premises, including (without limitation) any flood flows, or inundation of the Adobe Creek and Barron Creek confluence at Highway 101 onto the Premises. District agrees to exercise reasonable care during operation and maintenance activities to minimize damage to City's improvements. City is responsible for any damage occurring to either District's or City's improvements or structures located on the Premises that results from the public's use of the Premises, and all such costs for repairing such damage to District's or City's improvements will be borne by City.

**16) Term of Agreement and Automatic Renewal.** This Agreement will become effective on the last-signed signature date set forth below (the "**Effective Date**"). The term of this Agreement (including the rights and obligations contained therein), commencing on the Effective Date, shall be for twenty-five (25) years, and shall be automatically renewed for successive twenty-five (25) year terms unless either party provides written notice of nonrenewal or requests an amendment to the agreement no less than 360 days prior to the expiration of the then-existing term.

**17) Termination of Agreement.** Either party may terminate this Agreement after providing the other party with at least 360 days prior written notice of its intent to terminate this Agreement. Termination

of this Agreement by either party will apply exclusively to the Adobe Creek Reach Trail. City shall not be required to remove the WBA Access Entry Point to bridge (Exhibit "A"); however, every provision that pertains to the WBA Access Entry Point to bridge shall survive termination of this Agreement and remain in effect for as long as the bridge is in use. Upon the termination or expiration of this Agreement, City must remove all City Improvements from the Premises, and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. If the District requires the trail (other than the WBA Access Entry Point) to be removed from the Premises due to a flood protection project or other District project, this Agreement will terminate upon District providing the City with written notice of at least 360 days. Notice of intent to terminate may be given by City's Director of Public Works. Notice of intent to terminate may be given by District's Chief Executive Officer.

**18) City's Responsibility for Public Use.** Subject to the conditions and restrictions contained in this Agreement, City has the full control and authority, for public and recreation purposes over the use of the Premises, and City may restrict, or control, regulate and/or supervise the public use thereof. City may, at its discretion, consistent with the right of District hereinafter described, and without diminution of the flood protection or water resources management function or hazard thereto of the Premises as now existing or as may hereafter be altered, take any measures of every kind as, in the opinion of City, may be necessary for the health and safety of the users of the Premises for any purpose under this Agreement. City has the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises by City.

**19) District's Superior Rights.** It is expressly understood that District is engaged in flood protection, the protection of water resources, and stream stewardship, and that the terms and conditions of this Agreement will not in any way interfere with the absolute, free, and unrestricted right of District to operate and maintain for flood protection, water resource management, and stream stewardship purposes, the stream bed and banks, or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises.

**20) City's Subordinate Rights.** City will have the right to build additional improvements on the Premises necessary, or convenient, to the enjoyment of this Agreement, provided the location of any such improvement is, in each case during the term of this Agreement, first approved by District by issuance of a District Permit. It is fully understood and agreed that District has the sole, unfettered discretion to approve or disapprove of such additional improvements.

**21) Indemnification by City.** Notwithstanding any other provision of this Agreement, City agrees to indemnify, defend and hold harmless District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of

City's officers, agents, employees, or independent contractors, except to the extent caused by District's sole negligence or willful misconduct. This Agreement to defend, indemnify, and hold harmless District will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature

**22) Notices.** Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

**City:**

City of Palo Alto  
Attention: Public Works Director  
250 Hamilton Avenue  
Palo Alto, CA 94301  
w/copy to Real Estate Manager

**District:**

Santa Clara Valley Water District  
Attention: Clerk of the Board  
5750 Almaden Expressway  
San Jose, CA 95118  
w/copy to Community Projects Review Unit

**23) Successors and Assigns.** This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. City will neither assign nor sublet this Agreement without the prior written consent of District.

**24) Choice of Law.** This Agreement is governed by California law.

**25) Amendments.** This Agreement may not be modified or amended except in writing signed by the authorized representative of both parties and approved as required by applicable law.

**26) Compliance with Laws.** Each party shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all applicable federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.

**27) Not Real Property Interest.** It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee or other interest in a party's real property to the other party.

**28) Attorney's Fees.** In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorney's fees as established by the judge or arbitrator presiding over such dispute.

**29) Entire Agreement and Incorporation of Exhibits.** This Agreement, together with all exhibits referenced herein and attached hereto, constitutes the entire agreement between the parties and

supersedes all prior written and oral understandings.

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

**"City"**

CITY OF PALO ALTO

A California chartered municipal corporation

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

James Keene  
City Manager

ATTEST:

\_\_\_\_\_  
Beth Minor  
City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Molly S. Stump  
City Attorney

**"District"**

SANTA CLARA VALLEY WATER DISTRICT,

a Special District, created by the California Legislature

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

Norma J. Camacho  
Chief Executive Officer

ATTEST:

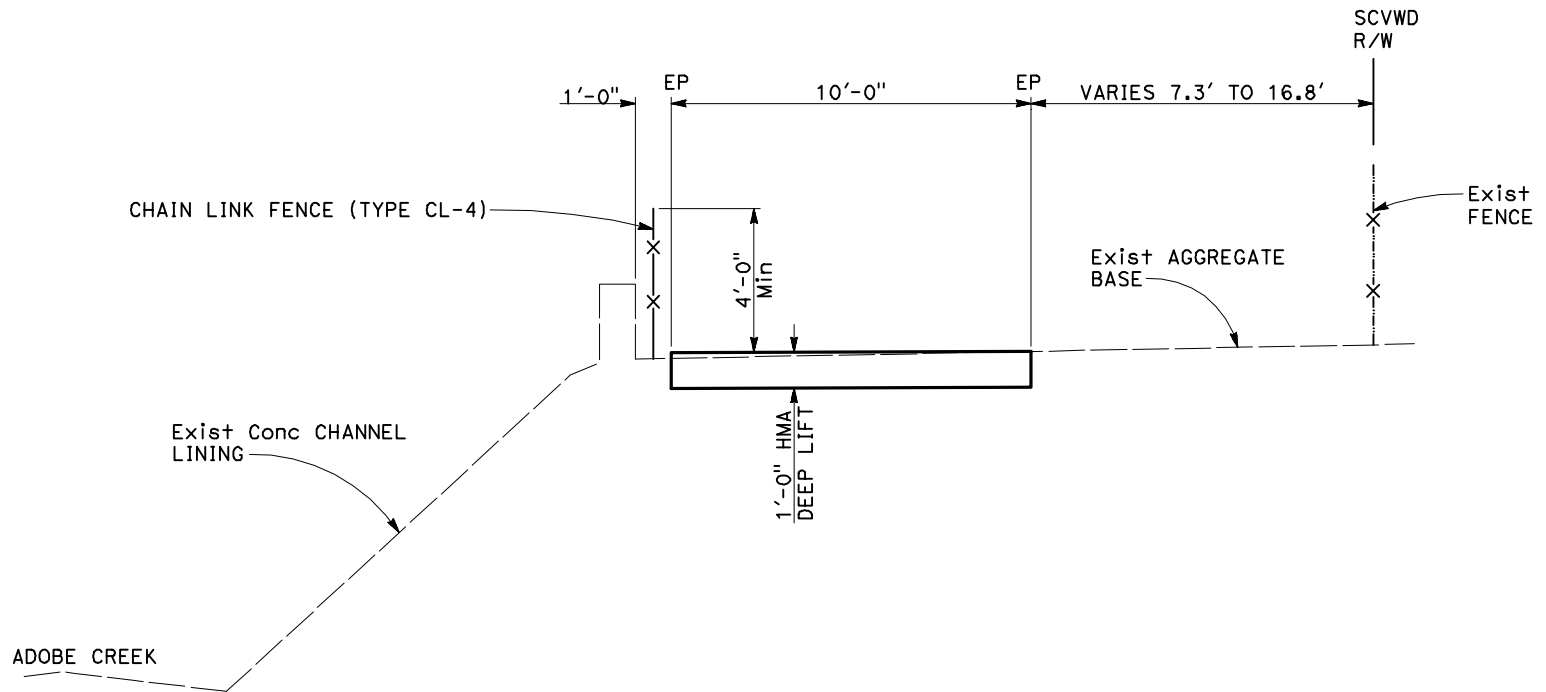
\_\_\_\_\_  
Michele L. King  
Clerk of the Board of Directors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Joseph D. Aranda  
Assistant District Counsel







PLAN CHECK SET/NOT FOR CONSTRUCTION (3/9/18)

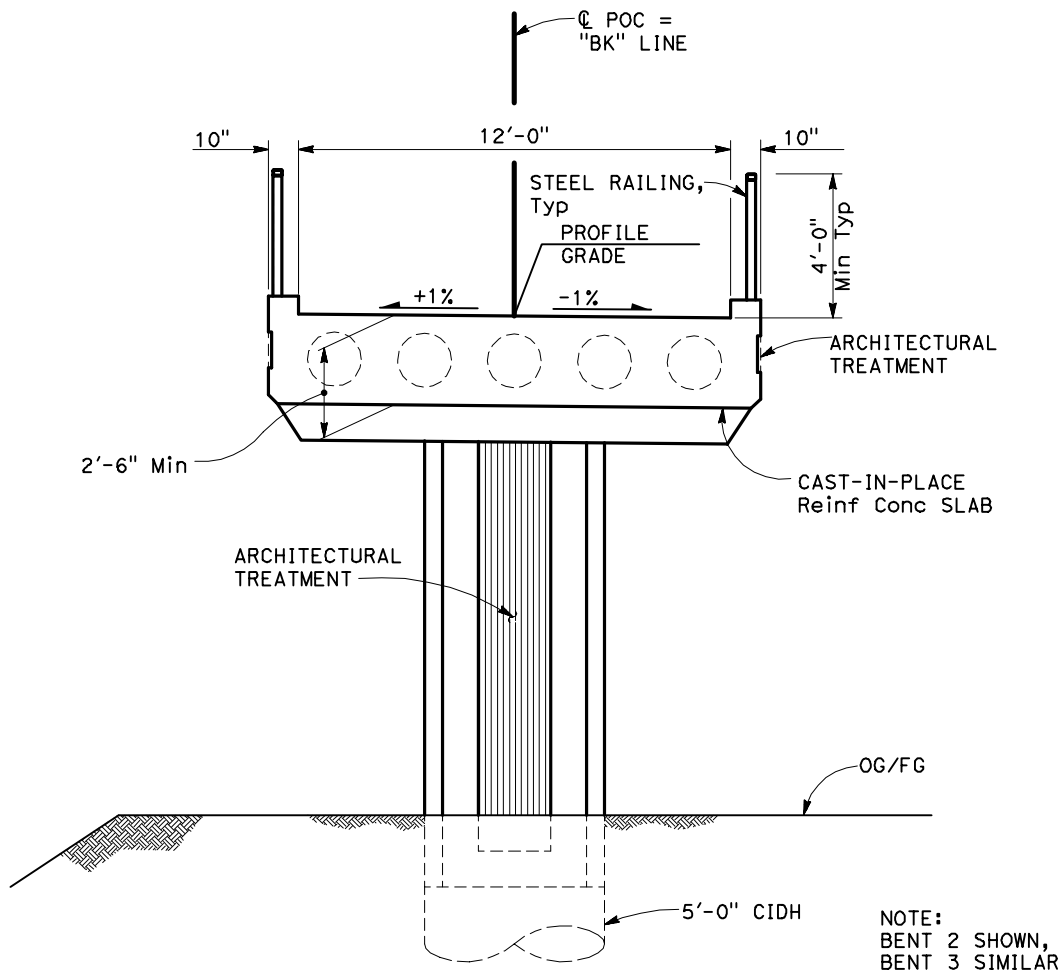
**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

865 The Alameda  
San Jose, California 95126  
408-296-5515

**ADOBE CREEK MULTI-USE PATH BRIDGE**

**ADOBE CREEK REACH TRAIL**

DESIGNED BY:	DATE: 2/8/18
DRAWN BY:	SCALE: AS SHOWN
CHECKED BY:	JOB No.:
SHEET 1 OF 6	
DRAWING No.	REV No.
<b>B</b>	



### SECTION AT BRIDGE BENT

3/16" = 1'-0"

NOTE:  
BENT 2 SHOWN,  
BENT 3 SIMILAR

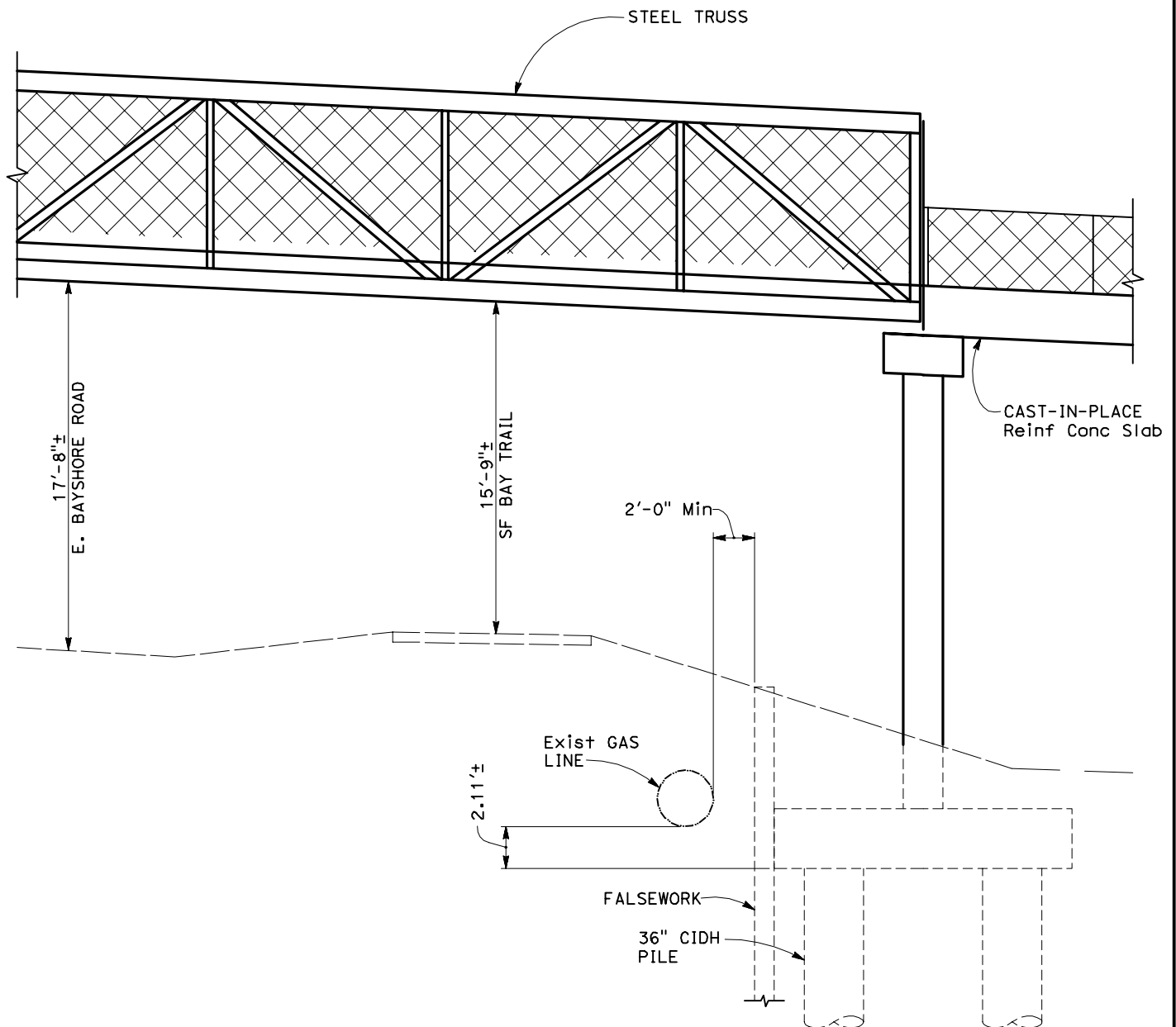
PLAN CHECK SET/NOT FOR CONSTRUCTION (3/9/18)

**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

865 The Alameda  
San Jose, California 95126  
408-296-5515

**ADOBE CREEK MULTI-USE  
PATH BRIDGE  
BRIDGE BENT**

DESIGNED BY:	DATE: 2/8/18
DRAWN BY:	SCALE: AS SHOWN
CHECKED BY:	JOB No.:
SHEET 5 OF 6	
DRAWING No.	REV No.
<b>B</b>	



### SECTION AT SF BAY TRAIL

1/8" = 1'-0"

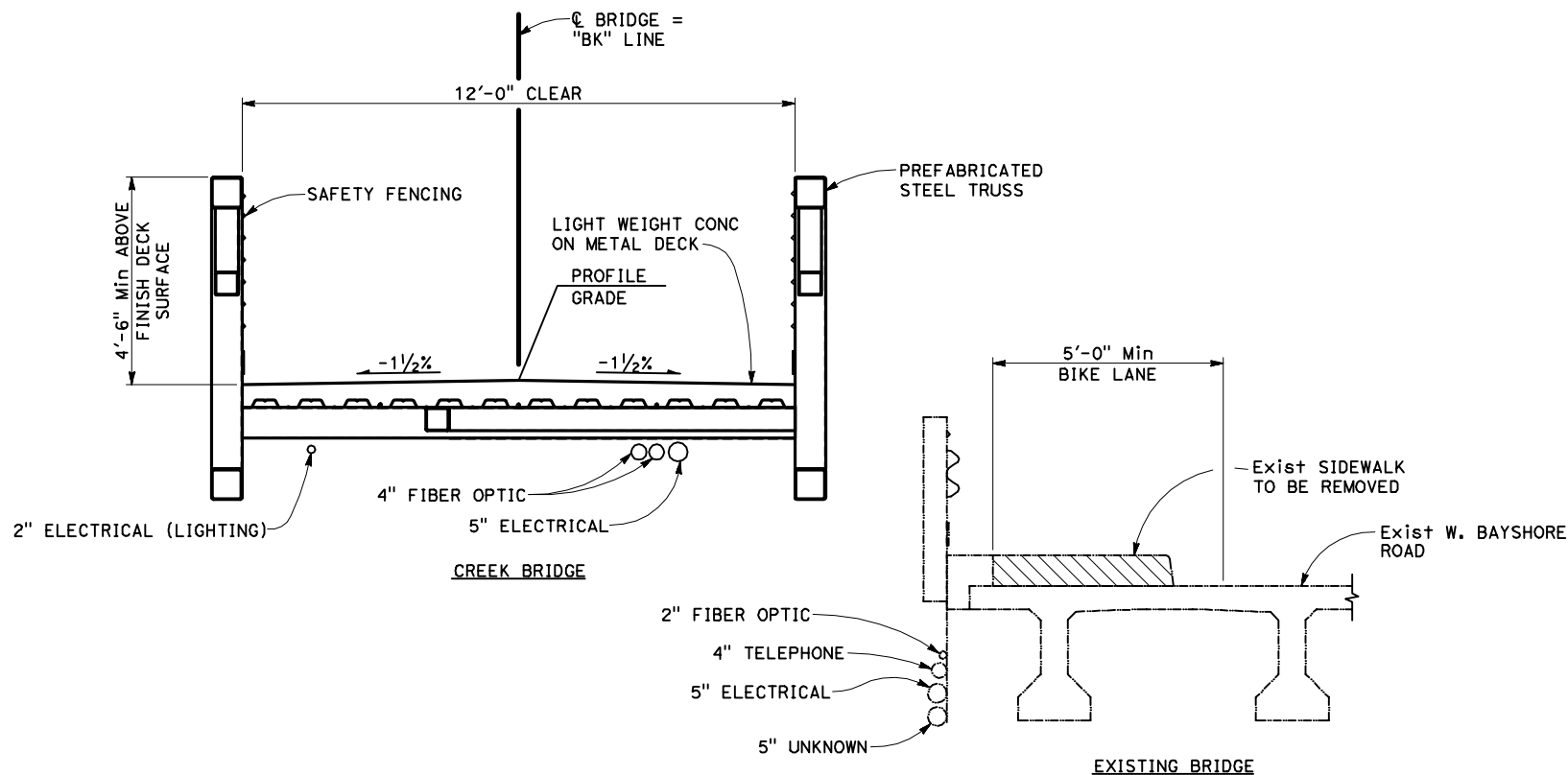
PLAN CHECK SET/NOT FOR CONSTRUCTION (3/9/18)

**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

865 The Alameda  
San Jose, California 95126  
408-296-5515

**ADOBE CREEK MULTI-USE  
PATH BRIDGE  
SF BAY TRAIL**

DESIGNED BY:	DATE: 2/8/18
DRAWN BY:	SCALE: AS SHOWN
CHECKED BY:	JOB No.:
SHEET 6 OF 6	
DRAWING No.	REV No.
<b>B</b>	



# **SECTION AT ADOBE CREEK BRIDGE**

1/4" = 1'-0"

PLAN CHECK SET/NOT FOR CONSTRUCTION (3/9/18)

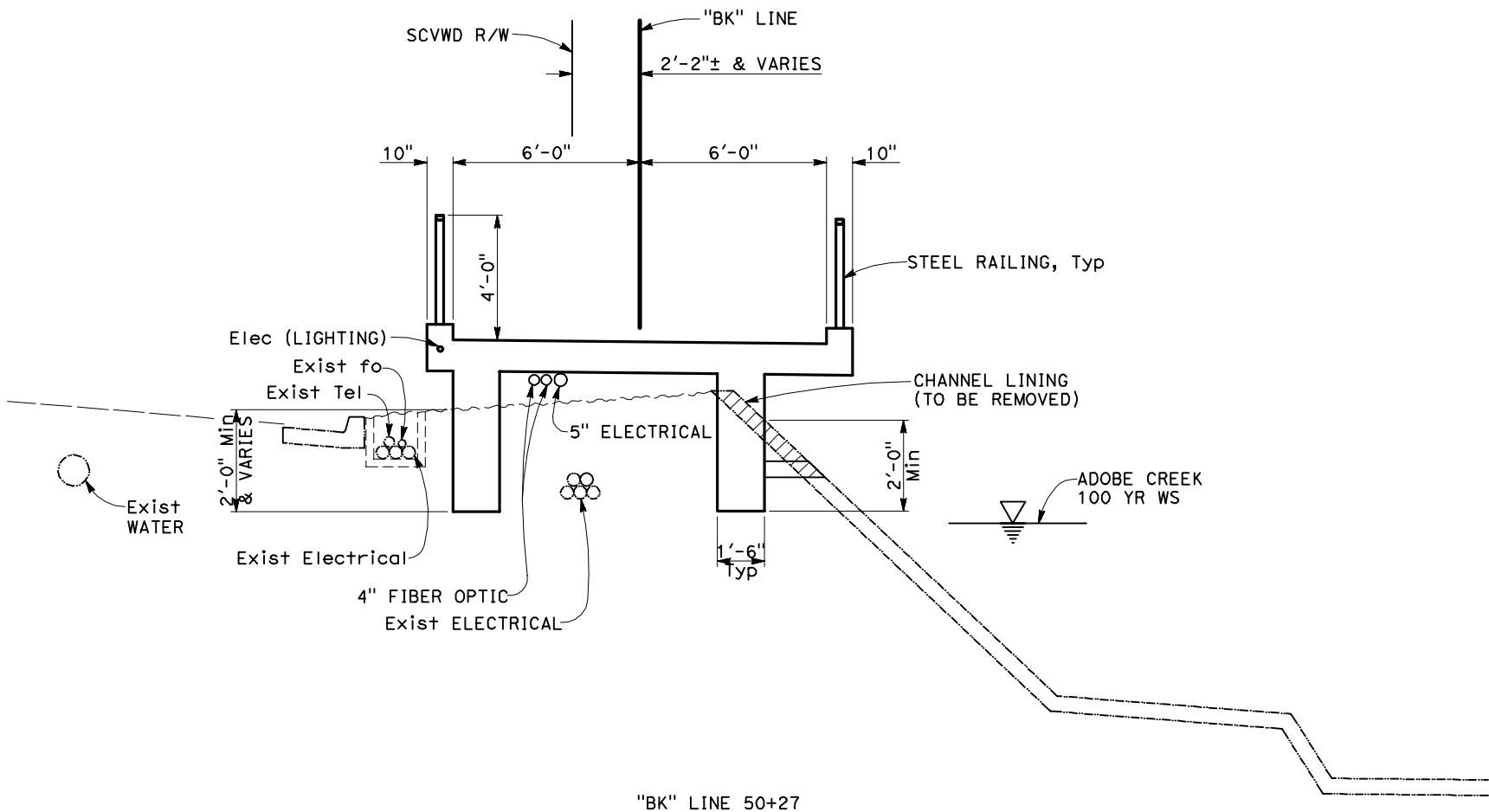
**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

865 The Alameda  
San Jose, California 95126  
408-296-5515

**ADOBE CREEK MULTI-USE PATH BRIDGE**

**ADOBE CREEK BRIDGE**

DESIGNED BY:	DATE: 2/8/18
DRAWN BY:	SCALE: AS SHOWN
CHECKED BY:	JOB No.:
SHEET 3 OF 6	
DRAWING No.	REV No.
<b>B</b>	



### SECTION AT APPROACH STRUCTURE

3/16" = 1'-0"

PLAN CHECK SET/NOT FOR CONSTRUCTION (3/9/18)

**BIGGS CARDOSA  
ASSOCIATES INC**  
STRUCTURAL ENGINEERS

865 The Alameda  
San Jose, California 95126  
408-296-5515

## **ADOBE CREEK MULTI-USE PATH BRIDGE**

### **APPROACH STRUCTURE**

DESIGNED BY:	DATE: 2/8/18
DRAWN BY:	SCALE: AS SHOWN
CHECKED BY:	JOB No.:
SHEET 2 OF 6	
DRAWING No.	REV No.
<b>B</b>	







## LEGEND

- — DETOUR PATH  
X TRAIL CLOSURE



CITY OF  
**PALO ALTO**  
PUBLIC WORKS DEPT.  
250 HAMILTON AVE, FL 6  
PALO ALTO, CA 94301

DESIGNED BY: VT

DRAWN BY: VT

DATE: 07-26-2018

SCALE: NTS

HIGHWAY 101 BICYCLE/PEDESTRIAN OVERCROSSING  
AND ADOBE CREEK REACH TRAIL

## DETOUR PLAN

16 of 16

JOB NO.

PE-11011

EXHIBIT

C

Attachment 4  
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