



Real Estate Assets Department

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Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



**CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT – ONE B**

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT – ONE B ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and The San Diego Association of Governments ("SANDAG"), a California public agency ("PERMITTEE"), to be effective as of **August 1, 2021** (the "Effective Date"), and when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. SANDAG and the Federal Transit Administration ("FTA") are working together on the Mid-Coast Corridor Transit Project which will extend trolley service from Santa Fe Depot in Downtown San Diego to the University City community of San Diego, serving major activity centers such as Old Town, the University of California, San Diego (UCSD), and Westfield UTC. The extended trolley service is anticipated to start in November 2021.
- B. SANDAG is concurrently working on the Elvira to Morena Double Track Project (EMDT) along the San Diego County segment of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor. This project includes double tracking segments of the LOSSAN tracks from railroad Control Point Elvira to Control Point Morena along with construction of associated site improvements, and signal modifications.
- C. The above referenced Mid-Coast Corridor Transit Project and the Elvira to Morena Double Track Project shall be referred to as the Project ("Project").
- D. SANDAG's use of the Permit Areas is for a public purpose and will provide improvements to the transit and rail service in the Mid-Coast Corridor between Downtown San Diego, Old Town and University City. Although the Mid-Coast Corridor is currently served by transit, the existing transit system does not offer the level of transit and rail service needed to meet the region's goals for mobility, accessibility, reliability and efficiency. The Project will extend the San Diego Trolley Blue Line north and connect with other trolley lines using an exclusive right-of-way for rail transit and will shorten travel times, improve reliability, and reduce the number of transfers required for travel to destinations in University City, thereby addressing identified transportation needs and improve travel times on the rail system in the Mid-Coast Corridor.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions. As used in this Permit, the following terms shall be defined as follows:

a. **"Monthly Rent"** is hereby waived because the use benefits the Project, which is a public transportation endeavor, and is a benefit to CITY.

b. **"Permit Area"** shall mean those certain CITY-owned real properties located in San Diego, CA as more particularly depicted in **Exhibit A: Permit Area**, attached hereto.

c. **"Permit Fee"** is hereby waived because the use benefits the Project, which is a public transportation endeavor, and is a benefit to CITY.

d. **"Permit Use"** shall mean the exclusive use of the Permit Area solely for construction and staging areas for SANDAG's construction of various improvements associated with the Project and adding a gate in the existing fence at the west side of the Permit Area of APN 676-030-01-00 for safe access by PERMITTEE to access restoration areas as defined below, and subsequent restoration of all impacted portions of the Permit Area including, but not limited to, the removal of non-native and invasive species and the planting and establishment of sustainable native species vegetation ("Habitat Restoration") to CITY's satisfaction, and for no other purposes whatsoever. Notwithstanding the foregoing, CITY has the right to enter and use the Permit Area as CITY deems necessary.

e. **"PERMITTEE's Address for Notices"** shall be:

SANDAG
401 B Street, Suite 800
San Diego, CA 92101
Attn: Greg Gastelum

f. **"Term"** shall mean three (3) years, commencing on the Effective Date.

2. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. **Use of Permit Area.** PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY's prior written consent in each instance. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.
4. **Governmental Approvals.** By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

5. **CITY's Consent, Discretion.** CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
6. **Revocable License.** This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) if for CITY's convenience, upon thirty (30) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.
 - a. **PERMITTEE's Waiver.** PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which PERMITTEE incurs as a result of CITY's revocation or termination of this Permit.
7. **No Holdover.** If PERMITTEE continues to occupy or use the Permit Area after the expiration or earlier termination of this Permit, such occupancy or use shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. Subject to the Late Removal provisions of this Permit, if PERMITTEE continues to occupy or use the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area at a mutually agreed upon rental rate or calculated at a fair market rental rate, either of which shall be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion and paid for by SANDAG. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.
8. **Termination.** PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY.
9. **Restoration of Permit Area.** Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall at minimum, restore the Permit Area to its condition prior to PERMITTEE's occupancy or use of the Permit Area, and as otherwise required by environmental impact reports, and to CITY's satisfaction, normal wear and tear excepted. PERMITTEE shall implement the Habitat Restoration to CITY's satisfaction and as specified under the Project's state and federal permits.
10. **Superior Interests.** This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall

obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

11. PERMITTEE's Management of Permit Area and Construction Activities.

- a. Prior to starting the Permit Use, PERMITTEE shall videotape or otherwise document, to CITY's satisfaction, the existing condition of the Property and provide such documentation to City.
- b. CITY may demand work stoppage due to failure of PERMITTEE to provide and maintain safe conditions related to the Permit Use.
- c. PERMITTEE must comply with CITY's Noise Abatement and Control Ordinance (San Diego Municipal Code section 59.5.0101 *et seq.*, as may be amended from time to time).
- d. PERMITTEE shall not cause disruption or interruption in any and all utility services provided to the Permit Area at any time, without proper notification.
- e. The Permit Area will be revegetated in accordance with PERMITTEE's revegetation plans and environmental permits, and to CITY's satisfaction.
- f. CITY may reasonably amend at any time this Section 11 to address compliance of laws and regulations, health and safety and to maintain the property value and condition of the Property in its sole discretion.

12. Maintenance of the Permit Area. Notwithstanding anything to the contrary in this Permit, PERMITTEE shall maintain the Permit Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. As appropriate, PERMITTEE shall fence and screen the Permit Area to CITY's reasonable satisfaction. If certain areas are not practical to fence, fencing may be waived by agreement of the parties. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, litter, weeds and brush to CITY's reasonable satisfaction. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Permit Area.

13. Entry and Inspection. CITY may at all times enter and inspect the Permit Area.

14. Utilities. PERMITTEE shall order, obtain and pay for all utilities and all utility service and installation charges in connection with its use of the Permit Area. All newly-

installed utilities shall be subject to CITY's prior approval and, at CITY's option, installed underground.

15. **Improvements/Alterations.** Except for the Permit Use as set forth in this Permit, PERMITTEE shall not construct any improvements, structures or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

16. **Improvements and Personal Property.**

- a. Improvements. Any and all improvements, fixtures, structures and installations or additions to the Permit Area constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements") must be approved by the CITY's Development Services Department. Unless as otherwise agreed to in writing by CITY or as otherwise required by this Permit, upon expiration or earlier termination of this Permit, PERMITTEE shall remove PERMITTEE Improvements; this requirement to remove said PERMITTEE Improvements shall apply to PERMITTEE whether PERMITTEE constructed or installed said PERMITTEE Improvements during the current Term or during any previous time period wherein PERMITTEE was authorized to use the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements as of the expiration or earlier termination of this Permit, at no cost to CITY. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY.
- b. Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and

expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.

- c. Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area, under the same terms and conditions of this Permit, after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.
- d. Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be mutually agreed upon by the parties or determined as of the date of the expiration or termination of this Permit, either of which shall be determined by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion and paid for by SANDAG.
- e. CITY's Right to Acquire Personal Property. If PERMITTEE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.

17. Insurance. PERMITTEE represents and warrants to CITY that its Permit Use and Occupancy governed under this Permit are in furtherance of the Project. SANDAG's contractor, MCTC, is utilizing a Contractor Controlled Insurance Program ("CCIP"). This CCIP shall be in accordance with applicable law, and shall pay all claims related to this Permit or the PERMITTEE's use of the Permit Area as shown in Exhibit A. PERMITTEE shall deliver to CITY, prior to the Effective Date and shall maintain the same throughout the Term, a current certificate of insurance and all relevant endorsements for each of the following:

- a. Commercial General Liability Insurance ("CGL") written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an ISO form CA 00 01 12 90 or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per

occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.

- c. Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- d. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.
- e. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- f. Severability of Interest. Each policy must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- g. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- h. **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- i. **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- j. **Modification.** To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use.
- k. **Accident Reports.** PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- l. **Causes of Loss - Special Form Property Insurance.** PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

18. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and

costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

19. **Compliance with Laws.** PERMITTEE shall at all times in its use, occupancy, maintenance, and restoration of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable) within five (5) days of PERMITTEE receiving the same.
20. **Permits & Approvals.** PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.
21. **California Public Records Act.** CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, PERMITTEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by PERMITTEE, PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at PERMITTEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
 - a. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE

EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

22. **No Discrimination.** PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability in PERMITTEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
23. **Equal Opportunity.** PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
24. **Equal Benefits.** PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
25. **Disabled Access Compliance.** PERMITTEE will, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the

most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance shall include without limitation the following:

- a. PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
- c. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- d. Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
- e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
- f. PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

26. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.

27. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

28. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the

Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.

29. **No Nuisance.** PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
30. **Assignment and Sublicense.** PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
31. **Signs.** PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
32. **Encumbrances.** PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
33. **Taxes.** PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
34. **Aboveground Storage Tanks.**
 - a. **Monitoring.** If CITY, as permitter under this Permit (rather than in its governmental capacity) allows, and if PERMITTEE installs or maintains, any

aboveground storage tanks within the Permit Area (individually and collectively, "Aboveground Tanks"), PERMITTEE shall monitor each Aboveground Tank during the Term in compliance with this Permit and all applicable laws, rules and regulations. PERMITTEE shall conduct daily visual inspections of all Aboveground Tanks and shall permit the San Diego Regional Water Quality Control Board (the "Water Quality Board"), CITY, and all responsible governmental agencies, to conduct periodic inspections of all Aboveground Tanks.

- b. Reporting. PERMITTEE shall report to CITY each and every unauthorized release of a hazardous substance from Aboveground Tanks within twenty-four (24) hours of each such release.
 - c. Fees and Costs. PERMITTEE shall pay all fees and costs related to unauthorized releases of hazardous substances from Aboveground Tanks, including without limitation investigative, surface, groundwater cleanup and expert and agency fees. PERMITTEE shall maintain insurance or other financial means to ensure the fulfillment of its obligations hereunder to pay such fees and costs, including without limitation the costs of corrective actions, compensating third parties for personal injuries or property damage, and compensating CITY for damages to the Permit Area, directly or indirectly caused by any and all releases from Aboveground Tanks. PERMITTEE shall deliver to CITY and maintain evidence, satisfactory to CITY, of such financial responsibility. PERMITTEE shall pay all costs and expenses related to Aboveground Tanks, including without limitation costs and expenses to comply with PERMITTEE's obligations under this Permit.
 - d. Development, Maintenance and Repair. PERMITTEE shall develop, maintain and repair all Aboveground Tanks in compliance with all applicable laws, rules and regulations of competent governmental authorities, including without limitation the California Health and Safety Code, as presently existing and as may be amended from time to time ("Health & Safety Code"). PERMITTEE shall obtain all required permits and produce and deliver such documents as any and all responsible governmental agencies may require. PERMITTEE shall: (a) comply with all valid orders of the Water Quality Board; (b) file all required aboveground storage tank statements; (c) establish and maintain all required monitoring programs and systems; (d) report all spills as required; and (e) pay all lawfully-imposed penalties and fines.
35. **Hazardous Substances.** PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights

and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- b. Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities
- d. Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. Upon CITY's request, PERMITTEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. Indemnity. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California

Code of Regulations Title 19 and all other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.

- g. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area ("PERMITTEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's Operations on, in, from or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

- 36. **Storm Water Pollution Prevention Program— Best Management Practices.** City and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Permit Area in a manner which aids in the protection of City's precious water resources. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, PERMITTEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

37. **Prevailing Wages.** California prevailing wage requirements apply to the Permit Use. PERMITTEE must comply with state prevailing wage laws, including, but not limited to, those requirements set forth in **Exhibit B – Prevailing Wage Requirements**, attached hereto and incorporated herein by this reference. If the Permit Use is federally funded, PERMITTEE shall comply with all applicable federal laws, including, but not limited to, minimum wage rates pursuant to the Davis-Bacon Act. Should there be any difference between the state or federal wage rates, including health and welfare funds for any given craft, mechanic, or similar classifications needed to execute the Permit Use, it shall be mandatory upon PERMITTEE, its contractors or subcontractors to pay the higher of the two rates.
38. **Waiver.** The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
39. **Cumulative Remedies.** CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
40. **Survival.** Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
41. **Joint and Several Liability.** If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
42. **No Affiliation.** Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.

43. **Entire Agreement.** This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
44. **Counterparts.** This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
45. **Notices.** Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Dept
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020
Email: pmaus@sandiego.gov

46. **Authority to Contract.** Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

[The remainder of this page is intentionally left blank.]

47. **Acceptance of Permit Area.** By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Approved as to form:

BY: 

RYAN P. KOHUT,
SANDAG Senior Legal Counsel

The San Diego Association of Governments ("SANDAG")
a California public agency

BY: 

Name: Jim Linthicum

Title: Chief of Capital Programs & Regional Services

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

Penny Maus (Oct 17, 2021 16:18 PDT)
Penny Maus, Director
Real Estate Assets

Exhibit A: Permit Area

Exhibit B: Prevailing Wage Requirements

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

By: 
Melissa Ables (Oct 19, 2021 10:48 PDT)

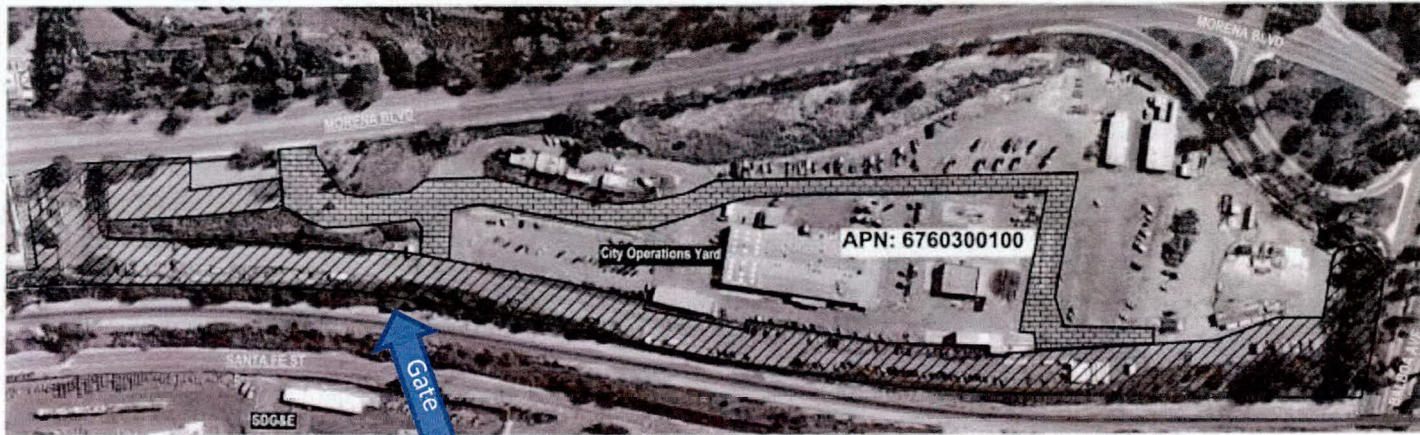
Name: Melissa Ables

Title: Deputy City Attorney

Date: Oct 19, 2021

Exhibit A: Permit Area

City Operations Yard - Use and Occupancy Permit 1A Exhibit



Hatched areas represent exclusive permit area.



Brick hatched areas represent access only. No parking or staging will be allowed.
To be coordinated with yard supervisor

NOTE: * Revised original exhibit pages 1 and 2 of Parcel Exhibit PN 9-1 & 9-4T A



APN: 6760300100
City Operations Yard

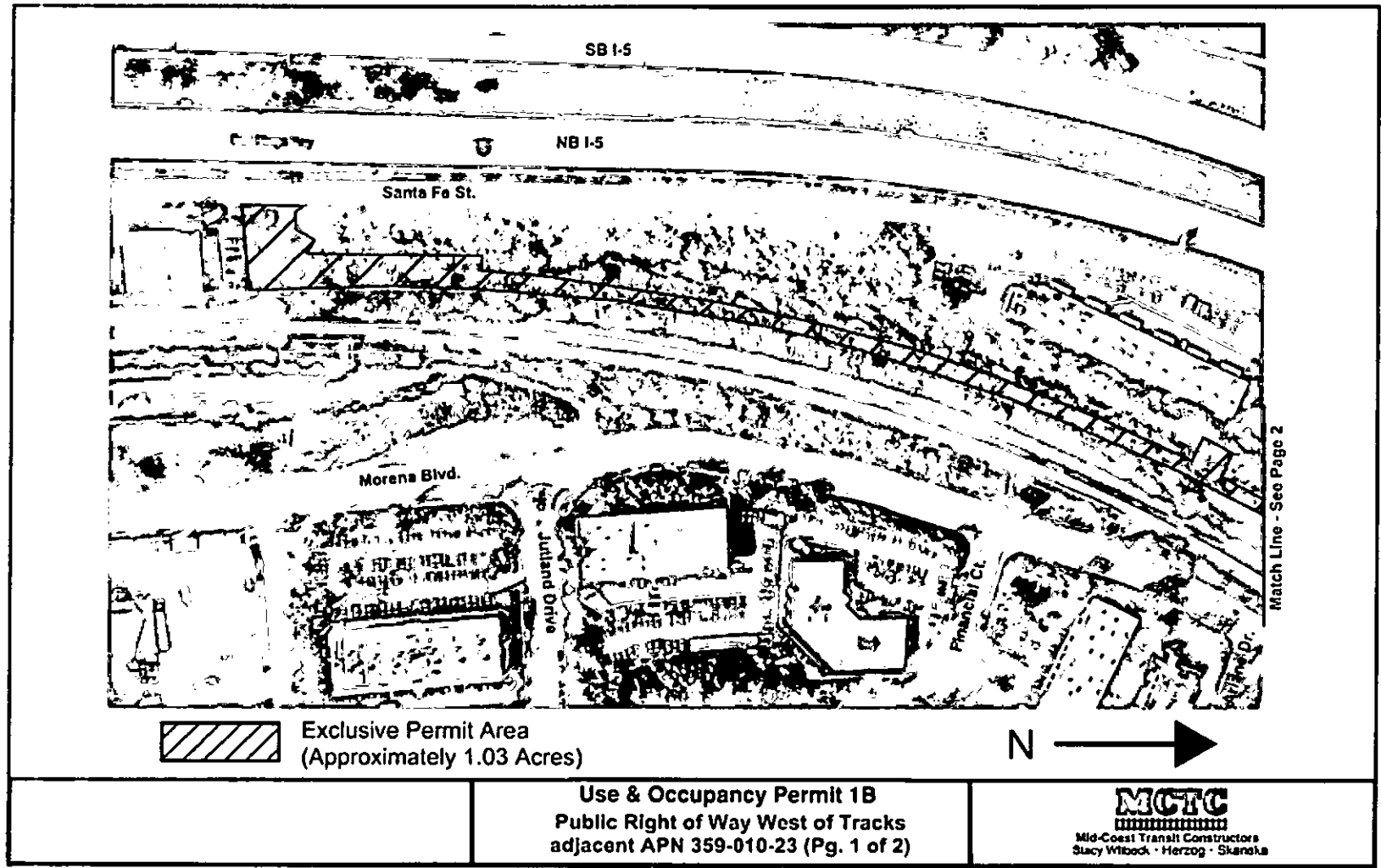
★	6/21/17	PN 9-1, 9-4T	REV 1	DRAWN BY - Zebadiah Hutchison
				CHECKED BY -
NO.	DATE	REVISIONS	APPROVED	MID COAST TRANSIT CONSTRUCTORS 401 B STREET, SUITE 100 SAN DIEGO, CA 92101

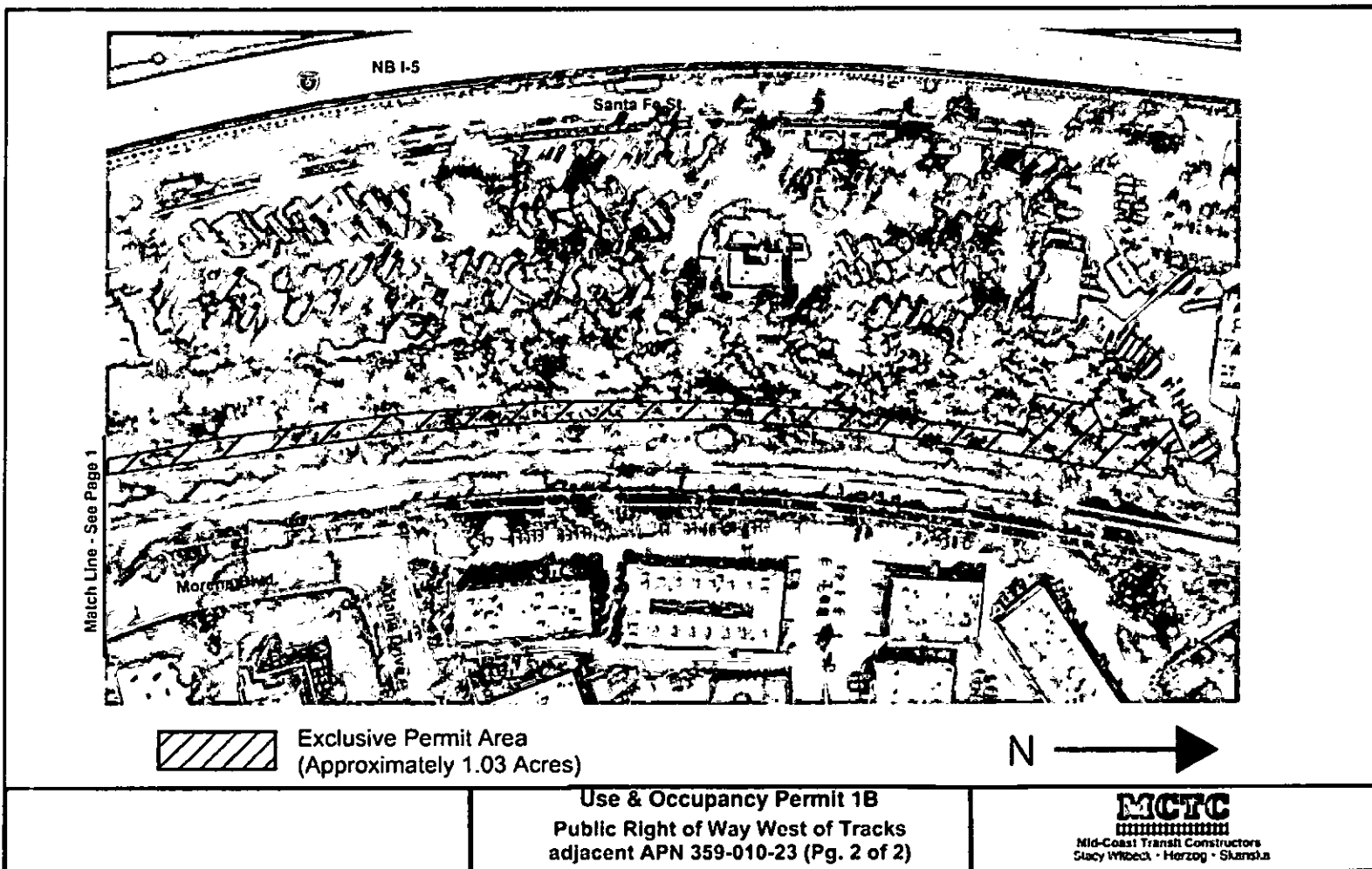
MCTC
Mid-Coast Transit Constructors
Stacy Wilbeck - Herzog - Skanska

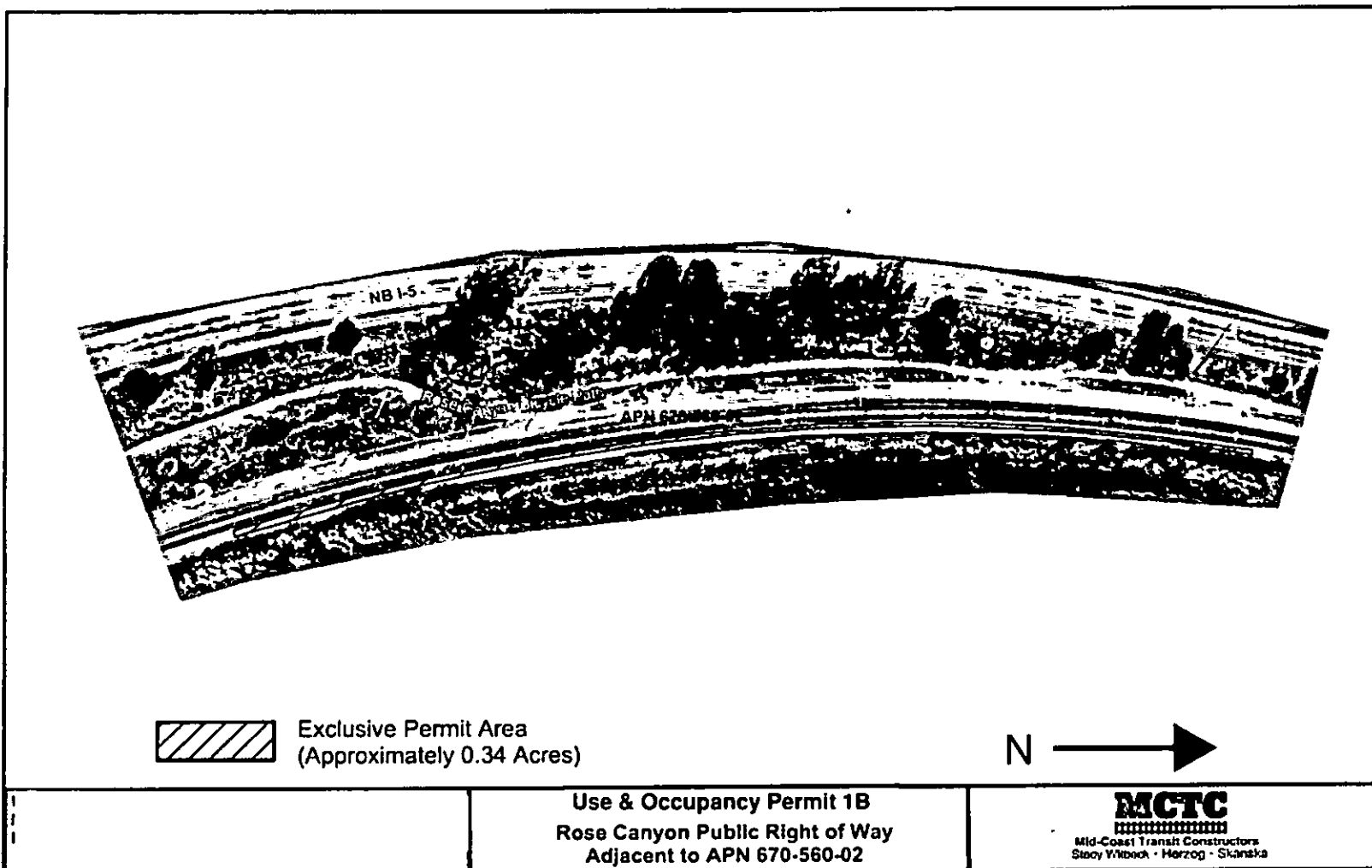
Use and Occupancy Permit 1A
5.24 Acres

SHEET
1 OF 1

Construction of RW488/RW500 & MidCoast construction and staging

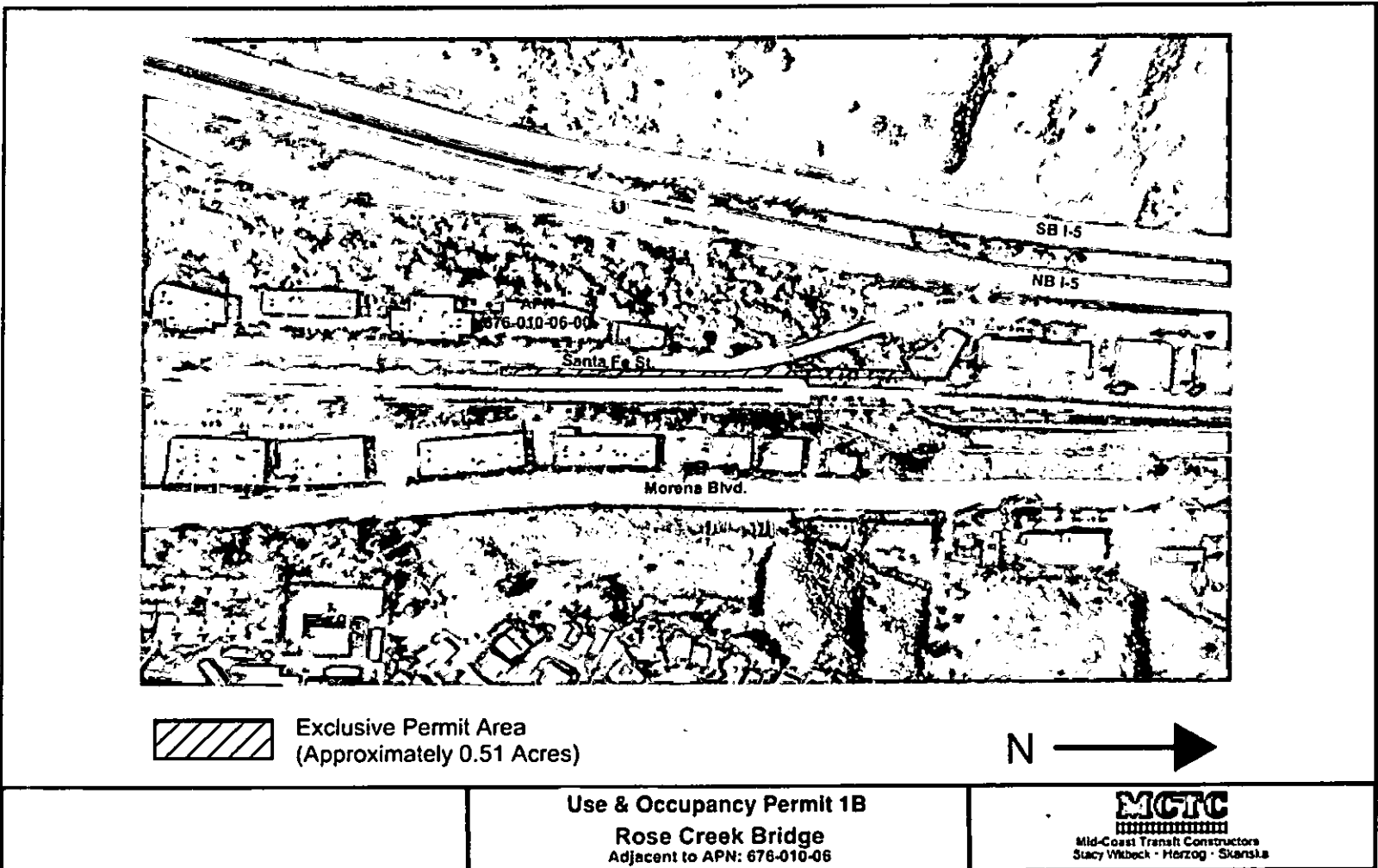


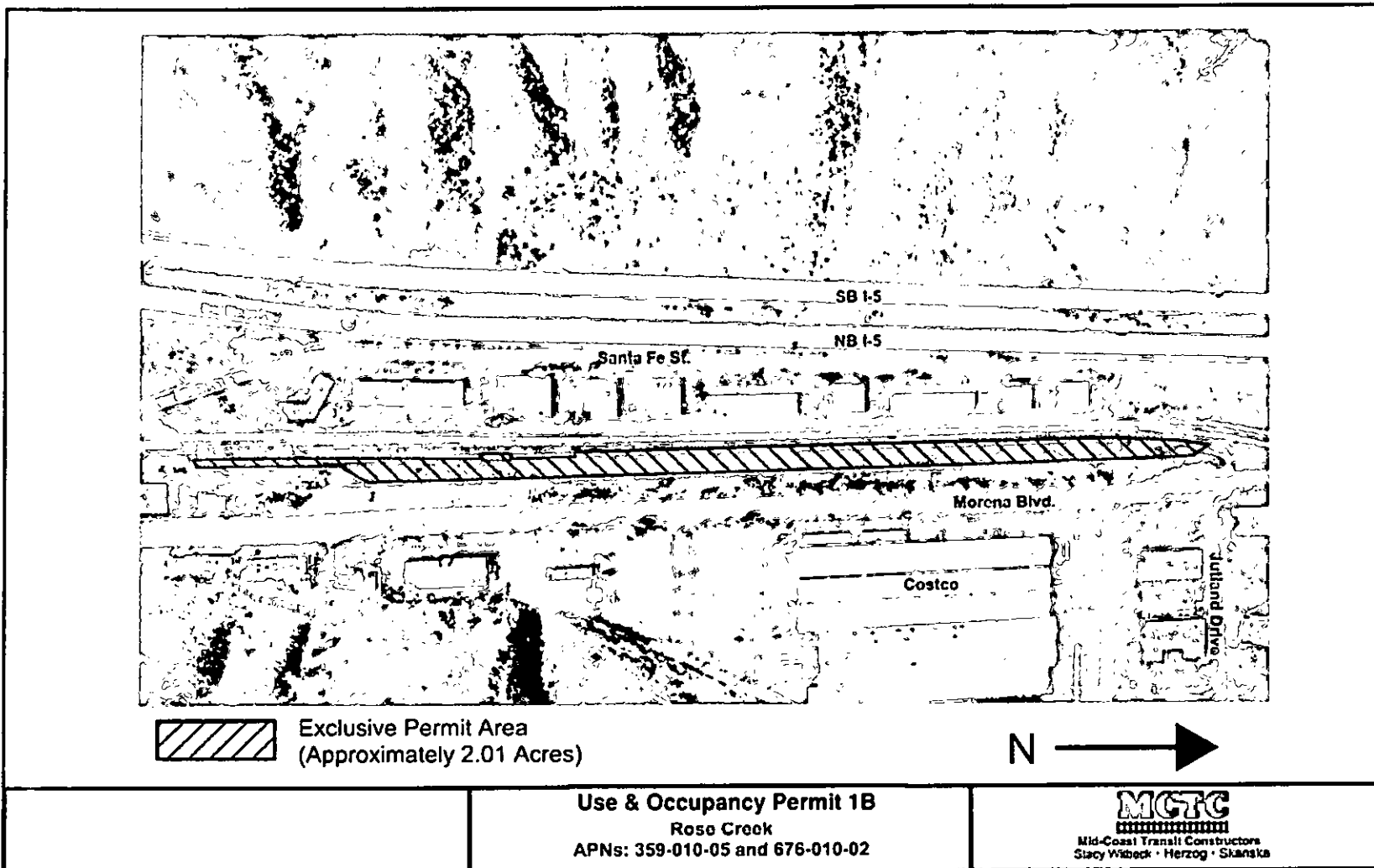




Use & Occupancy Permit 1B
Rose Canyon Public Right of Way
Adjacent to APN 670-560-02

MCTC
Mid-Coast Transit Constructors
Stacy V. Nibbel - Herzog - Skanska





UO Permit One B 09 24 21 Partially Executed

Final Audit Report

2021-10-19

Created:	2021-09-29
By:	Mary Carlson (MMLCarlson@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1AICZqb9ELkrwMZ8poKTPztIVKinTVcg

"UO Permit One B 09 24 21 Partially Executed" History

-  Document created by Mary Carlson (MMLCarlson@sandiego.gov)
2021-09-29 - 5:11:06 PM GMT
-  Document emailed to Penny Maus (pmaus@sandiego.gov) for signature
2021-09-29 - 5:12:06 PM GMT
-  Document emailed to Melissa Ables (mables@sandiego.gov) for signature
2021-09-29 - 5:12:06 PM GMT
-  Email viewed by Melissa Ables (mables@sandiego.gov)
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-  Email viewed by Penny Maus (pmaus@sandiego.gov)
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-  Document e-signed by Penny Maus (pmaus@sandiego.gov)
Signature Date: 2021-10-07 - 11:18:32 PM GMT - Time Source: server
-  Document e-signed by Melissa Ables (mables@sandiego.gov)
Signature Date: 2021-10-19 - 5:48:57 PM GMT - Time Source: server
-  Agreement completed.
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