



Real Estate Assets Department
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LEGAL DOCUMENTS



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AMENDMENTS



7

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

THIS FIRST AMENDMENT TO CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT – One B (“First Amendment”) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), and the San Diego Association of Governments, a California public agency (“SANDAG” or “PERMITTEE”), to be effective as of **October 1, 2022** (the “Effective Date”), and when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. WHEREAS, the Parties entered into the City of San Diego Use and Occupancy Permit – One B, effective as of August 1, 2021 (the “Permit”); and
- B. WHEREAS, the Parties would like to reduce the size of the Permit Area; and
- C. WHEREAS, all capitalized terms not otherwise defined in this First Amendment shall have the same meaning as in the Permit.

NOW THEREFORE, the Parties agree to amend the Permit as follows:

- 1. “Permit Use” in Definitions section “d” shall be replaced in its entirety with the following: “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 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 review and approval, which shall not be conditioned, delayed or unreasonably withheld, and for no other purposes whatsoever. Notwithstanding the foregoing, CITY has the right to enter and use the Permit Area as CITY deems necessary. If CITY’s entry and use of the Permit Area may interfere with SANDAG’s construction and Habitat Restoration schedule, CITY shall meet and confer with SANDAG in advance of entering the Permit Area to minimize potential impacts to SANDAG’s schedule.
- 2. Page 19, which is a portion of Exhibit A, entitled “City Operations Yard – Use and Occupancy Permit 1A Exhibit” shall be deleted and replaced with “City Operations Yard – Use and Occupancy Permit 1A Exhibit” attached hereto.
- 3. Confirmation of Agreement. All other terms and conditions of the Permit remain unchanged and shall remain in full force and effect.
- 4. Entire Agreement. The Permit, as amended by this First Amendment, represents the entire understanding between the Parties as to the subject matter of the Permit, as so amended.

5. Counterparts. This First Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.
6. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First Amendment may be used in the singular, plural, past tense, or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the Permit), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.
7. Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this First Amendment, without application of conflicts of laws principles or statutes.
8. Binding on Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.
9. No Other Representations or Warranties. Except as expressly set forth in this First Amendment, no Party makes any representation or warranty material to this First Amendment to any other Party.
10. Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or pursuant to this First Amendment by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

IN WITNESS WHEREOF, this FIRST AMENDMENT TO USE AND OCCUPANCY PERMIT
– ONE B is executed to be effective as of the Effective Date.

Approved as to form:

BY: Annie Smiddy
ANNIE SMIDDY,
SANDAG Senior Legal Counsel

Approved as to form:
MARA W. ELLIOTT, CITY
ATTORNEY

By: Brian Byun
Brian Byun (Dec 21, 2022 10:42 PST)

Name: Brian Byun

Title: Deputy City Attorney

Date: Dec 21, 2022

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

BY: S. L. Humphreys

Name: Sharon Humphreys

Title: Director of Engineering and Construction

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: Penny Maus
Penny Maus (Dec 20, 2022 15:01 PST)

Penny Maus
Director, Department of Real Estate and Airport
Management

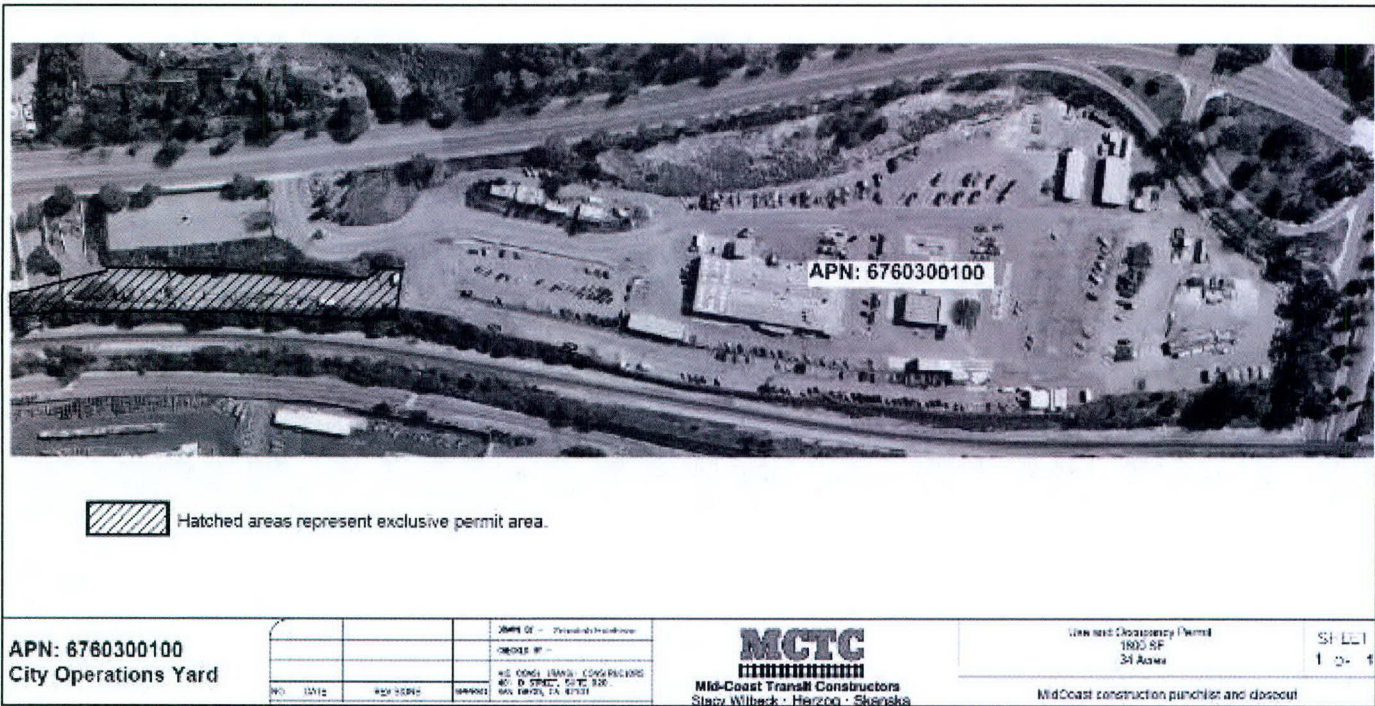
Attachments:

Exhibit A: Permit Area

Attachment A: Environmental Clearance

Exhibit A: Permit Area

City Operations Yard – Use and Occupancy Permit 1A Exhibit



Attachment A: Environmental Clearance

[To follow on next page]

Attachment A

Environmental Determination	
Environmental Planner	Tara Ash-Reynolds (tashreynolds@sandiego.gov)
Project Name	First Amendment to Use & Occupancy Permit with SANDAG—One B
Environmental Determination	This First Amendment to Use & Occupancy Permit with SANDAG to allow use of City-owned property for the sole exclusive use of the Permit Area for construction (e.g. for transit power substations, parking, access roads, retaining walls) and other improvements associated with the Project is covered by the following certified environmental documents: LOSSAN Final PEIR/EIS. Federal Railroad Administration (FRA) and State of California, Department of Transportation. SCH# 2002031067. FR# 02-6644 Vol.67 #54. September 2007; EIR/EIS FRA Record of Decision, March 2009; LOSSAN Elvira to Morena Double Track Project Environmental Document, FRA NEPA CE 03/06/15 approved by the SANDAG Board on 06/26/15; LOSSAN San Diego River Bridge Double Track Project included in the LOSSAN PEIR/EIS; and Mid-Coast Corridor Transit Project Final Supplemental Environmental Impact Statement and Subsequent Environmental Impact Report Volume 1. U.S. Department of Transportation Federal Transit Administration and San Diego Association of Governments (SANDAG), SCH# 2010051001, September 2014; certified by SANDAG Board Resolution No. RTC-2015-03, 11/21/14; Elvira to Morena Double Tracking Utilities Relocation Addendum No. 401591, dated 4/09/15 to MND No. 255100 (Citywide Pipeline Projects-2011/SCH No. 2011091045) certified by the City of San Diego's Interim Planning Director acting as the Mayor-Appointed Designee on 07/14/15. This activity is a subsequent discretionary action and is not considered a separate project for the purposes of CEQA review pursuant to CEQA Guidelines Sections 15378(c) and

10/19/2022



Attachment A

	15060(c)(3). Pursuant to CEQA Statute Section 21166 and CEQA Guidelines Section 15162, there is no change in circumstance, additional information, or project changes to warrant additional environmental review for this action.
Date Environmental Determination made	10/19/22

SANDAG Permit One B - 1st Amendment 10 13 22_FOR SIGNATURES_ASM

Final Audit Report

2022-12-15

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