

**SECOND AMENDMENT
TO
CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT – FIVE
(Mission Valley Preserve Main Track Two)**

THIS SECOND AMENDMENT TO CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT - FIVE ("Amendment") 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"), (collectively, "Parties"), to be effective as of Oct 5, 2017 (the "Effective Date"), and when signed by the parties and approved by the San Diego City Attorney.

WHEREAS, the Parties entered into the City of San Diego Use and Occupancy Permit – Five effective as of January 29, 2016 (the "Original Permit"); and

WHEREAS, the Parties entered into the First Amendment to City of San Diego Use and Occupancy Permit – Five effective as of September 2, 2016 ("First Amendment"); and

WHEREAS, the Original Permit and the First Amendment shall be referred to collectively hereinafter as the "Permit"; and

WHEREAS, the PERMITTEE has requested to decrease the size of the Permit Area because of a change in the schedule of the Project; and

WHEREAS, all capitalized terms not otherwise defined in this Amendment shall have the same meaning as in the Permit.

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

1. Paragraph 1, subparagraph b of the Permit is deleted in its entirety and replaced as follows:

“b. “Permit Area” shall mean those certain CITY-owned real properties located in Mission Valley Preserve in San Diego, CA (portions of APN 436-660-06, 436-660-20, and 436-660-33), more particularly depicted in **Exhibit A-1: Permit Area**, attached hereto.”

2. Paragraph 6 of the Permit is deleted in its entirety and replaced as follows:

“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."

3. Paragraph 17 of the Permit is deleted in its entirety and replaced as follows:

"17. **Insurance.** PERMITTEE represents and warrants to CITY that its Permit Use and Occupancy governed under this Permit are in furtherance of the Mid-Coast Corridor Transit 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."
4. All other terms and conditions of the Permit remain unchanged and shall remain in full force and effect.

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IN WITNESS WHEREOF, this SECOND AMENDMENT TO USE AND OCCUPANCY PERMIT - FIVE is executed to be effective as of the Effective Date.

Approved as to form:

By: [Signature]
RYAN P. KOHUT
SANDAG Senior Legal Counsel

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

BY: [Signature]
Name: John L. Thompson
Title: Director, MMAI

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Cybele L. Thompson
Director, Real Estate Assets

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Mara W. Elliott
Date: 10-5-17
Deputy City Attorney

Environmental Analysis Section Environmental Clearance:

This Use & Occupancy Permit with SANDAG to allow access to City-owned property for the sole exclusive use of the Permit Area for construction and staging areas 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

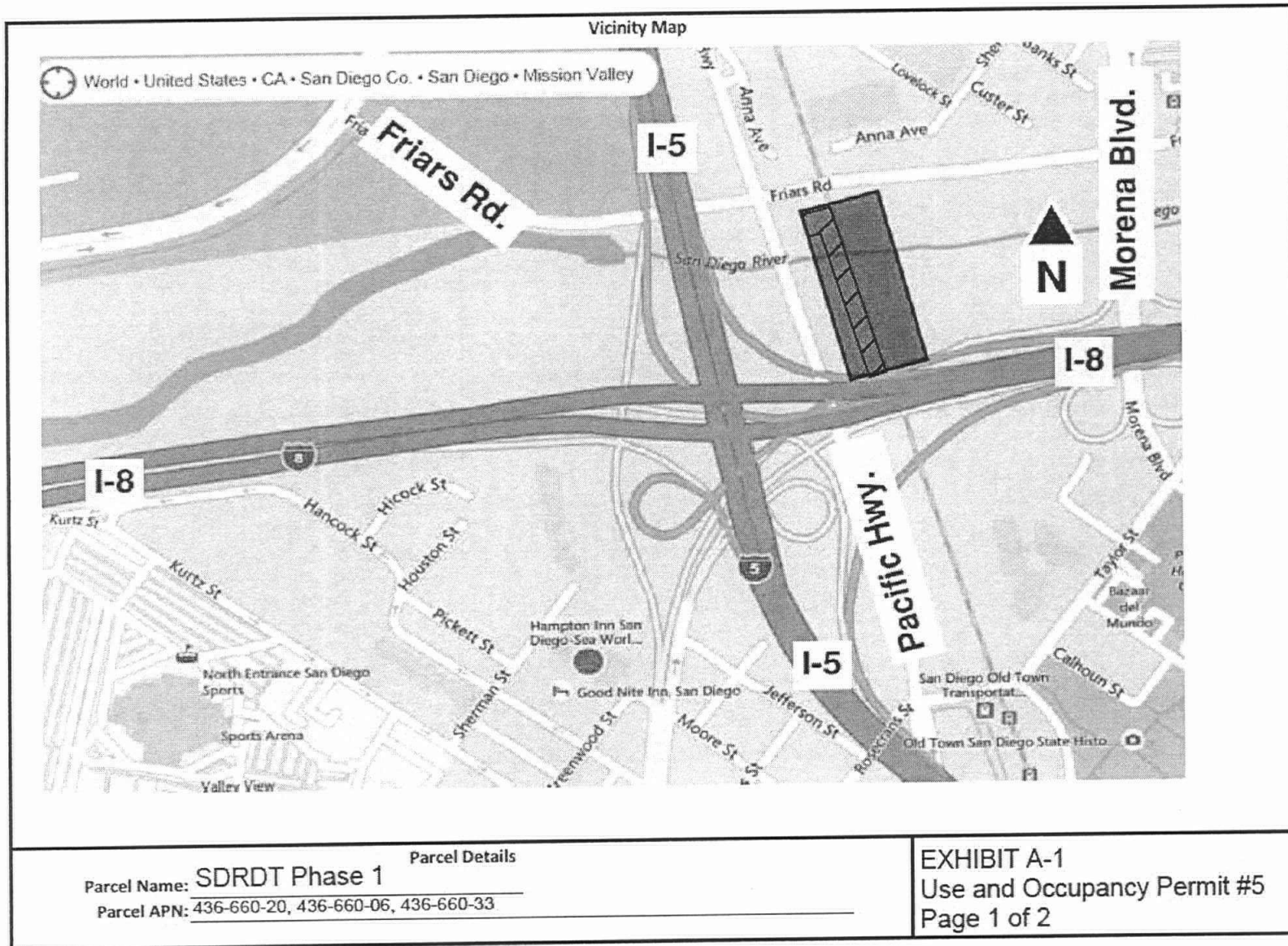
Mid-Coast Corridor Transit Project Final Supplemental Environmental Impact Statement and Subsequent Environmental Impact Report Volume 1. U.S. Department of Transportation Federal Transit Administration and San Diego Association of Governments (SANDAG), SCH# 2010051001, September 2014; certified by SANDAG Board Resolution No. RTC-2015-03, 11/21/14;

Date: 9/28/17

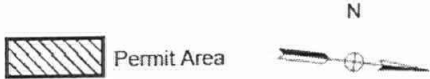
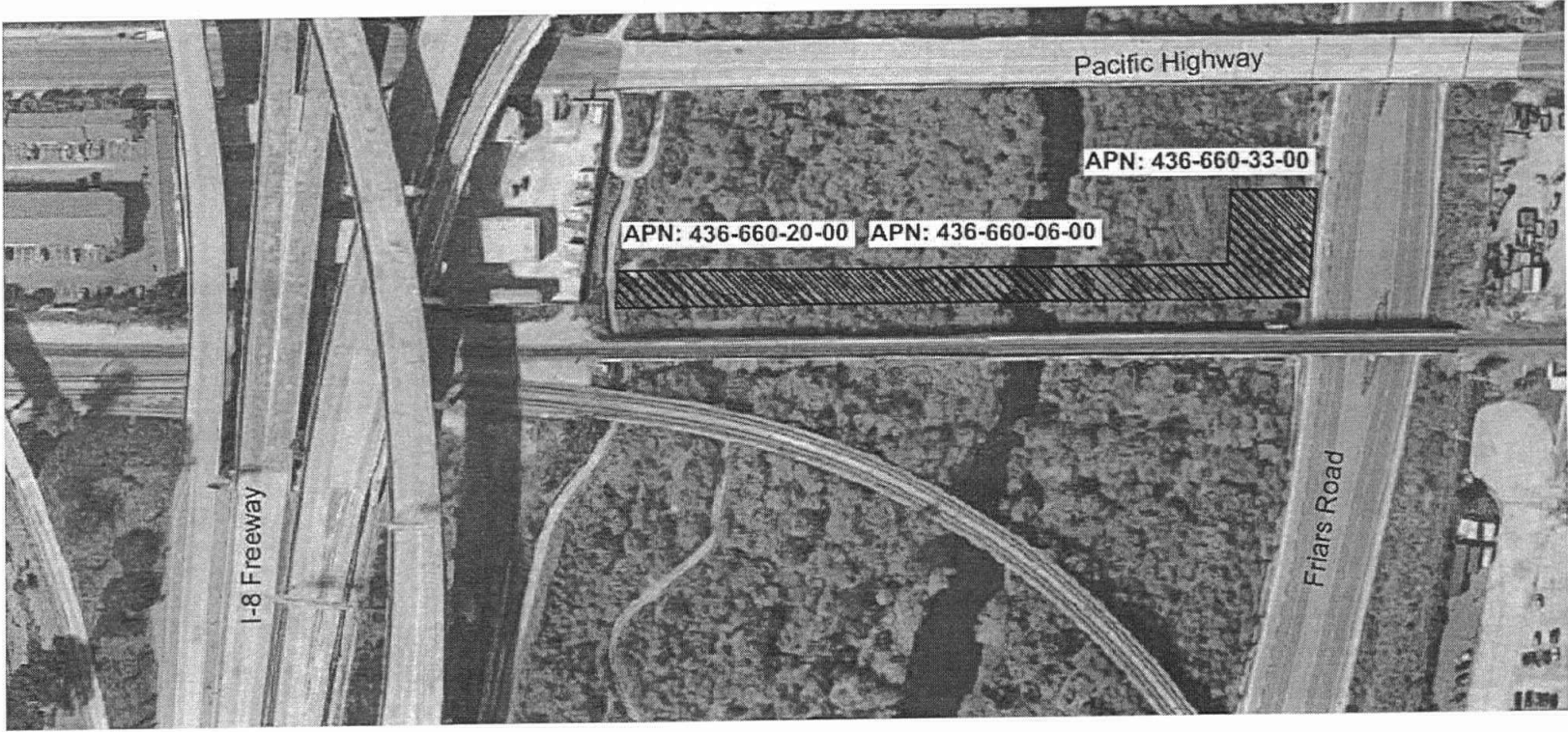
BY: 
Alyssa Muto
Deputy Director, Environmental & Policy Analysis
Planning Department

Exhibit A-1: Permit Area

EXHIBIT A-1: PERMIT AREA



Mission Valley Preserve SDRBDT Use and Occupancy Permit Exhibit A - Amendment 2 to Permit Five



Mission Valley Preserve
SDRBDT PHS 1



Use and Occupancy Permit
33,887 SF
0.78 Acres

SHEET
1 OF 1

Construction of SDRBDT MT2 - Bridge