Notice:

An agenda item entitled Approval of Conservation Easement Purchase Option Agreement is proposed to be added to the April 17, 2015 Board of Directors Meeting Agenda of the San Dieguito River Park Joint Powers Authority Board pursuant to Government Code Section 54952.2(b)(2) which allows the Board to add an item to the agenda if it makes the following findings:

1. There is a need to take immediate action that cannot reasonably wait until the next regularly scheduled meeting, and

2. The need for action came to the attention of the JPA after the regular agenda was posted.

The meeting will be held at: County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego. Friday, April 17, 2015, 11:00 a.m. – 12:30 p.m.

Speaker slips will be available. Please fill out a slip and give it to the Chair prior to the meeting if you wish to speak to an item on the agenda. The Board may take action on any item listed on the Consent or Action agenda.
DATE: April 17, 2015

TO: JPA Board

FROM: Staff

SUBJECT: Approval of Conservation Agreement Purchase Option Agreement

RECOMMENDATION:

It is recommended that the Board of Directors:
1. Approve the Conservation Easement Purchase Option Agreement for Fenton North Property and authorize the Chairperson of the Board to sign it in behalf of the San Diego River Park.

NOTE: This item is proposed to be added to the April 17, 2015 JPA Board of Directors Meeting as it was developed after the publication of the agenda and must be effected prior to the May meeting.

BACKGROUND:

Attached is an option agreement for the purchase of environmental credits for approximately 18.81 acres for the Fenton North Property, owned by the San Dieguito River Valley Conservancy. The agreement is a three party agreement between San Diego Gas and Electric Company, the option purchaser, the San Dieguito River Valley Conservancy, the seller of the option, and the JPA, the agency to which the conservation easement would be granted by SDG&E. The option provides the exclusive right, during the option period, for SDG&E to purchase the environmental credits on the property. The option fee is for $50,000 and is irrevocable however, the fee amount will be credited to the conservation easement purchase price of $940,500 if SDG&E proceeds with the purchase of the environmental credits. The option period is from the date of execution until December 31, 2015.

The reason the JPA is involved in the execution of this option is because SDG&E wants to ultimately grant the conservation easement in favor of the JPA. The conservation easement would be executed subject to the acceptance of the JPA, and following the development of a Habitat Management Plan, calculation of cost for restoration and maintenance of the property through a Property Analysis Record (PAR), and the establishment of a sufficient endowment to provide the habitat management services provided.

The net proceeds of the sale of the environmental credits for the property, if executed, will be split on a 50/50 basis between the San Dieguito River Valley Conservancy and JPA, as proposed in the Memorandum of Understanding (also appearing on the April 17
agenda.)

FISCAL IMPACT:

This agreement is financially beneficial to the JPA. The JPA’s share of the proceeds from the sale of the conservation easement for the Fenton North property are estimated to amount to over $400,000.

ALTERNATIVES:

1. Do not approve the Option Agreement. This action is not recommended as the land was dedicated to the Conservancy for the purpose of environmental mitigation, and failing to execute the agreement could result in the significant loss of income associated with this potential transaction to sell environmental credits to SDG&E.

Respectfully submitted,

Mark J. Ochenduszko
Interim Executive Director

Attachments: Proposed Option Agreement
Location Maps of Both Properties
CONSERVATION EASEMENT PURCHASE OPTION AGREEMENT

This Conservation Easement Purchase Option Agreement (this "Agreement"), dated as of __________, 2015, is by and between the San Dieguito River Valley Land Conservancy, a California nonprofit corporation ("Optionor"), the San Dieguito River Valley Regional Open Space Park Joint Power Authority, a California public entity ("JPA"), and San Diego Gas & Electric Company, a California corporation ("Optionee"). Optionor, JPA and Optionee shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Optionor owns the fee interest in that certain parcel of real property designated as Assessor's Parcel Number 242-110-14 comprising approximately 23.455 acres situated in the City of San Diego, in San Diego County, California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Land"). The Land, together with any and all rights, title and interest in and to (1) improvements located on the Land, and (2) rights, privileges, easements and servitudes appurtenant to the Land, including but not limited to water and water rights, development rights and mineral rights, shall be referred to herein collectively as the "Property."

B. Optionee has requested from Optionor, and Optionor has agreed to grant to Optionee, on the terms and conditions set forth in this Agreement, an irrevocable and exclusive right and option ("Option") to purchase a "Conservation Easement" in favor of the JPA and enforceable by Optionee, over the remainder of the Property not already encumbered by existing conservation easements, an area comprising approximately 18.81 acres, more fully described on Exhibit B attached hereto ("Easement Area").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Definitions. The following terms, as used in this Agreement, shall have the definitions set forth below:

"Agencies" shall mean the Army Corps of Engineers, the California Department of Fish and Wildlife and/or the State Water Resources Control Board.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Applicable Laws" shall mean any and all applicable laws, ordinances, codes, statutes, rules, regulations, orders, decisions, decrees, edicts and directives issued by any Governmental Authority.
“Business Day” shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in San Diego, California are authorized or obligated by law or executive order to be closed.

“Casualty Event” shall have the meaning set forth in Section 8(c) of this Agreement.

“Claims” shall have the meaning set forth in Section 14 of this Agreement.

“Closing Date” shall have the meaning set forth in Section 5 of this Agreement.

“Condemnation Event” shall have the meaning set forth in Section 9 of this Agreement.

“Conservation Easement” shall mean a conservation easement as defined by Section 815.1 of the California Civil Code recorded against the Property in the Official Records of San Diego County, granted by Optionor to the JPA and funded by Optionee, which restricts development of the Easement Area and requires the JPA to maintain the Easement Area in accordance with a Habitat Management Plan (HMP) developed by Optionee and/or the Optionee Parties and approved by the Agencies, to the extent such approvals are determined to be necessary in Optionee’s sole discretion. The Conservation Easement shall comply with California Civil Code Section 815 et seq. and shall expressly grant Optionee the right to enforce the requirements of the Conservation Easement against the JPA and to carry out, through the Optionee Parties, the restoration of the Easement Area as required by the HMP, and shall also expressly grant Optionee the exclusive right to use or bank for its own purposes any mitigation credits created by the establishment of the Conservation Easement. The Conservation Easement shall also grant JPA and the Optionee Parties the right to use all privileges, easements and servitudes appurtenant to the Property itself, including well rights, water rights, parking, and rights of access, ingress and egress. Unless otherwise agreed by the parties in writing, the Conservation Easement shall provide that Optionee is responsible for the cost and implementation of all restoration work within the Easement Area and that JPA’s responsibility for maintenance of the Easement Area shall begin after all restoration work is complete.

“Due Diligence” shall have the meaning set forth in Section 8(b) of this Agreement.

“Due Diligence Materials” shall have the meaning set forth in Section 8(a) of this Agreement.

“Effective Date” shall have the meaning set forth in Section 2(a) of this Agreement.

“Encumbrance” shall have the meaning set forth in Section 7(a) of this Agreement.

“Environmental Law” shall mean any Applicable Law relating to: (a) air emissions or the storage, use, release, generation, treatment, storage or disposal of hazardous or toxic wastes, wastewater discharges and similar environmental matters; or (b) the impact of the matters described in the preceding clause upon human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act

“Easement Area” shall have the meaning set forth in Recital B of this Agreement.

“Exercise Period” shall have the meaning set forth in Section 5 of this Agreement.

“Expiration Date” shall have the meaning set forth in Section 4 of this Agreement.

“Governmental Authority” shall mean any federal, state, regional, county, parish, municipal or other local government, authority, agency, commission, body, court, tribunal, department or division.

“Hazardous Materials” shall mean all chemicals, substances, materials, objects, conditions, wastes or combination thereof that are or may be hazardous to human health or safety or the environment due to their radioactivity, ignitability, corrosivity, reactivity, toxicity or other properties or effects, including but not limited to oil, petroleum, petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, toxic mold and all chemicals, substances, materials, objects, conditions, wastes or combinations thereof that are now or in the future are listed, defined or regulated in any manner by any Environmental Law.

“JPA” shall have the meaning set forth in the preamble of this Agreement.

“Land” shall have the meaning set forth in Recital A of this Agreement.

“Official Records” shall have the meaning set forth in Section 2(b) of this Agreement.

“Option” shall have the meaning set forth in Recital B of this Agreement.

“Option Fee” shall have the meaning set forth in Section 6(a) of this Agreement.

“Optionee Parties” shall mean Optionee’s directors, managers, members, officers, shareholders, employees, affiliates, parent companies, subsidiaries, contractors, subcontractors, consultants, agents and representatives, and their respective successors and assigns.
“Optionee” shall have the meaning set forth in the preamble to this Agreement.

“Optionor Default” shall have the meaning set forth in Section 13(a) of this Agreement.

“Optionor Parties” shall mean Optionor’s directors, officers, employees, contractors, subcontractors, consultants, agents and representatives, and their respective successors and assigns.

“Optionor” shall have the meaning set forth in the preamble to this Agreement.

“Party” or “Parties” shall have the meaning set forth in the preamble to this Agreement.

“Permitted Encumbrances” shall have the meaning set forth in Section 7(f) of this Agreement.

“Property” shall have the meaning set forth in Recital A of this Agreement.

“Purchase Price” shall have the meaning set forth in Section 6 of this Agreement.

“Term” shall have the meaning set forth in Section 4 of this Agreement.

“Title Company” shall mean Chicago Title Company, 2365 Northside Drive, Suite 500, San Diego, CA 92108, Attention: Zona Weekly.

2. Effectiveness of Agreement.

(a) Optionor, JPA and Optionee shall each execute two (2) original counterparts of this Agreement. This Agreement shall be effective as of the day that the last of Optionor, JPA and Optionee have duly authorized and executed counterparts of this Agreement. The date that this Agreement becomes effective shall be referred to herein as the “Effective Date”.

(b) Optionee may cause a memorandum of this Agreement in substantially the form set forth as Exhibit C attached hereto and incorporated herein by this reference to be recorded with respect to the Easement Area in the official records of the County of San Diego (“Official Records”) at any time after the Effective Date. In the event the Option expires without being exercised, Optionee shall, if requested by Optionor, execute and deliver to Optionor a quitclaim deed releasing all of its interest in the Property.

3. Grant of Option. Optionor hereby grants the Option to Optionee, and Optionee hereby acquires the Option from Optionor, on the terms and conditions set forth in this Agreement. Upon Optionee’s exercise of the Option, Optionee shall purchase from Optionor the Conservation Easement in favor of the JPA, and Optionor shall grant the Conservation Easement to the JPA, at the Purchase Price and otherwise on the terms and conditions set forth in this Agreement.
4. **Term of Option.** The term of the Option ("**Term**") shall commence on the Effective Date and shall expire as of 5:00 p.m. Pacific Time on December 31, 2015 ("**Expiration Date**").

5. **Exercise of Option, Exercise Period and Closing Date.**

(a) Optionee may elect, in its sole discretion, to exercise the Option by delivering a written exercise notice to Optionor during the Term, with a copy to JPA, at which time Optionee shall be deemed to have irrevocably exercised the Option, subject to the terms and conditions set forth in this Agreement.

(b) Within sixty (60) days of Optionee’s exercise of the Option, Optionor, JPA and Optionee shall execute, acknowledge and deliver the Conservation Easement and any and all other documents reasonably necessary or appropriate to consummate the purchase of the Conservation Easement in accordance with this Agreement ("**Exercise Period**"). The date on which all such documents have been executed and delivered to the appropriate parties shall be the "**Closing Date**."

(c) During the Exercise Period and at least thirty (30) days prior to the Closing Date, the JPA shall be given an opportunity to review and approve the final Conservation Easement, HMP and endowment (as described in Section 6(c) below), and such approval shall not be unreasonably withheld or conditioned. The JPA shall approve or provide any comments or objections to the documents within fourteen Business Days of its receipt for review.

6. **Option Fee and Purchase Price.**

(a) Optionee and Optionor hereby acknowledge and agree that the fee payable by Optionee to Optionor for the Option shall be Fifty Thousand Dollars ($50,000.00) (the "**Option Fee**") and shall be payable by wire transfer of immediately available funds or Optionee’s corporate check within two (2) days of the Effective Date. The Option Fee is consideration for the Option granted herein and is non-refundable.

(b) The purchase price for the Conservation Easement shall be Nine Hundred Forty Thousand, Five Hundred Dollars ($940,500.00) ("**Purchase Price**"), payable by wire transfer of immediately available funds or Optionee’s corporate check on the Closing Date. The Option Fee shall be credited towards the Purchase Price upon Optionee’s exercise of the Option.

(c) In addition to the foregoing, in the event Optionee elects to exercise the Option in accordance with Section 5 above, Optionee shall also establish an endowment fund in favor of the JPA to fund the ongoing maintenance and care of the Easement Area pursuant to a separate endowment agreement between Optionee and the JPA or the applicable endowment fund manager. The amount of such endowment fund shall be determined by the Optionee and the Agencies. The
endowment fund is not required to be established or funded on the Closing Date, but Optionee shall be obligated to establish and fund the endowment post-Closing in accordance with the timeline set forth by the Agencies in the HMP for the Easement Area and approved by the JPA.

7. **Encumbrances Affecting Easement Area.**

(a) During the Term, Optionor (i) shall not, without the prior written consent of Optionee, which may be granted or withheld in Optionee’s reasonable discretion, sell, convey, grant or assign, or materially amend, any on or off record easement, servitude, right-of-way, lease, option, license, covenant, condition, restriction, hypothecation, encumbrance or other title matter ("Encumbrance") affecting the Easement Area, and (ii) shall not, without the prior written consent of Optionee, which may be granted or withheld in Optionee’s reasonable discretion, enter into any contract or agreement regarding the operation, management, repair, development or improvement of the Easement Area that cannot be terminated upon not more than thirty (30) days prior written notice. If Optionee exercises the Option, then the foregoing provisions of this Section 7(a) shall continue to apply during the Exercise Period.

(b) Optionee plans to obtain a preliminary title report issued by Title Company, setting forth the Encumbrances affecting the Easement Area, together with legible copies of any recorded documents relating to such Encumbrances ("Title Report").

(c) With respect to any Encumbrance affecting the Easement Area, Optionee may deliver to Optionor a Title Objection Notice by April 31, 2015 ("Contingency Due Date"). If Optionee shall have delivered to Optionor any Title Objection Notice with respect to any Encumbrance by the Contingency Due Date, then within five (5) Business Days after receipt of the Title Objection Notice, Optionor shall deliver to Optionee a written response to the Title Objection Notice, stating either that (1) Optionor shall cure such Encumbrance by May 31, 2015 and provide Optionee with evidence satisfactory to Optionee that such Encumbrance shall be removed from title as of such date, or (2) Optionor shall not cure such Encumbrance. If Optionor fails to deliver to Optionee any response to the Title Objection Notice within fifteen (15) Business Days after receipt of the Title Objection Notice, then Optionor shall be conclusively deemed to have elected to cure such Encumbrance.

(d) If Optionor has elected not to cure any Encumbrance under Section 7(c)(2) above, then Optionee may elect, in its sole discretion, by delivery of written notice to Optionor and Escrow Holder, to either (i) terminate this Agreement, in which case neither Optionor nor Optionee shall have any further rights or obligations under this Agreement, other than those obligations that survive the expiration or earlier termination of this Agreement, or (ii) waive its objections without any reduction in the Purchase Price. If Optionor has elected to cure any Encumbrance under Section 7(c)(1) above, but fails to cure such Encumbrance by June 30, 2015, then
Optionee may elect, in its sole discretion, by delivery of written notice to Optionor, to either (i) terminate this Agreement, in which case neither Optionor nor Optionee shall have any further rights or obligations under this Agreement, other than those obligations that survive the expiration or earlier termination of this Agreement, or (ii) waive the objection to the Encumbrance and proceed with the purchase of the Conservation Easement.

(e) If Optionee shall exercise the Option, then before the end of the Exercise Period, Optionor shall be obligated to cure, at Optionor’s sole cost, without notice, any Encumbrance affecting the Easement Area caused or created by or arising from Optionor’s violation of its obligations set forth in Section 7(a) above, provided, however, that if any such Encumbrance cannot be cured within 30 days of the date Optionee exercised the Option, then Optionee may elect, in its sole discretion, by delivery of written notice thereof to Optionor, to either (A) terminate the purchase of the Conservation Easement, or (B) waive it objection to the Encumbrance and proceed with the purchase of the Conservation Easement.

(f) The term “Permitted Encumbrances” shall mean, collectively, all Encumbrances affecting the Easement Area except (i) Encumbrances that Optionor is obligated to cure under Section 7(e) above without notice, and (ii) Encumbrances with respect to which Optionee delivered a Title Objection Notice on or before the Contingency Due Date and did not subsequently waive any objection. During the Exercise Period, Optionor shall convey to Optionee the Conservation Easement, subject only to the Permitted Encumbrances. Prior to June 30, 2015, Optionor shall remove from the Easement Area any third party using, occupying or possessing all or any portion of the Easement Area, unless such third party’s right to use, occupy or possess the Easement Area constitutes a Permitted Encumbrance.

8. Physical Condition of Easement Area.

(a) Not more than ten (10) days after the Effective Date, Optionor shall deliver to Optionee, to the extent within Optionor’s possession or control, any (i) existing survey of the Easement Area, (ii) reports, analyses, studies, appraisals and documents relating to the value or physical or environmental condition of the Easement Area, (iii) existing zoning designations, permits, approvals and entitlements issued for the Easement Area, (iv) notices of violations of any Applicable Laws issued by any Governmental Authority regarding the Easement Area or the Property, (v) documents relating to pending or threatened litigation or condemnation proceedings affecting the Easement Area or the Property, and (vi) copies of any covenants, restrictions or conditions affecting the Easement Area (collectively, “Due Diligence Materials”).

(b) During the Term, Optionor shall permit Optionee and the Optionee Parties to undertake any due diligence, review, inquiries, analyses, audits, tests, studies and inspections (“Due Diligence”) with respect to the Easement Area as Optionee deems necessary or desirable. Optionor shall have the right (but not the
obligation) to be present or have a representative present while such Due Diligence is being conducted. Optionee shall promptly repair any damage to the Easement Area or the Property caused by the performance of such Due Diligence by Optionee and/or the Optionee Parties. During the Term, Optionee will have the right to enter upon the Easement Area in its existing condition, and to make any applications for its desired modifications of the Easement Area with any Governmental Authority; provided that no permits shall be pulled without the express prior written consent of Optionor.

(c) During the Term, neither Optionor nor its Optionor Parties shall alter in any material respect the physical condition of the Easement Area without Optionee’s prior written consent, which may be granted or withheld in Optionee’s sole discretion. Without limiting the generality of the foregoing, neither Optionor nor its Optionor Parties shall cause any casualty that destroys or damages all or any portion of the Easement Area (a “Casualty Event”) or introduce, release, store, generate, spill, place or dispose of any Hazardous Materials in, on, under or around the Easement Area or take any action to exacerbate existing Hazardous Materials in, on, under or around the Easement Area or the Property. In addition, if Optionee exercises the Option, then the foregoing provisions set forth in this Section 8(c) shall continue to apply throughout the Exercise Period.

(d) If a Casualty Event occurs on the Property that affects the Easement Area or the value of the Conservation Easement, or Optionor or the Optionor Parties introduces, releases, stores, generates, spills, places or disposes of any Hazardous Materials in, on, under or around the Easement Area or takes any action to exacerbate existing Hazardous Materials in, on, under or around the Easement Area, or Optionor alters in any material respect the physical condition of the Easement Area without Optionee’s prior written consent, then Optionor shall take all actions reasonably necessary or required under Applicable Law to repair and restore the Easement Area or remediate such Hazardous Materials, at Optionor’s sole cost, provided, however, that if the Easement Area cannot be repaired and restored or any such Hazardous Materials cannot be remediated within thirty (30) days of Optionee’s request to perform such repair or remediation, then Optionee may elect, in its sole discretion, by delivery of written notice thereof to Optionor, to either (A) terminate the purchase of the Conservation Easement, or (B) waive any objection to such material alteration of the Easement Area and proceed with the purchase of the Conservation Easement.

9. Condemnation. If, during the Term, all or any portion of the Easement Area is condemned or a suit to condemn all or any portion of the Easement Area is filed or threatened or notice of a suit to expropriate all or any portion of the Easement Area is given or received (“Condemnation Event”), then Optionor shall promptly deliver to Optionee written notice describing the Condemnation Event in reasonable detail, together with a copy of any documentation relating to the Condemnation Event. Upon the occurrence of any Condemnation Event with respect to the Easement Area, Optionee may elect, in its sole discretion, by delivery of written notice thereof to Optionor, to either (a)
terminate the purchase of the Conservation Easement, or (b) proceed with the purchase of the Conservation Easement, in which case the Purchase Price shall be reduced based on the amount of acreage to be condemned. If Optionee exercises the Option, then the foregoing provisions set forth in this Section shall continue to apply throughout the Exercise Period.


(a) Optionor hereby represents and warrants, as of the Effective Date and the consummation of the purchase of the Conservation Easement (or, if made as of a specific date, as of such specific date):

(i) Organization; Standing; Power; Authority. Optionor is a 501(c)(3) nonprofit corporation, duly organized and existing in the State of California, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in this Agreement. Optionor has taken all actions necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement. The individual executing this Agreement and any other documents or agreements to be executed and/or delivered in connection with or pursuant to this Agreement is duly authorized to do so. The performance by Optionor of Optionor's duties, obligations and responsibilities under this Agreement will not violate any Applicable Law, or any material agreement, document or instrument to which Optionor is a party or by which Optionor or the Easement Area is bound or affected. All proceedings required to be taken by or on behalf of Optionor to authorize Optionor to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of; or performance by Optionor of its obligations under this Agreement.

(ii) Enforceability. This Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement constitute or shall constitute the valid and binding obligation of Optionor, enforceable against Optionor in accordance with their terms, except as such enforcement may be limited by (A) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (B) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.
(iii) **Ownership.** Optionor is the owner of the Property and holds good and marketable title to the Easement Area in full ownership free and clear of all Encumbrances, other than the Permitted Encumbrances.

(iv) **No Litigation.** There is no litigation, proceedings, special assessments or investigations pending or, to Optionor’s knowledge, threatened against Optionor that arises out of the ownership or operation of the Easement Area or the Property or that might affect the value of the Conservation Easement or the ability of Optionor to perform Optionor’s obligations under this Agreement. There are no condemnation, zoning or other land use regulation proceedings pending or, to Optionor’s knowledge, threatened, with respect to the Easement Area.

(v) **No Unrecorded Encumbrances.** To Optionor’s knowledge, there are no unrecorded Encumbrances affecting the Easement Area.

(vi) **No Hazardous Materials.** To Optionor’s knowledge, (A) no Hazardous Materials have been placed, stored, generated, produced, discharged, disposed of or released on the Easement Area or transported to or from the Easement Area, (B) there are no underground storage tanks located under the Easement Area, and (C) there is no reason why the Easement Area would not be in compliance with applicable Environmental Law.

(vii) **No Broker’s Commissions.** Optionor does not believe it has entered into any agreement or taken any action that will result in any obligation to pay any brokerage, finder’s fee or similar commission in connection with the purchase of the Conservation Easement as contemplated in this Agreement. However, to the extent any such fee is required to be paid, it shall be Optionor’s sole obligation.

(vii) **Breach of Contract.** Optionor is not in breach of any contracts affecting the Easement Area. Optionor is not in default with respect to any of its obligations pertaining to the Easement Area nor are there any facts or circumstances which would likely lead to default in the near future.

(viii) **Applicable Laws.** There is no existing or threatened material violation of any order, judgment, Applicable Law (including Environmental Laws) with respect to the Easement Area.

(b) Notwithstanding any other provision of this Agreement, the representations and warranties made by Optionor in Section 10(a) shall survive for a period of eighteen (18) months after (i) the expiration or earlier termination of this Agreement, or (ii) if Optionee shall have exercised the Option, the Exercise Period, provided, however, that in the case of Optionor’s fraud or intentional or willful misrepresentation with respect to any representation or warranty, such representation and/or warranty shall survive until the expiration of the longest running applicable statute of limitations period.
11. JPA Representations and Warranties.

(a) JPA hereby represents and warrants as follows, as of the Effective Date and as of the consummation of the purchase of the Conservation Easement (or if made as of a specific date, as of such specific date):

(i) Organization; Standing; Power; Authority. JPA is a California public entity, duly organized and existing in the State of California, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in this Agreement. JPA has taken all organizational action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement. The individual executing this Agreement and any other documents or agreements to be executed and/or delivered in connection with or pursuant to this Agreement is duly authorized to do so. The performance by JPA of JPA’s duties, obligations and responsibilities under this Agreement will not violate or constitute a material default under the terms and provisions of JPA’s joint exercise of powers agreement or any other material agreement, document or instrument to which JPA is a party or by which JPA is bound or affected. All proceedings required to be taken by or on behalf of JPA to authorize JPA to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by JPA of its obligations under this Agreement.

(ii) Enforceability. This Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement constitute or shall constitute the valid and binding obligation of JPA, enforceable against JPA in accordance with their terms, except as such enforcement may be limited by (A) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (B) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Notwithstanding any other provision of this Agreement, the representations and warranties made by JPA in Section 11(a) shall survive for a period of eighteen (18) months after (i) the expiration or earlier termination of this Agreement, or (ii) if Optionee shall have exercised the Option, the Exercise Period, provided, however, that in the case of JPA’s fraud or intentional or willful misrepresentation with respect to any representation or warranty, such representation and/or warranty
shall survive until the expiration of the longest running applicable statute of limitations period.


(a) Optionee hereby represents and warrants as follows, as of the Effective Date and as of the consummation of the purchase of the Conservation Easement (or if made as of a specific date, as of such specific date):

(i) **Organization; Standing; Power; Authority.** Optionee is a California corporation, duly organized and existing in the State of California, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in this Agreement. Optionee has taken all organizational action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement. The individual executing this Agreement and any other documents or agreements to be executed and/or delivered in connection with or pursuant to this Agreement is duly authorized to do so. The performance by Optionee of Optionee's duties, obligations and responsibilities under this Agreement will not violate or constitute a material default under the terms and provisions of Optionee's operating agreement or any material agreement, document or instrument to which Optionee is a party or by which Optionee is bound or affected. All proceedings required to be taken by or on behalf of Optionee to authorize Optionee to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Optionee of its obligations under this Agreement.

(ii) **Enforceability.** This Agreement and all other documents and agreements to be executed and/or delivered in connection with or pursuant to this Agreement constitute or shall constitute the valid and binding obligation of Optionee, enforceable against Optionee in accordance with their terms, except as such enforcement may be limited by (A) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (B) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Notwithstanding any other provision of this Agreement, the representations and warranties made by Optionee in Section 12(a) shall survive for a period of eighteen (18) months after (i) the expiration or earlier termination of this Agreement, or (ii) if Optionee shall have exercised the Option, the Exercise Period, provided, however,
that in the case of Optionee's fraud or intentional or willful misrepresentation with respect to any representation or warranty, such representation and/or warranty shall survive until the expiration of the longest running applicable statute of limitations period.

13. **Default.**

(a) The failure of any Party to perform any specific obligation or responsibility that it is required to perform under the terms of this Agreement, without exception, shall constitute a "**Default**" under this Agreement if such failure is not cured within fifteen (15) Business Days after delivery of written notice of such failure to such defaulting Party by a non-defaulting Party.

(b) Upon the occurrence of a Default, the notifying non-defaulting Party shall have the right to pursue any and all remedies at law or in equity that are available to such Party as a result of such Default, including but not limited to the right to (i) cure such Default and receive reimbursement from the defaulting Party for all costs incurred to effect such cure, (ii) pursue injunctive relief or specific performance of this Agreement, or (iii) record any notice of pending action against the Easement Area or the Property.

(c) Notwithstanding anything herein to the contrary, the Parties acknowledge and understand that in no event shall Optionee's failure to exercise the Option be considered a Default under the terms of this Agreement.

14. **Indemnification.** Optionor, Optionee and JPA each individually hereby agree to indemnify, hold harmless and defend the other from and against any and all losses, liabilities, claims, demands, damages, causes of action, liens, obligations, fines, penalties, costs and expenses (including but not limited to all investigation costs and reasonable consulting, engineering, outside attorney's fees or other professional fees) (collectively, "**Claims**") arising from (i) their exercise of the rights granted herein, (ii) any Default, including but not limited to any breach of a covenant, representation and warranties set forth in this Agreement, or (iii) any matters arising from a parties' fraud or misrepresentation, provided, however, that the foregoing indemnity shall not include Claims to the extent directly arising from the negligence or willful misconduct of an indemnified party. The indemnity set forth in this section shall survive the consummation of the purchase of the Conservation Easement. Any Claims for which a party is obligated to indemnify pursuant to this Agreement ("**Indemnified Claim**") shall be immediately reimbursable as and when incurred.

15. **Assignment.** No Party may assign its rights, title, interest and obligations under this Agreement without the other Parties' prior written consent, which may be granted or withheld in such Party's sole discretion, except that Optionee's prior written consent shall not be required for Optionee to assign Optionee's rights, title, interest and obligations under this Agreement to an affiliate or parent company of Optionee. Upon such assignment and the assumption by the assignee of Optionee's rights, title, interest and obligations under this
Agreement, Optionee shall be released from any liability or obligation under this Agreement.

16. **Waiver of Performance.** Any Party may waive the satisfaction or performance of any terms or conditions of this Agreement that have been included in this Agreement for its benefit, so long as such waiver is in writing, specifies the waived term or condition and delivered to the other Parties.

17. **Notices.** All notices under this Agreement shall be in writing and shall be effective upon actual receipt whether sent by United States registered or certified mail, return receipt requested, postage prepaid, delivered by personal delivery, legible facsimile, reputable overnight courier, or email or facsimile transmission with written confirmation of successful transmission, followed within one (1) Business Day by delivery via one of the other means set forth herein, addressed to the Parties as follows:

If to Optionor: 3030 Bunker Hill Street, Suite 307C
San Diego, CA 92109
Attention: Executive Director
Telephone: 858 755-6956
Facsimile: ________________________

If to JPA: 18372 Syamore Creek Road
Escondido, CA 92025
Attention: Executive Director
Telephone: 858 674-2270
Facsimile: ________________________

If to Optionee: San Diego Gas & Electric Company
8335 Century Park Court, Suite 100
San Diego, CA 92123-1569
Attention: Real Estate Records - CP1-2A
Telephone: 858-637-3714
Facsimile: 858-637-3766

With a copy to: San Diego Gas & Electric
101 Ash Street
San Diego, California 92101
Attention: Commercial Law Department
Telephone: (619) 696-4395
Facsimile: (619) 699-5150

18. **Amendments.** This Agreement may be amended only by written agreement signed by both of the Parties.
19. **Time of the Essence.** Time and each of the terms and conditions of this Agreement are hereby expressly made of the essence.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

21. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without reference to its choice of law provisions. Any legal action or proceeding arising out of this Agreement shall be brought in a state court of competent jurisdiction in San Diego, California. By execution and delivery of this Agreement, each Party hereby irrevocably and unconditionally accepts and submits to the personal jurisdiction of said courts.

22. **Attorneys’ Fees and Costs.** In any action among the Parties seeking the enforcement of any of the terms or conditions of this Agreement or in connection with the Easement Area, the prevailing Party in such action shall be awarded, in addition to any damages or equitable relief, its reasonable attorney’s fees and costs.

23. **Prior Agreements.** This Agreement supersedes any and all oral or written agreements among the Parties regarding any option to purchase a Conservation Easement over the Easement Area which are prior in time to this Agreement. Neither Optionee nor Optionor shall be bound by any prior understanding, agreement, promise, representation or stipulation regarding any option to purchase the Conservation Easement, express or implied, not specified herein.

24. **Further Assurances.** The Parties shall execute all documents and instruments reasonably required in order to consummate the transactions contemplated in this Agreement.

25. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

26. **Severability.** If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

27. **Construction of Agreement.** The language in this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The language in this Agreement and all documents and instruments referred to in this Agreement have been prepared, examined, negotiated and revised by each Party and its legal counsel, and no implication shall be drawn and no provision shall be construed against any Party by virtue of the purported identity of the drafter of this Agreement. The section headings of this Agreement are for purposes of reference only and shall not be used for limiting or interpreting the meaning of any section of this Agreement. When required by the context, whenever the singular is used in this Agreement, the same shall include the plural, and the plural shall include the singular, the masculine gender shall include the feminine and neuter genders, and vice versa. As used in this Agreement, the term “Optionor” shall include the respective successors and assigns of Optionor, the term “JPA” shall include the respective
successors and assigns of JPA, and the term “Optionee” shall include the successors and permitted assigns of Optionee.

28. **No Partnership or Joint Venture.** None of the Parties shall be considered to be partners or joint venturers with each other and nothing in this Agreement shall create or be deemed to create any partnership or joint venture between any of the Parties.

29. **Legal Advice.** Each of the Parties hereby acknowledges and agrees that such Party is not relying upon any other Party or any other Party’s counsel for advice with respect to any legal or tax implications of the transaction contemplated herein. Each of the Parties hereby agrees to rely upon its own respective legal counsel and tax advisors with respect to said matters.

[Signatures appear on following pages.]
IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement as of the date first above written.

OPTIONOR

San Dieguito River Valley Land Conservancy,
a California nonprofit corporation

By: ________________________________
Name: ______________________________
Its: ________________________________

JPA

San Dieguito River Valley Regional Open Space Park Joint Power Authority,
a California public entity

By: ________________________________
Name: ______________________________
Its: ________________________________

OPTIONEE

San Diego Gas & Electric Company,
a California corporation

By: ________________________________
Name: ______________________________
Title: ______________________________
EXHIBIT A TO OPTION AGREEMENT
DESCRIPTION OF LAND

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN: 242-110-14
EXHIBIT C TO OPTION AGREEMENT
FORM OF MEMORANDUM OF OPTION

[See attached.]
MEMORANDUM OF PURCHASE OPTION AGREEMENT

By this Memorandum of Purchase Option Agreement (the “Memorandum”) entered into as of __________, 2015, San Dieguito River Valley Land Conservancy, a California nonprofit corporation (“Optionor”), San Dieguito River Valley Regional Open Space Park Joint Power Authority, a California public entity (“JPA”) and San Diego Gas & Electric Company, a California corporation (“Optionee”), declare and agree as follows:

1. Optionor owns the fee interest in certain real property designated as Assessor’s Parcel Numbers 242-110-14 comprising approximately 23.455 acres situated in the City of San Diego, San Diego County, California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“Land”). The Land, together with any and all rights, title and interest in and to (1) improvements located on the Land, and (2) rights, privileges, easements and servitudes appurtenant to the Land, including but not limited to water and water rights, development rights and mineral rights, shall be referred to herein collectively as the “Property”.

2. Optionee has requested from Optionor, and Optionor has agreed to grant to Optionee an irrevocable and exclusive right and option to purchase a conservation easement in favor of the JPA over the remainder of the Property not already encumbered by existing conservation easements, comprising approximately 18.81 acres (“Option”).

3. Optionor, JPA and Optionee entered into that certain Purchase Option Agreement dated __________, 2015 (the “Option Agreement”) whereby Optionee obtained the Option to purchase the Conservation Easement on behalf of the JPA. The Option Agreement expires after 5:00 p.m. on December 31, 2015.
4. This Memorandum is subject to the terms, conditions and provisions of the Option Agreement, all of which are incorporated herein by this reference as if set out herein in full. Optionor and Optionee have executed and recorded this Memorandum to give notice of the Option Agreement and their respective rights and obligations with respect to the Option. In the event of any inconsistency between the Option Agreement and this Memorandum, the Option Agreement shall control.

[Signatures appear on following page.]
IN WITNESS WHEREOF, Optionor, JPA and Optionee have executed this Memorandum of Option Agreement as of the date first set forth herein above.

OPTIONOR: San Dieguito River Valley Land Conservancy, a California nonprofit corporation

By: ________________________________
Name: ________________________________
Title: ________________________________

JPA: San Dieguito River Valley Regional Open Space Park Joint Power Authority, a California public entity

By: ________________________________
Name: ________________________________
Its: ________________________________

OPTIONEE: San Diego Gas & Electric Company, a California corporation

By: ________________________________
Name: ________________________________
Title: ________________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ____________________________

On ________________________ before me, Notary Public,
________________________________________, personally appeared
________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________ (Seal)
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ____________________________

On ________________________ before me, Notary Public,
________________________________________, personally appeared
________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________ (Seal)
Notary Public
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of ________________________

On ________________________ before me, Notary Public,
______________________________ , personally appeared
______________________________ , who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________________________ (Seal)
Notary Public
EXHIBIT A TO MEMORANDUM OF PURCHASE OPTION AGREEMENT

DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN: 242-110-14