

**INTERGOVERNMENTAL
AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO
AND THE SYCUAN BAND OF THE KUMEYAAY NATION AND SYCUAN TRIBAL
DEVELOPMENT CORPORATION CONCERNING
SYCUAN'S REQUEST TO PLACE 1357 ACRES INTO FEDERAL TRUST**

This Agreement ("Agreement") is entered into this ____ day of _____, 2012, between the County of San Diego, a political subdivision of the State of California ("County"), the Sycuan Band of the Kumeyaay Nation, a federally-recognized American Indian Tribe located in the County of San Diego, State of California ("Tribe") and Sycuan Tribal Development Corporation ("STDC"), a business entity organized solely under the laws of the Sycuan Band of the Kumeyaay Nation. The Tribe and STDC shall collectively be referred to as "Sycuan". The County and Sycuan shall be collectively referred to as the "Parties".

RECITALS

A. The Board of Supervisors of the County of San Diego and the General Council of the Sycuan Band of the Kumeyaay Nation are the governing bodies of individual governmental entities responsible for ensuring the health, safety and general welfare of their respective constituents or members.

B. Sycuan owns land within the unincorporated area of the County. Some land owned by Sycuan is held in trust by the United States on behalf of Sycuan; other land is owned in fee.

C. Sycuan has an amended application pending with the United States in which Sycuan has asked that 1357 acres of land be taken into trust on its behalf. The County and the Tribe recognize that residents of the Reservation and the lands to be taken into trust, and the residents living Off-Reservation are neighbors with legitimate concerns regarding development of this land, and the character of life in San Diego County.

D. The Environmental Assessment for Sycuan's fee- to- trust amended application identified certain impacts stemming from development that is proposed to take place on the land, Sycuan has agreed to mitigate said impacts as described in Section A of this Agreement. In addition, the placing of this land into trust will result in the loss of tax revenue to County. Sycuan has thus agreed to make payments to the County to partially compensate for the County's loss of tax revenue as described in Section 5 of this Agreement.

E. Pursuant to this Agreement, the County and Sycuan wish to memorialize their respective obligations related to the United States taking said land into trust for Sycuan in accordance with Sycuan's pending amended application.

F. Sycuan enters into this Agreement as a responsible exercise of its sovereignty, recognizing that its long-term governmental and business interests are best served by implementing this Agreement.

G. The County enters into this Agreement as a responsible exercise of its sovereignty, recognizing the importance of fostering a government-to-government relationship between the Tribe and the County.

NOW, THEREFORE, the County and Sycuan hereby enter into this Agreement to set forth the respective obligations of Sycuan and the County and to strengthen the government-to-government relationship between the County and Sycuan. To achieve these purposes, the County and Sycuan agree as set forth herein.

A. TRIBAL OBLIGATIONS

1. Security and Law Enforcement.

The Tribe and the County shall cooperate in applying for and securing grant funding for the purpose of providing security and law enforcement on and in the vicinity of the current Reservation and the land to be added to the Reservation through the approval of the fee to trust application. The County shall apply for funding through the Special Distribution Fund, the Regional Transportation Authority, Sandag, and/or other local, state or federal funding sources, and the Tribe shall support such funding requests by working cooperatively and jointly where feasible.

2. Public Health and Safety.

- a. Sycuan shall have a geotechnical investigation and report prepared by a California Certified Engineering geologist (“Report”). This Report shall evaluate the failed slope just north of the streambed stabilizer on the western shore of Lake Emma, and shall include a slope stability analysis on the failed slopes. The Report shall include the geologist’s conclusion regarding whether the slopes have the potential to fail further so as to cause a breach in the lake adjacent to the streambed stabilizer which could lead to flooding/erosion of downstream property. Mitigation measures (if necessary) shall be identified in the Report to protect the slopes and ensure that stream flows leaving the lake occur only through the streambed stabilizer. Sycuan shall implement the recommended mitigation measures. Sycuan shall provide maintenance of the slopes and land adjacent to the streambed stabilizer in perpetuity, in a condition that does not threaten downstream property or people from inundation hazards.
- b. Sycuan shall maintain the areas along the north shore of Lake Emma previously disturbed by mining, where erosion is occurring to ensure that erosion does not cause damage to Dehesa Road or the road right-of- way adjacent to Dehesa Road.
- c. Sycuan agrees to ensure that silt, if any, which flows onto Sloan Canyon Road from the Harbison Creek location is immediately and completely removed by taking any and all necessary and appropriate remedial action. Sycuan agrees to reimburse County should immediate silt removal be necessary to protect the public safety. Sycuan agrees to obtain all required permits from the County if the remedial action involves work on a County road right-of-way.

3. Public Trail

- a. Sycuan agrees to execute, within thirty (30) days of the effective date of this Agreement, the Option Agreement between the County of San Diego, the Sycuan Band of the Kumeyaay Nation and Sycuan Tribal Development Corporation attached hereto as Exhibit A , in which the Tribe and STDC grant to the County an option for the future location and dedication of a public trail on the 1357 acres to be taken in

trust; provided, however, that in addition to Sycuan and the County, certain federal agencies must also permit the development and location of said trail.

4. Transportation and Circulation

- a. The Tribe and the County shall cooperate in applying for and securing grant funding for the purpose of providing transportation and circulation improvements in the vicinity of the current Reservation and the land to be added to the Reservation when the Tribe's fee to trust application is approved. The County shall apply for funding through the Special Distribution Fund, the Regional Transportation Authority, Sandag, and/or other local, state or federal funding sources, and the Tribe shall support such funding requests by working cooperatively and jointly where feasible.
- b. Specific transportation projects and remedial measures were identified in the Tribe's Environmental Assessment to mitigate direct and cumulative impacts. The recommendations in the Environmental Assessment indicate that the Tribe should fund a proportional share of two projects as specifically set forth herein.
 1. Public Road Improvements for Dehesa Road at Harbison Canyon Road.
 - a. The Tribe agrees to pay the County a total sum of eight hundred thousand dollars (\$800,000.00) to be used exclusively by the County to design and construct a dedicated northbound right-turn lane on Dehesa Road at Harbison Canyon Road. The Tribe also agrees to provide any needed right of way on its property to the County for the northbound right-turn lane. The \$800,000.00 shall be remitted by the Tribe to the County in four equal payments of two hundred thousand dollars (\$200,000.00), the first of which shall be made within 30 days of final approval of the Tribe's amended fee to trust application. Whenever the phrase "final approval of the Tribe's amended fee to trust application" is used in this Agreement, it shall mean the date on which the United States records title to the 1,357 acres in trust for the Tribe. The second payment will be remitted within sixty (60) days thereafter. The third payment shall be made within thirty (30) days of the Tribe receiving notice from the County that design and environmental work are complete, and the fourth and final payment shall be made within thirty (30) days of the Tribe receiving notice that the County Board of Supervisors has approved advertisement, award, and construction of the project; provided, however, that under no circumstances will the Tribe remit any payments to the County prior to final approval of the Tribe's amended fee to trust application.
 2. Public Road Improvements for Dehesa Road from Willow Glen Drive to Harbison Canyon Road.
 - a) To ensure the continued flow of traffic on Dehesa Road, the Tribe shall dedicate necessary road right of way to the County and fully fund and construct new left turn pockets on Dehesa Road at the point where the primary entrance to both the Dehesa Housing and the entrance to the Outdoor Events Center/RV spaces are to be located as identified in the Environmental Assessment prepared for the Tribe's amended fee-to-trust application. Sycuan

agrees that this improvement shall include widening for appropriately designed turn pockets and acceleration and deceleration lanes that will comply with County road standards. Sycuan will also ensure that adequate width is maintained for bicycle lanes in their Dehesa Road improvements. Further, the Tribe agrees that it will apply for an encroachment permit, and shall be responsible for all appropriate environmental documents, design review and construction costs to complete this new intersection consistent with County road standards.

- c. The Tribe shall pay the County's one-time Transportation Impact Fee (TIF) to mitigate cumulative traffic impacts from the operations that will take place on the fee to trust land. The TIF shall be computed and paid based on the "Select Industrial" TIF rate for the Crest-Dehesa area (which is \$239 per Average Daily Trips (ADT) multiplied by the trip rate of 680 trips being generated by the Tribe's proposed project for a total TIF payment due to the County of \$162,520. The Tribe will make this TIF payment within 30 days of final approval of the Tribe's amended fee to trust application.

5. Property Taxes/ Transient Occupancy Taxes/ Sales Taxes

- a. The Tribe shall pay annually to the County the sum of \$123,928.00 for a period of seven years and six-months to mitigate lost County revenues from property taxes. The Tribe's first payment will be made within ninety (90) days of final approval of the Tribe's amended fee-to trust application, and annually thereafter; provided, however, that the amount of the eighth and final payment shall be \$61,964.00.
- b. The Tribe shall pay annually to the County the sum of \$149,825.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment hereunder, to mitigate lost County revenue from transient occupancy taxes. The Tribe's first payment will be made within ninety (90) days of final approval of the Tribe's amended fee-to trust application, and annually thereafter; provided, however, that the amount of the eighth and final payment shall be prorated and thus one-half of the annual sum.
- c. The Tribe shall pay annually to the County the sum of \$47,479.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment hereunder, to mitigate lost County revenues from sales taxes. The Tribe's first payment will be made within ninety (90) days of final approval of the Tribe's amended fee-to trust application, and annually thereafter; provided, however, that the amount of the eighth and final payment shall be prorated and thus one-half of the annual sum.

6. Mitigation for Currently Unanticipated Uses

- a. The Tribe agrees that if it changes the uses of the property being taken into trust from those described in its amended application dated May 2011, it will mitigate its impacts from such proposed uses in the following manner:
 1. The Tribe shall notify the County in advance of such proposed project changes, and the Parties shall commence discussions and negotiations to determine whether

such changes trigger the need for further analysis of Off-Reservation impacts. If the County makes an objective, good faith determination that further analysis is needed, the Tribe shall conduct such analysis. Based on said analysis, the Tribe and the County agree to enter into good faith negotiations to mitigate any Off-Reservation impacts identified in the analysis. Nothing herein is to be construed as requiring the County to agree to any future proposed uses or requiring the Tribe to agree to any limits on future uses; provided, however, that the Tribe shall comply with its NRMP, as adopted and currently in effect at the time of said use.

7. Ball Fields For Community Use

- a. Sycuan agrees to allow the community of Dehesa to use Sycuan's Recreation Center and the ball fields that will be constructed on Sycuan's Spinali property in accordance with the written policies Sycuan adopts, and may, from time to time, amend, for use of the Recreation Center.

B. COUNTY OBLIGATIONS

1. Within fourteen (14) days of the effective date of this Agreement, the County agrees to withdraw its opposition to Sycuan's Amended Application to take 1357 acres into trust by submitting a letter to the Bureau of Indian Affairs.
2. The County agrees not to file an appeal or any other type of challenge to any decision by the Bureau of Indian Affairs, including any decision made by its agents or officers, or any other division or appointee of the United States, to take the 1357 acres into federal trust, be it via litigation or administrative action.
3. The County agrees to withdraw the Civil Penalty Notice of Order related to the Sloane Canyon mine properties initiated on or about August 18, 2011 forthwith.
4. The County agrees not to file any further administrative, civil or other action related to the Sloane Canyon mine properties and further, agrees not to assess any civil penalties or any other type of fine, or pursue any lien related thereto.
5. The County agrees to assist Sycuan in processing a boundary adjustment regarding the legal lot(s) for the land being sold to KDLC as open space.
6. The County agrees to process Sycuan's requests to vacate the following title restrictions:
 - a. Open space easement recorded April 28, 1997, Document No. 1997-0194622;
 - b. Conditional Irrevocable Offer to Dedicate Real Property to County of San Diego SPA 88-007 Planning Areas IA and IB, recorded April 28, 1997, Document No. 1997-0195623; and
 - c. any other open space restrictions which were similarly recorded to run for the period of the operations of the sand mining or until 2017, whichever comes first; provided, however, that Sycuan agrees to reimburse the County for all reasonable costs the County incurs to process said vacations.
7. If the Tribe applies to annex to the Otay Municipal Water District, and without in any way limiting the County's discretion to support or oppose the Tribe's proposal, the County agrees to cooperate with the Tribe in its review and comment on the application. “

C. DISPUTE RESOLUTION

1. Voluntary Resolution, Meet and Confer Obligation. Sycuan and the County shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Disputes between Sycuan and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:
 - a. Either Party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
 - b. The Parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both Parties agree in writing to an extension of time.
 - c. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then upon the written request of either Party, the dispute may be submitted to binding arbitration in accordance with this section. The disputes submitted to arbitration shall be limited to claims that this Agreement has been breached by either Sycuan or the County. The arbitrator shall reach decisions resolving any disputes pursuant to this Agreement within ninety (90) days of the disputes or issues being first submitted to him or her.
2. Arbitration Rules. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held on the Sycuan Band of the Kumeyaay Nation Reservation or, at such other location mutually agreeable to the Parties. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. The arbitration shall be administered by a single neutral arbitrator. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided however, that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. The arbitrator shall have no power whatsoever to alter the agreements between the Parties set forth herein, or to issue a decision that is contrary to applicable law.
3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Dispute Resolution Section shall not be construed to waive, limit, or restrict any remedy that is otherwise available to either Party, nor shall this Section be construed to restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation; provided, however that neither Party is under any obligation to agree to such alternative method of dispute resolution.

D. CONSENT TO JURISDICTION: LIMITED EXPRESS WAIVER OF SOVEREIGN IMMUNITY

1. Sycuan expressly and irrevocably waives the Tribe's sovereign immunity specifically and exclusively to the County, and to no other individual or entity, for the following limited purposes that are directly related to this Agreement, and the County's ability to enforce the terms agreed to by Sycuan and the County in this Agreement.
2. Sycuan will submit to any arbitration proceeding as described in this Section, and consents to the jurisdiction of the United States District Court for the Southern District of California and, if the United States District Court for the Southern District of California finds that it lacks jurisdiction, to the jurisdiction of the Superior Court for the County of San Diego, State of California, in each case for the purposes of compelling arbitration in the event that either Party refuses to arbitrate any arbitrable dispute as contemplated herein, and for the enforcement of any decision and collection of any award of the arbitrator as contemplated herein.
3. Sycuan expressly waives the Tribe's sovereign immunity in any suit, action or legal proceeding by County for money damages, specific performance, injunctive relief and/or declaratory relief for Sycuan's breach of this Agreement. Further, Sycuan hereby unconditionally waives any claim or defense of exhaustion of tribal administrative or judicial remedies.
4. Sycuan's waiver shall commence as of the effective date of this Agreement.
5. Sycuan does not waive any aspect of its sovereign immunity with respect to any claims or actions by any third party. Sycuan's limited waiver is granted only to the County, and not to any other individual or entity, and only as specifically set forth in this Agreement.
6. In any court action brought pursuant to this Agreement, no Party shall be entitled to recover attorneys' fees and costs unless explicitly otherwise provided by applicable law.
7. The Parties hereby agree that any damages awarded or arising under this Agreement shall be exclusively limited to actual or compensatory damages incurred. These actual or compensatory damages must be shown with substantial certainty. In no instance shall the Parties to this Agreement be entitled to consequential damages, punitive damages, or lost profits. By acceptance and execution of this Agreement, the Parties explicitly and unequivocally agree that the only damages contemplated by the Parties as arising from this Agreement are actual or compensatory damages.

E. INDEMNITY

1. The Tribe agrees to indemnify the County, its agents, officers, and employees from and against all costs related to any actions, suits, claims, damages, losses, judgments, liabilities, expenses, including but not limited to litigation costs and reasonable attorneys' fees, directly related to or arising from a legal challenge to this Agreement by a third party. Sycuan's obligation to indemnify the County shall include all costs, judgments, awards, attorneys' fees, settlements, litigation costs, et cetera; provided, however, that said legal challenge must be brought by a third party against the County and directly contest the authority of the County to negotiate, approve and enter into this Agreement.

2. The Tribe's obligation to defend and indemnify the County, its agents, officers, and employees under this Agreement shall be effective regardless of whether any or all Agreement approvals and/or actions by the County regarding the Agreement remain valid or are invalidated by any court of competent jurisdiction; provided, however, that Sycuan shall not be required to indemnify the County to the extent that the County is determined to be negligent in its acts or omissions.
3. In the event that a claim, action, or proceeding is filed against the County as set forth in paragraph 1. above, the County shall immediately notify Sycuan in writing and cooperate with Sycuan in defending against same. Further, the County shall not enter into settlement discussions or agree to settle any such claim without first meeting and conferring with the Tribe and counsel of the Tribe's choosing. Provided that the County fully coordinates with the Tribe in defense of any claim, Sycuan shall promptly pay any and all reasonable fees and costs associated with defense of said claim, action or proceeding within thirty (30) days of receiving an itemized billing therefor.
4. The obligations of this indemnity Agreement shall be binding on the Parties and all successors and assigns of the Tribe. The Tribe shall so obligate all transferees and assigns.

F. NOTICE.

1. All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County, the Tribe and STDC at their respective addresses as follows:

For the Tribe:

Chairperson
Sycuan Band of the
Kumeyaay Nation
5459 Sycuan Road
El Cajon, CA 92019

For the County:

San Diego County Administrative Officer
San Diego County
1600 Pacific Highway, Room 209
San Diego, CA 92101

With a Copy to:

Patricia A. Prochaska
Attorney at Law
7275 N. Mercer Way
Mercer Island, WA 98040-2131

With a Copy to:

Claudia Anzures
1600 Pacific Highway, Ste 355
San Diego, CA 92101

For STDC:

President
Sycuan Tribal Development Corporation
1530 Hilton Head Road
El Cajon, CA 92019

With a Copy to:

Glenn Quiroga, Executive Vice President
Sycuan Tribal Development Corporation
1530 Hilton Head Road
El Cajon, CA 92019

2. Any Party may change the address to which such communications are to be given by providing the other Party with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.
3. All notices will be effective upon receipt and will be deemed received through delivery if personally served or on the fifth (5th) day following deposit in the mail if sent by first class mail.

G. MISCELLANEOUS PROVISIONS

1. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, confer a benefit or create any right on any third party, or the power or right to bring an action to enforce any of its terms.
2. Amendments. This Agreement may be amended only by written instrument duly signed and executed by the County and Sycuan.
3. Waiver. The waiver by either Party or any of its officers, agents or employees, or the failure of either Party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County or of Sycuan.
4. Authorized Representatives. The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of its respective Party and to bind its respective Party to the terms and conditions of this Agreement. The person executing this Agreement on behalf of its respective Party understands that all Parties are relying on these representations in entering into this Agreement.
5. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each Party.
6. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect, except to the extent that the invalidity of the severed provisions would result in a failure of consideration or would materially adversely affect any Party's benefit of its bargain. If a court of competent jurisdiction were to determine that a provision of this Agreement is invalid or unenforceable and results in a failure of consideration or materially adversely affects any Party's benefit of its bargain, then the Parties agree to promptly use good faith efforts to

amend this Agreement to reflect the original intent of the Parties. Except for this obligation to discuss amending this Agreement, no Party is obligated to agree to a new agreement or any amendment hereto.

7. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States and the laws of the State of California.
8. Force Majeure. In the event of a forced delay in performance by either Sycuan or the County due to causes beyond the reasonable control of that Party, including but not limited to fire, floods, catastrophic weather events or other natural disasters, epidemics, embargoes, war, acts of war (whether or not war is declared), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God, acts or inaction by any Party or its employees or agents, unusual delay in transportation, unavailability of materials, the time for performance shall be extended for the period of the forced delay.
9. Entire Agreement. This Agreement constitutes the entire agreement between the County, the Tribe and STDC and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute among the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties equally so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year above set forth. This Agreement shall be effective as of the first business day following the date on which the last Party executes it.

SYCUAN BAND OF THE
KUMEYAAY NATION

COUNTY OF SAN DIEGO

By _____
Daniel J. Tucker, Tribal Chairman

By _____
Ron Roberts, Chairperson
San Diego County Board of Supervisors

SYCUAN TRIBAL DEVELOPMENT
CORPORATION

By _____
Daniel J. Tucker, Board Chairman

OPTION AGREEMENT

BY AND BETWEEN

THE SYCUAN BAND OF THE KUMEYAAY NATION,

SYCUAN TRIBAL DEVELOPMENT CORPORATION

AND

THE COUNTY OF SAN DIEGO

OPTION AGREEMENT

This OPTION AGREEMENT ("Option Agreement") is entered into as of _____, 2012, by and between THE SYCUAN BAND OF THE KUMEYAAY NATION, a federally recognized American Indian Nation ("Tribe"), SYCUAN TRIBAL DEVELOPMENT CORPORATION ("STDC") (the Tribe and STDC are hereinafter collectively referred to as "Sycuan") and the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County") (the Tribe, STDC, and the County are hereinafter collectively referred to as "Parties").

1. Grant of Option. In accordance with the Intergovernmental Agreement between the County of San Diego, the Sycuan Band of the Kumeyaay Nation, and Sycuan Tribal Development Corporation executed on or about [date to be inserted] ("Intergovernmental Agreement"), Sycuan hereby grants the County an option ("Option") to exercise a right to require the dedication of a public trail easement; provided, however, that exercise of said Option shall be subject to all of the terms and conditions stated herein.
2. Term of Option. The term of this Option ("Option Term") shall begin on the date this Option Agreement is approved by the Tribe and STDC, and shall continue in effect for a period of exactly twenty-five (25) years after the date on which the United States records title in trust on behalf of the Tribe to the 1357 acres of land that is the subject of the Tribe's amended application filed in May 2011. At the expiration of the Option Term, or if this Option is terminated by County under paragraph 4 of this Option Agreement, neither Party shall have any further rights or obligations hereunder; provided, however, that if a forced delay in performance by either Sycuan or the County due to causes beyond the reasonable control of that Party, including but not limited to fire, floods, catastrophic weather events or other nature disasters, epidemics, embargoes, war, acts of war (whether or not war is declared) insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God, acts or inaction by any Party or its employees or agents, or inaction or delay on the part of other governmental agencies that may need to issue permits or permission to align the trail, unusual delays in transportation, unavailability of materials, the Option Term shall be extended for the period of the forced delay. In addition, Tribe and STDC agree that if the County has commenced the necessary actions to locate an acceptable trail alignment and has diligently pursued any other needed governmental approvals, but has not obtained such approvals at the expiration of the Option Term, Tribe and STDC agree that the Option Term will be extended for 10 additional years to allow County to complete the approval process. County agrees that upon termination of this Option, County will execute, acknowledge and deliver to Sycuan a Quitclaim Deed releasing all rights, title and interest in any Property arising from this Option Agreement if Sycuan requests said Quitclaim Deed from County.
3. Exercise of Option. County will provide written notice to the Tribe a minimum of 30 days prior to the date on which it intends to exercise this Option. Upon such notice, the Tribe agrees to execute and deliver to County any documents required from the Tribe within 60 days of written notice by County. The Tribe further agrees that it will take all actions necessary and request that the federal agency holding title to the land approve the grant of easement to the County as contemplated by this Option Agreement.
4. Termination of Option. County is free to terminate this Option Agreement at any time, in its sole discretion, by delivering written notice thereof to the Tribe.
5. Access to Property. Sycuan agrees to allow County and its agents reasonable access to the Property for the sole purpose of inspecting and surveying the Property to determine the exact alignment of a trail and for other purposes directly related to County's right to construct the trail; provided,

however, that County shall provide advance written notice to the Tribe a minimum of two business days prior to accessing the Property.

6. County's Indemnity. County shall indemnify, hold harmless and defend Sycuan from and against any and all liens, claims, liabilities, losses, damages, costs, expenses, suits or judgments for labor performed or materials furnished to or for County, or for injuries to any person or property damage, arising out of any accident or occurrence in any way connected with entry upon the Property by County or its agents pursuant to paragraph 5 of this Option Agreement; provided, however, that Sycuan shall be liable for liability arising from the sole negligence or willful misconduct of Sycuan.

7. Agreement On Trail Alignment. Sycuan and County shall evaluate trail alignments on the Property and shall confer and consult with the United States Fish and Wildlife Service concerning the optimal location for the trail alignment. The preferred alignment is one that will fulfill the needs of the public to access recreational trails, but will not unreasonably impact Sycuan's future plans for development or other activities. The Parties agree to negotiate in good faith to reach agreement over the alignment of the trail.

8. Approvals Required Beyond Sycuan's Control. County acknowledges that the Property on which the trail will be located is subject to certain approvals by certain federal entities over which Sycuan has no control, including, but not limited to, the United States Fish and Wildlife Service. Accordingly, although Sycuan will fully cooperate with the County and negotiate in good faith as set forth in this Agreement, unless all entities with jurisdiction over the Property explicitly provide the necessary approvals, development of the trail cannot proceed.

9. Assignment. Neither Sycuan nor County shall have the right to assign their respective rights or obligations under this Option Agreement without the prior written consent of the other party.

10. Entire Agreement. This Option Agreement, together with Intergovernmental Agreement expressly referred to herein, constitutes the entire agreement between the Parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are hereby superseded.

11. Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Option Agreement.

12. Governing Law. This Option Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

13. Headings. The captions and paragraph headings used in this Option Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

14. Modification, Waiver. No modification, waiver, amendment or discharge of this Option Agreement shall be valid unless the same is in writing and signed by both Parties.

15. No Other Inducement. The making, execution and delivery of this Option Agreement by the Parties hereto has been induced by no representations, statements warranties or agreements other than those expressed herein.

16. Notices. Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to

the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be.

County's Address for Notice:

Brian Albright, Director
Department of Parks and Recreation
5500 Overland Avenue, Suite 410
San Diego, CA 92123

Telephone: 858-966-1301

Tribe's Address for Notice:

Daniel J. Tucker, Chairman
Sycuan Band of the Kumeyaay Nation
5459 Sycuan Road
El Cajon, CA 92019

Telephone: 619.445.2613 x 1001

STDC's Address for Notice:

Glenn Quiroga, Executive Vice President
Sycuan Tribal Development Corporation

Telephone: 619.444.4043

Any party may change its address for notice by delivering written notice to the other Parties as provided herein.

17. Severability. If any term, provision, covenant or condition of this Option Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Option Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Option Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Specific Performance and Other Remedies. The Parties understand that the Property is unique and for that reason, among others, the Parties may be irreparably damaged in the event that this Option Agreement is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this Option Agreement, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the Parties may have hereunder at law or in equity.

19. Time. Time is of the essence of each provision of this Option Agreement.

20. Time Period Computation. All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.

21. Recording. County may record this Option Agreement in the official records of San Diego County, and may re-record it at any time as it deems necessary to preserve its Option rights.

22. Authorized Representatives. The persons executing this Option Agreement on behalf of Sycuan affirmatively represents that they have the requisite legal authority to grant this Option on behalf of Sycuan and to bind Sycuan to the terms and conditions of this Agreement. The persons executing this Option on behalf of Sycuan understand that all Parties are relying on these representations in entering into this Agreement.

23. Waiver of Sovereign Immunity. Sycuan hereby specifically grants a limited waiver of the Tribe's sovereign immunity from suit to County and to no other individual or entity whatsoever to enforce the specific terms of this Agreement. County shall thus have the right to enforce this Agreement in the Superior Court of the County of San Diego, or in the United States District Court in and for the Southern District of California, if the San Diego Superior Court, for whatever reason, declines jurisdiction over the matter.

This Option Agreement shall be effective as of the date of its approval and execution by Sycuan.

SYCUAN BAND OF THE KUMEYAAY NATION

By: _____
Daniel J. Tucker, Chairman

SYCUAN TRIBAL DEVELOPMENT CORPORATION

By: _____
Daniel J. Tucker, Chairman

COUNTY OF SAN DIEGO

By: _____
[INSERT]