Date: April 6, 2015

To: Unified Disaster Council

From: Jeff Ledbetter, Regional Public Safety Geodatabase Program Manager

Subject: Non-disclosure Agreement with San Diego Gas & Electric

RECOMMENDATION:

That the Unified Disaster Council (UDC) authorize the chairperson to enter into a non-disclosure agreement with San Diego Gas & Electric (SDG&E) to facilitate the sharing of GIS data relating to the location of electric distribution and/or transmission facilities, operational status, and structures.

BACKGROUND:

The public safety and emergency management communities have long sought GIS data from SDG&E for emergency planning and response. SDG&E's field level personnel have had a willingness to share the subject data but have been prevented from doing so by the absence the required non-disclosure agreement.

One of the primary advantages of the UDC becoming the governing body for the Regional Public Safety Geodatabase (RPSG) is that it provides a legal entity to enter into agreements, such as this proposed agreement with SDG&E, on behalf of its members. The advantage to both the UDC members and the party it strikes an agreement with is that it only has to strike one agreement with the UDC, as opposed to on agreement with each member. This recommendation seeks to take advantage of this arrangement for the first time.

Please find the proposed agreement language with SDG&E attached. The agreement has been reviewed by County counsel through the Office of Emergency Services.

SUBMITTED BY:

Jeff Ledbetter
RPSG Program Manager

NONDISCLOSURE, INFORMATION USE
AND HOLD HARMLESS AGREEMENT

San Diego County Unified Disaster Council ("REQUESTOR") desires information from **San Diego Gas & Electric Company** ("Company") relating to the location of Company's electric distribution and/or transmission facilities, operational status, and structures, in order to develop emergency response plans (collectively, the "Purpose"). In connection with such Purpose, REQUESTOR has requested certain map and geographic information system data pertaining to such facilities (the "GIS Data") and other technical and other Confidential Information (as defined below). As a condition to such disclosure by Company to each of REQUESTOR's officers, employees, directors, shareholders, partners, affiliates, agents, representatives or advisors (collectively "Representatives"), Company and REQUESTOR hereby agree to this Nondisclosure, Information Use and Hold Harmless Agreement ("Agreement"), as of **February 18, 2015**, as follows:

1. DEFINITION

"Confidential Information" shall mean any proprietary information concerning the business, operations and assets of Company and/or its present and future direct or indirect parent company(ies), affiliates or subsidiaries, including, without limitation, any documentation, technical engineering applications, documents or data, the GIS Data, spatial data and maps in GIS format, including shapefiles for structures, single line diagrams, single line meter and relay diagrams, other diagrams representing electric transmission or distribution facilities, information relating to Company substation design (including, without limitation, design documents and drawings, security systems design and operation and similar information constituting critical energy infrastructure information as defined by 18 C.F.R. §388.113(c)(1)) (collectively, "CEII"), and other information of a similar nature, whether or not reduced to writing or other tangible form, and any trade secrets, whether or not defined as "trade secrets" under the Uniform Trade Secrets Act of California; provided, however, that "Confidential Information" shall exclude information (1) known to REQUESTOR or a Representative prior to obtaining the same from Company; (2) in the public domain at the time of disclosure to REQUESTOR; (3) obtained by REQUESTOR or a Representative from a third party who did not receive the same, directly or indirectly, from Company; or (4) approved for release by written authorization of an authorized officer of Company. The party claiming that any of the foregoing four (4) exceptions apply shall have the burden of proof to establish such applicability.

2. LIMITED USE; NONDISCLOSURE

REQUESTOR hereby agrees that it shall use the Confidential Information solely for its own internal purposes to perform the Purpose. Neither REQUESTOR nor its Representatives shall use the Confidential Information for other than the limited purposes set forth herein. Neither REQUESTOR nor its Representatives shall disclose the Confidential Information to third parties. REQUESTOR agrees to use the higher of the same degree of care it uses with respect to its own proprietary or confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Without limiting the generality of the foregoing, Requestor shall not disclose the Confidential Information to any individual or entity

other than a Representative. REQUESTOR shall cause each of its Representatives to abide by the terms of this Agreement and shall be responsible for any breach of this Agreement thereof.

3. NO WARRANTY

Company makes no representations or warranties, whether expressed or implied, as to the accuracy, correctness, defensibility, completeness or any other standard or measure of quality or adequacy or as to its use or intended use for any particular purpose regarding any of the Confidential Information provided to REQUESTOR under this Agreement. The Confidential Information, especially the GIS Data, is not precise and, as the systems generating the Confidential Information are complex and may contain some nonconformities and defects, including omissions, typographical or other errors, Company does not guarantee the reliability, accuracy, quality, timeliness, usefulness, adequacy, completeness or suitability of the Confidential Information, or the desired results to be obtained. Company assumes no obligation to update the Confidential Information. Neither Company nor any of Company's representatives, agents, officers, directors, employees, stockholders, owners, affiliate, successors or assigns will have any liability to REQUESTOR or any other person resulting from the use of the Confidential Information, including, but not limited to the GIS Data.

4. HOLD HARMLESS

REQUESTOR is solely responsible for the selection and use of the Confidential Information and any consequences resulting from REQUESTOR's use, adaption or modification of the Confidential Information, including, but not limited to the GIS Data.

As consideration for Company providing the Confidential Information (including the GIS Data) to REQUESTOR pursuant to this Agreement, REQUESTOR shall be solely responsible for and REQUESTOR agrees to fully and forever hold harmless, indemnify against, defend, release, waive, discharge, and covenant not to sue Company, and its current and future parent company(ies), subsidiaries, affiliates and its and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns, from any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, attorneys' fees (including fees and disbursements of in-house and/or outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either party, arising out of or connected in any manner from the REQUESTOR's use of the Confidential Information; (b) damage to, loss, and/or destruction of property, including, without limitation, property of REQUESTOR or others arising out of or connected in any manner from the REQUESTOR's use of the Confidential Information; or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to REQUESTOR's acts or omissions in breach of this Agreement or arising out of or connected in any manner from the REQUESTOR's use of the Confidential Information. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by the sole negligence or willful misconduct of Company.

5. COURT OR ADMINISTRATIVE ORDER

Notwithstanding the provisions of Article 2 above, REQUESTOR and its Representatives may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, it is required to do so by the disclosure requirements of any law, rule, or regulation or any order, decree, subpoena or ruling or other similar process of any court, securities exchange, governmental agency or governmental or regulatory authority. Prior to making or permitting any of its Representatives to make such disclosure, REQUESTOR shall provide Company with prompt written notice of any such requirement so that Company may seek a protective order or other appropriate remedy.

6. PUBLICITY

Neither party or its Representatives shall, without the prior written consent of the other party, disclose to any person (1) the fact that the Confidential Information has been made available to REQUESTOR or its Representatives or (2) any information regarding any ongoing discussions between the parties, including the fact that such discussions are occurring; provided, however, that either party may disclose the information described in clauses (1) and (2) above if such disclosure is required under any of the circumstances described in Article 5 above, in which case the procedures specified therein with respect to such disclosure shall apply.

7. DOCUMENT RETENTION

At any time upon the request of Company, REQUESTOR shall promptly deliver to Company or destroy all portions of documents (and all copies thereof, however stored) furnished to or prepared by REQUESTOR and its Representatives that contain Confidential Information.

8. NO WAIVER

It is understood and agreed that no failure or delay by either party in exercising any right, power or privilege available hereunder or under applicable law shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof the exercise of any other such right, power or privilege.

9. SURVIVAL

Notwithstanding the return or destruction of all or any part of the Confidential Information, the terms of this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information. Notwithstanding the foregoing, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect in perpetuity with respect to any GIS Data or CEII provided by Company to REQUESTOR.

10. ASSIGNMENT

Neither party may assign (by operation of law or otherwise) any of its rights or obligations hereunder without the prior written consent of the other party.

11. REMEDIES

The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Company and the Representatives are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by REQUESTOR or its Representatives, Company shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, money damages or any other legal or equitable remedy available to Company.

12. OTHER BUSINESS OPPORTUNITIES

Neither the holding of discussions among the parties hereto nor the disclosure of Confidential Information will be construed as an obligation on the part of either party to refrain from engaging at any time in the same business or any business similar or dissimilar to the business in which the other is now engaged. Further, except as otherwise agreed in writing, information received concerning a party's future plans is tentative and does not represent firm decisions or commitments by either party. Each party may meet with third persons and may receive information similar to the Confidential Information which the party received under this Agreement.

13. NO IMPLIED LICENSES

Nothing in this Agreement will be construed as granting any rights to REQUESTOR, by license or otherwise, to any of Company's Confidential Information, except as specifically stated in this Agreement.

14. ENTIRE AGREEMENT; AMENDMENT

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and may be amended only in writing signed by both parties. This Agreement supersedes any previous confidentiality or nondisclosure agreement or contractual provisions between the parties to the extent they relate to the subject matter hereof.

15. GOVERNING LAW

The formation, interpretation and performance of this Agreement shall be governed by the internal laws of the State of California.

16. ATTORNEYS' FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs,

expenses (including expert testimony) and reasonable attorneys' fees, including allocated costs and fees of in-house counsel, incurred therein by the prevailing party.

17. VENUE AND JURISDICTION

In the event of any litigation to enforce or interpret any terms of this Agreement, the parties agree that such action will be brought in the Superior Court of the County of San Diego, California (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

18. NOTICES

All notices to be given under this Agreement shall be in writing and either sent by a nationally recognized overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or sent by telecopy during business hours of the recipient, with a copy of the notice also deposited in the United States mail (postage prepaid) the same business day, in which case notice shall be deemed delivered on transmittal by telecopier provided that a transmission report is generated reflecting the accurate transmission of the notices, or sent by United States mail, postage prepaid, in which case notice shall be deemed delivered as of two business days after deposit in the mail, addressed as follows:

San Diego Gas & Electric Company
Attn: Commercial Counsel
101 Ash Street
San Diego, CA 92101
Phone: 619-696-4395
Fax: 619-699-5150

San Diego County Unified Disaster Council
Attn: Holly Crawford, President
5580 Overland Ave
San Diego, Ca 92123
Phone: 858-565-3490
Fax: 858-565-3499

These addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

19. SAVINGS CLAUSE

If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or

void, the remainder of the Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

20. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement, including signature pages, by electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

21. TERMINATION

Termination of the Agreement may be effected as to any party as follows: either party shall give notice of the termination of participation in this Agreement. The Agreement shall be terminated twenty days after filing of such notice.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below.

REQUESTOR:	**COMPANY:**
San Diego County **Unified Disaster Council**	**SAN DIEGO GAS & ELECTRIC COMPANY**
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print Name)	Name: _____ (Print Name)
Title: _____	Title: _____
Date: _____	Date: _____

Approved as to legal form: