

SAMPLE FORMS - CONTRACTS
Access to the SoCalGas Pipeline System
Consulting Services Agreement (Form 6440, 2/08)

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(See Attached Form)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 3829
DECISION NO.
1C13

ISSUED BY
Lee Schavrien
Senior Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Feb 15, 2008
EFFECTIVE Mar 16, 2008
RESOLUTION NO. _____

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (the "Agreement") is made and entered into effective this _____ day of _____, 20__ (the "Effective Date") by and between **Southern California Gas Company**, a California corporation ("SoCalGas"), and _____ (the "Client").

RECITALS

WHEREAS, SoCalGas is a public utility regulated by the California Public Utilities Commission ("CPUC") providing gas service to end-use customers within Southern California.

WHEREAS, the Client is a sponsor of a _____ project and/or has an interest in SoCalGas' ability to receive and redeliver additional gas supplies into its gas utility system.

WHEREAS, the Client desires to retain SoCalGas in connection with the performance of certain consulting services, upon the terms and conditions set forth in this Agreement (the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein the parties agree as follows:

SECTION 1 - CONSULTING SERVICES

1.1. **Retention.** Client hereby retains SoCalGas to provide the Services, upon the terms and conditions set forth in this Agreement.

1.2. **Scope of Services.** The Services to be provided to Client by SoCalGas shall consist of the tasks set forth in Exhibit A to this Agreement including analyzing the impact on its gas transmission system of receipt of additional gas supply at a new or expansion of an existing receipt point for redelivery to end use customers (the "Scope of Services"). No construction work shall be included or done pursuant to this Agreement.

1.3. **Term.** This Agreement shall be effective on the Effective Date and shall continue in full force and effect until the completion of the Services.

SECTION 2 - COMPENSATION AND EXPENSES

2.1. **Compensation.** An estimate of SoCalGas' fees and all other applicable costs to be billed by SoCalGas to Client under this Agreement are set forth in Exhibit A to this Agreement. In any event, Client shall be liable for the actual costs of the Services

which may be higher than the estimated costs. Actual costs shall include the actual Services rendered and all related costs incurred, and shall include permit or other fees or charges, procurement, indirect costs and overheads, carrying costs, and any related income or other tax liability thereon.

2.2. Payment. Upon execution of this Agreement, Client shall make payment to "Southern California Gas Company" for the Services in the amount specified in Exhibit A within ___ days. Any amount billed by SoCalGas to Client subsequent to the initial payment shall be paid by Client within twenty (20) days after receipt of SoCalGas' invoice to the address set forth in Section 8 below.

2.3. Change Orders. Any change to the Scope of Services shall be in writing (a "Change Order") and signed by Client and SoCalGas. If Client issues any request for a change in the Scope of the Services or the time of completion of the Services beyond those tasks described in the Scope of Services and not identified as a Change Order, but which SoCalGas considers to be a Change Order, then SoCalGas shall notify Client in writing and the parties shall mutually decide whether such a change in the Scope of Services or the time of completion of the Services constitutes a Change Order, which increases or decreases the Scope of the Services and increases or decreases the cost to SoCalGas of providing the Services. If SoCalGas issues a Change Order that results in an increase or decrease in the cost of the Services, then an adjustment shall be made to the total compensation and/or the time of completion of the Services. All written Change Orders shall become a part of this Agreement. SoCalGas may refrain from any additional work until Client has paid such additional amount as set forth above.

2.4. Payroll Taxes. Social security, federal, and other applicable taxes shall not be withheld from payments made to SoCalGas.

SECTION 3 - INFORMATION AND OWNERSHIP

3.1. Confidential Information. During the term of this Agreement, either party may have access to and become acquainted with confidential information and trade and business secrets of the other. Treatment of this information by both parties is set forth in the Confidentiality Agreement which is attached hereto and incorporated herein as Exhibit B of this Agreement (the Confidentiality Agreement).

3.2. Ownership and Use. Notwithstanding the above, any and all material and information prepared, accumulated or developed by SoCalGas, any subcontractor or their respective employees, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, (hereinafter, collectively "Work Product"), shall remain the property of SoCalGas when prepared or in process, whether or not delivered to Client. SoCalGas hereby grants to Client a nonexclusive royalty-free unrestricted license to use, copy, and distribute any Work Product furnished by SoCalGas to Client under this Agreement, subject to the terms specified in Exhibit B, Confidentiality Agreement. SoCalGas warrants that the Work Product provided by SoCalGas hereunder will meet or exceed

all generally accepted industry standards for this type of work. SoCalGas makes no representations about the suitability, reliability, availability, timeliness or accuracy of Work Product or Services for any purpose. The Work Product will be done using information and assumptions at one point of time and which are subject to change at any time that could change the results or analysis reflected in Work Product. Estimates of costs may not cover all environmental costs or other unforeseen costs, or costs resulting from changes to laws, rules and regulations governing the Services herein. Therefore, SoCalGas does not warrant the Services or Work Product for any use and specifically disclaims any liability for any subsequent use of the Work Product, or any part thereof, by Client. No warranty of any kind is or will be included as part of the Services and all express and implied warranties, including any warranties of merchantability, and/or fitness for a particular purpose are specifically disclaimed with the exception of claims solely arising from the gross negligence or intentional misconduct by SoCalGas that occurs while performing the Services. Client will not hold SoCalGas liable or responsible in any way for any losses, damages, claims, costs, expenses or other obligations it incurs, or may incur, arising out of or related to Client's use of, or reliance on, any part of the Services, Work Product or other information provided by SoGalGas hereunder.

SECTION 4 - STATUS

SoCalGas is and at all times during the term of this Agreement shall be an independent contractor providing consulting services to Client. Nothing contained in this Agreement shall be construed to create a relationship of principal and agent, employer and employee, servant and master, partnership or joint venture between the parties.

SECTION 5 - ATTORNEYS' FEES

Should any dispute arise regarding any term or provision of this Agreement or enforcement of any rights hereunder, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

SECTION 6 - SUPERVISION AND COORDINATION

During the term of this Agreement, each party shall appoint a representative who will be authorized, empowered and available to act for and on behalf of each to implement the terms and conditions of this Agreement.

SECTION 7 – DISPUTES

Any dispute or need for interpretation arising out of this Agreement which cannot be resolved after a reasonable period of time of good faith negotiation may be submitted to the CPUC for resolution.

SECTION 8 – NOTICES

Any and all notices and other communications hereunder shall be in writing and shall be deemed to have been duly given or received when delivered personally or by courier forty-eight (48) hours after being mailed, via first class, postage prepaid, to the addresses set forth immediately below of the parties hereto or to such other addresses as either of the parties hereto may from time to time designate in writing to the other party.

SoCalGas:

Southern California Gas Company
Address
Address
Attn:

Client:

Client
Address
Address
Attn:

SECTION 9 - SUCCESSORS AND ASSIGNS

Assignment or transfer of the entire rights and obligations of any Party hereunder shall only be permitted under the following circumstances:

A. When the assignment is to a successor, representative or assignee which shall succeed by purchase, merger, corporate reorganization/restructuring or consolidation to all or substantially all of the assets of Project or SoCalGas, as the case may be and when the assignment is to a parent, affiliate or subsidiary of a Party hereto; or

B. When any Party assigns or pledges this Agreement under the provisions of any mortgage, deed of trust, indenture or similar instrument which it has executed or may execute hereafter; however, in such event the other Parties shall be provided prior written notice thereof; or

C. When the Party assigning shall have first obtained the consent in writing of the other Party hereto.

SECTION 10 - APPLICABLE LAW

The provisions of this Agreement shall be construed and enforced in accordance with the laws of the State of California.

SECTION 11 – WAIVERS

The failure or delay of either party to exercise or enforce at any time any of the provisions of this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce each and every provision of the Agreement and shall not otherwise affect the validity of this Agreement.

SECTION 12 – SEVERABILITY

If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision shall become inapplicable and shall be deemed omitted from this Agreement. Such determination shall not, however, in any way invalidate the remaining provisions of this Agreement.

SECTION 13 - ENTIRE AGREEMENT AND AMENDMENTS

This Agreement and its exhibits constitute the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes any prior written or oral understanding or agreement between the parties relating to the subject matter hereof. This Agreement shall not be amended, altered, or supplemented in any way except by an instrument in writing, signed by the duly authorized representative of the parties that expressly references this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and in the year first above written.

Southern California Gas Company

Client

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A
Consulting Services Agreement dated _____

SoCalGas will provide the Client with a report that provides a preliminary cost estimate requested by the Client for construction of necessary facilities as described below (the "Services"). SoCalGas proposes to analyze the impact on its gas transmission system of receiving _____ million cubic feet per day (MMcfd) of new supply at _____, California, on a _____ basis. SoCalGas' analysis will identify any system improvements necessary to accept this new supply under the assumption that the new supply _____. Any assessment of gas quality or gas quality issues are outside of the scope of this cost estimate.

A cost estimate for any facility improvements, accurate to $\pm 20\%$, will be calculated. The findings and estimate will not constitute a proposal by SoCalGas. This preliminary cost estimate will include only the construction cost of the identified facilities. SoCalGas will not have performed a specific site or route evaluation for the Client's project in the development of this estimate. Additionally, costs associated with taxes (CIAC); permitting, paving, right-of-way acquisition, environmental issues, gas quality, measurement, regulatory, and land acquisition/development issues; and any unusual construction costs or facility requirements (e.g. freeway, river, or channel crossings) are explicitly excluded from this preliminary cost estimate. These costs are the Client's responsibility to determine and may be significant.

SoCalGas' construction costs continue to rise with increasing costs of labor and materials. Since this preliminary cost estimate is developed using average historical project cost data, it is highly likely that the actual construction costs for the Client's particular project will vary significantly from this preliminary estimate. SoCalGas urges the Client to retain the services of a third-party engineering construction firm, or enter into a design and engineering contract with SoCalGas to develop a more accurate construction cost estimate for this specific project.

Because of the exclusions and limitations of this initial review, SoCalGas does not recommend that the Client use this preliminary cost estimate for any purpose, including any substantive planning or other decisions regarding the cost or viability of its project. Any use by the Client is solely at its own risk and should factor in the above risks and limitations.

A report that summarizes the results of SoCalGas' analyses, identifies any facility improvements, and estimates the cost of construction of those improvements, will be provided to the Client. The Client will be granted an unrestricted license to use, copy, and distribute the report; however, the report and all work product shall remain the property of SoCalGas.

The estimated cost to perform the Services is \$_____. SoCalGas will complete the analysis within _____ business days after receipt of payment.

Payment in full of the estimated cost of the Services is required upon execution of a Consulting Services Agreement and Exhibit A to proceed with the analysis. The Client will

be responsible for the actual costs of the Services; to this end, an invoice or refund will be issued to the Client at the completion of the project for any difference between the actual costs and this estimate.

Should the Client's requirements vary from this proposal, SoCalGas would like the opportunity to modify and resubmit this proposal as appropriate. If the Client has any questions, please call _____ at _____.

Accepted and agreed to by their respective authorized representatives:

SOUTHERN CALIFORNIA GAS COMPANY

[Client]

By _____

By _____

Title _____

Title _____

Date _____

Date _____